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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

### **Soil Conservation and Water Quality Division[27]**

Replace Chapter 10

Replace Chapter 12

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

Replace Chapters 35 and 36

### **Arts Division[222]**

Replace Analysis

Remove Reserved Chapters 10 and 11, Chapters 12 and 13, and Reserved Chapters 14 to 30

Insert Reserved Chapters 10 to 30

### **Human Services Department[441]**

Replace Chapters 51 and 52

### **Iowa Public Employees' Retirement System[495]**

Replace Analysis

Replace Chapter 4

Replace Chapters 6 to 9

Replace Chapters 11 and 12

Replace Chapter 14

Replace Chapter 16

### **City Finance Committee[545]**

Replace Chapter 2

### **Environmental Protection Commission[567]**

Replace Chapter 20

Replace Chapters 22 and 23

Replace Chapter 25

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

Replace Analysis

Replace Chapter 11

Replace Reserved Chapter 20 with Chapter 20

### **Secretary of State[721]**

Replace Analysis

Replace Chapter 21

**Transportation Department[761]**

Replace Analysis

Replace Chapter 20

Replace Chapter 25

Replace Chapter 180

Replace Chapters 400 and 401

Replace Chapter 425

Replace Chapter 511

Replace Chapter 524

Replace Chapter 620

CHAPTER 10  
IOWA FINANCIAL INCENTIVE PROGRAM FOR SOIL EROSION CONTROL

[Prior to 12/28/88, see Soil Conservation Department, 780—Ch 5]

**27—10.1 to 10.9** Reserved.

PART 1

**27—10.10(161A) Authority and scope.** This chapter establishes procedures and standards to be followed by the division of soil conservation and water quality, Iowa department of agriculture and land stewardship, in accordance with the policies of the state soil conservation and water quality committee in implementing the state's financial incentive program for soil erosion control. It also establishes standards and guidelines to which the soil conservation districts shall conform in fulfilling their responsibilities under this program.

[ARC 2192C, IAB 10/14/15, effective 11/18/15; ARC 3243C, IAB 8/2/17, effective 9/6/17]

**27—10.11(161A) Rules or subrules are severable.** If any provision of a rule or subrule or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the rule or subrule which can be given effect without invalid provision or application, and to this end the provisions of these rules or subrules are severable.

**27—10.12 to 10.19** Reserved.

PART 2

**27—10.20(161A) Definitions.**

*“Administrative order”* means a written notice from the commissioners to the landowner or landowners of record and to the occupants of land informing them they are violating the district's soil loss limit regulations or maintenance agreement and advising them of action required to conform to the regulations.

*“Allocation”* means those funds that are identified as a district's share of the state's appropriated funds that have been distributed to a particular program.

*“Applicant”* means a person or persons requesting assistance for implementing soil and water conservation practices.

*“Appropriations”* means those funds appropriated from the general fund of the state and provided the division of soil conservation and water quality for funding the various incentive programs for soil erosion control.

*“Case file”* means a record that is assembled and maintained for each application approved for state cost sharing.

*“Certification of practice form”* means a signature page used to attest that a practice was installed, performed or maintained in accordance with applicable standards.

*“Certifying technician”* means the district conservationist of the Natural Resources Conservation Service (NRCS) or the district forester of the department of natural resources.

*“Commissioner”* means one of the members of the governing body of a district, elected or appointed in accordance with the provisions of Iowa Code chapter 161A.

*“Committee”* or *“state soil conservation and water quality committee”* means the committee established by Iowa Code section 161A.4 as the policymaking body of the division of soil conservation and water quality.

*“Complaint”* means a written and signed document received by the commissioners from a landowner or occupant of land stating that said property in the district is being damaged by sediment resulting from soil erosion on the property of another named landowner.

“*Conservation cover*” means that if a tract of agricultural land has not been plowed or used for growing row crops at any time within the prior 15 years, it shall be classified as agricultural land under conservation cover.

“*Department*” means the department of agriculture and land stewardship as established in Iowa Code chapter 159.

“*District*” or “*soil and water conservation district(s)*” means a governmental subdivision of this state organized for the purposes, with the powers, and subject to the restrictions set forth in Iowa Code chapter 161A.

“*District cooperator*” means an individual or business that has entered into a cooperator’s agreement with a district for the purpose of planning, applying, and maintaining the necessary soil and water conservation practices on land under control of the individual or business.

“*Division*” means the division of soil conservation and water quality as established and maintained by the department pursuant to Iowa Code section 159.5(15) and administered pursuant to Iowa Code chapter 161A.

“*Excessive erosion*” means soil erosion that is occurring at a rate exceeding the established soil loss limit.

“*Fiscal year*” means the state fiscal year for which program funds were appropriated.

“*Landowner*” includes any person, firm or corporation, partnerships, estates, trusts, or any federal agency, this state or any of its political subdivisions, who shall hold title to or have legal control over land lying within a district.

“*Maintenance/performance agreement*” means an agreement between the recipient, the landowner, and the district. The recipient and landowner agree to maintain the soil conservation practices for which financial incentives from the division through the district have been received. The agreement states that the recipient and landowner will maintain, repair, or reconstruct the practices if they are not maintained according to the terms specified in the agreement. The terms of the agreement shall be specified by the division.

“*Obligated funds*” means those moneys that are set aside out of the district’s allocation or by the division for payment to a landowner after the commissioners have approved an application for financial incentives.

“*Power of attorney*” means a legal document that grants a person the right to act on behalf of the landowner.

“*Recipient*” means a landowner or district cooperator who has qualified for and received financial incentive payments for implementing soil and water conservation practices.

“*Road*” means the entire width between property lines of the publicly owned right-of-way.

“*Row cropped lands*” means land that is in an established rotation sequence that includes row crops and the sequence is actively being followed or is in consecutive row crop sequence.

“*Soil conservation practices*” means any of the practices which serve to reduce erosion of soil by wind and water on land used for agricultural or horticultural purposes and approved by the state soil conservation and water quality committee.

“*Soil loss limit*” means the maximum amount of soil loss due to erosion by water or wind, expressed in terms of tons per acre per year, which the commissioners of the respective soil and water conservation districts have established by rule as acceptable.

“*State soil survey data base for Iowa*” means a listing of the soil map units for each county and the properties and interpretation for each of the map units.

“*Supplemental allocation*” means additional funds provided beyond the original allocation.

“*Supplementary administrative order*” means a written notice sent to those receiving an administrative order for violation of the district’s soil loss limit regulations advising that cost-share funds are being committed to the landowner or landowners and establishing time limits for correcting the soil erosion problems.

“*Technician*” means a person qualified to design, lay out and inspect construction of soil conservation practices, and who is assigned to or employed by a soil and water conservation district.

“*Unobligated funds*” means those cost-share moneys the districts have been allocated and those the division administers that have not been obligated.

[ARC 8766B, IAB 5/19/10, effective 7/1/10; ARC 0224C, IAB 7/25/12, effective 8/29/12; ARC 2192C, IAB 10/14/15, effective 11/18/15; ARC 3243C, IAB 8/2/17, effective 9/6/17; ARC 4340C, IAB 3/13/19, effective 4/17/19]

**27—10.21 to 10.29** Reserved.

PART 3

**27—10.30(161A) Compliance, refunds, reviews and appeals.** This division establishes rules for determining landowner or farm operator compliance with performance or maintenance agreements that have been entered into as a result of receiving financial incentive payments for implementing soil conservation practices. This division also defines the responsibilities of the districts and the division for obtaining refunds from landowners or farm operators, and procedures to be followed, when it is found that temporary practices are not being performed in accordance with funding agreements.

This division also defines the responsibilities of the districts and the division for requiring maintenance, repair or reconstruction of permanent soil and water conservation practices when it is found that permanent practices are not being maintained in accordance with funding agreements.

**27—10.31(161A) Compliance with maintenance/performance agreements.**

**10.31(1) Performance agreement.** Rescinded IAB 7/18/07, effective 6/27/07.

**10.31(2) Maintenance/performance agreement.** As a condition for receipt of any financial incentives funds for implementing soil and water conservation practices, the owner of the land on which the practices have been installed shall agree to maintain those practices for the term specified in the maintenance/performance agreement. Specific conditions of the agreement are detailed on the form.

*a.* Determination of practice implementation and continued compliance with maintenance/performance agreements.

(1) The certifying technician or the technician of the district will determine if the completed practice is in compliance with applicable standards and specifications in Part 8 of these rules. The certifying technician shall attest to completion and compliance with the standards by completing and signing a certification of practice form. The completed certification will be retained in the district case file for the appropriate landowner.

(2) The certifying technician or district technician shall inspect the practice at any time the district commissioners have reason to believe it is not being satisfactorily maintained. The division will evaluate the situation to determine that proper procedures were followed. “Satisfactorily maintained” means being maintained in such a state of repair so that the practice is successfully performing the function for which it was originally installed. Following the inspection, the certifying technician shall complete a certification of practice form. The completed certification shall be filed in the district’s case file for the landowner.

(3) The district shall inspect a practice whenever requested to do so by the landowner. The person requesting the inspection shall be provided a copy of the completed certification of practice form, used to document the results of this inspection.

*b.* Determination of noncompliance with maintenance/performance agreement. If the certifying technician determines that the practice is not being satisfactorily maintained, it shall be so noted on the certification of practice form. The district shall notify the division in writing of the noncompliance finding. The notification to the division shall contain a complete explanation of why the practice is considered not to be in compliance with the maintenance/performance agreement. The division will evaluate the situation to determine that proper procedures were followed. “Satisfactorily maintained” means the practice has been maintained in such a state of repair that it is successfully performing the function for which it was originally installed.

*c.* In the event that properly maintained practices that were installed with the assistance of Iowa financial incentive program funds are damaged due to natural disasters, completing the maintenance/performance agreement shall not constitute an action or intent on the part of the division

to prevent the owner of the land on which the practices were installed from receiving federal emergency conservation program assistance to repair or replace the practices.

**27—10.32(161A) Noncompliance.**

**10.32(1)** *Noncompliance with performance agreements.* Rescinded IAB 7/18/07, effective 6/27/07.

**10.32(2)** *Refunds for noncompliance with maintenance agreements to cost-share agreements entered prior to July 1, 1981.* Rescinded IAB 7/18/07, effective 6/27/07.

**10.32(3)** *Refunds for noncompliance with maintenance agreements entered between January 1, 1981, and July 1, 1982.* Rescinded IAB 7/18/07, effective 6/27/07.

**10.32(4)** *Noncompliance with maintenance/performance agreements.* Upon determination by the district and the division that a landowner is not in compliance with a maintenance/performance agreement, the division shall assist the district in the issuance of an administrative order to the landowner requiring appropriate maintenance, repair or reconstruction of the practice, provided voluntary means have been exhausted. The district, in its sole discretion, may allow the landowner or the landowner's successors to refund to the division the entire amount of the financial incentive payment received by the landowner in lieu of maintaining, repairing or reconstructing a practice.

a. Within 60 days from the date of issue of the administrative order, the landowner shall submit to the district a written and signed statement of intent to maintain, repair or reconstruct the practice.

b. The maintenance, repair or reconstruction work shall be initiated within 180 days from the date of issue of the administrative order and shall be satisfactorily completed within one year of the date of issue of the administrative order.

**10.32(5)** *Agricultural land converted to nonagricultural land.* If land subject to a maintenance/performance agreement is converted to a nonagricultural use that does not require a permanent soil and water conservation practice which has been established with financial incentives, the practice shall not be removed until the owner refunds the appropriate amount of the payment received.

a. Amount of refund. The amount of refund will be the amount of the financial incentive payment received less 5 percent for each year the practice was in place.

b. Districts will notify the division when such refunds are collected.

c. Refunds will be made to the division. The division will deposit refunds to the appropriate district account. Use of the refunds will be limited to providing financial incentives under this chapter.

**27—10.33(161A) Appeals and reviews.** A landowner or farm operator who has been ordered to maintain, repair or reconstruct a temporary or permanent practice subject to a maintenance/performance agreement may, as appropriate, review the order with the district commissioners or the division of soil conservation and water quality. Appeals to the state soil conservation and water quality committee may be made by the district, a landowner or a farm operator following a review by the division director or the director's designee.

**10.33(1)** Review with soil and water conservation district commissioners. When a landowner or farm operator wishes to appeal an order to maintain, repair or reconstruct a temporary or permanent practice subject to a maintenance/performance agreement, the landowner or farm operator may request a review of the order with the district commissioners. The commissioners shall schedule a meeting to review the issue with the landowner or farm operator. This proceeding shall be informal. A landowner or farm operator shall request a review with the district commissioners in writing and within 30 days following receipt of their order.

**10.33(2)** Review with the division of soil conservation and water quality. After having unsuccessfully met with the district commissioners, a landowner or farm operator who has been ordered to maintain, repair or reconstruct a temporary or permanent practice subject to a maintenance/performance agreement may file a written request for review with the division. The division review shall be conducted by the division director or the director's designee. This proceeding shall be informal. A landowner or farm operator shall request the review with the division in writing within 30 days following the review with the district.

**10.33(3)** Appeal to the state soil conservation and water quality committee. In those cases where the district, landowner, or farm operator is not satisfied with the decision rendered as a conclusion of a division review concerning an order to maintain, repair or reconstruct a temporary or permanent practice covered by a maintenance/performance agreement, the district, landowner, or farm operator may appeal the division's decision to the state soil conservation and water quality committee. This proceeding shall be a formal, contested case hearing. The district, landowner, or farm operator shall make the appeal to the state committee in writing within 30 days following completion of the division's review.

**10.33(4)** The committee will either affirm, modify, or vacate the administrative order following the completion of the contested case hearing.

[ARC 2192C, IAB 10/14/15, effective 11/18/15; ARC 3243C, IAB 8/2/17, effective 9/6/17]

**27—10.34 to 10.39** Reserved.

PART 4

**27—10.40** Reserved.

**27—10.41(161A) Appropriations.** The department of agriculture and land stewardship, division of soil conservation and water quality, has received appropriations for conservation cost sharing since 1973 and appropriations to fund certain incentive programs for soil erosion control since 1979. Funds are appropriated each year by the general assembly.

The division has four years to encumber or obligate these funds before they revert to the state's general fund. This rule addresses the distribution of these appropriations among the incentive programs for soil erosion control established by the division in accordance with the authorities extended in Iowa Code chapter 161A. The rule is also consistent with the restrictions imposed by language of the appropriations bills.

**10.41(1)** Voluntary program. Ninety percent of the appropriation is to be used for cost sharing to provide state funding of not more than 50 percent of the approved cost of permanent soil and water conservation practices or for incentive payments to encourage management practices to control soil erosion on land that is now row-cropped.

The first \$15,000 allocated to each district and up to 30 percent of the amount remaining in a district's original and supplemental allocation may be used for the establishment of practices listed in subrules 10.82(1) and 10.82(2).

The commissioners of a district may allocate voluntary program funds for the restoration of permanent soil and water conservation practices which are damaged or destroyed because of a disaster emergency. Funds may be used for construction, reconstruction, installation, or repair of projects. The commissioners must determine that funds are necessary to restore permanent practices to prevent erosion in excess of applicable soil loss limits caused by the disaster emergency. Funds cannot be used unless a state of disaster emergency pursuant to a proclamation as provided in Iowa Code section 29C.6 has been declared. Funds can be used only if federal or state disaster emergency funds are not adequate. Funds do not have to be allocated on a cost-share basis. Districts are required to report to the division regarding restoration projects and funds allocated for projects.

**10.41(2)** Publicly owned lakes. For the approved cost of permanent soil conservation practices on watersheds above publicly owned lakes, a minimum of 5 percent of the amount appropriated is to be set aside for cost sharing at a rate not to exceed 75 percent.

**10.41(3)** Mandatory program. A maximum of 5 percent of the appropriation shall be set aside for cost sharing with landowners or farm operators who are required to install soil erosion control practices as a result of an administrative order from the district to abate complaints filed under Iowa Code section 161A.47.

**10.41(4)** Special watershed projects. Iowa Code section 161A.7 permits cost sharing up to 60 percent of the cost of a project including five or more contiguous farm units which have at least 500 or more acres of farmland and which constitute at least 75 percent of the agricultural land lying within a watershed or

subwatershed, where the owners jointly agree to a watershed conservation plan in conjunction with their respective farm unit soil conservation plan.

**10.41(5)** Summer construction incentives. Funds are available for the planting of a conservation cover crop in place of cropland during the growing season to extend the construction season for the purpose of the installation of conservation practices. This practice shall be applied using the conservation crop rotation standard. Summer construction incentives are only available in conjunction with state-funded conservation practices.

This rule is intended to implement Iowa Code chapter 161A.  
[ARC 7722B, IAB 4/22/09, effective 4/1/09; ARC 8766B, IAB 5/19/10, effective 7/1/10; ARC 0737C, IAB 5/15/13, effective 7/1/13; ARC 2192C, IAB 10/14/15, effective 11/18/15]

**27—10.42 to 10.49** Reserved.

#### PART 5

**27—10.50(161A) Allocations to soil and water conservation districts.** This division identifies those program funds that are allocated to the districts and explains how the allocations are made.

**27—10.51(161A) Voluntary program.** The division will allocate program funds to the districts in steps identified as original allocations and supplemental allocations.

**10.51(1) Original allocation.** Sixty percent of the fiscal year funds distributed to this program will be allocated to the districts at the beginning of the fiscal year in accordance with a formula based on the state soil survey database for Iowa. The formula is  $A = wzf$ , where:

- a. A = allocation to the district.
- b. w = the percentage factor for the district, determined by  $(x/y) (100)$ , where:
  - (1) x = district acres, determined by totaling the district's land capability class acres from the state soil survey database for Iowa using the formula:  $(\frac{1}{4})2e + 3e + 4e$ .
  - (2) y = state acres, determined by totaling the state's land capability class acres from the state soil survey database for Iowa using the formula:  $(\frac{1}{4})2E + 3E + 4E$ .
- c. z = sixty percent of fiscal year funds distributed to the voluntary program.
- d. f = an adjustment factor of 0.980 applied to each district's allocation to adjust the original allocation to compensate for establishing a minimum of four-tenths of 1 percent of "z" to ensure that each district has a workable program.
- e. The following table provides the value of "w" for each district:

#### Individual Soil and Water Conservation District

##### Percentage Allocation Factors

<u>W(%) District</u>	<u>W(%) District</u>	<u>W(%) District</u>	<u>W(%) District</u>
1.7 Adair	1.2 Davis	1.0 Jefferson	0.2 Pocahontas*
1.1 Adams	1.4 Decatur	1.2 Johnson	0.8 Polk
1.5 Allamakee	0.8 Delaware	1.2 Jones	1.4 E. Pottawattamie
1.1 Appanoose	0.5 Des Moines	1.4 Keokuk	1.2 W. Pottawattamie
1.3 Audubon	0.4 Dickinson	0.5 Kossuth	1.6 Poweshiek
1.2 Benton	1.8 Dubuque	1.0 Lee	1.6 Ringgold
0.3 Black Hawk*	0.4 Emmet	1.0 Linn	0.7 Sac
0.6 Boone	1.1 Fayette	0.5 Louisa	0.8 Scott
0.3 Bremer*	0.3 Floyd*	1.1 Lucas	1.8 Shelby
0.3 Buchanan*	0.6 Franklin	0.9 Lyon	1.0 Sioux
0.5 Buena Vista	1.0 Fremont	1.2 Madison	0.6 Story
0.6 Butler	0.5 Greene	1.2 Mahaska	1.5 Tama

<u>W(%) District</u>	<u>W(%) District</u>	<u>W(%) District</u>	<u>W(%) District</u>
0.3 Calhoun*	0.5 Grundy	1.3 Marion	1.7 Taylor
1.2 Carroll	1.5 Guthrie	1.5 Marshall	1.1 Union
1.5 Cass	0.4 Hamilton	1.1 Mills	1.2 Van Buren
1.2 Cedar	0.4 Hancock	0.2 Mitchell*	1.0 Wapello
0.4 Cerro Gordo	0.7 Hardin	1.3 Monona	1.2 Warren
1.0 Cherokee	1.7 Harrison	1.0 Monroe	1.1 Washington
0.4 Chickasaw	0.9 Henry	1.2 Montgomery	1.4 Wayne
1.2 Clarke	0.4 Howard	0.5 Muscatine	0.3 Webster*
0.4 Clay	0.2 Humboldt*	0.5 O'Brien	0.5 Winnebago
2.0 Clayton	1.3 Ida	0.3 Osceola*	2.0 Winneshiek
1.2 Clinton	1.4 Iowa	1.5 Page	2.2 Woodbury
2.5 Crawford	1.7 Jackson	0.4 Palo Alto	0.2 Worth*
0.8 Dallas	1.8 Jasper	2.4 Plymouth	0.4 Wright

\*The minimum value to be used in determining original allocations to districts shall be 0.4.

**10.51(2) Supplemental allocation.** The remaining balance of the fiscal year funds plus recalled funds will be provided to the districts in a supplemental allocation. The districts shall identify valid applications and cost estimates, if any, for supplemental allocations to the division by September 1 and by December 31. Factors to be considered in making a supplemental allocation to a district include:

*a.* The sum of cost estimates (for pending applications) in each district, divided by the total cost estimates (for pending applications) for all 100 districts, multiplied by the remaining available program funds; and

*b.* Whether or not the proposed supplemental allocation exceeds three times the original allocation to the district.

**10.51(3) Recall of funds.** The division shall recall unobligated funds from district accounts on December 31 and on June 30. Recalled funds will be made available to qualifying districts as supplements to their initial allocation.

**10.51(4) Reallocation of recalled funds.** Rescinded IAB 7/18/07, effective 6/27/07.

**10.51(5) Eligibility for supplemental allocations.** In order to be considered as a pending application for the purpose of calculating supplemental need, an application must be immediately ready to proceed to layout, design and construction upon approval by the district.

*a.* Fall supplemental funding shall only be available to those districts that have 75 percent of their funds obligated and have demonstrated an ability to use available funds.

*b.* Spring supplemental funding shall be made available to practices that will be completed by June 30 of the current year.

**10.51(6) Recall and reallocation of funds by division director.** If districts are not demonstrating an ability to use available funding, the division director may recall these funds and reallocate the funds to a district that has an immediate need for additional funding.

[ARC 8766B, IAB 5/19/10, effective 7/1/10; ARC 0737C, IAB 5/15/13, effective 7/1/13; ARC 1448C, IAB 4/30/14, effective 7/1/14]

**27—10.52(161A) Publicly owned lakes.** The division of soil conservation and water quality maintains the funds that are distributed to the publicly owned lakes program. These funds may be used to provide cost sharing not to exceed 75 percent of the approved cost of soil conservation practices on watersheds above publicly owned lakes and reservoirs. The division will allocate these program funds to eligible districts in steps identified as original allocation, recall of unobligated funds, and reallocation.

**10.52(1) Original allocation.** Funding needs will be identified and funds will be set aside for watershed projects which have cost-share funds in addition to state and district cooperator funds (e.g., federal, county, or other). The remaining funds will be allocated equally between the other watersheds identified on the publicly owned lakes priority list.

**10.52(2) Recall of unobligated funds.** Funds that are allocated to districts under this program and are not obligated by September 1 shall be recalled by the division and reallocated.

**10.52(3) Recall of obligated, but unspent funds.** Rescinded IAB 7/18/07, effective 6/27/07.

**10.52(4) Reallocation of recalled funds.** The reallocation of recalled funds will be based on need and demonstrated ability to use the funds. The districts shall submit their requests identifying valid applications and cost estimates, if any, to the division. The division shall allocate funds for these requests on a first-come, first-served basis to other eligible watersheds above publicly owned lakes.

**10.52(5) Eligible watersheds.** For a landowner to qualify for 75 percent cost sharing under this program, the watershed in which the land is located must be on a list of priority watersheds above publicly owned lakes or reservoirs that is established by the department of natural resources.

**10.52(6) Applications and agreements.** Applications and agreements for 75 percent cost sharing under this program will be handled by the districts as described in Part 7 of these rules except that the division will allocate funds to districts on an as-needed and first-come, first-served basis.

[ARC 0737C, IAB 5/15/13, effective 7/1/13; ARC 1448C, IAB 4/30/14, effective 7/1/14; ARC 2192C, IAB 10/14/15, effective 11/18/15]

**27—10.53** Reserved.

**27—10.54(161A) Mandatory program.** The division of soil conservation and water quality maintains the funds that are distributed to the mandatory cost-share program. These funds are used to provide cost sharing to landowners who are required to establish permanent soil and water conservation practices as the result of a district's administrative order or a court order.

**10.54(1) Applications and agreements.** Applications and maintenance/performance agreements for 50 percent cost sharing under this program will be handled by the districts as described in Part 7 of these rules except as follows:

*a.* When the district commissioners have decided that cost-share assistance is to be approved for a landowner, a copy of the application and a copy of the cost estimate proposed by the technician will be sent to the division with a request for funding obligation. The division will review the application, allocate funds for the specific application to the district and notify the district of the approval. If funds are not available, the division will not allocate funds to the specific application, but will write a letter of explanation to the district. The district will notify the landowner of the status by issuing a supplementary administrative order.

*b.* Prior approval of the amendment must be obtained from the division should the commissioners desire to amend the application to change the amount of work or the cost.

**10.54(2) Redistribution of program funds.** Any unobligated program funds remaining at the end of the fiscal year will be redistributed to the voluntary cost-share program. These funds may be included with the supplemental allocation to districts or may be disbursed with the original allocation.

[ARC 2192C, IAB 10/14/15, effective 11/18/15]

**27—10.55** Reserved.

**27—10.56(161A) Special watershed projects.** District commissioners will satisfy the following conditions with regard to special watershed projects:

**10.56(1)** Prior to approving a project application for 60 percent cost-share, the district must obtain a project number from the division.

**10.56(2)** All participating landowners in a particular project will be required to show progress towards completion during the first year of the project. Progress will be evaluated by the district. Failure of all participating landowners to show progress during the first year will result in loss of authorization of the project and 60 percent cost-share funding eligibility.

**10.56(3)** Authorization for each project shall not exceed five years.

**27—10.57(161A) Reserve fund.**

**10.57(1) Purpose and use of the reserve fund.** The reserve fund will be set aside and used only to meet contingencies that occur in the districts or within the division. The reserve fund shall not exceed \$150,000.

**10.57(2) Replenishing the reserve fund.** On June 30 of each year, the division may recall any unspent allocations and replenish the fund in accordance with subrule 10.57(1). If needed, the reserve fund may also be replenished at any time with recalled funds to return the balance to \$150,000.

**27—10.58 and 10.59** Reserved.

PART 6

**27—10.60(161A) Funding rates.** The purpose of this division is to establish the funding rates at which the state will fund or share the cost for approved soil conservation practices under the various incentive programs. In all cases, except for the mandatory program, the state's share will be computed using the percentages specified below and the estimated cost, the amended estimated cost, or the actual cost of implementing the practice, whichever is less. Payments under the mandatory program will be based on actual costs. Funds distributed to annual programs for permanent practices may be used in combination with other public funds as long as the maximum cost-share rate realized by the district cooperator does not exceed 75 percent of the total eligible costs.

**10.60(1) Voluntary.**

*a.* The state will cost-share 50 percent of the cost certified by the certifying technician as being reasonable, proper, and incurred by the applicant in voluntarily installing approved, permanent soil conservation practices, except for tree planting. Eligible costs include machine hire or use of the applicant's equipment, needed materials delivered to and used at the site, and labor required to install the practice.

*b.* For tree and shrub establishment, the following criteria shall apply:

(1) Fifty percent of the actual cost, not to exceed \$600 per acre, including the following:

1. Establishing ground cover;
2. Trees and tree planting operations;
3. Weed and pest control; and
4. Mowing, disking, and spraying.

(2) Fifty percent of the actual cost, not to exceed \$150 per acre, for woody plant competition control.

(3) Actual cost, not to exceed the lesser of \$14 per rod or \$45 per acre protected, for permanent fences that protect planted acres from grazing, excluding boundary and road fencing.

*c.* For currently funded fiscal years, the division will make one-time payments of up to \$10 per acre for no-tillage, ridge-till and strip-till; \$6 per acre for contour farming; \$25 per acre for establishing a cover crop; and 50 percent of the cost up to \$25 per acre for strip-cropping, field borders and filter strips. The one-time only payment may apply to management practices lasting up to four consecutive years. The one-time only payment for multiple years is calculated based on the listed annual amounts. A performance agreement is required for incentive payments covering a time period of one year or longer.

*d.* Funding for the restoration of permanent practices damaged or destroyed because of a disaster (see 10.41(1)) does not have to be allocated on a cost-share basis.

*e.* Where a livestock watering system is installed in a grade stabilization structure, cost share is limited to 50 percent of the estimated or eligible cost, whichever is less, not to exceed \$500 for the watering tank or holding facility, pipe and valves. Payment will be made only if the structure is fenced.

**10.60(2) Summer construction incentives.** In addition to cost share for the establishment of a permanent conservation practice, up to \$200 per acre is available to offset income lost from cropland acres taken out of production during the growing season. Payment will be made upon completion of the permanent conservation practice. To qualify:

*a.* The field being treated shall be in row cropland during the growing season in which the permanent conservation practice is being constructed.

*b.* The construction area shall be planted with a conservation cover for erosion control purposes on the construction site.

*c.* The construction of the permanent conservation practice shall take place between June 15 and October 15. Work must be started and completed between these dates and verified by the technician prior to payment of the incentive.

*d.* Only the land necessary for the construction is eligible for this incentive. The construction work area shall be determined by the technician.

*e.* The construction work area shall not be used to grow a row crop except for the required conservation cover crop.

**10.60(3) *Special watershed projects.*** Commissioners may enter into agreements providing for cost sharing up to 60 percent of the cost of a project that includes five or more contiguous farm units which collectively have at least 500 or more acres of farmland and which constitute at least 75 percent of the agricultural land lying within a watershed or a subwatershed. The owners must jointly agree to a watershed conservation plan in conjunction with their respective farm unit soil conservation plans.

**10.60(4) *Mandatory.*** The rate of cost share for permanent soil and water conservation practices required as a result of an administrative order shall be 50 percent of the total cost to the landowner of installing the approved practice. The cost must be certified by the technician as being reasonable, proper and incurred by the landowner. The rate of cost share for temporary soil and water conservation practices is set by the state soil conservation and water quality committee.

**10.60(5) *Watersheds above publicly owned lakes.*** The state will cost-share 75 percent of the approved cost of permanent soil and water conservation practices on watersheds above certain publicly owned lakes. Watersheds above publicly owned lakes that qualify for 75 percent cost sharing must be identified on a priority list established by the department of natural resources.

**10.60(6) *Conservation cover.*** Cost share for certain lands is restricted by Iowa Code chapter 161A. Each tract of agricultural land which has not been plowed or used for growing row crops at any time within the prior 15 years shall be considered classified as agricultural land under conservation cover. "Agricultural land" has the meaning assigned that term by Iowa Code section 9H.1. If any tract of land so classified is thereafter plowed or used for growing row crops, the district commissioners shall not approve use of state cost-share funds for establishing permanent or temporary soil and water conservation practices on that tract of land in an amount greater than one-half the amount of cost-share funds which would be available for that land if it were not classified as agricultural land under conservation cover. This restriction shall apply even if an administrative order or court order has been issued requiring establishment of conservation practice.

[ARC 7722B, IAB 4/22/09, effective 4/1/09; ARC 8766B, IAB 5/19/10, effective 7/1/10; ARC 0224C, IAB 7/25/12, effective 8/29/12; ARC 0331C, IAB 9/19/12, effective 8/24/12; ARC 0477C, IAB 11/28/12, effective 1/2/13; ARC 0737C, IAB 5/15/13, effective 7/1/13; ARC 1448C, IAB 4/30/14, effective 7/1/14; ARC 3243C, IAB 8/2/17, effective 9/6/17; ARC 4340C, IAB 3/13/19, effective 4/17/19]

**27—10.61 to 10.69** Reserved.

#### PART 7

**27—10.70(161A) Applications and agreements.** The purpose of this part is to identify and define procedures to be followed in applying for and entering agreements for receiving financial incentives for implementing approved temporary or permanent soil and water conservation practices.

**27—10.71(161A) Applications submitted to soil and water conservation district.** District cooperators desiring to be considered for financial incentives for implementing soil and water conservation practices shall complete necessary applications as specified by the division. If an applicant's land is in more than one district, the respective district commissioners will review the application and agree to obligate all funds from one district or prorate the funding between districts.

**27—10.72(161A) Application signup.**

**10.72(1) Signatures by landowner and applicant.** All applications and agreements shall be signed by the landowner except as noted in subrule 10.72(3) below. For an applicant to qualify for payment, both landowner and applicant must sign the application.

**10.72(2) Land being bought under contract.** All applications and agreements concerning land being purchased under contract shall be signed by both the contract seller and the contract buyer. If the operator is applying, the contract buyer, the contract seller, and the operator must sign.

**10.72(3) Power of attorney.** Applications and agreements may be signed by any person designated to represent the landowner or applicant, provided the appropriate power of attorney has been filed with the district office. The power of attorney requirement can be met by submitting a notarized full power of attorney statement to the district office. In the case of estates and trusts, court documents designating the responsible person or administrator may be submitted to the district in lieu of the power of attorney.

**27—10.73(161A) Eligibility for financial incentives.**

**10.73(1) District cooperator.** Rescinded IAB 7/18/07, effective 6/27/07.

**10.73(2) Administrative order.** Rescinded IAB 7/18/07, effective 6/27/07.

**10.73(3) Practices installed on adjoining public lands.** Where soil and water conservation practices are installed on public lands, which benefit adjoining private lands, and costs of the installation are to be shared by the parties, state cost-share funds may be used to cost-share the landowner cost of the erosion control portion of the project.

**10.73(4) Ineligible lands.**

*a.* Iowa financial incentive funds shall not be used to reimburse other units of government for implementing soil and water conservation practices.

*b.* Privately owned land not used for agricultural production shall not qualify for financial incentives.

*c.* Tracts of land used for agricultural production which are less than ten acres in size and from which less than \$2,500 of agricultural products are sold annually shall not qualify for financial incentives funds, unless approved by the commissioners as part of a group project or as a continuation of an adjacent system.

*d.* Tracts of land enrolled in the United States Department of Agriculture's Conservation Reserve Program (CRP) that have more than 90 days left on the contract.

**10.73(5) Need for soil and water conservation practices.**

*a.* Financial incentives shall be available only for those soil and water conservation practices determined to be needed by the district to reduce excessive erosion or sedimentation and included in the designated practices identified in Part 8 of these rules. Such determination of need shall be made by a qualified technician.

*b.* At the discretion of the SWCD commissioners, practice construction may be allowed during the last 90 days of the CRP contract.

**10.73(6) District priorities.** Each application for financial incentives shall be evaluated under the priority system adopted by the district for disbursement of allocated funds. The district priority system shall be reviewed annually by the district. The priority system shall be sent electronically to the division for the division's record after the annual review. The priority system shall give consideration to the public benefit derived. The priority system adopted by the district shall be made available for review at the district office.

[ARC 8766B, IAB 5/19/10, effective 7/1/10; ARC 0737C, IAB 5/15/13, effective 7/1/13]

**27—10.74(161A) Financial incentive application and processing procedures.**

**10.74(1) Application for financial incentives.**

*a.* Application submitted by landowner and applicant. Applicants for financial incentives for soil and water conservation practices shall complete and submit a request for assistance to the district office where the practice will be implemented.

*b. Denial of application by district.* Applications which are denied by the district shall be retained in the district until the end of the fiscal year. Application denial as used in this part refers to those applications which cannot be approved for reasons other than lack of available financial incentive funds.

*c. Obligation of funds.* Following approval of an application, the district may obligate funds for the project or, as appropriate, secure obligation of funds from the division for the amount of the project cost estimate identified on the application. In those cases where funds are not available, the application will be held by the district until funding becomes available or until the end of the fiscal year. Upon obligation of funds, the district shall notify the applicant. The district will maintain a record of funds obligated for approved applications.

*d. Application withdrawn by applicant.* An application may be withdrawn by the applicant at any time prior to receipt of payment by notifying the district in writing that withdrawal is desired. Applications withdrawn by the applicant shall be retained in the records of the district until the end of the fiscal year.

**10.74(2) Project design by district.**

*a. District personnel responsible for design.* The technician of the district shall design and lay out proposed soil and water conservation practices for which financial incentives funds have been obligated. The certifying technician of the district shall be responsible for determining compliance with applicable design standards and specifications.

*b. Cost estimate adjustments.*

(1) Application amendment. In the event that adjustment to the project cost estimate is necessitated by the final design, the applicant shall either agree to assume the additional cost or complete and submit an amendment request to the district for approval by the commissioners.

(2) Adjustment to obligated funds. The district may adjust the amount of incentive funds obligated for the project or may secure an adjusted obligation from the division for funds obligated by the division. In the event that additional funds are not available, the project may be redesigned, if possible, to a level commensurate with available funds, or the applicant can agree to assume full financial responsibility for the portion of the project cost in excess of the amount obligated.

**10.74(3) Practice construction and certification.**

*a. Construction contracts.* The landowner and applicant shall be responsible for securing any contractors needed and for all contractual or other agreements necessary to construct or perform the approved practices.

*b. Certification of practice.* The certifying technician or the technician of the district will determine that the completed practice is in compliance with applicable standards and specifications and that costs incurred are reasonable and proper. The certifying technician shall make such determination by completing and signing the certification of practice form. A copy of the certification will be retained in the district's case file.

**10.74(4) Payment of financial incentives.**

*a. Submittal of bills and claim or certification of practice form to district.* The applicant shall submit to the district a signed claim or certification of practice form and all bills relative to the project. Any materials and labor provided by the applicant must be itemized, and the itemization of any materials and labor provided by the applicant shall accompany the claim.

*b. Approval for payment.* The commissioners shall verify the technician's certification prior to approving the certification of practice form for submittal to the division for payment.

*c. Claim submitted to the division by district.* The signed claim or certification of practice form shall be submitted to the division. All original signed documents including itemized bills, claim agreements, maintenance/performance agreements and amendments shall be retained at the district office in the cooperator's case file.

*d. Payment.* Payment for the reimbursable cost of the project will be returned by the division to the district or directly to the landowner or applicant.

**10.74(5) Maintenance/performance agreements.**

*a. Maintenance/performance agreement required.* As a condition for receipt of any financial incentive funds for permanent soil and water conservation practices, the owner of the land on which the

practices have been installed shall agree to maintain those practices for a minimum term as required by the division.

*b. Maintenance/performance agreement form.* An agreement to maintain practices for which financial incentives are being paid shall be made by completing and signing a maintenance/performance agreement form. Specific conditions of the maintenance/performance agreement are detailed on the form. Completion of the form and signature of the landowner are required prior to transfer of the incentive payment from the district to the recipient(s).

*c. Filing of agreements.*

(1) Establishment of a file for maintenance/performance agreements. The district shall establish and maintain a separate permanent file containing any documentation related to the maintenance/performance agreement form. The maintenance/performance agreements file shall be accessible for review by the public.

(2) Statement of compliance or noncompliance. A seller of agricultural land with respect to which a maintenance/performance agreement is in effect may request the district to inspect the practices. If the practices have not been removed, altered, or modified, the district shall issue a written statement that the seller has satisfactorily maintained the permanent practice as of the date of the statement.

The buyer of lands covered by a maintenance/performance agreement, where buyer means someone who has completed a contract for sale or deed, may also request that the district inspect the lands to determine whether any practice has been removed, altered, or modified as of the date of the inspection. If a practice has been removed, altered, or modified, the district will provide the buyer with a statement specifying the extent of noncompliance as of the date of the statement.

The seller and the buyer, if known, shall be given notice of the time of inspection so that they may be present during the inspection to express their views as to compliance.

**10.74(6) Case files.** A case file shall be assembled and maintained for each application approved. The file will contain all documents and correspondence that require signatures from either the district, district cooperators or technicians. The case file shall also include all bills and invoices related to an approved application.

[ARC 8766B, IAB 5/19/10, effective 7/1/10]

**27—10.75 to 10.79** Reserved.

#### PART 8

**27—10.80(161A) General conditions, eligible practices and specifications.** The purpose of this part is to establish the general conditions and limitations concerning practice implementation, the state-approved soil and water conservation practices eligible for state financial incentives and the specifications for which funded practices must conform.

**27—10.81(161A) General conditions.** The following general conditions shall be met, where applicable, in addition to the specifications in rule 27—10.84(161A). To the extent of any inconsistency between the general conditions and the specifications, the general conditions shall control.

**10.81(1) Practice need.** The designated soil and water conservation practices shall not be funded unless the technician has inspected the site and has determined that such practice(s) is needed to reduce excessive erosion or sedimentation.

**10.81(2) Eligible practices must control erosion and sediment.** Only those soil and water conservation practices applied to agricultural crop and pasture land whose primary function is to control soil erosion and prevent sediment damage will be eligible for incentive program funds.

**10.81(3) Limitation of reimbursable costs of practices.** Overbuilding or other practice modifications which exceed the minimum requirements of the specification shall be permitted, if approved by the technician. Any additional costs resulting from such overbuilding or exceeding of the minimum specifications shall not be cost shared by the state. Examples of overbuilding or exceeding specifications include but are not limited to the following:

a. Where a district cooperater desires that water be stored for purposes other than grade stabilization to control erosion,

b. Where additional top width is added to an earthen fill to provide a field crossing or road,

c. Where additional flow capacity for lowland drainage laterals is added to an underground outlet constructed as a component of a terrace system, and

**10.81(4) Materials.** Projects funded with Iowa financial incentive funds will utilize only new materials or used materials that meet or exceed design standards and have a life expectancy of 20 years.

**10.81(5) Existing practices.**

a. *Repair and maintenance.* Repair and maintenance of existing practices are not eligible for funding.

b. *Addition of underground outlets.* The addition of underground outlets to existing waterways and terraces is not eligible for funding.

**10.81(6) Upland treatment.** Seventy-five percent of the upland area shall be adequately treated for erosion control before waterways or grade stabilization structures will be funded.

**10.81(7) Seeding.**

a. *Seeding required.* Following practice construction, seeding shall be performed as appropriate in accordance with seeding specifications referenced in rule 10.84(161A), except as waived below.

b. *Seeding after specified seeding dates.* When the construction of a practice is completed after the seeding date contained in the specifications, seeding may be delayed until the following year. If delayed, the applicant shall be responsible for protecting the practice with temporary vegetative cover or other means until the seeding can be completed. For seeding delayed until the next year, the district may approve payment for the completed practice but such payment shall exclude the seeding cost. The remaining payment for seeding may be made available the following year.

**10.81(8) Diversions.** Rescinded IAB 5/19/10, effective 7/1/10.

**10.81(9) Converting land to permanent vegetative cover.** Rescinded IAB 5/19/10, effective 7/1/10.

**10.81(10) Underground outlet.** Rescinded IAB 5/19/10, effective 7/1/10.

[ARC 8766B, IAB 5/19/10, effective 7/1/10]

**27—10.82(161A) State designation of eligible practices.** Only those soil and water conservation practices listed in this rule are eligible for the Iowa financial incentives program funds.

**10.82(1) Residue and management practices.** The division will make one-time payments for residue and tillage management practices.

a. No-till planting.

b. Ridge-till planting.

c. Strip-till planting.

d. Cover crops.

**10.82(2) Temporary practices.** The division will make one-time payments for temporary practices.

a. Critical area planting.

b. Contour farming.

c. Strip-cropping.

d. Field border.

e. Filter strips.

f. Pasture and hay planting. Pasture and hay planting will be eligible for funding only when land that has been planted to row crop for three out of the last five years is being converted to permanent vegetative cover.

**10.82(3) Permanent practices.**

a. Reserved.

b. Diversion. Diversions are eligible for funding only when used to prevent downstream erosion.

c. Windbreak and shelterbelt establishment. A strip or belt of trees or shrubs established within or adjacent to a field to reduce sediment damage and soil depletion caused by wind.

d. Grade stabilization structure.

e. Reserved.

- f.* Grassed waterway.
  - g.* Reserved.
  - h.* Terrace.
  - i.* Underground outlet. Underground outlets are eligible for Iowa financial incentive funding only when used as a component of eligible permanent practices contained in subrule 10.82(3).
  - j.* Water and sediment control basin.
  - k.* Reserved.
  - l.* Conservation cover.
  - m.* Tree and shrub planting. The minimum eligible area is three acres.
- [ARC 8766B, IAB 5/19/10, effective 7/1/10; ARC 0331C, IAB 9/19/12, effective 8/24/12; ARC 0477C, IAB 11/28/12, effective 1/2/13]

**27—10.83(161A) Designation of eligible practices.** District commissioners may designate which soil and water conservation practices will be eligible for Iowa financial incentive payments in their district. The selected practices must be from the state-approved practices contained in rule 27—10.82(161A). [ARC 8766B, IAB 5/19/10, effective 7/1/10]

**27—10.84(161A) Practice standards and specifications.** Practices shall meet Natural Resources Conservation Service conservation standards and specifications. These standards may be accessed through the electronic field office technical guide at [http://efotg.nrcs.usda.gov/efotg\\_locator.aspx?map=IA](http://efotg.nrcs.usda.gov/efotg_locator.aspx?map=IA). The tree planting standard may be accessed through the department of natural resources' forestry technical guide found at <http://www.iowadnr.com/forestry/pdf/techguide.pdf>. Standards and specifications are available in hard copy in the district office where the practice will be implemented. These specifications and the general conditions, rule 27—10.81(161A), shall be met in all cases. To the extent of any inconsistency between the general conditions and the specifications, the general conditions shall control.

**27—10.85 to 10.89** Reserved.

#### PART 9

**27—10.90** Reserved.

**27—10.91(161A) Annual report.** The district will submit an annual report to the division. The report will reflect accomplishments for the fiscal year ending June 30. The report shall be submitted to the division on or before July 7 each year.

**27—10.92(161A) Control of lands.** Rescinded IAB 5/19/10, effective 7/1/10.

**27—10.93 and 10.94** Reserved.

**27—10.95(161A) Forms.** Standard forms, applications, and agreements used by the applicant and recipient of financial incentives for soil erosion control as outlined in these rules are provided by the division. Copies of all forms, applications, and agreements are available from the soil conservation district office located in each county. Copies are also available from the division at the following address: Division of Soil Conservation and Water Quality, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, Des Moines, Iowa 50319. [ARC 2192C, IAB 10/14/15, effective 11/18/15]

**27—10.96 to 10.99** Reserved.

These rules are intended to implement Iowa Code chapter 161A.

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[Filed emergency 8/17/79—published 9/5/79, effective 8/17/79]<sup>1</sup>

[Filed 8/1/80, Notice 6/25/80—published 8/20/80, effective 9/25/80]<sup>1</sup>

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- [Filed Emergency ARC 0331C, IAB 9/19/12, effective 8/24/12]
- [Filed ARC 0477C (Notice ARC 0303C, IAB 8/22/12), IAB 11/28/12, effective 1/2/13]
- [Filed ARC 0737C (Notice ARC 0655C, IAB 3/20/13), IAB 5/15/13, effective 7/1/13]
- [Filed ARC 1448C (Notice ARC 1369C, IAB 3/5/14), IAB 4/30/14, effective 7/1/14]
- [Filed ARC 2192C (Notice ARC 2102C, IAB 8/19/15), IAB 10/14/15, effective 11/18/15]
- [Filed ARC 3243C (Notice ARC 3086C, IAB 6/7/17), IAB 8/2/17, effective 9/6/17]
- [Filed ARC 4340C (Notice ARC 4235C, IAB 1/16/19), IAB 3/13/19, effective 4/17/19]

<sup>1</sup> History transferred from 780—Ch 7

CHAPTER 12  
WATER PROTECTION PRACTICES—WATER PROTECTION FUND

**27—12.1 to 12.9** Reserved.

PART 1

**27—12.10(161C) Authority and scope.** This chapter establishes procedures and standards to be followed by soil and water conservation districts and the division of soil conservation and water quality of the department of agriculture and land stewardship, in accordance with the policies of the state soil conservation and water quality committee in implementing water protection practices through the water protection fund created in Iowa Code section 161C.4. This account shall be used to establish water protection practices with individual landowners.

[ARC 2192C, IAB 10/14/15, effective 11/18/15; ARC 3243C, IAB 8/2/17, effective 9/6/17]

**27—12.11(161C) Rules are severable.** If any provision of a rule or subrule or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the rule or subrule which can be given effect without invalid provision or application, and to this end the provisions of these rules or subrules are severable.

**27—12.12 to 12.19** Reserved.

PART 2

**27—12.20(161C) Definition of terms.** In addition to the term defined herein, definitions in rule 27—10.20(161A) shall apply.

“*Agricultural production*” means the commercial production of food or fiber.

**27—12.21 to 12.29** Reserved.

PART 3

**27—12.30(161C) Compliance, refund, reviews and appeals.** Rules 27—10.30(161A) through 27—10.33(161A) shall apply.

[ARC 8755B, IAB 5/19/10, effective 7/1/10]

**27—12.31 to 12.39** Reserved.

PART 4

**27—12.40(161C) Appropriations.** Resource enhancement and protection program, soil and water enhancement account funds are allocated to the water protection fund. Each year’s allocation of water protection funds is divided equally between the water quality protection projects account and the water protection practices account.

[ARC 8755B, IAB 5/19/10, effective 7/1/10]

**27—12.41 to 12.49** Reserved.

PART 5

**27—12.50(161C) Water protection practices account.** This part defines procedures for allocation, recall and reallocation of water protection practices funds to soil and water conservation districts and to the division’s reserve fund.

[ARC 0737C, IAB 5/15/13, effective 7/1/13]

**27—12.51(161C) Allocation to soil and water conservation districts.**

**12.51(1) Original allocation.** July 1 of each year, funds appropriated to the water protection practices account will be allocated to districts. Seventy-three and one-half percent of the funds will be divided equally among 100 soil and water conservation districts. Twenty-five percent of the funds plus any additional appropriations for reforestation will be kept in a separate account for woodland establishment and protection, and establishment of native grasses and forbs. One and one-half percent will be held in a reserve fund.

**12.51(2) Recall of funds.** Any funds allocated in the current fiscal year that the districts have not spent or obligated by June 30 shall be recalled by the division.

**12.51(3) Supplemental allocations.** The districts shall identify valid applications and cost estimates, if any, for supplemental allocations to the division by September 1. Factors to be considered in making a supplemental allocation to a district include:

*a.* The sum of cost estimates (for pending applications) in each district, divided by the total cost estimates (for pending applications) for all 100 districts, multiplied by the remaining available program funds; and

*b.* Whether or not the proposed supplemental allocation exceeds three times the original allocation to the district.

**12.51(4) Reallocation of recalled funds.** Rescinded IAB 7/18/07, effective 6/27/07.

**12.51(5) Woodland, native grass and forbs fund.** Twenty-five percent of the funds and any additional appropriations for reforestation will be allocated to districts.

*a. Original allocation.* The funds distributed to this program will be allocated equally to the 100 soil and water conservation districts at the beginning of each fiscal year.

*b. Supplemental allocation.* The districts shall identify valid applications and cost estimates, if any, for supplemental allocations to the division by September 1. Factors to be considered in making a supplemental allocation to a district include:

(1) The sum of cost estimates (for pending applications) in each district, divided by the total cost estimates (for pending applications) for all 100 districts, multiplied by the remaining available program funds; and

(2) Whether or not the proposed supplemental allocation exceeds three times the original allocation to the district.

*c. Eligibility of soil and water conservation districts for supplemental allocation.* For a district to qualify for a supplemental allocation, the district must meet the following requirement: seventy-five percent of the woodland, native grass and forbs funds shall be obligated to landowners.

**12.51(6) Reserve funds.** The division may administer a reserve fund for the program consisting of not more than 1.5 percent of each year's appropriated funds.

*a.* Purpose and use of the reserve fund. The reserve fund will be set aside and used only to fund contingencies that occur in the application of practices in the districts.

*b.* On June 30 each year the division will transfer the unspent reserve fund balance into the water protection practices account to be allocated to districts under subrule 12.51(1).

**12.51(7) Recall and reallocation of funds by division director.** If districts are not demonstrating an ability to use available funding, the division director may recall these funds and reallocate the funds to a district that has an immediate need for additional funding.

[ARC 8755B, IAB 5/19/10, effective 7/1/10; ARC 0737C, IAB 5/15/13, effective 7/1/13; ARC 3244C, IAB 8/2/17, effective 9/6/17]

**27—12.52 to 12.59** Reserved.

## PART 6

**27—12.60(161C) Applications and agreements.** The purpose of this part is to identify and define procedures to be followed in applying for and entering agreements for receiving water protection practices funds.

**27—12.61(161C) Applications submitted to soil and water conservation district.** Landowners or farm operators desiring to be considered for water protection practices funds shall complete necessary applications as specified by the district. All application forms and agreements for water protection practices funds are available from and shall be submitted to the district office located in the county where such practices are proposed. If an applicant's land is in more than one district, the respective district commissioners will review the application and agree to obligate all funds from one district or prorate the funding between districts.

**27—12.62(161C) Application sign-up.**

**12.62(1) Signatures by landowner and qualified applicant.** All applications and agreements shall be signed by the landowner and applicant. For an applicant to qualify for payment, both landowner and applicant must sign the application.

**12.62(2) Land being bought under contract.** All applications and agreements concerning land being purchased under contract shall be signed by both the contract seller and the contract buyer. If the operator is applying, the contract buyer, the contract seller, and the operator must sign.

**12.62(3) Power of attorney.** Applications and agreements may be signed by any person designated to represent the landowner or farm operator, provided the appropriate power of attorney has been filed with the district office. The power of attorney requirement can be met by submitting a notarized full power of attorney statement to the district office. In the case of estates and trusts, court documents designating the responsible person or administrator may be submitted to the district in lieu of the power of attorney.

**27—12.63(161C) Eligibility for financial incentives.**

**12.63(1) District cooperator.** Rescinded IAB 7/18/07, effective 6/27/07.

**12.63(2) Practices installed on adjoining public lands.** Where water protection practices which benefit adjoining private lands are installed on public lands and costs of the installation are to be shared by the parties, state water protection practices funds may be used to cost-share only the private landowner cost of the water protection practice.

**12.63(3) Ineligible lands.**

*a.* Water protection practices funds shall not be used to reimburse other units of government for implementing soil and water conservation practices.

*b.* Privately owned land not used for agricultural production shall not qualify for water protection practices funds. Windbreaks, streambank and shoreline protection, and stormwater quality best management practices established on privately owned land are eligible whether or not the land is in agricultural production.

*c.* Tracts of land enrolled in the United States Department of Agriculture's Conservation Reserve Program (CRP) that have more than 90 days left on the contract, except for woodland establishment, management and protection practices, and native grass and forb establishment practices under rule 27—12.82(161C) shall not qualify.

**12.63(4) District priorities.** Each application for water protection practices shall be evaluated under the priority system adopted by the district for disbursement of allocated funds. Soil and water conservation district commissioners shall give priority to applications for practices that implement their soil and water resource conservation plan. The priority system adopted by the district shall be made available for review at the district office.

[ARC 8755B, IAB 5/19/10, effective 7/1/10; ARC 0737C, IAB 5/15/13, effective 7/1/13; ARC 3244C, IAB 8/2/17, effective 9/6/17]

**27—12.64 to 12.69** Reserved.

PART 7

**27—12.70(161C) Water protection practices.** The purpose of this part is to establish the general conditions, eligible practices, specifications, and cost-share rates for the installation of water protection practices authorized in Iowa Code chapter 161C.

**27—12.71(161C) General conditions.** The following general conditions shall be met.

**12.71(1) Technician certification.** The designated water protection practices shall not be funded unless the technician has inspected the site and has determined that such practice(s) is needed to protect water quality.

**12.71(2) Limitation of reimbursable cost of practices.** Overbuilding or other practice modifications which exceed the minimum requirements of the specification shall be permitted, if approved by the technician. Any additional costs resulting from such overbuilding or exceeding of the minimum specifications shall not be cost shared by the state.

**12.71(3) Materials.** Projects funded with water protection funds will utilize only new materials or used materials that meet or exceed design standards and have a life expectancy of 20 years.

**12.71(4) Repair or maintenance.** Repair or maintenance of existing practices is not eligible for funding.

**27—12.72(161C) Eligible practices.** Practices listed in this rule are eligible for water protection practices fund reimbursement.

**12.72(1) Critical area planting.**

**12.72(2) Contour buffer strips.** The practice includes science-based trials of row crops integrated with prairie strips (STRIPS) planted on contour.

**12.72(3) Field border.**

**12.72(4) Filter strips.** The practice includes science-based trials of row crops integrated with prairie strips (STRIPS) planted at the foot slope.

**12.72(5) Pasture and hay planting.** The practice must include the conversion of land from row crop production to a permanent vegetative cover to control excessive water erosion.

**12.72(6) Constructed wetlands.** Land enrolled in the Conservation Reserve Program, or other similar programs, is eligible, if this practice is not an allowable practice under that program.

**12.72(7) Wetland restoration.** Land enrolled in the Conservation Reserve Program, or other similar programs, is eligible, if this practice is not an allowable practice under that program.

**12.72(8) Streambank and shoreline protection.** The practice must be bioengineered using combinations of stream-side plantings or trees, other vegetation, structural practices such as modification of slopes, and installation of reinforcing materials and in-stream structures. Land enrolled in the Conservation Reserve Program, or other similar programs, is eligible, if this practice is not an allowable practice under that program.

**12.72(9) Stormwater quality best management practices (BMPs).** A technique, measure, or structural control that is used for a given set of conditions to manage the quantity and improve the quality of stormwater runoff in the most cost-effective manner. BMPs can be either:

*a.* Nonstructural BMPs, which include a range of pollution prevention, education, or institutional management and development practices designed to limit the conversion of rainfall to runoff and to prevent pollutants from entering runoff at the source of runoff generation; or

*b.* Structural BMPs, which are engineered and constructed systems that are used to treat the stormwater at either the point of generation or the point of discharge to either the storm sewer system or to receiving waters (e.g., detention ponds or constructed wetlands).

**12.72(10) Access control.** The practice involves fencing an area to exclude livestock from intermittent streams (defined on U.S. Geological Survey topographic maps as “3 dot” blue-line streams) or larger streams. Eligibility for cost-share assistance extends only to fencing required to implement this practice, but does not extend to fences along roads or land boundaries.

[ARC 8755B, IAB 5/19/10, effective 7/1/10; ARC 0737C, IAB 5/15/13, effective 7/1/13; ARC 3244C, IAB 8/2/17, effective 9/6/17]

**27—12.73(161C) Eligible practices for priority water resource protection.** Practices listed in this rule are eligible for water protection practice fund reimbursement only in those areas or instances approved in rule 27—12.75(161C).

**12.73(1) Grassed waterway.**

**12.73(2) Grade stabilization structure.**

**12.73(3)** Terrace.

**12.73(4)** Water and sediment control basin.

**12.73(5)** Diversion.

**12.73(6)** Waste storage facility. Cost-sharing under this practice is not authorized for:

- a. Portable pumps and pumping equipment.
- b. Waste disposal equipment.
- c. Building, modification of a building, that portion of the animal waste structure that serves as part of the building, or its foundation.
- d. That portion of the cost of animal waste control structures attributed to expansion of an animal waste management system.

[ARC 8755B, IAB 5/19/10, effective 7/1/10; ARC 0737C, IAB 5/15/13, effective 7/1/13]

**27—12.74(161C) Agricultural drainage well closure.** Practices listed in this rule are eligible for water protection practice fund reimbursement where installation of the practice is consistent with current drainage law of the state of Iowa. This practice is intended to assist in the voluntary closure of agricultural drainage wells registered with the department of natural resources prior to September 30, 1988. It is not intended to be a substitute for future agricultural drainage well assistance programs authorized in Iowa Code section 159.29 that will be developed in conjunction with the Iowa department of agriculture and land stewardship's agricultural drainage well research and demonstration project.

**12.74(1)** *Eligible practices.*

- a. Agricultural drainage well plugging and cistern removal.
- b. Tile outlet from plugged agricultural drainage well to a suitable, legal outlet.

**12.74(2)** *Implementation of practice.* This practice shall not be used to provide outlet(s) for previously undrained wetland(s) as defined and classified under state or federal law.

**12.74(3)** *Outlets with excess capacity.* Tile outlets which exceed the minimum capacity required to provide one-half inch drainage coefficient to the area originally served by the drainage well shall be permitted, if approved by the technician. Any additional cost resulting from providing such excess capacity shall not be cost-shared by the state.

**27—12.75(161C) Priority watersheds and water quality problems.** Practices listed in rule 27—12.73(161C) will be eligible for landowner reimbursement from water protection practices funds only for watersheds and water quality problems designated by soil and water conservation district commissioners and approved by the state soil conservation and water quality committee.

**12.75(1)** *District designation.* Districts shall submit to the division the description of high priority watershed(s) or water quality problems within their district to be designated as eligible for practices listed in rule 27—12.73(161C).

**12.75(2)** *State soil conservation and water quality committee evaluation.* The state soil conservation and water quality committee shall examine the district submission under 12.75(1) with respect to the following criteria.

- a. The public value and current use of the water resource to be protected.
- b. The nature, extent and severity of the water quality problem to be addressed.
- c. The degree to which the district designation focuses practice application in a manner that will achieve a water quality benefit from the funds available.

**12.75(3)** *Review time limit.* The state soil conservation and water quality committee shall approve or disapprove the district designation within 90 days of receipt by the division.

**12.75(4)** *Disapproval of designation.* In the event of disapproval of district designation, the state soil conservation and water quality committee shall inform the district of the reason for disapproval.

[ARC 3243C, IAB 8/2/17, effective 9/6/17]

**27—12.76(161C) Practice standards and specifications.** In addition to specifications defined herein, rule 27—10.84(161A) specifications shall apply.

**12.76(1)** *Agricultural drainage well closure.* 567 IAC Chapter 39, Requirements for Properly Plugging Abandoned Wells.

**12.76(2)** *Agricultural drainage well plugging and cistern removal.* 567 IAC Chapter 39, Requirements for Properly Plugging Abandoned Wells.

**12.76(3)** *Stormwater quality best management practices.* Iowa Stormwater Management Manual, Chapter 2, Sections D-L.

**27—12.77(161C) Cost-share rates.** The following cost-share rates shall apply for eligible practices designated in rules 27—12.72(161C) to 27—12.74(161C). These rates represent the maximum allowable cost share provided by state funds. These rates may be used in combination with other public funds to provide a total cost-share rate not to exceed 75 percent of the lesser of the eligible or the estimated cost of installation.

**12.77(1)** *Cost-share rates.* Cost-share rates for practices designated in rule 27—12.72(161C) shall be 50 percent of the eligible or estimated cost of installation, whichever is less, except for contour buffer strips, field borders, and access control. Cost-share rates for 12.72(2), contour buffer strips, and 12.72(3), field borders, shall be a one-time payment of 50 percent of the eligible or estimated cost of installation, whichever is less, up to \$25 per acre. Cost-share rates for 12.72(10), access control, shall include a one-time payment of up to \$200 per acre. In addition, fencing systems used to implement access control are eligible for 50 percent of the eligible or estimated cost, whichever is less, not to exceed \$14 per rod for permanent fencing. Cost-share assistance for this practice may not be provided on the same acres that already received a cost-share payment through the buffer initiative program.

**12.77(2)** *Cost-share rates for water protection practices.* Cost-share rates for practices designated in rule 12.73(161C) shall be 50 percent of the eligible or estimated cost, whichever is less.

**12.77(3)** *Cost-share rates for agricultural drainage well closure.* Cost-share rates for practices designated in rule 27—12.74(161C) shall be the following:

*a.* Fifty percent of the eligible or estimated cost, whichever is less, of agricultural drainage well plugging and cistern removal, not to exceed \$500.

*b.* Fifty percent of the eligible or estimated cost, whichever is less, of establishing a tile outlet from the plugged agricultural drainage well to a suitable, legal outlet, not to exceed \$2,000.

[ARC 8755B, IAB 5/19/10, effective 7/1/10; ARC 0737C, IAB 5/15/13, effective 7/1/13; ARC 3244C, IAB 8/2/17, effective 9/6/17]

**27—12.78 and 12.79** Reserved.

#### PART 8

**27—12.80(161C) Water protection practices—woodlands, native grasses and forbs.** The purpose of this part is to establish the general conditions, eligible practices, specifications and cost-share rates for the installation of woodlands, native grasses and forbs as authorized in Iowa Code chapter 161C.

**27—12.81(161C) General conditions.** The following general conditions shall be met.

**12.81(1)** *Practice need.* The designated practices shall not be funded unless the certifying technician has inspected the site and has determined that such practice(s) is needed.

**12.81(2)** *Forest management plan required.* A forest management plan approved by the forestry bureau of the department of natural resources is required for the practices of forest stand improvement, tree planting, site preparation for natural regeneration, and rescue treatments.

**12.81(3)** *Eligibility of practices.* Planting or management of trees for nut orchards or Christmas tree production is only eligible as intermediate products in stands being established for other approved purposes. Planting or management of trees for ornamental purposes or fruit orchards is not eligible.

[ARC 8755B, IAB 5/19/10, effective 7/1/10]

**27—12.82(161C) Eligible practices.** Land enrolled in the Conservation Reserve Program is eligible for woodland establishment, management and protection practices and is also eligible for native grass and forb establishment. All practices listed in this part are available to all other eligible landowners within Iowa soil and water conservation districts. All practices listed below are permanent.

**12.82(1)** Windbreaks. A belt of trees or shrubs established or restored next to an occupied structure. A windbreak must meet either NRCS Standard 380-Windbreak/shelterbelt establishment or NRCS Standard 650-Windbreak/shelterbelt renovation.

**12.82(2)** Field windbreak. A belt of trees or shrubs established or restored, within or adjacent to a field. A windbreak must meet either NRCS Standard 380-Windbreak/shelterbelt establishment or NRCS Standard 650-Windbreak/shelterbelt renovation.

**12.82(3)** Forest stand improvement. Minimum eligible area is five acres.

**12.82(4)** Tree planting. Minimum eligible area is three acres.

**12.82(5)** Site preparation for natural regeneration. Minimum eligible area is three acres.

**12.82(6)** Riparian forest buffer.

**12.82(7)** Rescue treatments. Minimum eligible area is three acres.

**12.82(8)** Prescribed grazing. The practice must include a minimum of two paddocks of native species grasses.

**12.82(9)** Conservation cover.

[ARC 8755B, IAB 5/19/10, effective 7/1/10]

**27—12.83(161C) Practice standards and specifications.** Soil and water conservation practices shall meet Natural Resources Conservation Service conservation standards and specifications where applicable. These standards may be accessed through the electronic field office technical guide at [efotg.sc.egov.usda.gov/efotg\\_locator.aspx](http://efotg.sc.egov.usda.gov/efotg_locator.aspx).

Tree planting, forest stand improvement, site preparation for natural regeneration and rescue treatment standards may be accessed through the department of natural resources' forestry technical guide found at [www.iowadnr.gov/Portals/idnr/uploads/forestry/ForestryTechguide.pdf](http://www.iowadnr.gov/Portals/idnr/uploads/forestry/ForestryTechguide.pdf).

Standards and specifications are also available in hard copy in the district office where the practice will be implemented. These specifications and the general conditions, rule 27—10.81(161A), shall be met in all cases. To the extent of any inconsistency between the general conditions and the specifications, the general conditions shall control.

[ARC 8755B, IAB 5/19/10, effective 7/1/10; ARC 3934C, IAB 8/1/18, effective 9/5/18]

**27—12.84(161C) Cost-share rates.** The following cost-share rates shall apply for eligible practices designated in rule 27—12.82(161C). The use of state cost-share funds alone or in combination with other public funds shall not exceed the limits established by these rules.

**12.84(1)** *Windbreaks.* Seventy-five percent of the eligible or estimated cost, whichever is less, not to exceed \$1,600 for the total cost of the establishment or restoration of the windbreak.

**12.84(2)** *Field windbreaks.* Seventy-five percent of the eligible or estimated cost, whichever is less, not to exceed \$600 per acre for the total cost of the establishment or restoration of the field windbreak.

**12.84(3)** *Forest stand improvement.* Seventy-five percent of the eligible or estimated cost, whichever is less, not to exceed \$120 per acre for prescribed woodland burning, thinning, pruning crop trees, or releasing seedlings or young trees.

**12.84(4)** *Tree planting.*

*a.* Seventy-five percent of the eligible or estimated cost, whichever is less, not to exceed \$600 per acre, for tree planting including the following:

- (1) Establishing ground cover,
- (2) Trees and tree-planting operations,
- (3) Weed and pest control,
- (4) Mowing, disking, and spraying.

*b.* Seventy-five percent of the eligible or estimated cost, whichever is less, not to exceed \$150 per acre for woody plant competition control.

**12.84(5)** *Site preparation for natural regeneration.* Seventy-five percent of the eligible or estimated cost, whichever is less, not to exceed \$120 per acre of site preparation.

**12.84(6)** *Riparian forest buffer.* Seventy-five percent of the eligible or estimated cost, whichever is less.

**12.84(7)** *Rescue treatment.*

*a.* Seventy-five percent of the eligible or estimated cost, whichever is less, not to exceed \$60 per acre to establish alternate cover for competition control.

*b.* A one-time payment of 75 percent of the eligible or estimated cost, whichever is less, not to exceed \$15 per acre to control damaging rodent populations.

*c.* Seventy-five percent of the eligible or estimated cost, whichever is less, not to exceed \$600 per acre, for plantation replanting including the following:

- (1) Establishing ground cover,
- (2) Trees and tree planting,
- (3) Weed control.

**12.84(8) *Prescribed grazing.*** Seventy-five percent of the eligible or estimated cost, whichever is less. Systems must include at least two paddocks of native species grasses. Development of a water source is not eligible. Boundary fences or road fences are not included.

**12.84(9) *Conservation cover.*** Seventy-five percent of the eligible or estimated cost, whichever is less.

**12.84(10) *Fencing systems.*** Fencing systems used to implement or protect a conservation practice described in rule 27—12.82(161C) are eligible for the lesser of 75 percent of the eligible or estimated cost. The fencing costs cannot exceed \$14 per rod for permanent fencing or \$5 per rod for temporary electric fencing. Fences along roads or land boundaries are not eligible.

[ARC 8755B, IAB 5/19/10, effective 7/1/10; ARC 3244C, IAB 8/2/17, effective 9/6/17; ARC 4340C, IAB 3/13/19, effective 4/17/19]

**27—12.85(161C) *Special practice and cost-share procedures eligibility.*** Districts may submit requests to establish eligible practices, develop cost-share procedures, experiment with new conservation practices and explore new technologies with approval of the state soil conservation and water quality committee.

**12.85(1) *District designation.*** Districts shall submit to the state soil conservation and water quality committee the description of their intentions, which could include:

- a.* Type of practice.
- b.* Cost-share rate.
- c.* Resource to be protected.
- d.* Estimated cost.
- e.* Landowner interest.
- f.* Technology to be addressed.

**12.85(2) *State soil conservation and water quality committee evaluation.*** The state soil conservation and water quality committee shall examine the district submission under 12.85(1) with respect to the following criteria.

- a.* The public and current use of the resource to be protected.
- b.* The nature, extent, and severity of the problem to be addressed.
- c.* The degree to which the request focuses practice or technology application in a manner that will achieve a soil erosion or water quality benefit from the funds available.
- d.* Whether a specification can be developed by NRCS or DNR for the new technology or practice.

**12.85(3) *Review time limit.*** The state soil conservation and water quality committee shall approve or disapprove the district designation within 90 days of receipt by the division.

**12.85(4) *Disapproval of designation.*** In the event of disapproval of district requests, the state soil conservation and water quality committee shall inform the district of the reason for disapproval.

This rule is intended to implement Iowa Code chapters 161A and 161C.  
[ARC 3243C, IAB 8/2/17, effective 9/6/17]

**27—12.86 to 12.89** Reserved.

## PART 9

**27—12.90(161C,312) Reporting and accounting.** Reports will be prepared in the same manner as provided in rule 27—10.91(161A).

These rules are intended to implement Iowa Code chapters 161A and 161C and Iowa Code section 455A.19.

[Filed 12/8/89, Notice 10/18/89—published 12/27/89, effective 1/31/90]

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[Filed ARC 2192C (Notice ARC 2102C, IAB 8/19/15), IAB 10/14/15, effective 11/18/15]

[Filed ARC 3243C (Notice ARC 3086C, IAB 6/7/17), IAB 8/2/17, effective 9/6/17]

[Filed ARC 3244C (Notice ARC 3112C, IAB 6/7/17), IAB 8/2/17, effective 9/6/17]

[Filed ARC 3934C (Notice ARC 3819C, IAB 6/6/18), IAB 8/1/18, effective 9/5/18]

[Filed ARC 4340C (Notice ARC 4235C, IAB 1/16/19), IAB 3/13/19, effective 4/17/19]



CHAPTER 35  
ACCIDENT AND HEALTH INSURANCE

BLANKET ACCIDENT AND SICKNESS INSURANCE  
[Prior to 10/22/86, Insurance Department[510]]

**191—35.1(509) Purpose.** The purpose of this regulation is to establish guidelines for insurers to make special risk coverage available to particular groups that will be exposed to specific hazards for a certain period of time.

**191—35.2(509) Scope.** These rules shall apply to all insurance companies holding a certificate of authority to transact the business of insurance under the provisions of Iowa Code chapters 508 and 515.

**191—35.3(509) Definitions.**

**35.3(1)** Blanket accident and sickness insurance is hereby declared to be that form of accident, sickness or accident and sickness insurance designed to insure against specified hazards incident to or defined by reference to a particular activity or activities and covering groups of persons as enumerated in the following subparagraphs:

*a.* Under a policy issued to an employer, who shall be deemed the policyholder covering any group of employees defined by reference to specific hazards incident to an activity or activities of the policyholder.

*b.* Under a policy issued to a college, high school, junior high school, grade school, school district, school jurisdictional unit or other institution of learning; or to the head, principal, governing board of any such educational unit who or which shall be deemed the policyholder covering students, teachers or employees.

*c.* Under a policy issued to any religious, charitable or educational organization, or branch thereof, which shall be deemed the policyholder covering any group of members or participants defined by reference to specified hazards incident to an activity or activities sponsored or supervised by such policyholder.

*d.* Under a policy issued to a sports team, youth camp, recreational organization or sponsor thereof, which shall be deemed the policyholder, covering members, campers, participants, employees, officials or supervisors.

*e.* Under a policy issued to any volunteer fire department, first aid, civil defense or other such volunteer organizations, which shall be deemed the policyholder, covering any group of members or participants defined by reference to specified hazards incident to an activity or activities or operations sponsored or supervised by such policyholder.

*f.* Under a policy issued to a newspaper or other publisher, which shall be deemed the policyholder, covering its carriers.

*g.* Under a policy issued to an association, other than a labor union, trade association or industrial association, which shall have a constitution and bylaws and which has been organized and is maintained in good faith for purposes other than that of obtaining insurance, which shall be deemed the policyholder, covering any group of members or participants defined by reference to specified hazards incident to an activity or activities or operations sponsored or supervised by such policyholder.

*h.* Under a policy issued to cover any other risk or class of risks which, in the discretion of the commissioner, may be properly eligible for blanket accident and sickness insurance. The discretion of the commissioner may be exercised on an individual risk basis or class of risks, or both.

**35.3(2)** Brochure shall mean an instrument, booklet or pamphlet setting forth a statement as to the insurance protection provided, to whom the insurance benefits are payable, sufficient information on the procedure an insured shall follow in filing a claim and such other provisions as are in the opinion of the commissioner of insurance necessary to inform the holder thereof as to rights under the policy.

**35.3(3)** For purposes of Iowa Code section 514C.22 relating to biologically based mental illness coverage in a group policy, contract or plan providing for third-party payment of health, medical, and surgical coverage benefits issued by a carrier, “biologically based mental illness” shall mean

the following mental disorders as they are defined under the following diagnostic classes within the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, edition DSM-IV-TR:

- a.* Schizophrenia. Diagnostic codes 295.xx and 293.xx, including all specific subtypes of schizophrenia listed under those two diagnostic codes and using an appropriate extension. Schizophrenia also includes diagnostic codes 295.40, 295.70, 297.1, 298.8, 297.3 and 298.9.
- b.* Bipolar disorders. Diagnostic code 296.xx including all specific subtypes of bipolar disorders listed under that diagnostic code and using an appropriate extension. Bipolar disorders also includes diagnostic codes 286.89, 301.13, 296.80, 293.83 and 296.90.
- c.* Major depressive disorders. Diagnostic codes 296.2x and 296.3x including all specific subtypes of major depressive disorders listed under those two diagnostic codes and using an appropriate extension.
- d.* Schizo-affective disorders. Diagnostic code 295.70.
- e.* Obsessive-compulsive disorders. Diagnostic code 300.3.
- f.* Pervasive development disorders. Diagnostic codes 299.00, 299.80 and 299.10.
- g.* Autistic disorders. Diagnostic code 299.00.

[ARC 3682C, IAB 3/14/18, effective 4/18/18]

**191—35.4(509) Required provisions.** No blanket policy as herein defined shall be issued or delivered in this state unless a copy of the policy and brochure if required, has been approved by the commissioner of insurance in accordance with the provisions set forth in rule 191—35.7(509). All policies of blanket accident or sickness insurance or combination thereof issued in this state shall contain in substance the following provisions:

**35.4(1)** A provision that the policy including endorsements and a copy of the application, if any, of the policyholder and the persons insured shall constitute the entire contract between the parties, and that any statement made by the policyholder or by a person insured shall in the absence of fraud, be deemed a representation and not a warranty. No such statement shall be used in defense of a claim under the policy, unless it is contained in a written application. If a copy of such application is not delivered to the person insured the insurer shall be precluded from introducing such application as evidence in any action involving any statements contained therein.

**35.4(2)** A provision that written notice of sickness or of injury must be given to the insurer within 20 days of the date when such sickness or injury occurred. Failure to give notice within such time shall not invalidate nor reduce any claim if it shall be shown not to have been reasonably possible to give such notice and that notice was given as soon as was reasonably possible.

**35.4(3)** A provision that the insurer will furnish either to the claimant or to the policyholder for delivery to the claimant such forms as are usually furnished by it for filing proof of loss. If such forms are not furnished before the expiration of 15 days after giving such notice, the claimant shall be deemed to have complied with the requirements of the policy as to proof of loss upon submitting within the time fixed in the policy for filing proof of loss, written proof covering the occurrence, the character and the extent of the loss for which claim is made.

**35.4(4)** A provision that in the case of claim for loss of time for disability, written proof of such loss must be furnished to the insurer within 90 days after the commencement of the period for which the insurer is liable, and that subsequent written proofs of the continuance of such disability must be furnished to the insurer at such intervals as the insurer may reasonably require, and that in the case of claim for any other loss, written proof of such loss must be furnished to the insurer within 90 days after the date of such loss. Failure to furnish such proof within such time shall not invalidate nor reduce any claim if it shall be shown not to have been reasonably possible to furnish such proof and that such proof was furnished as soon as was reasonably possible.

**35.4(5)** A provision that all benefits payable under the policy other than benefits for loss of time will be payable immediately upon receipt of due written proof of such loss, and that, subject to due proof of loss, all accrued benefits payable under the policy for loss of time will be paid not less frequently than monthly during the continuance of the period for which the insurer is liable, and that any balance remaining unpaid at the termination of such period will be paid immediately upon receipt of such proof.

**35.4(6)** A provision that the insurer at its own expense, shall have the right and opportunity to examine the person of the insured when and so often as it may reasonably require during the pendency of claim under the policy and also the right and opportunity to make an autopsy where it is not prohibited by law.

**35.4(7)** A provision that no action at law or in equity shall be brought to recover under the policy prior to the expiration of 60 days after written proof of loss has been furnished in accordance with the requirements of the policy and that no such action shall be brought after the expiration of three years after the time written proof of loss is required to be furnished.

**191—35.5(509) Application and certificates not required.** An individual application need not be required from a person covered under a blanket accident and sickness policy, nor shall it be necessary for the insurer to furnish each person a certificate; however, a brochure as herein defined shall be issued to the policyholder for delivery to each person insured as defined in 35.3(1) “b” and “g.”

**191—35.6(509) Facility of payment.** All benefits under any blanket accident and sickness policy shall be payable to the person insured, to a designated beneficiary or beneficiaries, or to their estate, except that if the person insured be a minor or otherwise not competent to give a valid release, such benefits may be made payable to their parent, guardian or other person actually supporting the insured, designated beneficiary, or beneficiaries. The policy may also provide that all or a portion of any indemnities provided by any such policy on account of hospital, nursing, medical or surgical services may with the consent of the insured be paid directly to the hospital or person rendering such services, but the policy may not require that the services be rendered by a particular hospital or person. Payment so made shall discharge the obligation of the insurer with respect to the amount of insurance so paid.

These rules are intended to implement Iowa Code section 509.6.

**191—35.7(509) General filing requirements.**

**35.7(1)** Insurance companies required to file rates or forms with the division shall submit required rate and form filings pursuant to rule 191—20.1(505,509,514A,515,515A,515F).

**35.7(2)** Each filing must be submitted to the division of insurance not less than 60 days prior to the effective date of the filing. Any deficiencies or discrepancies in the filing will delay final approval. In case of disapproval, the company will be notified by the division.

**191—35.8(509) Electronic delivery of accident and health group insurance certificates.**

**35.8(1) Purpose.** The purpose of this rule is to authorize the electronic delivery of accident and health group insurance certificates in an efficient manner by insurers and group policyholders, while guaranteeing that individual plan members still receive the important information contained in such group insurance certificates, as required by Iowa Code section 509.3(2), and as allowed by the uniform electronic transactions Act, Iowa Code chapter 554D.

**35.8(2) Scope.** This rule shall apply to all insurance companies holding a certificate of authority to transact the business of insurance under the provisions of Iowa Code chapters 508 and 515.

**35.8(3) Electronic delivery—insurance companies.** The insurer will be deemed to comply with the requirements of Iowa Code section 509.3(2) if the group insurance certificate is delivered to the group policyholder electronically and if:

*a.* The insurer takes appropriate and necessary measures to ensure that the system for furnishing group insurance certificates results in actual receipt of transmitted information by group policyholders, which may be done by:

- (1) Using return-receipt electronic mail features;
- (2) Periodic reviews or surveys to confirm receipt of the transmitted information; or
- (3) Any other method approved by the insurance commissioner.

*b.* The electronic documents contain the same content and appear in reasonably the same format as the certificates previously approved by the insurance commissioner.

c. Each group policyholder is provided notice, through electronic means or in writing, apprising the group policyholder of the fact that the certificate will be furnished electronically, of the significance of the certificate and the group policyholder's obligations under this rule, and of the group policyholder's right to request and receive a paper copy of the document for each participant.

d. Upon request of any group policyholder, the insurer furnishes paper copies of the group insurance certificate that was delivered to the group policyholder electronically, so that the group policyholder may provide them to participants that have requested paper copies.

**35.8(4) *Electronic delivery—group policyholders.*** The group policyholder will be deemed to comply with the requirements of Iowa Code section 509.3(2) if the group insurance certificate is delivered to the individual plan member electronically and if:

a. The group policyholder takes appropriate and necessary measures to ensure that the system for furnishing group insurance certificates results in actual receipt of transmitted information by participants, which may be done by:

- (1) Using return-receipt electronic mail features;
- (2) Periodic reviews or surveys to confirm receipt of the transmitted information; or
- (3) Any other method approved by the insurance commissioner.

b. The electronic documents contain the same content and appear in reasonably the same format as the certificates previously approved by the insurance commissioner.

c. Each participant is provided notice, through electronic means or in writing, apprising the participant of the fact that the certificate will be furnished electronically, of the significance of the certificate, and of the participant's right to request and receive, free of charge, a paper copy of the document.

d. Upon request of any participant, the group policyholder furnishes, free of charge, a paper copy of the group insurance certificate that was delivered to the participant electronically.

This rule is intended to implement Iowa Code chapter 509.

#### GENERAL ACCIDENT AND HEALTH INSURANCE REQUIREMENTS

### **191—35.9(509B,513B,514D) Notice of cancellation, nonrenewal or termination of accident and health insurance.**

#### **35.9(1) *Purpose and definitions.***

a. *Purpose.* The purpose of this rule is to clarify the authorized methods of delivery for notices of cancellation, nonrenewal or termination by an insurer, issuer, employer, group policyholder, or carrier, so as to implement the various policyholder protections intended by Iowa Code sections 509B.5, 513B.5, 514D.3, 515.125 and 515.129A and chapter 505B.

b. *Definitions.* As used in Iowa Code section 505B.1 and this rule:

“*Commissioner*” means the Iowa insurance commissioner or insurance division.

“*Notice of cancellation, nonrenewal or termination*” means:

1. Notice of termination of an insurance policy at the end of a term or before the termination date;
2. Notice of a decision or intention not to renew a policy; and
3. For purposes of notices required by Iowa Code sections 509B.5, 513B.5, 514D.3, 515.125 and 515.129A and chapter 505B, “notice of cancellation, nonrenewal or termination” includes but is not limited to the following:

- An employer's or group policyholder's notification to employees or members of the termination or substantial modification of the continuation of an employer group accident or health policy pursuant to Iowa Code section 509B.5;

- A carrier's advance notice to all affected small employers, participants, and beneficiaries of its decision to discontinue offering a particular type of small group health insurance plan pursuant to Iowa Code section 513B.5(1)“e”(2);

- An insurance company's notice of termination of an individual accident and sickness policy, pursuant to rules promulgated pursuant to Iowa Code section 514D.3;

- An insurance company's notice of forfeiture, suspension, cancellation, or intention not to renew, pursuant to Iowa Code section 515.125; or
- An insurance company's notice of cancellation of personal lines policies or contracts pursuant to Iowa Code section 515.129A.

**35.9(2) Scope.** This rule shall apply to all insurance companies holding a certificate of authority to transact the business of insurance under the provisions of Iowa Code chapters 508, 512B, 515, and 520.

**35.9(3) Delivery.** For any notice of cancellation, nonrenewal or termination by an insurer, employer, group policyholder, or carrier to be effective, an insurer, employer, group policyholder, or carrier must, within the time frame established by law, deliver the notice to the person to whom notice is required to be provided either in person or by mail through the U.S. Postal Service to the last-known address of the person to whom notice is required to be provided. The use of U.S. Postal Service Intelligent Mail® fulfills any requirement in the Iowa Code sections cited in this subrule for certified mail or certificate of mailing as proof of mailing.

**35.9(4) Electronic transmissions.** Notwithstanding the requirements of subrule 35.9(3), if an insurer, issuer, employer, group policyholder, or carrier receives, pursuant to 191—subrule 4.24(2), approval from the commissioner of a manner of electronic delivery of a notice of cancellation, nonrenewal or termination of a policy, the approved manner shall satisfy the notice requirements of Iowa Code sections 509B.5, 513B.5, 514D.3, 515.125 and 515.129A and chapter 505B.

This rule is intended to implement Iowa Code chapters 505B, 509B, 513B, 514D, and 515.  
[ARC 1999C, IAB 5/27/15, effective 7/1/15; ARC 2415C, IAB 2/17/16, effective 3/23/16; ARC 3682C, IAB 3/14/18, effective 4/18/18]

**191—35.10 to 35.19** Reserved.

**191—35.20(509A) Life and health self-funded plans.**

**35.20(1) Scope.** This rule shall apply to life and health self-funded plans for political subdivisions of the state, school corporations, and all other public bodies of the state. This rule shall not apply to life and health self-funded plans for the state of Iowa.

**35.20(2) Iowa Code chapter 28E agreements—certificate of registration.** Public entities seeking to pool risk through a joint exercise of power under Iowa Code chapter 28E shall apply for and obtain a certificate of registration from the commissioner. This subrule shall not apply to single-employer public entities with self-insured plans.

*a.* An application for a certificate of registration shall contain the following:

- (1) A copy of the proposed agreement entered into pursuant to Iowa Code chapter 28E, to be executed by all plan participants;
- (2) A copy of the articles of incorporation, bylaws, agreements, or other documents or instruments describing the rights and obligations of employers, employees and beneficiaries;
- (3) A copy of all contracts with insurance companies, consultants and third-party administrators;
- (4) A business plan, including a copy of all contracts or other instruments which the 28E agreement proposes to make with or sell to its members, a copy of its plan description and the printed matter to be used in the solicitation of members; and
- (5) A current list of all participating public entities.

*b.* Iowa Code chapter 28E agreements shall contain the following provisions:

- (1) If the plan is in a deficit position, a participant cannot terminate from the plan without the prior written consent of the commissioner;
- (2) If a participant in the plan terminates, the terminating participant shall be assessed its proportionate share of the plan's deficit, if any;
- (3) Deficit assessments shall be mandatory for all plan participants within a time frame acceptable to the commissioner;
- (4) Plan participants have no individual interest in the accumulated surplus of a plan; and
- (5) Upon termination of the plan, surplus remaining after the payment of all liabilities shall be distributed proportionately to plan participants that were active members of the plan on the termination date.

c. Reporting requirements. In addition to the requirements of subrule 35.20(3), all public entities pooling risk shall submit:

(1) Quarterly financial statement. A plan shall file with the commissioner of insurance within 60 days of the end of each quarter a report which has been verified by at least two of its principal officers and which covers the preceding calendar quarter. The report shall be on a form prescribed by the commissioner. The commissioner of insurance may request additional reports and information from a plan as often as is deemed necessary.

(2) Amendments. A plan shall submit copies of any proposed amendment to the documents submitted in accordance with subrule 35.20(2), paragraph "a," 30 days in advance of the amendment's proposed effective date.

(3) Other documents. A plan shall submit any other documents deemed necessary by the commissioner.

**35.20(3)** Minimum plan standards for both pooled and single-employer public entities. Self-funded life plans subject to this rule shall meet the requirements of Iowa Code sections 509.1, 509.2, 509.4, and 509.15 and rules thereunder. Self-funded health plans subject to this rule shall meet the requirements of Iowa Code sections 509.1 and 509.3 and rules thereunder. In order to ensure that a self-funded life or health plan is able to cover all reasonably anticipated expenses and to avoid liability for the public body, a self-funded life or health plan shall provide that:

a. An annual report showing the starting and ending balance of the fund, deposits of monthly accrual rates and other assets of the fund, and the amount and nature of all disbursements from the fund shall be prepared and submitted to the governing body of the public body. An annual report shall be made to show a separate accounting to reflect all required reserves.

b. Monthly accrual rates shall be established at a satisfactory level to provide funds to cover all claims, reserves, and expenses to operate the plan. Accrual rates shall be reevaluated annually. Accrual rates shall be funded solely through public body contributions or through a combination of employer and employee contributions.

c. A plan fund shall be established exclusively for the deposit of monthly accrual rates and other assets pertaining to the plan. After a self-funded life or health plan is established and as long as any claims may be made against the plan fund, all contributions shall be deposited as collected in the plan fund. The plan fund shall be disbursed only for plan expenses.

d. The following reserves shall be established in the plan fund:

(1) A reserve for claims that have been incurred by participants under the plan, but have not yet been presented for payment. The appropriate amount of this reserve shall be on an actuarially sound basis as determined by an independent actuary, an insurance company, or a nonprofit health service corporation authorized pursuant to Iowa Code chapter 514.

(2) A claims fluctuation reserve for setting aside funds that become available during a month when claims are less than projected for that month. Funds shall be maintained and available for a month in which claims exceed those projected for that month. For public entities that require a certificate of registration under subrule 35.20(2), the claims fluctuation reserve shall equal or exceed a minimum of two months of paid claims.

e. The public body shall obtain a fidelity bond as a guaranty of faithful operation of the self-funded plan by the public body, its officers, agents, and employees.

f. Disbursements from the plan fund shall be made only for the following specified plan expenses:

(1) Payment of claims.

(2) Cost of aggregate excess loss coverage.

(3) Cost of specific excess loss coverage.

(4) Bonding expenses.

(5) Payment of service fees applicable to plan design, payment of claims, materials explaining plan benefits, actuarial assistance, legal assistance, and accounting assistance.

(6) Other expenses directly related to the operation of the plan.

g. Aggregate excess loss coverage shall be obtained which will limit a public body's total claim liability for each year to not more than 125 percent of the level of claims liability as projected by an

independent actuary or insurance company. A public body shall fund this potential additional liability of 25 percent either by allocating necessary funds from the operating fund of the general fund or by setting up an additional reserve in the operating fund. Specific excess loss coverage may also be obtained if a public body wishes to limit its total annual liability on claims for any one claimant.

*h.* The commissioner may retain an independent actuary, at the commissioner's discretion, to review the adequacy of a plan's reserves. The cost of such review shall be paid by the plan. Examples that illustrate when the commissioner may retain an independent actuary include, but are not limited to, negative trends in the plan's financial statements, an increase in consumer complaints about the plan's failing to timely pay claims and material changes to the plan's operations.

**35.20(4)** Plan shortfalls. If the resources of any self-funded plan subject to this rule are not adequate to fully cover all claims under that plan, then the public body sponsoring that plan shall make up the shortfall from other resources.

**35.20(5)** Confidentiality. Information held by the plan administrator of a self-funded plan shall be kept confidential. An employee or agent of the plan administrator shall not use or disclose any information to any person, except to the extent necessary to administer claims or as otherwise authorized by law.

**35.20(6)** A health self-funded plan subject to this rule shall not prohibit a participating provider from or penalize a participating provider for discussing treatment options with covered persons, irrespective of a self-funded plan's position on the treatment options, or from advocating on behalf of covered persons within the utilization review or grievance processes established by the self-funded plan or a person contracting with the self-funded plan.

The self-funded plan shall not penalize a provider because the provider, in good faith, reports to state or federal authorities any act or practice by the self-funded plan that, in the opinion of the provider, jeopardizes patient health or welfare.

**35.20(7)** Benefits shall be made available by the health self-funded plan for inpatient and outpatient emergency services. Since self-funded plans may not contract with every emergency care provider in an area, self-funded plans shall make every effort to inform members of participating providers.

The term "emergency services" means, with respect to an individual enrolled with an organization, covered inpatient and outpatient services that are furnished by a provider who is qualified to furnish the services that are needed to evaluate or stabilize an emergency medical condition.

The term "emergency medical condition" means a medical condition manifesting itself by symptoms of sufficient severity, including but not limited to severe pain, that an ordinarily prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in one of the following:

1. Placing the health of the individual or, with respect to a pregnant woman, the health of the woman and her unborn child in serious jeopardy;
2. Serious impairment to bodily function; or
3. Serious dysfunction of any bodily organ or part.

Reimbursement to a provider of "emergency services" shall not be denied by any health maintenance organization without that organization's review of the patient's medical history, presenting symptoms, and admitting or initial diagnosis as well as final diagnosis, submitted by the provider, in determining whether, by definition, emergency services could reasonably have been expected to be provided. Reimbursement for emergency services shall not be denied solely on the grounds that a noncontracted provider performed services. If reimbursement for emergency services is denied, the enrollee may file a complaint with the self-funded plan. Upon denial of reimbursement for emergency services, the self-funded plan shall notify the enrollee and the provider that they may register a complaint with the commissioner of insurance.

**35.20(8)** A health self-funded plan subject to this rule shall allow a female member direct access to obstetrical or gynecological services from network and participating providers. The plan shall also allow a pediatrician to be the primary care provider for a child through the age of 18.

This rule is intended to implement Iowa Code chapter 509A and 2003 Iowa Acts, chapter 83.

**191—35.21(509) Review of certificates issued under group policies.**

**35.21(1) *Nondiscretionary groups.*** A certificate of coverage delivered in this state under a group life or accident and health insurance policy issued to a group substantially as described in Iowa Code section 509.1, subsections (1) to (7), shall not be reviewed by the commissioner if the policy is issued outside of this state.

**35.21(2) *Discretionary groups.*** A certificate of coverage delivered in this state under a group life or accident and health insurance policy issued to a group not substantially as described in Iowa Code section 509.1, subsections (1) to (7), shall not be reviewed by the commissioner if the policy is issued outside of this state and if the policy is issued or offered in a state which has reviewed and approved the policy under a statute substantially similar to Iowa Code section 509.1(8).

These rules are intended to implement Iowa Code sections 509.1, 509.6, and 509A.14.

## LARGE GROUP HEALTH INSURANCE COVERAGE

**191—35.22(509) Purpose.** This division of Chapter 35 implements the requirements of Pub.L. 104-191, the Health Insurance Portability and Accountability Act of 1996 and Iowa Code section 509.3 for large group health insurance coverage.

**191—35.23(509) Definitions.**

*“Affiliation period”* means a period of time that must expire before health insurance coverage provided by an HMO becomes effective, and during which the HMO is not required to provide benefits.

*“Beneficiary”* has the meaning given the term under Section 3(8) of the Employee Retirement Income Security Act of 1974 (ERISA), which states, “a person designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to a benefit” under the plan.

*“Bona fide association”* means, with respect to group health insurance coverage offered in Iowa, an association that meets the following conditions:

1. Has been actively in existence for at least five years.
2. Has been formed and maintained in good faith for purposes other than obtaining insurance.
3. Does not condition membership in the association on any health status-related factor relating to an individual including an employee of an employer or a dependent of any employee.
4. Makes health insurance coverage offered through the association available to all members regardless of any health status-related factor relating to the members or individuals eligible for coverage through a member.
5. Does not make health insurance coverage offered through the association available other than in connection with a member of the association.

*“Carrier”* means an entity subject to the insurance laws and regulations of this state, or subject to the jurisdiction of the commissioner, that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including an insurance company offering sickness and accident plans, a health maintenance organization, a nonprofit health service corporation, or any other entity providing a plan of health insurance, health benefits or health services.

*“COBRA”* means Title X of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

*“Commissioner”* means the commissioner of insurance.

*“Continuation coverage”* means coverage under a COBRA continuation provision or a similar state program. Coverage provided by a plan that is subject to a COBRA continuation provision or similar state program, but that does not satisfy all the requirements of that provision or program, will be deemed to be continuation coverage if it allows an individual to elect to continue coverage for a period of at least 18 months. Continuation coverage does not include coverage under a conversion policy required to be offered to an individual upon exhaustion of continuation coverage, nor does it include continuation coverage under the Federal Employees Health Benefits Program.

*“Creditable coverage”* means health benefits or coverage provided to an individual under any of the following:

1. A group health plan.
2. Health insurance coverage.
3. Part A or Part B Medicare pursuant to Title XVIII of the federal Social Security Act.
4. Medicaid pursuant to Title XIX of the federal Social Security Act, other than coverage consisting solely of benefits under Section 1928 of that Act.
5. 10 U.S.C. ch. 55.
6. A health or medical care program provided through the Indian Health Service or a tribal organization.
7. A state health benefits risk pool.
8. A health plan offered under 5 U.S.C. ch. 89.
9. A public health plan as defined under federal regulations.
10. A health benefit plan under Section 5(e) of the Peace Corps Act, 22 U.S.C. 2504(e).
11. A short-term limited-duration policy.

“*Director*” means the director of public health appointed pursuant to Iowa Code section 135.2.

“*Division*” means the division of insurance.

“*Eligible employee*” means an individual who is eligible to enroll in group health insurance coverage offered to a group health plan maintained by an employer, in accordance with the terms of the group health plan.

“*Employee*” means any individual employed by an employer.

“*Enrollment date*” means the first day of coverage or, if there is a waiting period, the first day of the waiting period.

“*Exhaustion of continuation coverage*” means that an individual’s continuation coverage ceases for any reason other than either failure of the individual to pay premiums on a timely basis, or for cause such as making a fraudulent claim or an intentional misrepresentation of a material fact in connection with the plan. An individual is considered to have exhausted continuation coverage if:

1. Coverage ceases due to the failure of the employer or other responsible entity to remit premiums on a timely basis, or
2. When the individual no longer resides, lives, or works in a service area of an HMO or similar program, whether or not within the choice of the individual, and there is no other continuation coverage available to the individual.

“*Group health plan*” means an employee welfare benefit plan as defined in Section 3(1) of the federal Employee Retirement Income Security Act of 1974, to the extent that the plan provides medical care including items and services paid for as medical care to employees or their dependents as defined under the terms of the plan directly or through insurance, reimbursement, or otherwise.

1. For purposes of this rule, “medical care” means amounts paid for any of the following:
  - The diagnosis, cure, mitigation, treatment, or prevention of disease, or amounts paid for the purpose of affecting a structure or function of the body.

- Transportation primarily for and essential to medical care referred to in this definition.
- Insurance covering medical care referred to in this definition.

2. For purposes of this division, a plan, fund, or program established or maintained by a partnership which, but for this paragraph, would not be an employee welfare benefit plan, shall be treated as an employee welfare benefit plan which is a group health plan to the extent that the plan, fund, or program provides medical care, including items and services paid for as medical care, for present or former partners in the partnership or to the dependents of such partners, as defined under the terms of the plan, fund, or program, either directly or through insurance, reimbursement, or otherwise.

3. With respect to a group health plan, the term “employer” includes a partnership with respect to a partner.

4. With respect to a group health plan the term “participant” includes the following:

- With respect to a group health plan maintained by a partnership, an individual who is a partner in the partnership.

- With respect to a group health plan maintained by a self-employed individual, under which one or more of the self-employed individual’s employees are participants, the self-employed individual,

if that individual is, or may become, eligible to receive benefits under the plan or the individual's dependents may be eligible to receive benefits under the plan.

*"Health insurance coverage"* or *"health insurance plan"* means benefits consisting of health care provided directly, through insurance or reimbursement, or otherwise and including items and services paid for as health care under a hospital or health service policy or certificate, hospital or health service plan contract, or health maintenance organization contract offered by a carrier.

1. "Health insurance coverage" does not include any of the following:

- Coverage for accident only, or disability income insurance.
- Coverage issued as a supplement to liability insurance.
- Liability insurance, including general liability insurance and automobile liability insurance.
- Workers' compensation or similar insurance.
- Automobile medical payment insurance.
- Credit-only insurance.
- Coverage for on-site medical clinic care.
- Other similar insurance coverage, specified in federal regulations, under which benefits for medical care are secondary or incidental to other insurance benefits.

2. "Health insurance coverage" does not include benefits provided under a separate policy as follows:

- Limited scope dental or vision benefits.
- Benefits for long-term care, nursing home care, home health care, or community-based care.
- Short-term limited-duration insurance.
- Any other similar, limited benefits as provided by rule of the commissioner.
- Stop loss insurance coverage.

3. "Health insurance coverage" does not include benefits offered as independent noncoordinated benefits as follows:

- Coverage only for a specified disease or illness;
- Hospital indemnity or other fixed indemnity insurance.

4. "Health insurance coverage" does not include Medicare supplemental health insurance as defined under Section 1882(g)(1) of the federal Social Security Act, coverage supplemental to the coverage provided under 10 U.S.C. ch. 55, and similar supplemental coverage provided under insurance coverage.

5. "Group health insurance coverage" means health insurance coverage offered in connection with a group health plan.

*"Health maintenance organization"* or *"HMO"* means a federally qualified health maintenance organization as defined in Section 1301(a) of the Public Health Services Act or an organization licensed under Iowa Code section 514B.5.

*"Large employer"* means an employer employing two or more employees and which does not meet the definition of small employer under Iowa Code section 513B.2(16).

*"Late enrollee"* means an individual, other than one who enrolls during a special enrollment period, who enrolls under a health benefit plan or health insurance coverage in connection with which it is issued, other than during the first period in which the individual is eligible to enroll under terms of the health benefit plan or health insurance coverage.

*"Network plan"* means health insurance coverage of a health insurance issuer under which the financing and delivery of medical care including items and services paid for as medical care are provided, in whole or in part, through a defined set of providers under contract with the carrier.

*"Plan year"* means the year that is designated as the plan year in the plan document of a group health plan, except that if the plan document does not designate a plan year or if there is no plan document, the plan year is:

1. The deductible/limit year used under the plan.
2. If the plan does not impose deductibles or limits on a yearly basis, the plan year is the policy year.

3. If the plan does not impose deductibles or limits on a yearly basis, and either the plan is not insured or the insurance policy is not renewed on an annual basis, the plan year is the employer's taxable year.

*"Preexisting condition exclusion"* means, with respect to health insurance coverage, a limitation or exclusion of benefits relating to a condition based on the fact that the condition was present before the date of enrollment for such coverage, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before such date. A preexisting condition exclusion includes any exclusion applicable to an individual as a result of information that is obtained relating to an individual's health status before the individual's first day of coverage, such as a condition identified as a result of a preenrollment questionnaire or physical examination given to the individual, or review of medical records relating to the preenrollment period.

*"Short-term limited-duration insurance"* means health coverage provided pursuant to a contract with an issuer that has an expiration date specified in the contract that is less than 12 months after the original effective date of the contract and, taking into account renewals or extensions, has a duration of no longer than 36 months in total.

*"Significant break in coverage"* means a period of 63 consecutive days during all of which the individual does not have any creditable coverage, except that neither a waiting period nor an affiliation period is taken into account in determining a significant break in coverage.

*"Special enrollment period"* means a period other than the first period in which an eligible employee or a dependent is eligible to enroll under the terms of group health insurance coverage in connection with which it is issued, without regard to other enrollment periods defined under the health insurance coverage.

*"Waiting period"* means, with respect to group health insurance coverage and an eligible employee or a dependent who is potentially eligible for coverage under the plan, the period that must pass with respect to the individual before the individual is eligible to be covered for benefits under the terms of the plan.

[ARC 3682C, IAB 3/14/18, effective 4/18/18; ARC 4332C, IAB 3/13/19, effective 2/20/19]

### **191—35.24(509) Eligibility to enroll.**

**35.24(1)** A carrier offering group health insurance coverage shall not establish rules for eligibility, including continued eligibility, of an individual to enroll under the terms of the coverage based on any of the following health status-related factors in relation to the individual or a dependent of the individual:

- a. Health status.
- b. Medical condition, including both physical and mental conditions.
- c. Claims experience.
- d. Receipt of health care.
- e. Medical history.
- f. Genetic information.
- g. Evidence of insurability, including conditions arising out of acts of domestic violence.
- h. Disability.

**35.24(2)** Subrule 35.24(1) does not require group health insurance coverage to provide particular benefits other than those provided under the terms of the coverage, and does not prevent a coverage from establishing limitations or restrictions on the amount, level, extent, or nature of the benefits or coverage for similarly situated individuals enrolled in the coverage.

**35.24(3)** Rules for eligibility to enroll under group health insurance coverage include rules defining any applicable waiting or affiliation periods for such enrollment.

**35.24(4)** A carrier offering health insurance coverage shall not require an individual, as a condition of enrollment or continued enrollment under the coverage, to pay a premium or contribution which is greater than a premium or contribution for a similarly situated individual enrolled in the coverage on the basis of a health status-related factor in relation to the individual or to a dependent of an individual enrolled under the coverage. This subrule shall not be construed to do either of the following:

- a. Restrict the amount that an employer may be charged for health insurance coverage.

*b.* Prevent a carrier offering group health insurance coverage from establishing premium discounts or rebates or modifying otherwise applicable copayments or deductibles in return for adherence to programs of health promotion and disease prevention.

**35.24(5)** A carrier shall not modify a health insurance coverage with respect to an employer or any eligible employee or dependent through riders, endorsements or other means, to restrict or exclude coverage or benefits for specific diseases, medical conditions, or services otherwise covered by the health insurance coverage.

[ARC 3682C, IAB 3/14/18, effective 4/18/18]

**191—35.25(509) Special enrollments.**

**35.25(1)** A carrier shall permit individuals to enroll for coverage under terms of a health benefit plan, without regard to other enrollment dates permitted under the group health insurance coverage, if an eligible employee requests enrollment or, if the group health insurance coverage makes coverage available to dependents, on behalf of a dependent who is eligible but not enrolled under the group health insurance coverage, during the special enrollment period, which shall be 30 days following an event described in subrule 35.25(2) or 35.25(3) with respect to the individual for whom enrollment is requested. A carrier may impose enrollment requirements that are otherwise applicable under terms of the group health insurance coverage to individuals requesting immediate enrollment.

**35.25(2)** An individual, who previously had other coverage for medical care and for whom an eligible employee declined coverage under the group health insurance coverage, may be enrolled during a special enrollment period if the individual has lost the other coverage for medical care and:

*a.* If required by the group health insurance coverage, the eligible employee stated in writing when declining the coverage, after being given a notice of the requirement form, and the consequences of failure to submit a written statement that coverage was declined because the individual had coverage for medical care under another group health insurance coverage, group health plan, or otherwise; and

*b.* When enrollment was declined for the individual:

(1) The individual had coverage under a COBRA continuation provision and the coverage has been exhausted; or

(2) The individual had coverage other than under a COBRA continuation provision and the coverage has been terminated due to loss of eligibility for the coverage, including loss of coverage as a result of legal separation, divorce, death, termination of employment, reduction in the number of hours of employment and any loss of eligibility after a period that is measured by reference to any of the foregoing, or termination of employer contributions toward the other coverage.

*c.* For purposes of subparagraph 35.25(2)“*b*”(2):

(1) Loss of eligibility for the coverages does not include loss of eligibility due to the eligible employee’s or dependent’s failure to make timely premium payments or termination of coverage for cause such as making a fraudulent claim or intentional misrepresentation of material fact in connection with the group health insurance coverage; and

(2) Employer contributions include contributions by any current or former employer of the individual or another person that was contributing to coverage for the individual.

(3) Exhaustion of COBRA continuation coverage means that an individual’s COBRA continuation coverage ceases for any reason other than either failure of the individual to pay premiums on a timely basis, or for cause, such as making a fraudulent claim or an intentional misrepresentation of a material fact in connection with the plan. An individual is considered to have exhausted COBRA continuation coverage if the coverage ceases.

**35.25(3)** If the eligible employee has previously declined enrollment under the group health insurance coverage but acquires a dependent through marriage, birth, adoption or placement for adoption, the eligible employee or dependent may be enrolled during the special enrollment period with respect to the individual.

**35.25(4)** Enrollment of the eligible employee or dependent is effective not later than the first day of the calendar month or, for a newborn or adopted child, on the date of birth, adoption, or placement for adoption.

[ARC 3682C, IAB 3/14/18, effective 4/18/18]

**191—35.26(509) Group health insurance coverage policy requirements.**

**35.26(1)** Group health insurance coverage subject to the rules in this division is renewable with respect to all eligible employees or their dependents at the option of the employer, except for one or more of the following reasons:

*a.* The health insurance coverage sponsor fails to pay or to make timely payments of premiums or contributions pursuant to the terms of the health insurance coverage.

*b.* The health insurance coverage sponsors, performs an act or practice constituting fraud or makes an intentional misrepresentation of a material fact under the terms of the coverage.

*c.* Noncompliance with the carrier's minimum participation requirements or employer contribution requirements.

*d.* For a network plan, no enrollees connected to the plan live, reside, or work in the service area of the issuer.

*e.* A carrier may choose to discontinue offering and cease to renew a particular type of health insurance coverage in the large group market if the carrier does all of the following:

(1) Provides advance notice of its decision to discontinue the plan to the commissioner or director a minimum of three days prior to the notice for affected employers, participants, and beneficiaries.

(2) Provides notice of its decision not to renew a plan to all affected employers, participants, and beneficiaries no less than 90 days prior to nonrenewal of a plan.

(3) Offers to each plan sponsor of the discontinued coverage the option to purchase any other coverage currently offered by the carrier to other employers in this state.

(4) Acts uniformly, in opting to discontinue the coverage and in offering the option under subparagraph 35.26(1)“e”(3), without regard to the claims experience of the sponsors under the discontinued coverage or to a health status-related factor relating to any participants or beneficiaries covered or new participants or beneficiaries who may become eligible for the coverage.

*f.* A decision by the carrier to discontinue offering and cease to renew all of its health insurance delivered or issued for delivery to employers in this state shall do all of the following:

(1) Provide advance notice of its decision to discontinue such coverage to the commissioner or director. Notice to the commissioner or director, at a minimum, shall be no less than three days prior to the notice provided for in subparagraph 35.26(1)“f”(2) to affected employers, participants, and beneficiaries.

(2) Provide notice of its decision not to renew such coverage to all affected employers, participants, and beneficiaries no less than 180 days prior to the nonrenewal of the coverage.

(3) Discontinue all health insurance coverage issued or delivered for issuance to employers in this state and cease renewal of such coverage.

*g.* The membership of an employer in a bona fide association, which is the basis for the coverage which is provided through such association, ceases, but only if the termination of coverage under this subrule occurs uniformly without regard to any health status-related factor relating to any covered individual.

*h.* The commissioner or director finds that the continuation of the coverage is not in the best interests of the policyholders or certificate holders, or would impair the carrier's ability to meet its contractual obligations.

*i.* At the time of coverage renewal, a carrier may modify the health insurance coverage for a product offered under group health insurance coverage in the group market, if such modification is consistent with the laws of this state and is effective on a uniform basis among group health insurance coverage with that product.

**35.26(2)** A carrier that elects not to renew health insurance coverage under 35.26(1)“f” shall not write any new business in the group market in this state for a period of five years after the date of notice to the commissioner or director.

**35.26(3)** This rule applies only to a carrier doing business in one established geographic service area of the state and the carrier's operations in that service area.

**35.26(4)** Preexisting condition exclusions.

*a.* A carrier, with respect to a participant or beneficiary, may impose a preexisting condition exclusion only as follows:

(1) The exclusion relates to a condition, whether physical or mental, regardless of the cause of the condition, for which medical advice, diagnosis, care, or treatment was recommended or received within the six-month period ending on the enrollment date. However, genetic information shall not be treated as a condition under this subparagraph in the absence of a diagnosis of the condition related to such information.

(2) The exclusion extends for a period of not more than 12 months, or 18 months in the case of a late enrollee, after the enrollment date.

(3) The period of any such preexisting condition exclusion is reduced by the aggregate of the periods of creditable coverage applicable to the participant or beneficiary as of the enrollment date.

*b.* A carrier offering group health insurance coverage shall not impose any preexisting condition as follows:

(1) In the case of a child who is adopted or placed for adoption before attaining 18 years of age and who, as of the last day of the 30-day period beginning on the date of the adoption or placement for adoption, is covered under creditable coverage. This subparagraph shall not apply to coverage before the date of such adoption or placement for adoption.

(2) In the case of an individual who, as of the last day of the 30-day period beginning with the date of birth, is covered under creditable coverage.

(3) Relating to pregnancy as a preexisting condition.

*c.* A carrier shall waive any waiting period applicable to a preexisting condition exclusion or limitation period with respect to particular services under health insurance coverage for the period of time an individual was covered by creditable coverage, provided that the creditable coverage was continuous to a date not more than 63 days prior to the effective date of the new coverage. Any period that an individual is in a waiting period for any coverage under group health insurance coverage, or is in an affiliation period, shall not be taken into account in determining the period of continuous coverage. A health maintenance organization that does not use preexisting condition limitations in any of its health insurance coverage may impose an affiliation period. For purposes of this paragraph, "affiliation period" means a period of time not to exceed 60 days for new entrants and not to exceed 90 days for late enrollees during which no premium shall be collected and coverage issued is not effective, so long as the affiliation period is applied uniformly, without regard to any health status-related factors.

*d.* A group health plan or carrier offering group health insurance under the plan may not impose a preexisting condition exclusion with respect to a participant or dependent of the participant before notifying the participant under rule 191—35.29(509).

[ARC 3682C, IAB 3/14/18, effective 4/18/18]

**191—35.27(509) Methods of counting creditable coverage.** For purposes of reducing any preexisting condition exclusion period, a group health plan or carrier offering group health insurance coverage shall determine the amount of an individual's creditable coverage by using the standard method described in subrule 35.27(1) except that the plan or carrier may use the alternative method under subrule 35.27(2) with respect to any or all of the categories of benefits described under subrule 35.27(4).

**35.27(1)** Under the standard method, a group health plan or health insurance carrier offering group health insurance coverage shall determine the amount of creditable coverage without regard to the specific benefits included in the coverage.

*a.* For purposes of reducing the preexisting condition exclusion period, a group health plan or health insurance carrier offering group health insurance coverage shall determine the amount of creditable coverage by counting all the days that the individual has under one or more types of creditable coverage. If on a particular day, an individual has creditable coverage from more than one source, all

the creditable coverage on that day is counted as one day. Further, any days in a waiting period for a plan or policy are not creditable coverage under the plan or policy.

*b.* Days of creditable coverage that occur before a significant break in coverage are not required to be counted.

*c.* Notwithstanding any other provisions of subrule 35.27(2) for purposes of reducing a preexisting condition exclusion period, a group health plan or a health insurance carrier offering group health insurance coverage may determine the amount of creditable coverage in any other manner that is at least as favorable to the individual as the method set forth in subrule 35.27(2).

**35.27(2)** Under the alternative method, a group health plan or a health insurance carrier offering group health insurance coverage shall determine the amount of creditable coverage based on coverage within any category of benefits described in subrule 35.27(4) and not based on coverage. The plan may apply a different preexisting condition exclusion period with respect to each category and may apply a different preexisting condition exclusion period for benefits that are not within any category. The creditable coverage determined for a category of benefits applies only for purposes of reducing the preexisting condition exclusion period with respect to that category. An individual's creditable coverage for benefits that are not within any category for which the alternative method is being used is determined under the standard method of subrule 35.27(1).

**35.27(3)** A plan or carrier using the alternative method is required to apply it uniformly to all participants and beneficiaries in the plan or policy. The use of the alternative method must be set forth in the plan.

**35.27(4)** The alternative method for counting creditable coverage may be used for coverage for any of the following categories of benefits:

- a.* Mental health.
- b.* Substance abuse treatment.
- c.* Prescription drugs.
- d.* Dental care.
- e.* Vision care.

**35.27(5)** If the alternative method is used, the plan is required to:

*a.* State prominently that the plan is using the alternative method of counting creditable coverage in disclosure statements concerning the plan, and state this to each enrollee at the time of enrollment under the plan;

*b.* Include in these statements a description of the effect of using the alternative method, including an identification of the category's uses; and

*c.* Count creditable coverage within a category if any level of benefits is provided within the category.

[ARC 3682C, IAB 3/14/18, effective 4/18/18]

### **191—35.28(509) Certificates of creditable coverage.**

**35.28(1)** Group health plans or carriers shall issue certificates of creditable coverage to persons losing coverage. A group health plan or carrier required to provide a certificate under this rule for an individual is deemed to have satisfied the certification requirements for that individual if another party provides the certificate, but only to the extent that information relating to the individual's creditable coverage and waiting or affiliation period is provided by the other party. Certificates shall be issued within a reasonable amount of time following termination to employees and dependents:

- a.* Automatically upon the termination of an individual's group coverage;
- b.* Automatically upon the termination of COBRA coverage;
- c.* Upon request within 24 months after coverage ends.

**35.28(2)** Certificates in writing. Certificates of coverage must be in writing unless all of the following conditions are met:

- a.* The individual requesting the certificate is not entitled to receive a certificate;
- b.* The individual requests that the certificate be sent to another plan or carrier;

*c.* The plan or carrier receiving the certificate agrees to accept the information through means other than a written certificate;

*d.* The plan or carrier receiving the certificate receives the certificate within a reasonable amount of time.

**35.28(3)** Required information. The certificate shall include the following information:

*a.* The date the certificate is issued;

*b.* The name of the group plan providing coverage;

*c.* The name of the employee or dependent to whom the certificate applies, other relevant identifying information, and the name of the employee if the certificate is for a dependent;

*d.* The plan administrator's name, address and telephone number;

*e.* A telephone number to call for further information if different from above;

*f.* Either a statement that the person has at least 18 months' creditable coverage without a significant break of coverage or the date any waiting period and creditable coverage began;

*g.* The date creditable coverage ended or an indication that the coverage is in force.

**35.28(4)** Family information. Information for families may be combined on one certificate. Any differences in creditable coverages shall be clearly delineated.

**35.28(5)** Dependent coverage transition rule. A group health plan or carrier that does not maintain dependent data is deemed to have satisfied the requirement to issue dependent certificates by naming the employee and specifying that the coverage on the certificate is for dependent coverage.

**35.28(6)** Delivering certificates. The certificate shall be given to the individual, plan or carrier requesting the certificate. The certificates may be sent by first-class mail. When a dependent's last-known address differs from the employee's last-known address, a separate certificate shall be provided to the dependent at the dependent's last-known address. Separate certificates may be mailed together to the same location.

**35.28(7)** A group health plan or carrier shall establish a procedure for individuals to request and receive certificates.

**35.28(8)** A certificate is not required to be furnished until the group health plan or carrier knows or should have known that the dependent's coverage terminated.

**35.28(9)** Demonstrating creditable coverage. An individual has the right to demonstrate creditable coverage, waiting periods, and affiliation periods when the accuracy of the certificate is contested or a certificate is unavailable. A group health plan or carrier shall consider information obtained by it or presented on behalf of an individual to determine whether the individual has creditable coverage.

[ARC 3682C, IAB 3/14/18, effective 4/18/18]

#### **191—35.29(509) Notification requirements.**

**35.29(1)** A group health plan or carrier shall provide written notice to the employee and dependents that includes the following:

*a.* The existence of any preexisting condition exclusions.

*b.* A determination that the group health plan or carrier intends to impose a preexisting condition exclusion and:

(1) The basis for the decision to do so;

(2) The length of time to which the exclusion will apply;

(3) The right of the employee or dependent to appeal a decision to impose a preexisting condition exclusion;

(4) The right of the person to demonstrate creditable coverage including the right of the person to request a certificate from a prior group health plan or carrier and a statement that the current group health plan or carrier will assist in obtaining the certificate.

*c.* That the group health plan, carrier, or ODS will use the alternative method of counting creditable coverage.

*d.* Special enrollment rights when an employee declines coverage for the employee or dependents.

**35.29(2)** A group health plan or carrier shall provide written notice to the employee and dependents of a modification of a prior creditable coverage decision when the group health plan or carrier

subsequently determines either no or less creditable coverage existed provided that the group health plan or carrier acts according to its initial determination until the final determination is made.

[ARC 3682C, IAB 3/14/18, effective 4/18/18]

**191—35.30(509) Mental health benefits.** Rescinded IAB 12/7/05, effective 1/11/06.

**191—35.31(509) Disclosure requirements.** All carriers shall include in contracts and evidence of coverage forms a statement disclosing the existence of any prescription drug formularies. Upon request, all carriers offering health insurance coverage that includes a prescription drug formulary shall inform enrollees of the coverage, and prospective enrollees of the coverage during any open enrollment period, whether a prescription drug specified in the request is included in such formulary.

All carriers shall also disclose the existence of any contractual arrangements providing rebates received by them for prescription drugs or durable medical equipment. Durable medical equipment means equipment that can stand repeated use and is primarily and customarily used to serve a medical purpose and is generally not useful to a person who is not sick or injured or used by other family members and is appropriate for home use for the purpose of improving bodily functions or preventing further deterioration of the medical condition caused by sickness or injury.

[ARC 3682C, IAB 3/14/18, effective 4/18/18]

**191—35.32(514C) Treatment options.**

**35.32(1)** A carrier shall not prohibit a participating provider from or penalize a participating provider for discussing treatment options with covered persons, irrespective of the carrier's position on the treatment options, or from advocating on behalf of covered persons within the utilization review or grievance processes established by the carrier or a person contracting with the carrier.

**35.32(2)** A carrier shall not penalize a provider because the provider, in good faith, reports to state or federal authorities any act or practice by the carrier that, in the opinion of the provider, jeopardizes patient health or welfare.

**191—35.33(514C) Emergency services.** Benefits shall be available by the carrier for inpatient and outpatient emergency services. Since carriers may not contract with every emergency care provider in an area, carriers shall make every effort to inform members of participating providers.

**35.33(1)** The term "emergency services" means, with respect to an individual enrolled with an organization, covered inpatient and outpatient services that are furnished by a provider who is qualified to furnish the services that are needed to evaluate or stabilize an emergency medical condition.

**35.33(2)** The term "emergency medical condition" means a medical condition manifesting itself by symptoms of sufficient severity, including but not limited to severe pain, that an ordinarily prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in one of the following:

- a.* Placing the health of the individual or, with respect to a pregnant woman, the health of the woman and her unborn child in serious jeopardy;
- b.* Serious impairment to bodily function; or
- c.* Serious dysfunction of any bodily organ or part.

**35.33(3)** Reimbursement to a provider of "emergency services" shall not be denied by any carrier without that organization's review of the patient's medical history, presenting symptoms, and admitting or initial as well as final diagnosis, submitted by the provider, in determining whether, by definition, emergency services could reasonably have been expected to be provided. Reimbursement for emergency services shall not be denied solely on the grounds that services were performed by a noncontracted provider. If reimbursement for emergency services is denied, the enrollee may file a complaint with the carrier. Upon denial of reimbursement for emergency services, the carrier shall notify the enrollee and the provider that they may register a complaint with the commissioner of insurance.

**191—35.34(514C) Provider access.** A carrier subject to this chapter shall allow a female enrollee direct access to obstetrical and gynecological services from network or participating providers. The carrier shall also allow a pediatrician to be the primary care provider for a child through the age of 18.

These rules are intended to implement Iowa Code chapters 509 and 514C and 1999 Iowa Acts, Senate File 276.

**191—35.35(509) Reconstructive surgery.**

**35.35(1)** A carrier that provides medical and surgical benefits with respect to a mastectomy shall provide the following coverage in the event an enrollee receives benefits in connection with a mastectomy and elects breast reconstruction:

- a. Reconstruction of the breast on which the mastectomy has been performed;
- b. Surgery and reconstruction of the other breast to produce a symmetrical appearance; and
- c. Prostheses and coverage of physical complications at all stages of a mastectomy including lymphedemas.

**35.35(2)** The benefits under this rule shall be provided in a manner determined in consultation with the attending physician and the enrollee. The coverage may be subject to annual deductibles and coinsurance provisions that are consistent with other benefits under the plan or coverage.

**35.35(3)** Written notice of the availability of coverage in this rule shall be provided to the enrollee upon enrollment and then annually.

**35.35(4)** A carrier shall not deny an enrollee eligibility or continued eligibility to enroll or renew coverage under the terms of the health insurance solely for the purpose of avoiding the requirements of this rule. A carrier shall not penalize, reduce or limit the reimbursement of an attending provider or induce the provider to provide care in a manner inconsistent with this rule.

This rule is intended to implement Public Law 105-277.  
[ARC 3682C, IAB 3/14/18, effective 4/18/18]

CONSUMER GUIDE

**191—35.36(514K) Purpose.** These rules implement Iowa Code Supplement section 514K.1(2) which requires the commissioner and the director of public health to annually publish a consumer guide. These rules apply to all carriers providing health insurance coverage in the individual, small employer group and large group markets that utilize a preferred provider arrangement and to all health maintenance organizations.

**191—35.37(514K) Information filing requirements.**

**35.37(1)** Each health maintenance organization shall annually file with the division no later than July 1 the following information by plan as requested by the division:

- a. Health plan employer data information set (HEDIS).
- b. Network composition.
- c. Other information determined to be beneficial to consumers including but not limited to consumer survey information.

**35.37(2)** Each preferred provider organization health network shall annually file with the division no later than July 1 the following information by plan as requested by the division:

- a. Reportable information as defined by a nationally recognized accreditation organization for preferred provider organization health networks.
- b. Network composition.
- c. Other information determined to be beneficial to consumers including but not limited to consumer survey information.

**35.37(3)** Each health maintenance organization and insurer using a preferred provider organization health network shall transmit the requested information by electronic mail or diskette in a format prescribed by the division.

**191—35.38(514K) Limitation of information published.** The division may establish limits on the data to be collected and published in the event the division believes the information is not statistically relevant and would not be beneficial to consumers.

These rules are intended to implement Iowa Code Supplement section 514K.1(2).

**191—35.39(514C) Contraceptive coverage.**

**35.39(1)** A carrier that provides benefits for outpatient prescription drugs or devices shall provide benefits for prescription contraceptive drugs or prescription contraceptive devices which prevent conception and are approved by the United States Food and Drug Administration or generic equivalents approved as substitutable by the United States Food and Drug Administration.

**35.39(2)** A carrier is not required to provide benefits for over-the-counter contraceptive drugs or contraceptive devices that do not require a prescription for purchase.

**35.39(3)** A contraceptive drug or contraceptive device does not include surgical services intended for sterilization, including, but not limited to, tubal ligation or vasectomy.

**35.39(4)** A carrier shall be required to provide benefits for services related to outpatient contraceptive services for the purpose of preventing conception if the policy or contract provides benefits for other outpatient services provided by a health care professional.

**35.39(5)** If a carrier does not provide benefits for a routine physical examination, the carrier is not required to provide benefits for a routine physical examination provided in the course of prescribing a contraceptive drug or contraceptive device.

This rule is intended to implement Iowa Code chapter 514C.  
[ARC 3682C, IAB 3/14/18, effective 4/18/18]

**191—35.40(514C) Autism spectrum disorders coverage.**

**35.40(1) Purpose.** This rule implements Iowa Code section 514C.28, relating to autism spectrum disorders coverage in a group plan established pursuant to Iowa Code chapter 509A for employees of the state that provides for third-party payment or prepayment of health, medical, and surgical coverage benefits.

**35.40(2) Definitions.** For purposes of this rule, the definitions found in Iowa Code section 514C.28(2) shall apply. In addition, the following definitions shall apply:

“*Autism spectrum disorders*” means the following neurological disorders as defined under the following diagnostic classes within the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders, edition DSM-IV-TR:

1. Autistic disorders. Diagnostic code 299.00.
2. Rett’s Disorder. Diagnostic code 299.80.
3. Childhood Disintegrative Disorder. Diagnostic code 299.10.
4. Asperger’s Disorder. Diagnostic code 299.80.
5. Pervasive Developmental Disorder NOS. Diagnostic code 299.80.

“*Commissioner*” means the commissioner of insurance.

“*Group plan*” or “*group health plan*” means a group health plan established for the employees of the state of Iowa under Iowa Code chapter 509A.

**35.40(3) Services.** A group plan is not required to provide coverage for any of the following:

- a. Acupuncture.
- b. Animal-based therapy including hippotherapy.
- c. Auditory integration training.
- d. Chelation therapy.
- e. Child care.
- f. Cranial sacral therapy.
- g. Custodial or respite care.
- h. Hyperbaric oxygen therapy.
- i. Special diets or supplements.

**35.40(4)** *Parents or legal guardians of children diagnosed with autism spectrum disorders.* A group plan shall not be required to pay for treatment rendered by parents or legal guardians who are otherwise qualified providers, supervising providers, therapists, professionals or paraprofessionals for treatment rendered to their own children.

**35.40(5)** *Locations for services.*

*a.* A group plan shall provide coverage for treatments, therapies and services to an insured diagnosed with autism spectrum disorders by an autism service provider in locations including the provider's office or clinic or in a setting conducive to the acquisition of the target skill. Treatments may be provided in schools when the treatments, therapies, and services are related to the goals of the treatment plan and do not duplicate services provided by a school.

*b.* A group health plan is not required to provide coverage for therapy, treatment or services when the therapy, treatment or services are provided to an insured who is residing in a residential treatment center or inpatient treatment or day treatment facility.

**35.40(6)** *Verification of qualified provider.* A group health plan is required to verify the licensure, certification and all training or other credentials of a qualified provider or health professional. A group health plan shall not deny payment or reimbursement for the necessary diagnosis or treatment provided by a certified behavior analyst or a health professional licensed under Iowa Code chapter 147.

**35.40(7)** *Annual publication CPI adjustment.* The commissioner shall publish on or before April 1 of each year beginning April 1, 2014, an adjustment to the required maximum benefit equal to the percentage change in the United States Department of Labor Consumer Price Index for all urban consumers in the preceding year. The adjusted maximum benefit published each April shall be used by group health plans in order to comply with this rule and shall be effective January 1 for group plans issued or renewed on or after January 1 of the following calendar year.

**35.40(8)** *Notice to insureds.* A group plan shall provide written notice to the insured regarding claims submitted and processed for the treatment of autism spectrum disorders and shall include the total amount expended to date for the current policy year. The notice may be included with the explanation of benefits form or in a separate communication provided on a periodic basis during the course of treatment.

This rule is intended to implement Iowa Code section 514C.28.

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<sup>1</sup> See IAB Insurance Division



CHAPTER 36  
INDIVIDUAL ACCIDENT AND HEALTH—MINIMUM  
STANDARDS AND RATE HEARINGS  
[Prior to 10/22/86, Insurance Department[510]]

DIVISION I  
MINIMUM STANDARDS

**191—36.1(514D) Purpose.** The purpose of this chapter is to implement Iowa Code chapter 514D so as to provide reasonable standardization and simplification of terms and coverages of individual accident and sickness insurance policies and individual subscriber contracts of hospital, medical, and dental service corporations in order to facilitate public understanding and comparison and to eliminate provisions contained in individual accident and sickness insurance policies and individual subscriber contracts of hospital, medical, and dental service corporations which may be misleading or confusing in connection either with the purchase of the coverages or with the settlement of claims and to provide for full disclosure in the sale of the coverages.

**191—36.2(514D) Applicability and scope.** This chapter shall apply to all individual accident and sickness insurance policies and subscriber contracts of service corporations, organized under Iowa Code chapter 514, delivered or issued for delivery to any person in this state on and after the effective date hereof, except it shall not apply to individual policies or contracts issued pursuant to a conversion privilege under a policy or contract of group or individual insurance when the group or individual policy or contract includes provisions which are inconsistent with the requirements of this chapter, nor to policies being issued to employees or members as additions to franchise plans in existence on the effective date of this chapter. The requirements contained in this chapter shall be in addition to any other applicable regulations previously adopted.

**191—36.3(514D) Effective date.** This chapter shall be effective on December 31, 1981, and shall be applicable to all new filings of individual accident and sickness insurance policies and nonprofit hospital, medical and dental service contracts made after that date, and all other policies and contracts covered by this chapter and delivered or issued for delivery after June 30, 1982, shall be in compliance with this chapter.

**191—36.4(514D) Policy definitions.** Except as provided hereafter, no individual accident or sickness insurance policy or hospital, medical, or dental service corporation subscriber contract delivered or issued for delivery to any person in this state shall contain definitions respecting the matters set forth below unless such definitions comply with the requirements of this rule.

**36.4(1) “One period of confinement”** means consecutive days of in-hospital service received as an inpatient, or successive confinements when discharge from and readmission to the hospital occurs within a period of time not more than 90 days or three times the maximum number of days of in-hospital coverage provided by the policy to a maximum of 180 days.

**36.4(2) “Hospital”** may be defined in relation to its status, facilities and available services or to reflect its accreditation by the Joint Commission on Accreditation of Hospitals.

*a.* The definition of the term “hospital” shall not be more restrictive than one requiring that the hospital:

- (1) Be an institution operated pursuant to law; and
- (2) Be primarily and continuously engaged in providing or operating, either on its premises or in facilities available to the hospital on a prearranged basis and under the supervision of a staff of duly licensed physicians, medical, diagnostic and major surgical facilities for the medical care and treatment of sick or injured persons on an inpatient basis for which a charge is made; and
- (3) Provide 24-hour nursing service by or under the supervision of registered graduate professional nurses (R.N.s).

*b.* The definition of the term “hospital” may state that the term shall not be inclusive of:

- (1) Convalescent homes, convalescent, rest, or nursing facilities; or
- (2) Facilities primarily affording custodial, educational or rehabilitative care; or
- (3) Facilities for the aged, drug addicts or alcoholics; or
- (4) Any military or veterans' hospital or soldiers' home or any hospital contracted for or operated by any national government or agency thereof for the treatment of members or ex-members of the armed forces, except where a legal liability exists for charges made to the individual.

**36.4(3)** "*Nursing facility*" shall be defined in relation to its status, facilities, and available services.

*a.* A definition of such home or facility shall not be more restrictive than one requiring that it:

- (1) Be operated pursuant to law;
- (2) Be approved for payment of Medicare benefits or be qualified to receive such approval, if so requested;

- (3) Be primarily engaged in providing, in addition to room and board accommodations, skilled nursing care under the supervision of a duly licensed physician;

- (4) Provide continuous 24-hour-a-day nursing service by or under the supervision of a registered graduate professional nurse (R.N.); and

- (5) Maintains a daily medical record of each patient.

*b.* The definition of such home or facility may provide that the term shall not be inclusive of:

- (1) Any home, facility or part thereof used primarily for rest;

- (2) A home or facility for the aged or for the care of drug addicts or alcoholics; or

- (3) A home or facility primarily used for the care and treatment of mental diseases, or disorders, or custodial or educational care.

**36.4(4)** "*Skilled nursing care*" and "*convalescent nursing care*," when used in a policy, shall be defined in the policy as follows: Skilled nursing care or convalescent nursing services means any treatment which is rehabilitative in nature, which is required to restore an individual to the individual's prior level of health after an accident or illness and hospitalization, and which is related to the condition which was the cause of the confinement. Skilled nursing care and convalescent nursing care are any level of care greater than custodial care.

**36.4(5)** "*Custodial nursing care*" shall be defined as that level of nursing care required to assist an individual in meeting day-to-day living requirements, such as but not limited to, eating, bathing, dressing, and which care is required primarily due to reasons of age and not reasons of sickness.

**36.4(6)** "*Accident*" and "*accidental injury*" shall be defined to employ "result" language and shall not include words which establish an accidental means test or use words such as "external, violent, visible wounds" or similar words of description or characterization.

*a.* The definition shall not be more restrictive than the following: Injury or injuries, for which benefits are provided, means accidental bodily injury sustained by the insured person which are the direct cause, independent of disease or bodily infirmity or any other cause, and occur while the insurance is in force.

*b.* Such definition may provide that injuries shall not include injuries for which benefits are provided under any workers' compensation, employer's liability or similar law, motor vehicle no-fault plan, unless prohibited by law, or injuries occurring while the insured person is engaged in any activity pertaining to any trade, business, employment, or occupation for wage or profit.

**36.4(7)** "*Sickness*" shall not be defined to be more restrictive than the following: Sickness means sickness or disease of an insured person which first manifests itself after the effective date of insurance and while the insurance is in force. A definition of sickness may provide for a probationary period which will not exceed 30 days from the effective date of the coverage of the insured person. The definition may be further modified to exclude sickness or disease for which benefits are provided under any workers' compensation, occupational disease, employer's liability or similar law.

**36.4(8)** "*Preexisting condition*" shall not be defined to be more restrictive than the following: Preexisting condition means the existence of symptoms which would cause an ordinary prudent person to seek diagnosis, care or treatment within a five-year period preceding the effective date of the coverage of the insured person or a condition for which medical advice or treatment was recommended

by a physician or received from a physician within a five-year period preceding the effective date of the insured person.

**36.4(9)** *“Physician”* may be defined by including words such as *“duly qualified physician”* or *“duly licensed physician.”* The use of the term “physician” requires an insurer to recognize and to accept, to the extent of its obligation under the contract, all providers of medical care and treatment when the services are within the scope of the provider’s licensed authority and are provided pursuant to applicable laws.

**36.4(10)** *“Nurses”* may be defined so that the description of nurse is restricted to a type of nurse, such as registered graduate professional nurse (R.N.), a licensed practical nurse (L.P.N.), or a licensed vocational nurse (L.V.N.). If the words “nurse,” “trained nurse” or “registered nurse” are used without specific definition, then the use of these terms requires the insurer to recognize the services of any individual who qualifies under such terminology in accordance with the applicable statutes or administrative rules of the licensing or registry board of the state of Iowa.

**36.4(11)** *“Total disability”*.

a. A general definition of total disability cannot be more restrictive than one requiring the individual to be totally disabled from engaging in any employment or occupation for which the individual is or becomes qualified by reason of education, training or experience and who is not in fact engaged in any employment or occupation for wage or profit.

b. Total disability may be defined in relation to the inability of the person to perform duties but may not be based solely upon an individual’s inability to: (1) perform “any occupation whatsoever,” “any occupational duty,” or “any and every duty of the person’s occupation”; or (2) engage in any training or rehabilitation program.

c. An insurer may specify the requirement of the complete inability of the person to perform all of the substantial and material duties of the person’s regular occupation or use words of similar import. An insurer may require care by a physician (other than the insured or a member of the insured’s immediate family).

**36.4(12)** *“Partial disability”* shall be defined in relation to the individual’s inability to perform one or more but not all of the “major,” “important,” or “essential” duties of employment or occupation or may be related to a “percentage” of time worked or to a “specified number of hours” or to “compensation.” Where a policy provides total disability benefits and partial disability benefits, only one elimination period may be required.

**36.4(13)** *“Residual disability”* shall be defined in relation to the individual’s reduction in earnings and may be related either to the inability to perform some part of the “major,” “important,” or “essential duties” of employment or occupation, or to the inability to perform all usual business duties for as long as is usually required. A policy which provides for residual disability benefits may require a qualification period, during which the insured must be continuously totally disabled before residual disability benefits are payable. The qualification period for residual benefits may be longer than the elimination period for total disability. In lieu of the term “residual disability,” the insurer may use “proportionate disability” or another term of similar import which in the opinion of the commissioner adequately and fairly describes the benefit.

**36.4(14)** *“Medicare”* shall be defined in any hospital, surgical or medical expense policy which relates its coverage to eligibility for Medicare or Medicare benefits. Medicare may be substantially defined as “The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended,” or “Title I, Part I of Public Laws 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act,” “as then constituted and any later amendments or substitutes thereof,” or words of similar import.

**36.4(15)** *“Complications of pregnancy”* shall be defined to include:

a. Conditions requiring hospital stays (when the pregnancy is not terminated) whose diagnoses are distinct from pregnancy but are adversely affected by pregnancy or are caused by pregnancy; and

b. Nonelective Caesarean section, ectopic pregnancy which is terminated and spontaneous termination of pregnancy, which occurs during a period of gestation in which a viable birth is not possible.

**36.4(16)** “*Mental or nervous disorders*” shall not be defined more restrictively than a definition including neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder of any kind.

**36.4(17)** “*Short-term limited-duration insurance*” means health coverage provided pursuant to a contract with an issuer that has an expiration date specified in the contract that is less than 12 months after the original effective date of the contract and, taking into account renewals or extensions, has a duration of no longer than 36 months in total.

This rule is intended to implement Iowa Code section 514D.3.  
[ARC 4332C, IAB 3/13/19, effective 2/20/19]

#### **191—36.5(514D) Prohibited policy provisions.**

**36.5(1)** Except as provided in subrule 36.4(7), no policy shall contain provisions establishing a probationary or waiting period during which no coverage is provided under the policy subject to the further exception that a policy may specify a probationary or waiting period not to exceed six months for specified diseases or conditions and losses resulting therefrom for hernia, disorder of reproductive organs, varicose veins, adenoids, appendix, and tonsils. However, the permissible six months’ exception shall not be applicable where such specified diseases or conditions are treated on an emergency basis. Accident policies shall not contain probationary or waiting periods.

**36.5(2)** No policy or rider for additional coverage may be issued as a dividend unless an equivalent cash payment is offered to the policyholder as an alternative to such dividend policy or rider. No such dividend policy or rider shall be issued for an initial term of less than six months. The initial renewal subsequent to the issuance of any policy or rider as a dividend shall clearly disclose that the policyholder is renewing the coverage that was provided as a dividend for the previous term and that the renewal is optional with the policyholder.

**36.5(3)** No policy shall exclude coverage for a loss due to a preexisting condition for a period greater than 12 months following policy issue where the application for the insurance does not seek disclosure of prior illness, disease or physical conditions or prior medical care and treatment and preexisting condition is not specifically excluded by the terms of the policy.

**36.5(4)** A disability income policy may contain a “return of premium” or “cash value benefit” so long as:

*a.* Such return of premium or cash value benefit is not reduced by an amount greater than the aggregate of any claims paid under the policy; and

*b.* The insurer demonstrates that the reserve basis for such policies is adequate. No other policy shall provide a return of premium or cash value benefit, except return of unearned premium upon termination or suspension of coverage, retroactive waiver of premium paid during disability, payment of dividends on participating policies, or experience rating refunds.

**36.5(5)** Policies providing hospital confinement indemnity coverage shall not contain provisions excluding coverage because of confinement in a hospital operated by the federal government.

**36.5(6)** No policy shall limit or exclude coverage by type of illness, accident, treatment or medical condition, except as follows:

*a.* Preexisting conditions or diseases, except for congenital anomalies of a covered dependent child;

*b.* Mental or emotional disorders, alcoholism and drug addiction;

*c.* Pregnancy, except for complications of pregnancy;

*d.* Illness or medical condition arising out of:

(1) War or act of war (whether declared or undeclared); participation in a felony, riot or insurrections; or service in the armed forces or units auxiliary thereto;

(2) Suicide (sane or insane), attempted suicide or intentionally self-inflicted injury;

(3) Aviation;

(4) With respect to short-term nonrenewable policies, of less than 12 months in duration, interscholastic sports;

(5) With respect to disability income protection policies, incarceration;

*e.* Cosmetic surgery, except that “cosmetic surgery” shall not include reconstructive surgery when service is incidental to or follows surgery resulting from trauma, infection or other diseases of the involved part, and reconstructive surgery because of congenital disease or anomaly of a covered dependent child which has resulted in a functional defect;

*f.* Foot care in connection with corns, calluses, flat feet, fallen arches, weak feet, chronic foot strain, or symptomatic complaints of the feet;

*g.* Care in connection with the detection and correction by manual or mechanical means of structural imbalance, distortion, or subluxation in the human body for purposes of removing nerve interference and the effects thereof, where interference is the result of or related to distortion, misalignment or subluxation of, or in the vertebral column;

*h.* Treatment provided in a government hospital; benefits provided under Medicare or other governmental program (except Medicaid), any state or federal workers’ compensation, employer’s liability or occupational disease law, or any motor vehicle no-fault law; services performed by a member of the covered person’s immediate family and services for which no charge is normally made in the absence of insurance;

*i.* Dental care or treatment;

*j.* Eye glasses, hearing aids and examination for the prescription or fitting thereof;

*k.* Rest cures, custodial care, transportation and routine physical examinations;

*l.* Territorial limitations.

**36.5(7)** The provisions of this chapter shall not impair or limit the use of waivers to exclude, limit or reduce coverage or benefits for specifically named or described preexisting diseases, physical condition or extra hazardous activity. Where waivers are required as a condition of issuance, renewal or reinstatement, signed acceptance by the insured is required unless on initial issuance the full text of the waiver is contained either on the first page or specification page of the policy or unless notice of the waiver appears on the first page or specification page.

**36.5(8)** Except as otherwise provided in 36.7(1), the terms “Medicare supplement,” “Medigap,” and words of similar import shall not be used unless the policy is issued in compliance with 191—Chapter 37.

**36.5(9)** Policy provisions precluded in this subrule shall not be construed as a limitation on the authority of the commissioner to disapprove other policy provisions or coverages in accordance with Iowa Code section 514D.3(2), which, in the opinion of the commissioner, are unjust, unfair, or unfairly discriminatory to the policyholder, beneficiary, or any person insured under the policy.

**36.5(10)** Rescinded IAB 10/30/91, effective 12/4/91.

**191—36.6(514D) Accident and sickness minimum standards for benefits.** The following minimum standards for benefits are prescribed for the categories of coverage noted in the following subrules. No individual policy of accident and sickness insurance or nonprofit hospital, medical or dental service corporation contract shall be delivered or issued for delivery in this state which does not meet the required minimum standards for the specified categories unless the commissioner finds that such policies or contracts are approvable as limited benefit health insurance and the outline of coverage complies with the appropriate outline in 36.7(12).

Nothing in this rule shall preclude the issuance of any policy or contract combining two or more categories of coverage set forth in this chapter.

Nonprofit hospital and medical service associations are subject to this chapter. When such associations are prohibited from issuing subscriber contracts which include all of the benefits required in 36.6(2) or 36.6(5), they shall include so much of those benefits as are permitted and they shall be issued in conjunction with another contract including at least the remainder of the minimum benefit required. In such event, the combination of contracts will be considered to have been issued in compliance with this chapter.

**36.6(1) General rules.**

*a.* A “noncancelable,” “guaranteed renewable,” or “noncancelable and guaranteed renewable” policy shall not provide for termination of coverage of the spouse solely because of the occurrence of

an event specified for termination of coverage of the insured, other than nonpayment of premium. The policy shall provide that in the event of the insured's death, the spouse of the insured, if covered under the policy, shall become the insured.

*b.* The terms "noncancelable," "guaranteed renewable," or "noncancelable and guaranteed renewable" shall not be used without further explanatory language in accordance with the disclosure requirements of 36.7(1)"*a.*" The terms "noncancelable" or "noncancelable and guaranteed renewable" may be used only in a policy which the insured has the right to continue in force by the timely payment of premiums set forth in the policy until the age of 65 or to eligibility for Medicare, during which period the insurer has no right to make unilaterally any change in any provision of the policy while the policy is in force: Provided, however, any accident and health or accident only policy which provides for periodic payments, weekly or monthly, for a specified period during the continuance of disability resulting from accident or sickness may provide that the insured has the right to continue the policy only to age 60 if, at age 60 the insured has the right to continue the policy in force at least to age 65 while actively or regularly employed. Except as provided above, the term "guaranteed renewable" may be used only in a policy which the insured has the right to continue in force by the timely payment of premiums until the age of 65 or to eligibility for Medicare, during which period the insurer has no right to make unilaterally any change in any provision of the policy while the policy is in force, except that the insurer may make changes in premium rates by classes: Provided, however, any accident and health or accident only policy which provides for periodic payments, weekly or monthly, for a specified period during the continuance of disability resulting from accident or sickness may provide that the insured has the right to continue the policy only to age 60 if, at age 60, the insured has the right to continue the policy in force at least to age 65 while actively and regularly employed.

*c.* In a family policy covering both husband and wife, the age of the younger spouse must be used as the basis for meeting the age and durational requirements of the definitions of "noncancelable" or "guaranteed renewable." However, this requirement shall not prevent termination of coverage of the older spouse upon attainment of the stated age limit (e.g., age 65) so long as the policy may be continued in force as to the younger spouse, to the age or for the durational period as specified in said definition.

*d.* When accidental death and dismemberment coverage is part of the insurance coverage offered under the contract, the insured shall have the option to include all insureds under the coverage and not just the principal insured.

*e.* If a policy contains a status type military service exclusion or a provision which suspends coverage during military service, the policy shall provide, upon receipt of written request, for refund of premiums as applicable to the person on a pro-rata basis.

*f.* In the event the insurer cancels or refuses to renew, policies providing pregnancy benefits shall provide for an extension of benefits as to pregnancy commencing while the policy is in force and for which benefits would have been payable had the policy remained in force.

*g.* Policies providing skilled, or convalescent, or extended care benefits following hospitalization shall not condition the benefits upon admission to the nursing facility within a period of less than 14 days after discharge from the hospital.

*h.* Family coverage shall continue for any dependent child who is incapable of self-sustaining employment due to mental retardation or physical handicap on the date that the child's coverage would otherwise terminate under the policy due to the attainment of a specified age limit for children and is chiefly dependent on the insured for support and maintenance. The policy may require that within 31 days of the date, the company receive due proof of such incapacity in order for the insured to elect to continue the policy in force with respect to the child, or that a separate converted policy be issued at the option of the insured or policyholder.

*i.* Any policy providing coverage for the recipient in a transplant operation shall also provide reimbursement of any medical expenses of a live donor to the extent that benefits remain and are available under the recipient's policy, after benefits for the recipient's own expenses have been paid.

*j.* A policy may contain a provision relating to recurrent disabilities; provided, however, that no provision shall specify that a recurrent disability be separated by a period greater than six months.

k. Accidental death and dismemberment benefits shall be payable if the loss occurs within 90 days from the date of the accident, irrespective of total disability. Disability income benefits, if provided, shall not require the loss to commence less than 30 days after the date of accident, nor shall any policy which the insurer cancels or refuses to renew require that it be in force at the time disability commences if the accident occurred while the policy was in force.

l. Specific dismemberment benefits shall not be in lieu of other benefits unless the specific benefit equals or exceeds the other benefits.

m. Any accident only policy providing benefits which vary according to the type of accidental cause shall prominently set forth in the outline of coverage the circumstances under which benefits are payable which are lesser than the maximum amount payable under the policy.

n. Termination of the policy shall be without prejudice to coverage for any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period the policy was in force may be predicated upon the continuous total disability of the insured, limited to the duration of the policy benefit period, or payment of the maximum benefits.

o. Rescinded IAB 11/27/91, effective 1/1/92.

**36.6(2)** “*Basic hospital expense coverage*” is a policy of accident and sickness insurance which provides coverage for a period of not less than 31 days during any continuous hospital confinement for each person insured under the policy, for expense incurred for necessary treatment and services rendered as a result of accident or sickness for at least the following:

a. Daily hospital room and board in an amount not less than the lesser of 80 percent of the charges for the semiprivate room accommodations or \$100 per day;

b. Miscellaneous hospital services for expenses incurred for the charges made by the hospital for services and supplies which are customarily rendered by the hospital and provided for use only during any one period of confinement in an amount not less than either 80 percent of the charges incurred up to at least \$3,000 or ten times the daily hospital room and board benefits;

c. Hospital outpatient services consisting of (1) hospital services on the day surgery is performed, and (2) hospital services rendered within 72 hours after accidental injury, in an amount not less than \$150, and (3) X-ray and laboratory tests, to the extent that benefits for such services would have been provided if rendered to an inpatient of the hospital in an amount not less than \$100.

Benefits provided under “a” and “b” above may be provided subject to a combined deductible amount not in excess of \$100.

**36.6(3)** “*Basic medical-surgical expense coverage*” is a policy of accident and sickness insurance which provides coverage for each person insured under the policy for the expenses incurred for the necessary services rendered by a physician for treatment of an injury or sickness for at least the following:

a. Surgical services:

(1) In amounts not less than those provided in a fee schedule based on the relative values contained in the state of New York certified surgical fee schedule, or the 1964 California Relative Value Schedule or other acceptable relative value scale of surgical procedures, up to a maximum of at least \$1,000 for any one procedure; or

(2) Not less than 80 percent of the reasonable charges.

b. Anesthesia services, consisting of administration of necessary general anesthesia and related procedures in connection with covered surgical service rendered by a physician other than the physician (or assistant) performing the surgical services:

(1) In an amount not less than 80 percent of the reasonable charges; or

(2) Fifteen percent of the surgical service benefit.

c. In-hospital medical services, consisting of physician services other than surgical care, rendered to a person who is a bed patient in a hospital for treatment of sickness or injury in an amount not less than 80 percent of the reasonable charges or \$50 per day for not less than 21 days during one period of confinement.

**36.6(4)** “*Hospital confinement indemnity coverage*” is a policy of accident and sickness insurance which provides daily benefits for hospital confinement on an indemnity basis in an amount not less than

\$40 per day and not less than 31 days during any one period of confinement for each person insured under the policy.

*a.* Coverage shall not be excluded due to a preexisting condition for a period greater than 12 months following the effective date of coverage of an insured person unless the preexisting condition is specifically and expressly excluded.

*b.* Except as provided in 191—Chapter 38, division II, benefits shall be paid regardless of other coverage.

**36.6(5)** *Individual major medical expense coverage.*

*a.* “Individual major medical expense coverage” is an accident and sickness insurance policy which provides hospital, medical and surgical expense coverage, to an aggregate maximum of not less than \$500,000; coinsurance percentage per year per covered person not to exceed 50 percent of covered charges, provided that the coinsurance out-of-pocket maximum after any deductibles does not exceed \$10,000 per year; a deductible stated on a per person, per family, per illness, per benefit period, or per year basis, or a combination of these bases not to exceed 5 percent of the aggregate maximum limit under the policy for each covered person for at least:

(1) Daily hospital room and board expenses subject only to limitations based on average daily cost of the semiprivate room rate in the area where the insured resides;

(2) Miscellaneous hospital services;

(3) Surgical services;

(4) Anesthesia services;

(5) In-hospital medical services;

(6) Out-of-hospital care, consisting of physicians’ services rendered on an ambulatory basis where coverage is not provided elsewhere in the policy for diagnosis and treatment of sickness or injury, diagnostic X-ray, laboratory services, radiation therapy, and hemodialysis ordered by a physician; and

(7) Not fewer than three of the following additional benefits:

1. In-hospital private duty registered nurse services.

2. Convalescent nursing care.

3. Diagnosis and treatment by a radiologist or physiotherapist.

4. Rental of special medical equipment, as defined by the insurer in the policy.

5. Artificial limbs or eyes, casts, splints, trusses or braces.

6. Treatment for functional nervous disorders, and mental and emotional disorders.

7. Out-of-hospital prescription drugs and medications.

*b.* If the policy is written to complement underlying basic hospital expense coverage and basic medical-surgical expense coverage, the deductible may be increased by the amount of the benefits provided by the underlying coverage.

*c.* The minimum benefits required by paragraph 36.6(5) “*a*” may be subject to all applicable deductibles, coinsurance and general policy exceptions and limitations. An individual major medical expense policy may also have special or internal limitations for prescription drugs, nursing facilities, intensive care facilities, mental health treatment, alcohol or substance abuse treatment, transplants, experimental treatments, mandated benefits required by law and those services covered under subparagraph 36.6(5) “*a*”(7) and other such special or internal limitations as are authorized or approved by the commissioner. Except as authorized by this subrule through the application of special or internal limitations, an individual major medical expense policy must be designed to cover, after any deductibles or coinsurance provisions are met, the usual, customary and reasonable charges, as determined consistently by the carrier and as subject to approval by the commissioner, or another rate agreed to between the insurer and provider, for covered services up to the lifetime policy maximum.

**36.6(6)** *Individual basic medical expense coverage.*

*a.* “Individual basic medical expense coverage” is an accident and sickness insurance policy that provides hospital, medical and surgical expense coverage, to an aggregate maximum of not less than \$250,000; coinsurance percentage per year per covered person not to exceed 50 percent of covered charges, provided that the coinsurance out-of-pocket maximum after any deductibles does not exceed \$25,000 per year; a deductible stated on a per person, per family, per illness, per benefit period, or per

year basis, or a combination of these bases not to exceed 10 percent of the aggregate maximum limit under the policy for each covered person for at least:

(1) Daily hospital room and board expenses subject only to limitations based on average daily cost of the semiprivate room rate in the area where the insured resides or such other rate agreed upon by the insurer and provider for a period of not less than 31 days during continuous hospital confinement;

(2) Miscellaneous hospital services;

(3) Surgical services;

(4) Anesthesia services;

(5) In-hospital medical services;

(6) Out-of-hospital care, consisting of physicians' services rendered on an ambulatory basis where coverage is not provided elsewhere in the policy for diagnosis and treatment of sickness or injury, diagnostic X-ray, laboratory services, radiation therapy and hemodialysis ordered by a physician; and

(7) Not fewer than three days of the following additional benefits:

1. In-hospital private duty registered nurse services;

2. Convalescent nursing home care;

3. Diagnosis and treatment by a radiologist or physiotherapist;

4. Rental of special medical equipment, as defined by the insurer in the policy;

5. Artificial limbs or eyes, casts, splints, trusses or braces;

6. Treatment for functional nervous disorders, and mental and emotional disorders; or

7. Out-of-hospital prescription drugs and medications.

*b.* If the policy is written to complement underlying basic hospital expense coverage and basic medical-surgical expense coverage, the deductible may be increased by the amount of the benefits provided by the underlying coverage.

*c.* The minimum benefits required by paragraph 36.6(6) "a" may be subject to all applicable deductibles, coinsurance and general policy exceptions and limitations. An individual basic medical expense policy may also have special or internal limitations for prescription drugs, nursing facilities, intensive care facilities, mental health treatment, alcohol or substance abuse treatment, transplants, experimental treatments, mandated benefits required by law and those services covered under subparagraph 36.6(6) "a"(7) and other such special or internal limitations as are authorized or approved by the commissioner. Except as authorized by this subrule through the application of special or internal limitations, an individual basic medical expense policy must be designed to cover, after any deductibles or coinsurance provisions are met, the usual customary and reasonable charges, as determined consistently by the carrier and as subject to approval by the commissioner, or another rate agreed upon by the insurer and provider, for covered services up to the lifetime policy maximum.

**36.6(7)** "*Disability income protection coverage*" is a policy which provides for periodic payments, weekly or monthly, for a specified period during the continuance of disability resulting from either sickness or injury or a combination of them which:

*a.* Provides that periodic payments which are payable at ages after 62 and reduced solely on the basis of age are at least 50 percent of amounts payable immediately prior to 62;

*b.* Contains an elimination period no greater than:

(1) Ninety days in the case of a coverage providing a benefit of one year or less;

(2) One hundred eighty days in the case of coverage providing a benefit of more than one year but not greater than two years; or

(3) Three hundred sixty-five days in all other cases during the continuance of disability resulting from sickness or injury; and

*c.* Has a maximum period of time for which it is payable during disability of at least six months except in the case of a policy covering disability arising out of pregnancy or childbirth in which case the period for disability may be one month. No reduction in benefits shall be put into effect because of an increase in social security or similar benefits during a benefit period.

If a policy provides total disability benefits and partial disability benefits, only one elimination period may be required.

Subrule 36.6(7) does not apply to those policies providing business buy-out coverage.

**36.6(8)** “*Accident only coverage*” is a policy of accident insurance which provides coverage, singly or in combination, for death, dismemberment, disability, or hospital and medical care caused by accident. Accidental death and double dismemberment amounts under such a policy shall be at least \$1,000 and a single dismemberment amount shall be at least \$500.

**36.6(9)** *Specified disease and specified accident coverage.*

a. “Specified disease coverage” is a policy which meets one of the following definitions:

(1) A policy which provides coverage for each person insured under the policy for a specifically named disease (or diseases) with a deductible amount, if any, not in excess of \$250 and an overall aggregate benefit limit of not less than \$5,000 and a benefit period of not less than two years for at least the following incurred expenses:

1. Hospital room and board and any other hospital-furnished medical services or supplies;
2. Treatment by a legally qualified physician or surgeon;
3. Private duty services of a registered nurse (R.N.);
4. X-ray, radium and other therapy procedures used in diagnosis and treatment;
5. Professional ambulance for local service to or from a local hospital;
6. Blood transfusions, including expense incurred for blood donors;
7. Drugs and medicines prescribed by a physician;
8. The rental of a respirator or similar mechanical apparatus;
9. Braces, crutches and wheelchairs as are deemed necessary by the attending physician for the treatment of the disease;
10. Emergency transportation if in the opinion of the attending physician it is necessary to transport the insured to another locality for treatment of the disease; and
11. May include coverage of any other expenses necessarily incurred in the treatment of the disease.

(2) A policy which provides coverage for each person insured under the policy for a specifically named disease (or diseases) with no deductible amount, and an overall aggregate benefit limit of not less than \$25,000 payable at the rate of not less than \$50 a day while confined in a hospital and a benefit period of not less than 500 days.

b. “Specified accident coverage” is an accident insurance policy which provides coverage for a specifically identified kind of accident (or accidents) for each person insured under the policy for accidental death or accidental death and dismemberment, combined with a benefit amount not less than \$5,000 for accidental death, \$5,000 for double dismemberment, and \$2,500 for single dismemberment.

**36.6(10)** “*Limited benefit health insurance coverage*” is any policy or contract which provides benefits that are less than the minimum standards for benefits required under 36.6(2) to 36.6(8). Limited benefit policies or contracts may be delivered or issued for delivery in this state only if the outline of coverage required by 36.7(12) is completed and delivered as required by 36.7(2). A policy covering a specified disease or combination of diseases shall meet the requirements of 36.6(9) and shall not be offered for sale as a “limited coverage.” A policy which is designed to supplement Medicare shall meet the requirements of 191—Chapter 37 and shall not be offered for sale as a “limited coverage.”

**36.6(11)** *Short-term limited-duration insurance coverage.*

a. “Short-term limited-duration insurance coverage” provides coverage up to an aggregate maximum of not less than \$500,000 for each initial or renewal policy term and shall include a minimum of all of the following services subject to the approved policy terms, limitations and exclusions:

- (1) Daily hospital room and board expenses subject only to limitations based on average daily cost of the semiprivate room rate in the area where the insured resides;
- (2) Miscellaneous hospital services, including emergency room services;
- (3) Surgical services;
- (4) Anesthesia services;
- (5) In-hospital medical services;
- (6) Out-of-hospital care consisting of physicians’ services rendered on an ambulatory basis, and through telemedicine by remote diagnosis and treatment of patients by means of telecommunications technology, where coverage is not provided elsewhere in the policy for diagnosis and treatment of

sickness or injury, diagnostic X-ray, laboratory services, radiation therapy, and hemodialysis ordered by a physician;

- (7) In-hospital registered nurse services;
- (8) Convalescent nursing care;
- (9) Diagnosis and treatment by a radiologist or physiotherapist;
- (10) Rental of special medical equipment, as defined by the insurer in the policy;
- (11) Artificial limbs or eyes, casts, splints, trusses or braces;
- (12) Treatment for functional nervous disorders, mental and emotional disorders and substance use disorders; and
- (13) Out-of-hospital prescription drugs and medications.

*b.* If the short-term limited-duration insurance coverage establishes a separate out-of-pocket maximum for the prescription drug benefit, the short-term limited-duration insurance coverage shall contain a deductible, coinsurance and copayment out-of-pocket maximum for all benefits for each covered person, excluding prescription drug services, that shall not exceed \$5,000 multiplied by the number of months of coverage and not in excess of \$20,000 for the full policy term of any duration, and the separate prescription drug benefit shall have a deductible, coinsurance and copayment out-of-pocket maximum separate from the other required services that shall not exceed \$2,500 multiplied by the number of months of coverage and not in excess of \$10,000 for the full policy term of any duration.

*c.* If the short-term limited-duration insurance coverage integrates a prescription drug benefit into the plan design, the deductible, coinsurance and copayment out-of-pocket maximum for each covered person for all medical and prescription drug coverage shall not exceed \$7,500 multiplied by the number of months of coverage and not in excess of \$30,000 for the full policy term of any duration.

*d.* After 180 days of coverage, short-term limited-duration insurance coverage that has an initial policy term or has been renewed or extended beyond 180 days in duration shall also provide preventative and wellness services subject to deductibles, coinsurance and copayments, including annual routine office visits, immunizations, mammography examinations, prostate-specific antigen blood tests and Papanicolaou tests.

*e.* Short-term limited-duration insurance shall not contain preexisting condition exclusions that exceed the initial policy term. Any renewable short-term limited-duration insurance shall be guaranteed renewable.

*f.* Short-term limited-duration insurance shall have an expiration date specified in the policy.

*g.* All short-term limited-duration policies shall contain the notices required of short-term limited-duration insurance as set forth in the Public Health Service Act, 45 CFR Section 144.103.

*h.* All short-term limited-duration insurance shall contain a free-look period of not less than ten days after the insured receives the policy during which the insured may cancel the insurance. If the insurance is so canceled, all fees and premiums paid shall be promptly refunded and the insurance shall be voided as if the policy had not been issued. Notice of the free-look period shall be prominently displayed on the first page of the policy.

(1) For the purposes of this paragraph, the policy shall be determined to be received by the insured as follows:

1. Pursuant to Iowa Code section 554D.117 if received electronically; and
2. Four days after the policy is postmarked for delivery if sent in the mail.

(2) For the purposes of this paragraph, the insured may cancel the insurance by giving notice to the insurance company, agent, broker or other representative in any manner, including but not limited to via electronic notice or by telephone.

*i.* All applications for short-term limited-duration insurance shall contain clear and unambiguous questions designed to ascertain the health condition of the applicant and identify any preexisting conditions.

This rule is intended to implement Iowa Code section 514D.4.  
[ARC 4332C, IAB 3/13/19, effective 2/20/19]

### **191—36.7(514D) Required disclosure provisions.**

**36.7(1) General rules.**

*a.* Each individual policy of accident and sickness insurance or hospital, medical, or dental service corporation subscriber contract shall include a renewal, continuation, or nonrenewal provision. The language or specifications of the provision must be consistent with the type of contract to be issued. This provision shall be appropriately captioned, shall appear on the first page of the policy, and shall clearly state the duration, where limited, of renewability and the duration of the term of coverage for which the policy is issued and for which it may be renewed.

*b.* Except for riders or endorsements by which the insurer effectuates a request made in writing by the policyholder or exercises a specifically reserved right under the policy, all riders or endorsements added to a policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the policyholder. After date of policy issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term must be agreed to in writing signed by the insured, except if the increased benefits or coverage is required by law.

*c.* Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy.

*d.* A policy which provides for the payment of benefits based on standards described as “usual and customary,” “reasonable and customary,” or words of similar import shall include a definition and explanation of the terms “usual and customary” or “reasonable and customary” in its accompanying outline of coverage.

*e.* If a policy contains any limitations with respect to preexisting conditions the limitations must appear as a separate paragraph of the policy and be labeled as “Preexisting Condition Limitations.”

*f.* All accident only policies shall contain a prominent statement on the first page of the policy or attached to it, in either contrasting color or in boldface type at least equal to the size of type used for policy captions, as follows:

“This is an accident only policy and it does not pay benefits for loss from sickness.”

*g.* All policies, except single premium nonrenewable policies and as otherwise provided in this paragraph, shall have a notice prominently printed on the first page of the policy or attached to it stating in substance that the policyholder shall have the right to return the policy within ten days of its delivery and to have the premium refunded if, after examination of the policy, the policyholder is not satisfied for any reason.

*h.* If age is to be used as a determining factor for reducing the maximum aggregate benefits made available in the policy as originally issued, such fact must be prominently set forth in the outline of coverage.

*i.* If a policy contains a conversion privilege, it shall comply, in substance, with the following: The caption of the provision shall be “Conversion Privilege,” or words of similar import. The provision shall indicate the persons eligible for conversion, the circumstances applicable to the conversion privilege, including any limitations on the conversion, and the person by whom the conversion privilege may be exercised. The provision shall specify the benefits to be provided on conversion or may state that the converted coverage will be as provided on a policy form then being used by the insurer for that purpose.

*j.* Insurers issuing policies which provide hospital or medical expense coverage on an expense-incurred or indemnity basis other than incidentally, to a person(s) eligible for Medicare by reason of age, shall provide to the policyholder a Medicare supplement buyer’s guide in the form of the booklet “Guide to Health Insurance for People with Medicare” developed jointly by the National Association of Insurance Commissioners and the Health Care Financing Administration of the U.S. Department of Health and Human Services. Delivery of the buyer’s guide shall be made whether or not the policy qualifies as a “Medicare supplement coverage” in accordance with 191—Chapter 37. Except in the case of direct response insurers, delivery of the buyer’s guide shall be made at the time of application and acknowledgment of receipt of certification of delivery of the buyer’s guide shall be provided to the insurer. Direct response insurers shall deliver the buyer’s guide upon request but not later than at the time the policy is delivered.

*k.* Outlines of coverage delivered in connection with policies defined in this chapter as Hospital Confinement Indemnity, Specified Disease or Limited Benefit Health Insurance Coverages to persons eligible for Medicare by reason of age shall contain, in addition to the requirements of 36.7(6), 36.7(10) and 36.7(12), the following language which shall be printed on or attached to the first page of the outline of coverage:

This policy IS NOT A MEDICARE SUPPLEMENT policy. If you are eligible for Medicare review the Medicare Supplement Buyer's Guide, available from the company.

*l.* If payment will not be made for services performed by a chiropractor acting within the scope of the chiropractor's license when those services would be compensable if performed by a medical doctor, then a statement that services performed by a chiropractor are not compensable shall be included in all outlines of coverage delivered in accordance with this chapter.

*m.* Disclosure requirements. All insurers shall include in contracts and evidence of coverage forms a statement disclosing the existence of any prescription drug formularies. Upon request, all insurers offering policies under this chapter that include a prescription drug formulary shall inform policyholders, and prospective policyholders at time of issuance, whether a prescription drug specified in the request is included in such formulary.

All insurers shall also disclose the existence of any contractual arrangements providing rebates received by them for prescription drugs or durable medical equipment. Durable medical equipment means equipment that can stand repeated use and is primarily and customarily used to serve a medical purpose and is generally not useful to a person who is not sick or injured or used by other family members and is appropriate for home use for the purpose of improving bodily functions or preventing further deterioration of the medical condition caused by sickness or injury.

**36.7(2)** *Outline of coverage requirements for individual coverages.* No individual accident and sickness insurance policy or nonprofit hospital, medical or dental service corporation subscriber contract subject to this chapter shall be delivered or issued for delivery in this state unless an appropriate outline of coverage, as prescribed in 36.7(3) to 36.7(12), is completed as to the policy or contract and

*a.* Delivered with the policy; or

*b.* Delivered to the applicant at the time application is made and acknowledgment of receipt or certification of delivery of the outline of coverage is provided to the insurer.

If an outline of coverage was delivered at the time of application and the policy or contract is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or contract must accompany the policy or contract when it is delivered and contain the following statement, in no less than 12-point type, immediately above the company name: "NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued."

The appropriate outline of coverage for policies or contracts providing hospital coverage which only meets the standards of 36.6(2) shall be that statement contained in 36.7(3). The appropriate outline of coverage for policies providing coverage which meets the standards of both 36.6(2) and 36.6(3) shall be the statement contained in 36.7(5). The appropriate outline of coverage for policies providing coverage which meets the standards of both 36.6(2) and 36.6(5) or 36.6(3) and 36.6(5) or 36.6(2), 36.6(3), and 36.6(5) shall be the statement contained in 36.7(7).

Appropriate changes in terminology may be made in the outline of coverage in the case of contracts of hospital, medical, or dental service corporations. In any other case where the prescribed outline of coverage is inappropriate for the coverage provided by the policy or contract, an alternate outline of coverage shall be submitted to the commissioner for prior approval.

**36.7(3)** *Basic hospital expense coverage (outline of coverage).* An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of 36.6(2). The items included in the outline of coverage must appear in the sequence prescribed.

(COMPANY NAME)

BASIC HOSPITAL EXPENSE COVERAGE  
OUTLINE OF COVERAGE

*a.* Read your policy carefully. This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you **READ YOUR POLICY CAREFULLY**.

*b.* Basic hospital expense coverage. Policies of this category are designed to provide to persons insured coverage for hospital expenses incurred as a result of a covered accident or sickness. Coverage is provided for daily hospital room and board, miscellaneous hospital services, and hospital outpatient services, subject to any limitations, deductibles and copayment requirements set forth in the policy. Coverage is not provided for physicians' or surgeons' fees or unlimited hospital expenses.

*c.* (A brief specific description of the benefits, including dollar amounts and number of days duration where applicable, contained in this policy in the following order:

- (1) Daily hospital room and board;
- (2) Miscellaneous hospital services;
- (3) Hospital outpatient services; and
- (4) Other benefits, if any.)

(NOTE: The above description of benefits shall be stated clearly and concisely, and shall include a description of any deductible or copayment provision applicable to the benefits described.)

*d.* (A description of any policy provisions which exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits described in "c" above.)

*e.* (A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.)

**36.7(4)** *Basic medical-surgical expense coverage (outline of coverage).* An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of subrule 36.6(3). The items included in the outline of coverage must appear in the sequence prescribed:

(COMPANY NAME)

**BASIC MEDICAL-SURGICAL EXPENSE COVERAGE  
OUTLINE OF COVERAGE**

*a.* Read your policy carefully. This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control your policy. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you **READ YOUR POLICY CAREFULLY**.

*b.* Basic medical-surgical expense coverage. Policies of this category are designed to provide to persons insured coverage for medical-surgical expenses incurred as a result of a covered accident or sickness. Coverage is provided for surgical services, anesthesia services, and in-hospital medical services, subject to any limitations, deductibles and copayment requirements set forth in the policy. Coverage is not provided for hospital expenses or unlimited medical-surgical expenses.

*c.* (A brief specific description of the benefits, including dollar amounts and number of days duration where applicable, contained in this policy, in the following order:

- (1) Surgical services;
- (2) Anesthesia services;
- (3) In-hospital medical services; and
- (4) Other benefits, if any.)

(NOTE: The above description of benefits shall be stated clearly and concisely, and shall include a description of any deductible or copayment provision applicable to the benefits described.)

*d.* (A description of any policy provisions which exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits described in "c" above.)

*e.* (A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.)

**36.7(5)** *Basic hospital and medical-surgical expense coverage (outline of coverage).* An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of 36.6(2) and 36.6(3) of this chapter. The items included in the outline of coverage must appear in the sequence prescribed:

(COMPANY NAME)  
 BASIC HOSPITAL AND MEDICAL-SURGICAL EXPENSE COVERAGE  
 OUTLINE OF COVERAGE

*a.* Read your policy carefully. This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR POLICY CAREFULLY.

*b.* Basic hospital and medical-surgical expense coverage. Policies of this category are designed to provide, to persons insured, coverage for hospital and medical-surgical expenses incurred as a result of a covered accident or sickness. Coverage is provided for daily hospital room and board, miscellaneous hospital services, hospital outpatient services, surgical services, anesthesia services, and in-hospital medical services, subject to any limitations, deductibles and copayment requirements set forth in the policy. Coverage is not provided for unlimited hospital or medical-surgical expenses.

*c.* (A brief specific description of the benefits, including dollar amounts and number of days duration where applicable, contained in this policy, in the following order:

- (1) Daily hospital room and board;
- (2) Miscellaneous hospital services;
- (3) Hospital outpatient services;
- (4) Surgical services;
- (5) Anesthesia services;
- (6) In-hospital medical services; and
- (7) Other benefits, if any.)

(NOTE: The above description of benefits shall be stated clearly and concisely, and shall include a description of any deductible or copayment provision applicable to the benefits described.)

*d.* (A description of any policy provisions which exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits described in “c” above.)

*e.* (A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.)

**36.7(6)** *Hospital confinement indemnity coverage (outline of coverage).* An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of 36.6(4). The items included in the outline of coverage must appear in the sequence prescribed:

(COMPANY NAME)  
 HOSPITAL CONFINEMENT INDEMNITY COVERAGE  
 OUTLINE OF COVERAGE

*a.* Read your policy carefully. This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR POLICY CAREFULLY.

*b.* Hospital confinement indemnity coverage. Policies of this category are designed to provide, to persons insured, coverage in the form of a fixed daily benefit during periods of hospitalization resulting from a covered accident or sickness, subject to any limitations set forth in the policy. These policies do not provide any benefits other than the fixed daily indemnity for hospital confinement and any additional benefit described below.

*c.* (A brief specific description of the benefits contained in this policy, in the following order:

- (1) Daily benefit payable during hospital confinement; and
- (2) Duration of benefit described in “c”(1).)

(NOTE: The above description of benefits shall be stated clearly and concisely.)

*d.* (A description of any policy provisions which exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits described in “c” above.)

*e.* (A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.)

*f.* (Any benefits provided in addition to the daily hospital benefit.)

**36.7(7) Major medical expense coverage (outline of coverage).** An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of 36.6(5) of this chapter. The items included in the outline of coverage must appear in the sequence prescribed:

(COMPANY NAME)

MAJOR MEDICAL EXPENSE COVERAGE  
OUTLINE OF COVERAGE

*a.* Read your policy carefully. This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR POLICY CAREFULLY.

*b.* Major medical expense coverage. Policies of this category are designed to provide, to persons insured, coverage for major hospital, medical and surgical expenses incurred as a result of a covered accident or sickness. Coverage is provided for daily hospital room and board, miscellaneous hospital services, surgical services, anesthesia services, in-hospital medical services, and out-of-hospital care, subject to any deductibles, copayment provisions, or other limitations which may be set forth in the policy. Basic hospital or basic medical insurance coverage is not provided.

*c.* (A brief specific description of the benefits, including dollar amounts, contained in this policy, in the following order:

- (1) Daily hospital room and board;
- (2) Miscellaneous hospital services;
- (3) Surgical services;
- (4) Anesthesia services;
- (5) In-hospital medical services;
- (6) Out-of-hospital care;
- (7) Maximum dollar amount for covered charges; and
- (8) Other benefits, if any.)

(NOTE: The above description of benefits shall be stated clearly and concisely, and shall include a description of any deductible or copayment provision applicable to the benefits described.)

*d.* (A description of any policy provisions which exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits described in “c” above.)

*e.* (A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.)

**36.7(8) Disability income protection coverage (outline of coverage).** An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of 36.6(6) of this chapter. The items included in the outline of coverage must appear in the sequence prescribed:

(COMPANY NAME)

DISABILITY INCOME PROTECTION COVERAGE  
OUTLINE OF COVERAGE

*a.* Read your policy carefully. This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR POLICY CAREFULLY.

*b.* Disability income protection coverage. Policies of this category are designed to provide, to persons insured, coverage for disabilities resulting from a covered accident or sickness, subject to any limitations set forth in the policy. Coverage is not provided for basic hospital, basic medical-surgical, or major medical expenses.

*c.* (A brief specific description of the benefits contained in this policy:)

(NOTE: The above description of benefits shall be stated clearly and concisely.)

*d.* (A description of any policy provisions which exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits described in “c” above.)

*e.* (A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.)

**36.7(9) Accident only coverage (outline of coverage).** An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of 36.6(7). The items included in the outline of coverage must appear in the sequence prescribed:

(COMPANY NAME)  
ACCIDENT ONLY COVERAGE  
OUTLINE OF COVERAGE

*a.* Read your policy carefully. This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR POLICY CAREFULLY.

*b.* Accident only coverage. Policies of this category are designed to provide, to persons insured, coverage for certain losses resulting from a covered accident ONLY, subject to any limitations contained in the policy. Coverage is not provided for basic hospital, basic medical-surgical, or major medical expenses.

*c.* (A brief specific description of the benefits contained in this policy:)

(NOTE: The above description of benefits shall be stated clearly and concisely, and shall include a description of any deductible or copayment provision applicable to the benefits described. Proper disclosure of benefits which vary according to accidental cause shall be made in accordance with 36.6(1) "m.")

*d.* (A description of any policy provisions which exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits described in "c" above.)

*e.* (A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.)

**36.7(10) Specified disease or specified accident coverage (outline of coverage).** An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of 36.6(8). The coverage shall be identified by the appropriate bracketed title. The items included in the outline of coverage must appear in the sequence prescribed:

(COMPANY NAME)  
(SPECIFIED DISEASE) (SPECIFIED ACCIDENT) COVERAGE  
OUTLINE OF COVERAGE

*a.* Read your policy carefully. This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR POLICY CAREFULLY.

*b.* (Specified disease) (Specified accident) coverage. Policies of this category are designed to provide, to persons insured, restricted coverage paying benefits ONLY when certain losses occur as a result of (specified diseases) or (specified accidents). Coverage is not provided for basic hospital, basic medical-surgical or major medical expenses.

*c.* (A brief specific description of the benefits, including dollar amounts, contained in this policy:)

(NOTE: The above description of benefits shall be stated clearly and concisely, and shall include a description of any deductible or copayment provisions applicable to the benefits described. Proper disclosure of benefits which vary according to accidental cause shall be made in accordance with 36.6(1) "m.")

*d.* (A description of any policy provisions which exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits described in "c" above.)

*e.* (A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation or right to change premiums.)

**36.7(11) Medicare supplement coverage (outline of coverage).** Rescinded IAB 10/30/91, effective 12/4/91.

**36.7(12) Limited benefit health coverage (outline of coverage).** An outline of coverage, in the form prescribed below, shall be issued in connection with policies which do not meet the minimum standards

of subrules 36.6(2) to 36.6(8). The items included in the outline of coverage must appear in the sequence prescribed:

(COMPANY NAME)  
LIMITED BENEFIT HEALTH COVERAGE  
OUTLINE OF COVERAGE

*a.* Read your policy carefully. This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR POLICY CAREFULLY.

*b.* Limited benefit health coverage. Policies of this category are designed to provide, to persons insured, limited or supplemental coverage.

*c.* (A brief specific description of the benefits, including dollar amounts, contained in this policy:)  
(NOTE: The above description of benefits shall be stated clearly and concisely, and shall include a description of any deductible or copayment provisions applicable to the benefits described. Proper disclosure of benefits which vary according to accidental cause shall be made in accordance with subrule 36.6(1) "n.")

*d.* (A description of any policy provisions which exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits described in 36.7(12) "c.")

*e.* (A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.)

**36.7(13) Short-term limited-duration insurance coverage.**

*a. Outline of coverage.* An outline of coverage, in the form prescribed below, shall be issued in connection with any short-term limited-duration insurance, as set forth in subrule 36.6(11). This outline of coverage must be provided in addition to the notices required by paragraph 36.6(11) "g." The items included in the outline of coverage must appear in the sequence prescribed below, and Section A must be in at least 14-point type or, if electronic, of equivalent prominence:

[COMPANY NAME]  
SHORT-TERM LIMITED-DURATION INSURANCE COVERAGE  
OUTLINE OF COVERAGE

[If coverage begins before January 1, 2019, the following notice shall appear in at least 14-point type or, if electronic, of equivalent prominence:]

A. THIS COVERAGE IS NOT REQUIRED TO COMPLY WITH CERTAIN FEDERAL MARKET REQUIREMENTS FOR HEALTH INSURANCE, PRINCIPALLY THOSE CONTAINED IN THE AFFORDABLE CARE ACT. BE SURE TO CHECK YOUR POLICY CAREFULLY TO MAKE SURE YOU ARE AWARE OF ANY EXCLUSIONS OR LIMITATIONS REGARDING COVERAGE OF PREEXISTING CONDITIONS OR HEALTH BENEFITS (SUCH AS HOSPITALIZATION, EMERGENCY SERVICES, MATERNITY CARE, PREVENTIVE CARE, PRESCRIPTION DRUGS, AND MENTAL HEALTH AND SUBSTANCE USE DISORDER SERVICES). YOUR POLICY MIGHT ALSO HAVE LIFETIME AND/OR ANNUAL DOLLAR LIMITS ON HEALTH BENEFITS. IF THIS COVERAGE EXPIRES OR YOU LOSE ELIGIBILITY FOR THIS COVERAGE, YOU MIGHT HAVE TO WAIT UNTIL AN OPEN ENROLLMENT PERIOD TO GET OTHER HEALTH INSURANCE COVERAGE. ALSO, THIS COVERAGE IS NOT "MINIMUM ESSENTIAL COVERAGE" FOR ANY MONTH IN 2018. YOU MAY HAVE TO MAKE A PAYMENT WHEN YOU FILE YOUR TAX RETURN UNLESS YOU QUALIFY FOR AN EXEMPTION FROM THE REQUIREMENT THAT YOU HAVE HEALTH COVERAGE FOR THAT MONTH.

[If coverage begins on or after January 1, 2019, the following notice shall appear in at least 14-point type or, if electronic, of equivalent prominence:]

A. THIS COVERAGE IS NOT REQUIRED TO COMPLY WITH CERTAIN FEDERAL MARKET REQUIREMENTS FOR HEALTH INSURANCE, PRINCIPALLY THOSE CONTAINED IN THE AFFORDABLE CARE ACT. BE SURE TO CHECK YOUR POLICY CAREFULLY TO MAKE SURE YOU ARE AWARE OF ANY EXCLUSIONS OR LIMITATIONS REGARDING COVERAGE OF PREEXISTING CONDITIONS OR HEALTH BENEFITS (SUCH AS HOSPITALIZATION,

EMERGENCY SERVICES, MATERNITY CARE, PREVENTIVE CARE, PRESCRIPTION DRUGS, AND MENTAL HEALTH AND SUBSTANCE USE DISORDER SERVICES). YOUR POLICY MIGHT ALSO HAVE LIFETIME AND/OR ANNUAL DOLLAR LIMITS ON HEALTH BENEFITS. IF THIS COVERAGE EXPIRES OR YOU LOSE ELIGIBILITY FOR THIS COVERAGE, YOU MIGHT HAVE TO WAIT UNTIL AN OPEN ENROLLMENT PERIOD TO GET OTHER HEALTH INSURANCE COVERAGE.

B. This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract, and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR POLICY CAREFULLY.

C. [A brief specific description of the benefits, including dollar amounts, contained in this policy. The description of benefits shall be stated clearly and concisely, and shall include a description of any deductible or copayment or other out-of-pocket cost provisions applicable to the benefits described. The description of benefits shall also clearly state any applicable provider network requirements including but not limited to distinctions in cost provisions for in-network and out-of-network providers.]

D. [A description of any other policy provisions which exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits described in Section C, above, including but not limited to any preexisting condition exclusions for policies.]

E. [A description of policy provisions regarding renewability or continuation of coverage, including any reservation of right to change premiums.]

*b. Application for coverage for short-term limited-duration insurance.* All applications for short-term limited-duration policies shall contain the notice prescribed below, which shall be in at least 14-point type or, if electronic, of equivalent prominence. One signed copy of such notice shall be retained by the applicant and an additional copy signed by the applicant shall be retained by the insurer.

STATEMENT TO APPLICANT BY ISSUER [PRODUCER, BROKER OR OTHER REPRESENTATIVE]:

**Health conditions which you may presently have (preexisting conditions) may not be immediately or fully covered under this policy.** This could result in a denial or delay of payment of benefits. If you wish to purchase a short-term limited-duration policy, be certain to truthfully and completely answer all questions on the application concerning your medical health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.

ALSO NOTE THAT, IF THIS COVERAGE EXPIRES OR YOU LOSE ELIGIBILITY FOR THIS COVERAGE, YOU MIGHT HAVE TO WAIT UNTIL AN OPEN ENROLLMENT PERIOD TO GET OTHER HEALTH INSURANCE COVERAGE.

\_\_\_\_\_  
(Signature of Producer, Broker or Other Representative of the Company)  
[Typed Name and Address of Producer, Broker or Other Representative]

The above "Statement to Applicant" was delivered to me on:

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Applicant's Signature)  
[ARC 4332C, IAB 3/13/19, effective 2/20/19]

**191—36.8(507B) Requirements for replacement.**

**36.8(1)** Application forms shall include a question designed to elicit information as to whether the insurance to be issued is intended to replace any other accident and sickness insurance presently in force. A supplementary application or other form to be signed by the applicant containing such a question may be used.

**36.8(2)** Upon determining that a sale will involve replacement, an insurer, other than a direct response insurer, or its agent shall furnish the applicant, prior to issuance or delivery of the policy, the notice described in 36.8(3). One copy of such notice shall be retained by the applicant and an additional copy signed by the applicant shall be retained by the insurer. A direct response insurer shall deliver to the applicant upon issuance of the policy, the notice described in 36.8(4). In no event, however, will such a notice be required in the solicitation of the following types of policies: accident only and single premium nonrenewable policies.

**36.8(3)** The notice required by 36.8(2) for an insurer, other than a direct response insurer, shall provide, in substantially the following form:

NOTICE TO APPLICANT REGARDING REPLACEMENT  
OF ACCIDENT AND SICKNESS INSURANCE

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing accident and sickness insurance and replace it with a policy to be issued by (Company Name) Insurance Company. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

*a.* Health conditions which you may presently have (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.

*b.* You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

*c.* If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical-health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.

The above "Notice to Applicant" was delivered to me on:

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(Date)

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(Applicant's Signature)

**36.8(4)** The notice required by subrule 36.8(2) above for a direct response insurer shall be as follows:

NOTICE TO APPLICANT REGARDING REPLACEMENT  
OF ACCIDENT AND SICKNESS INSURANCE

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing accident and sickness insurance and replace it with the policy delivered herewith issued by (Company Name) Insurance Company. Your new policy provides 30 days within which you may decide without cost whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

*a.* Health conditions which you may presently have (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.

*b.* You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interests to make sure you understand all the relevant factors involved in replacing your present coverage.

*c.* (To be included only if the application is attached to the policy.) If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to (Company Name and Address) within 30 days if any information is not correct and complete, or if any past medical history has been left out of the application.

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(Company Name)

**191—36.9(514D) Filing requirements.**

**36.9(1) *Rate filing.*** Every policy, rider or endorsement form affecting benefits which is submitted for approval shall be accompanied by a rate filing unless such rider or endorsement form does not require a change in a rate. Any subsequent addition to or change in rates applicable to such policy, rider or endorsement shall also be filed.

**36.9(2) *Contents of rate filings.*** Each rate submission shall include an actuarial memorandum describing the basis on which rates were determined and shall indicate and describe the calculation of the ratio, hereinafter called “anticipated creditable loss ratio,” of the present value of the expected benefits to the present value of the expected premiums over the entire period for which rates are computed to provide coverage. Interest shall be used in the calculation of these present values only if it is a significant factor in the calculation of this loss ratio. Each rate submission must also include a certification by a qualified actuary that to the best of the actuary’s knowledge and judgment the rate filing is in compliance with the applicable laws and regulations of Iowa and that the benefits are reasonable in relation to premiums.

**36.9(3) *Previously approved forms.*** Filings of rate revisions for a previously approved policy, rider or endorsement form shall also include the following:

*a.* A statement of the scope and reason for the revision, and an estimate of the expected average effect on premiums, including the anticipated loss ratio for the form.

*b.* A statement as to whether the filing applies only to new business, only to in force business, or both, and the reasons therefor.

*c.* A history of the experience under existing rates, including at least the data indicated in 36.9(4). The history may also include, if available and appropriate, the ratios of actual claims to the claims expected according to the assumptions underlying the existing rates. Additional data might include: substitution of actual claim runoffs for claim reserves and liabilities; determination of loss ratios with the increase in policy reserves (other than unearned premium reserves) added to benefits rather than subtracted from premiums; accumulations of experience funds; substitution of net level policy reserves

for preliminary term policy reserves; adjustment of premiums to an annual mode basis; or other adjustments or schedules suited to the form and to the records of the company. All additional data must be reconciled, as appropriate, to the required data.

*d.* The date and magnitude of each previous rate change, if any.

**36.9(4) Experience records.** Insurers shall maintain records of earned premiums and incurred benefits for each calendar year for each policy form, including data for rider and endorsement forms which are used with the policy form, on the same basis, including all reserves, as required for the accident and health policy experience exhibit. Separate data may be maintained for each rider or endorsement form to the extent appropriate. Experience under forms which provide substantially similar coverage may be combined. The data shall be for all years of issue combined, for each calendar year of experience since the year the form was first issued, except that data for calendar years prior to the most recent five years may be combined.

**36.9(5) Evaluating experience data.** In determining the credibility and appropriateness of experience data, due consideration must be given to all relevant factors, such as:

- a.* Statistical credibility of premiums and benefits, e.g., low exposure, low loss frequency.
- b.* Experienced and projected trends relative to the kind of coverage, e.g., inflation in medical expenses, economic cycles affecting disability income experience.
- c.* The concentration of experience at early policy durations where select morbidity and preliminary term reserves are applicable and where loss ratios are expected to be substantially lower than at later policy durations.
- d.* The mix of business by risk classification.

**191—36.10(514D) Loss ratios.**

**36.10(1) Average annual premium.**

*a.* New forms. With respect to a new form under which the average annual premium (as defined below) is expected to be at least \$200 benefits shall be deemed reasonable in relation to premiums provided the anticipated loss ratio is at least as great as shown in the following table:

Type of Coverage	OR	Renewal Clause		
		CR	GR	NC
Medical Expense	60%	55%	55%	50%
Loss of Income and other	60%	55%	50%	45%

For a policy form, including riders and endorsements, under which the expected average annual premium per policy is \$100 or more but less than \$200, subtract five percentage points from the numbers in the table above, or if less than \$100, subtract ten percentage points.

*b.* The average annual premium per policy shall be computed by the insurer based on an anticipated distribution of business by all applicable criteria having a price difference, such as age, sex, amount, dependent status, rider frequency, etc., except assuming an annual mode for all policies (i.e., the fractional premium loading shall not affect the average annual premium or anticipated loss ratio calculation).

The above anticipated loss ratio standards do not apply to a class of business where such standards are in conflict with specific statutes or regulations.

*c.* Definitions of renewal clause.

OR—Optionally Renewable: Renewal is at the option of the insurance company.

CR—Conditionally Renewable: Renewal can be declined by the insurance company only for stated reasons other than deterioration of health.

GR—Guaranteed Renewable: Renewal cannot be declined by the insurance company for any reason, but the insurance company can revise rates on a class basis.

NC—Non-Cancelable: Renewal cannot be declined nor can rates be revised by the insurance company.

**36.10(2) Rate revisions.** With respect to filings of rate revisions for a previously approved form, benefits shall be deemed reasonable in relation to premiums provided the following standards are met.

*a.* With respect to forms issued on and after the effective date of the revision, the standards are the same as in 36.10(1) above, except that the average annual premium shall be determined based on an actual rather than an anticipated distribution of business.

*b.* With respect to forms issued prior to the effective date of the revision, both (1) and (2) as follows shall be at least as great as the standards in 36.10(1):

(1) The anticipated loss ratio over the entire period for which the revised rates are computed to provide coverage;

(2) The ratio of (i) and (ii); where

(i) Is the sum of the accumulated benefits, from the later of the original effective date of the form or the effective date of this chapter, to the effective date of the revision, and the present value of future benefits, and

(ii) Is the sum of the accumulated premiums from the later of the original effective date of the form or the effective date of this chapter, to the effective date of the revision and the present value of future premiums, such present values to be taken over the entire period for which the revised rates are computed to provide coverage, and such accumulated benefits and premiums to include an explicit estimate of the actual benefits and premiums from the last date as of which an accounting has been made to the effective date of the revision. Interest shall be used in the calculation of these accumulated benefits and premiums and present values only if it is a significant factor in the calculation of this loss ratio.

**36.10(3) Credibility factors.** Anticipated loss ratios different than those indicated in 36.10(1) and 36.10(2) will require justification based on the special circumstances that may be applicable.

*a.* Examples of coverages requiring special consideration are as follows:

- (1) Accident only;
- (2) Short term nonrenewable, e.g., airline trip, student accident;
- (3) Specified peril, e.g., cancer, common carrier;
- (4) Other special risks.

*b.* Examples of other factors requiring special consideration are as follows:

- (1) Marketing methods, giving due consideration to acquisition and administration costs and to premium mode;
- (2) Extraordinary expenses;
- (3) High risk of claim fluctuation because of the low loss frequency or the catastrophic or experimental nature of the coverage;
- (4) Product features such as long elimination periods, high deductibles and high maximum limits;
- (5) The industrial or debit method of distribution;
- (6) Forms issued prior to the effective date of these guidelines.

Companies are urged to review their experience periodically and to file rate revisions, as appropriate, in a timely manner to avoid the necessity of later filing of exceptionally large rate increases.

**36.10(4) Medicare supplement policies.** Rescinded IAB 10/30/91, effective 12/4/91.

**191—36.11(514D) Certification.** Any policy form submitted to the insurance division for approval which is subject to Iowa Code chapter 514D shall be in conformance with the applicable requirements of Iowa Code chapter 514D and with the filing requirements set forth in rule 191—20.1(505,509,514A,515,515A,515F).

**191—36.12(514D) Severability.** If any provision of this regulation or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the regulation and the application of such provision to other persons or circumstances shall not be affected thereby.

**191—36.13(513C,514D) Individual health insurance coverage for children under the age of 19.**

**36.13(1)** *Purpose, applicability and effective date.*

a. The purpose of this rule is to set forth the requirements and procedures to be followed for individual health insurance coverage for children under the age of 19.

b. This rule shall apply to all “carriers” as defined in Iowa Code subsection 513C.3(5). For purposes of this rule, “carrier” means the same as it is defined in Iowa Code subsection 513C.3(5).

c. For purposes of this rule, a “child-only” policy means a health benefit plan delivered or issued for delivery to an individual who is the primary subscriber on the policy and who is under the age of 19. A “child-only” policy does not include a health benefit plan that is delivered or issued for delivery to a primary subscriber who is 19 years of age and older but that insures persons under the age of 19.

d. This rule shall become effective June 8, 2011, for policies sold or issued on or after that date.

**36.13(2)** *Coverage requirement for children under the age of 19, open enrollment period and notice.*

a. Carriers doing business in the state of Iowa shall offer coverage to primary subscribers under the age of 19 during the open enrollment period as established in this rule.

b. The open enrollment period for child-only policy applicants shall commence on July 1, 2011, and end on August 14, 2011. Carriers shall provide subsequent open enrollment periods for child-only policy applicants for the periods of July 1 through August 14 in the years 2012 and 2013.

c. A carrier shall advertise the open enrollment period for children under the age of 19, including the availability of child-only policy coverage, on the carrier’s website and through any other media as determined by the carrier. The advertising shall be conspicuous and provided in a manner reasonably calculated to give potential applicants timely and informative notice regarding the annual open enrollment period.

d. For child-only policy applications received during the open enrollment period, individual health insurance coverage shall be offered on a guaranteed-issue basis to individuals under the age of 19. The child-only policies shall be in compliance with federal and state law and shall be filed with the Iowa insurance division in accordance with Iowa law.

e. Carriers are not required to offer child-only policies outside the open enrollment periods provided in this subrule. However, a carrier shall permit a child under the age of 19 to apply and enroll for child-only policy coverage during a special enrollment period under the terms of the child-only policy if the child has experienced a qualifying event. A child-only policy issued during a special enrollment period after a qualifying event shall be issued on a guaranteed basis and shall not impose any preexisting conditions. For purposes of this paragraph, a “qualifying event” shall mean one or more of the following:

(1) The child lost creditable coverage as defined in Iowa Code section 514A.3B(3) as a result of termination of the parent’s or guardian’s employment or eligibility, the involuntary termination of the creditable coverage, death of the child’s parent or guardian, or the divorce or legal separation of the child’s parent or guardian, and a request for special enrollment is made within 30 days after termination of the creditable coverage.

(2) The child became a resident of Iowa during a month that was not the child’s birth month, and a request for coverage is made within 30 days after the child became a resident of Iowa.

(3) An event of marriage, birth, adoption or placement for adoption occurs and the request for special enrollment is made within 30 days after the occurrence of the event.

(4) The child was covered under a mandated continuation of a group health plan or group health insurance coverage plan until the coverage under that plan was exhausted.

(5) A court has ordered that coverage be provided for a spouse or minor or dependent child under a covered parent’s or guardian’s health insurance coverage and the request for enrollment is made within 30 days after issuance of the court order.

(6) The child changes status and the parent or guardian becomes an eligible employee and requests enrollment within 63 days after the date of the change in status.

f. An individual applying for coverage during the open enrollment period or during a special enrollment period shall not be eligible for guaranteed-issue coverage if the individual has other coverage or if other coverage is available at the time of the effective date of coverage. Other coverage shall not include coverage through the Iowa Comprehensive Health Association (HIPIOWA) or HIPIOWA-FED.

g. A carrier that issues a policy pursuant to this rule shall comply with all other applicable statutes and administrative rules, both state and federal, regarding individual health benefit policies.

h. A child-only policy may be appropriately rated based on the health status of the child-only policy applicant.

[ARC 9498B, IAB 5/4/11, effective 6/8/11]

**191—36.14 to 36.19** Reserved.

These rules are intended to implement Iowa Code chapters 507B, 510, 513C and 514D.

DIVISION II  
RATE HEARINGS

**191—36.20(514D,83GA,SF2201) Rate hearings.**

**36.20(1) Purpose, applicability and effective date.**

a. *Purpose.* The purpose of this rule is to set forth a procedure to be followed for hearings about certain health insurance policy premium rate increases.

b. *Applicability.* This rule applies to all individual health insurance policies issued or to be issued in Iowa except those excluded by 2010 Iowa Acts, Senate File 2201, section 8(4A).

c. *Effective date.* This rule became effective October 1, 2010.

**36.20(2) Definitions.**

“Carrier” shall mean a health insurance carrier licensed to do business in the state as used in 2010 Iowa Acts, Senate File 2201, section 8.

“Commissioner” shall mean the Iowa insurance commissioner or designee.

“Consumer advocate” shall mean the division’s consumer advocate described by Iowa Code section 505.8(6) or designee.

“Division” shall mean the Iowa insurance division.

“Filing” shall mean a rate filing presented to the division for approval pursuant to this chapter, Iowa Code chapter 514D and 2010 Iowa Acts, Senate File 2201, through the National Association of Insurance Commissioners’ System for Electronic Rate and Form Filing.

“Health insurance” shall mean the same as “health insurance” is used in 2010 Iowa Acts, Senate File 2201, section 8, and excludes the types of insurance listed in 2010 Iowa Acts, Senate File 2201, section 8(4A).

“Hearing” shall mean a public hearing for purposes of accepting comments regarding a premium rate increase for which a carrier has requested approval from the commissioner. The hearing is for the gathering of comments; it is not an adjudicatory proceeding or an administrative action.

“Plan” shall mean the policy form(s) subject to the rate change proposal.

“Rate” shall mean the premiums (or premium rates) presented to the division for approval.

**36.20(3) Filing and notice required.** Carriers that are required to file an application for a rate increase shall make a filing according to division procedures through the National Association of Insurance Commissioners’ System for Electronic Rate and Form Filing. When a carrier makes a request for the commissioner’s approval of a rate filing and the requested rate in the application is for a rate increase exceeding the average annual health spending growth rate stated in the most recent National Health Expenditure projection published by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services:

a. The carrier shall contact the division to obtain a hearing date, time and location.

b. Once the hearing is scheduled with the division, the carrier shall provide a notice of the intended rate increase and of the date, time and location of the rate hearing at least 45 days before the hearing.

c. The notice shall be in writing and shall be mailed to all persons insured by the plan for which the carrier is requesting approval of the rate increase.

d. The notice shall specify the proposed rate increase that is applicable to each policyholder and shall include the ranking and quantification of those factors that are responsible for the amount of the rate increase proposed.

e. The notice shall include information about how the policyholder can contact the consumer advocate for assistance.

f. The notice shall state the following:

NOTICE OF PROPOSED PREMIUM INCREASE

Dear [INSURED]

[CARRIER] has asked the Iowa Insurance Division to approve an increase in premium rates of approximately [ ]% with a proposed effective date of [DATE].

For your policy, the increase is anticipated to be as follows:

[CURRENT MONTHLY RATE] + [PROPOSED INCREASE] = [PROPOSED MONTHLY RATE]

Your actual premium increase may be less or greater than the proposed average premium increase due to a variety of factors that are independent of the proposed premium rate increase, including but not limited to age, geographic area, and plan design. In addition, the final rate you receive may be different than that listed above due to changes in those factors while the rate is pending approval or due to input from the Iowa Insurance Commissioner.

[RANKING AND QUANTIFICATION OF THOSE FACTORS THAT ARE RESPONSIBLE FOR THE AMOUNT OF THE RATE INCREASE PROPOSED]

A public hearing will be held at [TIME], [DATE], at [LOCATION] before the Iowa Insurance Commissioner to receive comments from [CARRIER] and the Iowa Insurance Consumer Advocate on the proposed rate increase.

You may contact the Consumer Advocate for assistance or to comment on the proposed premium rate at:

Iowa Insurance Division Consumer Advocate  
 Iowa Insurance Division  
 330 Maple Street  
 Des Moines, Iowa 50319  
 Telephone: (515)281-5705  
 Iowa-toll free: 1-877-955-1212  
 Fax: (515)281-3059  
 E-mail: [Insuranceca@iid.iowa.gov](mailto:Insuranceca@iid.iowa.gov)

All comments received will be considered public records. The Consumer Advocate will post comments received on the Consumer Advocate's Internet Web site (<http://iainsuranceca.wordpress.com/>), which is also accessible through the Insurance Division's Internet Web site ([www.iid.state.ia.us](http://www.iid.state.ia.us)), and the Consumer Advocate will present the comments at the public hearing.

g. If an insurer wishes to use language in its notice that is different from the language in paragraph "f," it must seek the approval of the commissioner prior to using different language. The request for approval shall be submitted to the commissioner via the National Association of Insurance Commissioners' System for Electronic Rate and Form Filing.

**36.20(4) Comments.**

a. The consumer advocate shall collect any public testimony or comments received from policyholders regarding the rate increase request.

b. The consumer advocate shall post without delay all comments received on the consumer advocate's Internet website ([iainsuranceca.wordpress.com/](http://iainsuranceca.wordpress.com/)), which is also accessible through the division's Internet website ([www.iid.state.ia.us](http://www.iid.state.ia.us)).

c. The consumer advocate shall provide the comments to the commissioner and present them at the hearing.

**36.20(5) Evidence requested by the commissioner.** At any time after the filing of the request for approval of the rate increase, the commissioner may:

a. Request additional information from the carrier, and the carrier shall furnish any additional information as requested;

b. Request the submission of additional information by any other party to the filing; and

c. Obtain independent analysis of the filing by qualified experts as permitted under Iowa Code section 505.15.

**36.20(6) Hearing.**

a. The hearing shall be open to the public.

b. The division shall make a record of the hearing. The cost of making the record shall be paid by the carrier. The cost of copies of the record requested by the carrier or by the division shall also be paid by the carrier.

c. At the hearing, the carrier that is requesting the commissioner's approval of the rate increase may present testimony and information to support its position in addition to the information supplied with the filing. The costs of the carrier's presentation shall be paid by the carrier.

d. The consumer advocate shall present at the hearing the public testimony and comments received.

e. Formal rules of pleading or evidence need not be observed at any hearing.

f. The hearing does not constitute a contested case under Iowa Code chapter 17A.

**36.20(7) Confidentiality.** Information submitted to the division as part of a filing and as part of the hearing process shall constitute a public record under Iowa Code chapter 22 except as provided in Iowa Code section 505.17 and 2010 Iowa Acts, Senate File 2201, section 6.

**36.20(8) Record of expenses.** A carrier shall maintain a record of expenses incurred by the carrier in relation to any rate hearing and shall submit it to the commissioner within 30 days following the date of the rate hearing.

**36.20(9) Severability.** If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provision to other persons or circumstances shall not be affected thereby.

This rule is intended to implement Iowa Code chapter 514D and 2010 Iowa Acts, Senate File 2201. [ARC 9158B, IAB 10/20/10, effective 10/1/10]

[Filed 11/5/81, Notice 9/2/81—published 11/25/81, effective 12/31/81]<sup>1</sup>

[Filed emergency 2/26/82—published 3/17/82, effective 3/11/82]

[Filed 5/7/82, Notice 3/17/82—published 5/26/82, effective 7/1/82]

[Filed 1/13/83, Notice 12/8/82—published 2/2/83, effective 3/9/83]

[Filed 7/11/86, Notice 6/4/86—published 7/30/86, effective 9/3/86]<sup>2</sup>

[Editorially transferred from [510] to [191] IAC Supp. 10/22/86; see IAB 7/30/86]

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<sup>1</sup> Effective date of 12/31/81 delayed 70 days by Administrative Rules Review Committee.

<sup>2</sup> See IAB Insurance Division



## **ARTS DIVISION[222]**

[Prior to 9/18/91, see Cultural Affairs[221] Chs 10, 11, 12]

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[Prior to 2/1/06, see 222—Ch 20]  
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Rescinded **ARC 4333C**, IAB 3/13/19, effective 4/17/19

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Rescinded IAB 9/23/98, effective 10/28/98

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CHAPTER 24  
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Rescinded IAB 9/23/98, effective 10/28/98

CHAPTER 25  
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Rescinded IAB 7/19/95, effective 8/23/95

CHAPTER 51  
ELIGIBILITY

[Prior to 7/1/83, Social Services[770] Ch 51]

[Prior to 2/11/87, Human Services[498]]

**441—51.1(249) Application for other benefits.** An applicant or any other person whose needs are included in determining the state supplementary assistance payment must have applied for or be receiving all other benefits, including supplemental security income or the family investment program, for which the person may be eligible. The person must cooperate in the eligibility procedures while making application for the other benefits. Failure to cooperate shall result in ineligibility for state supplementary assistance.

This rule is intended to implement Iowa Code section 249.3.

**441—51.2(249) Supplementation.** Any supplemental payment made on behalf of the recipient from any source other than a nonfederal governmental entity shall be considered as income, and the payment shall be used to reduce the state supplementary assistance payment.

**441—51.3(249) Eligibility for residential care.**

**51.3(1) Licensed facility.** Payment for residential care shall be made only when the facility in which the applicant or recipient is residing is currently licensed by the department of inspections and appeals pursuant to laws governing health care facilities.

**51.3(2) Physician's statement.** Payment for residential care shall be made only when there is on file an order written by a physician certifying that the applicant or recipient being admitted requires residential care but does not require nursing services. The certification shall be updated whenever a change in the recipient's physical condition warrants reevaluation, but no less than every 12 months.

**51.3(3) Income eligibility.** The resident shall be income eligible when the income according to 441—paragraph 52.1(3) "a" is less than 31 times the per diem rate of the facility. Partners in a marriage who both enter the same room of the residential care facility in the same month shall be income eligible for the initial month when their combined income according to 441—paragraph 52.1(3) "a" is less than twice the amount of allowed income for one person (31 times the per diem rate of the facility).

**51.3(4) Diversion of income.** Rescinded IAB 5/1/91, effective 7/1/91.

**51.3(5) Resources.** Rescinded IAB 5/1/91, effective 7/1/91.

This rule is intended to implement Iowa Code section 249.3.

**441—51.4(249) Dependent relatives.**

**51.4(1) Income.** Income of a dependent relative shall be less than the amount established by the department based on assistance standards as provided in rule 441—52.1(249). When the dependent's income is from earnings, an exemption of \$65 shall be allowed to cover work expense.

**51.4(2) Resources.** The resource limitation for a recipient and a dependent child or parent shall be \$2,000. The resource limitation for a recipient and a dependent spouse shall be \$3,000. The resource limitation for a recipient, spouse, and dependent child or parent shall be \$3,000.

**51.4(3) Living in the home.** A dependent relative shall be eligible until out of the recipient's home for a full calendar month starting at 12:01 a.m. on the first day of the month until 12 midnight on the last day of the same month.

**51.4(4) Dependency.** A dependent relative may be the recipient's ineligible spouse, parent, child, or adult child who is financially dependent upon the recipient. A relative shall not be considered to be financially dependent upon the recipient when the relative is living with a spouse who is not the recipient.

This rule is intended to implement Iowa Code sections 249.3 and 249.4.

[ARC 7605B, IAB 3/11/09, effective 4/15/09; ARC 9965B, IAB 1/11/12, effective 1/1/12; ARC 0064C, IAB 4/4/12, effective 5/9/12; ARC 0489C, IAB 12/12/12, effective 1/1/13; ARC 0633C, IAB 3/6/13, effective 5/1/13; ARC 1268C, IAB 1/8/14, effective 1/1/14; ARC 1352C, IAB 3/5/14, effective 4/9/14; ARC 1813C, IAB 1/7/15, effective 1/1/15; ARC 1892C, IAB 3/4/15, effective 4/8/15; ARC 2891C, IAB 1/4/17, effective 1/1/17; ARC 2958C, IAB 3/1/17, effective 4/5/17; ARC 3599C, IAB 1/31/18, effective 1/5/18; ARC 3715C, IAB 3/28/18, effective 5/2/18; ARC 4220C, IAB 1/2/19, effective 1/1/19; ARC 4336C, IAB 3/13/19, effective 4/17/19]

**441—51.5(249) Residence.** A recipient of state supplementary assistance shall be living in the state of Iowa.

This rule is intended to implement Iowa Code section 249.3.

**441—51.6(249) Eligibility for supplement for Medicare and Medicaid eligibles.** The following eligibility requirements are specific to the supplement for Medicare and Medicaid eligibles:

**51.6(1) Medicaid eligibility.** The recipient must be eligible for and receiving full medical assistance benefits under Iowa Code chapter 249A without regard to eligibility based on receipt of state supplementary assistance under this rule, and without being required to meet a spenddown or pay a premium to be eligible for medical assistance benefits.

**51.6(2) SSI eligibility.** The recipient shall meet all eligibility requirements for supplemental security income benefits other than limits on substantial gainful activity and income.

**51.6(3) Not otherwise eligible.** The recipient must not be eligible for benefits under another state supplementary assistance group.

**51.6(4) Medicare eligibility.** The recipient must be currently eligible for Medicare Part B.

**51.6(5) Living arrangement.** A recipient may live in one of the following:

- a. The person's own home.
- b. The home of another person.
- c. A group living arrangement.
- d. A medical facility.

**51.6(6) Income.** Income of a recipient shall be within the income limit for the person's Medicaid eligibility group, but must exceed 120 percent of the federal poverty level.

This rule is intended to implement Iowa Code section 249.3 as amended by 2005 Iowa Acts, House File 825, section 108.

**441—51.7(249) Income from providing room and board.** In determining income from furnishing room and board or providing family-life home care, the amount established by the department based on assistance standards as provided in rule 441—52.1(249) shall be deducted to cover the cost, and the remaining amount shall be treated as earned income.

This rule is intended to implement Iowa Code sections 249.3 and 249.4.

[ARC 7605B, IAB 3/11/09, effective 4/15/09; ARC 9965B, IAB 1/11/12, effective 1/1/12; ARC 0064C, IAB 4/4/12, effective 5/9/12; ARC 0489C, IAB 12/12/12, effective 1/1/13; ARC 0633C, IAB 3/6/13, effective 5/1/13; ARC 1268C, IAB 1/8/14, effective 1/1/14; ARC 1352C, IAB 3/5/14, effective 4/9/14; ARC 1813C, IAB 1/7/15, effective 1/1/15; ARC 1892C, IAB 3/4/15, effective 4/8/15; ARC 2891C, IAB 1/4/17, effective 1/1/17; ARC 2958C, IAB 3/1/17, effective 4/5/17; ARC 3599C, IAB 1/31/18, effective 1/5/18; ARC 3715C, IAB 3/28/18, effective 5/2/18; ARC 4220C, IAB 1/2/19, effective 1/1/19; ARC 4336C, IAB 3/13/19, effective 4/17/19]

**441—51.8(249) Furnishing of social security number.** As a condition of eligibility applicants or recipients of state supplementary assistance must furnish their social security account numbers or proof of application for the numbers if they have not been issued or are not known and provide their numbers upon receipt.

Assistance shall not be denied, delayed, or discontinued pending the issuance or verification of the numbers when the applicants or recipients are cooperating in providing information necessary for issuance of their social security numbers.

This rule is intended to implement Iowa Code sections 249.3 and 249.4.

**441—51.9(249) Recovery.**

**51.9(1) Definitions.**

*“Administrative overpayment”* means assistance incorrectly paid to or for the client because of continuing assistance during the appeal process.

*“Agency error”* means assistance incorrectly paid to or for the client because of action attributed to the department as the result of one or more of the following circumstances:

1. Misfiling or loss of forms or documents.
2. Errors in typing or copying.
3. Computer input errors.

4. Mathematical errors.
5. Failure to determine eligibility correctly or to certify assistance in the correct amount when all essential information was available to the local office.
6. Failure to make prompt revisions in payment following changes in policies requiring the changes as of a specific date.

“*Client*” means a current or former applicant or recipient of state supplementary assistance.

“*Client error*” means assistance incorrectly paid to or for the client because the client or client’s representative failed to disclose information, or gave false or misleading statements, oral or written, regarding the client’s income, resources, or other eligibility and benefit factors. It also means assistance incorrectly paid to or for the client because of failure by the client or client’s representative to timely report as defined in rule 441—76.10(249A).

“*Department*” means the department of human services.

**51.9(2) Amount subject to recovery.** The department shall recover from a client all state supplementary assistance funds incorrectly expended to or on behalf of the client, or when conditional benefits have been granted.

*a.* The department also shall seek to recover the state supplementary assistance granted during the period of time that conditional benefits were correctly granted the client under the policies of the supplemental security income program.

*b.* The incorrect expenditures may result from client or agency error, or administrative overpayment.

**51.9(3) Notification.** All clients shall be promptly notified when it is determined that assistance was incorrectly expended. Notification shall include for whom assistance was paid; the time period during which assistance was incorrectly paid; the amount of assistance subject to recovery, when known; and the reason for the incorrect expenditure.

**51.9(4) Source of recovery.** Recovery shall be made from the client or from parents of children under the age of 21 when the parents completed the application and had responsibility for reporting changes. Recovery must come from income, resources, the estate, income tax refunds, and lottery winnings of the client.

**51.9(5) Repayment.** The repayment of incorrectly expended state supplementary assistance funds shall be made to the department.

**51.9(6) Appeals.** The client shall have the right to appeal the amount of funds subject to recovery under the provisions of 441—Chapter 7.

This rule is intended to implement Iowa Code sections 249.3 and 249.4.

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## CHAPTER 52

## PAYMENT

[Prior to 7/1/83, Social Services[770] Ch 52]

[Prior to 2/11/87, Human Services[498]]

**441—52.1(249) Assistance standards.** Assistance standards are the amounts of money allowed on a monthly basis to recipients of state supplementary assistance in determining financial need and the amount of assistance granted. Current assistance standards shall be published on the department's website. Assistance standards shall be adjusted annually to reflect cost-of-living adjustments (COLA) adopted by the Social Security Administration, in accordance with 20 CFR §§416.2095 and 416.2096. Adjustments to the assistance standards based on COLA are effective January 1 of each year.

**52.1(1) Protective living arrangement.** Assistance standards shall be established by the department as provided in rule 441—52.1(249) for care and personal allowances for persons living in a family-life home certified under rules in 441—Chapter 111.

**52.1(2) Dependent relative.** Assistance standards for the following categories shall be established by the department as provided in rule 441—52.1(249) for state supplementary assistance for dependent relatives residing in a recipient's home.

- a. Aged or disabled client and a dependent relative.
- b. Aged or disabled client, eligible spouse, and a dependent relative.
- c. Blind client and a dependent relative.
- d. Blind client, aged or disabled spouse, and a dependent relative.
- e. Blind client, blind spouse, and a dependent relative.

**52.1(3) Residential care.** For periods of eligibility before July 1, 2017, the department will reimburse a recipient in either a privately operated or non-privately operated residential care facility on a flat per diem rate or on a cost-related reimbursement system with a maximum per diem rate established consistent with the assistance standards principles provided in rule 441—52.1(249). The department shall establish a cost-related per diem rate for each licensed residential care facility choosing the cost-related reimbursement method of payment according to rule 441—54.3(249).

For periods of eligibility beginning July 1, 2017, and thereafter, payment to a recipient in a privately operated licensed residential care facility shall be based on the maximum per diem rate. Reimbursement for recipients in non-privately operated residential care facilities will be based on the flat per diem rate or be based on the cost-related reimbursement system with a maximum per diem rate established consistent with the assistance standards principles provided in rule 441—52.1(249).

The facility shall accept the per diem rate established by the department for state supplementary assistance recipients as payment in full from the recipient and make no additional charges to the recipient.

a. All income of a recipient as described in this subrule after the disregards described in this subrule shall be applied to meet the cost of care before payment is made through the state supplementary assistance program.

Income applied to meet the cost of care shall be the income considered available to the resident pursuant to supplemental security income (SSI) policy plus the SSI benefit less the following monthly disregards applied in the order specified:

- (1) When income is earned, impairment related work expenses, as defined by SSI plus \$65 plus one-half of any remaining earned income.
- (2) An allowance established by the department consistent with rule 441—52.1(249) shall be given to meet personal expenses and Medicaid copayment expenses.
- (3) When there is a spouse at home, the amount of the SSI benefit for an individual minus the spouse's countable income according to SSI policies. When the spouse at home has been determined eligible for SSI benefits, no income disregard shall be made.
- (4) When there is a dependent child living with the spouse at home who meets the definition of a dependent according to the SSI program, the amount of the SSI allowance for a dependent minus the dependent's countable income and the amount of income from the parent at home that exceeds the SSI benefit for one according to SSI policies.

(5) Established unmet medical needs of the resident, excluding private health insurance premiums and Medicaid copayment expenses. Unmet medical needs of the spouse at home, exclusive of health insurance premiums and Medicaid copayment expenses, shall be an additional deduction when the countable income of the spouse at home is not sufficient to cover those expenses. Unmet medical needs of the dependent living with the spouse at home, exclusive of health insurance premiums and Medicaid copayment expenses, shall also be deducted when the countable income of the dependent and the income of the parent at home that exceeds the SSI benefit for one is not sufficient to cover the expenses.

(6) The income of recipients of state supplementary assistance or Medicaid needed to pay the cost of care in another residential care facility, a family-life home, an in-home health-related care provider, a home- and community-based waiver setting, or a medical institution is not available to apply to the cost of care. The income of a resident who lived at home in the month of entry shall not be applied to the cost of care except to the extent the income exceeds the SSI benefit for one person or for a married couple if the resident also had a spouse living in the home in the month of entry.

b. Payment is made for only the days the recipient is a resident of the facility. Payment shall be made for the date of entry into the facility, but not the date of death or discharge.

c. Payment shall be made in the form of a grant to the recipient on a post payment basis.

d. Payment shall not be made when income is sufficient to pay the cost of care in a month with less than 31 days, but the recipient shall remain eligible for all other benefits of the program.

e. Payment will be made for periods the resident is absent overnight for the purpose of visitation or vacation. The facility will be paid to hold the bed for a period not to exceed 30 days during any calendar year, unless a family member or legal guardian of the resident, the resident's physician, case manager, or department service worker provides signed documentation that additional visitation days are desired by the resident and are for the benefit of the resident. This documentation shall be obtained by the facility for each period of paid absence which exceeds the 30-day annual limit. This information shall be retained in the resident's personal file. If documentation is not available to justify periods of absence in excess of the 30-day annual limit, the facility shall submit a Case Activity Report, Form 470-0042, to the county office of the department to terminate the state supplementary assistance payment.

A family member may contribute to the cost of care for a resident subject to supplementation provisions at rule 441—51.2(249) and any contributions shall be reported to the county office of the department by the facility.

f. Payment will be made for a period not to exceed 20 days in any calendar month when the resident is absent due to hospitalization. A resident may not start state supplementary assistance on reserve bed days.

g. The per diem rate established for recipients of state supplementary assistance shall not exceed the average rate established by the facility for private pay residents.

(1) Residents placed in a facility by another governmental agency are not considered private paying individuals. Payments received by the facility from such an agency shall not be included in determining the average rate for private paying residents.

(2) To compute the facilitywide average rate for private paying residents, the facility shall accumulate total monthly charges for those individuals over a six-month period and divide by the total patient days care provided to this group during the same period of time.

**52.1(4) *Blind.*** The standard for a blind recipient not receiving another type of state supplementary assistance is \$22 per month.

**52.1(5) *In-home, health-related care.*** Payment to a person receiving in-home, health-related care shall be made in accordance with rules in 441—Chapter 177.

**52.1(6) *Minimum income level cases.*** The income level of those persons receiving old age assistance, aid to the blind, and aid to the disabled in December 1973 shall be maintained at the December 1973 level as long as the recipient's circumstances remain unchanged and that income level is above current standards. In determining the continuing eligibility for the minimum income level, the income limits, resource limits, and exclusions which were in effect in October 1972 shall be utilized.

**52.1(7) Supplement for Medicare and Medicaid eligibles.** Payment to a person eligible for the supplement for Medicare and Medicaid eligibles shall be \$1 per month.

This rule is intended to implement Iowa Code chapter 249.

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# IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]

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CHAPTER 4  
EMPLOYERS

[Prior to 6/9/04, see 581—Ch 21]

**495—4.1(97B) Covered employers.**

**4.1(1) Definition.** All public employers in the state of Iowa, its cities, counties, townships, agencies, political subdivisions, instrumentalities and public schools are required to participate in IPERS. For the purposes of these rules, the following definitions also apply:

*a. "Political subdivision"* means a geographic area or territorial division of the state which has responsibility for certain governmental functions. Political subdivisions are characterized by public election of officers and taxing powers. The following examples are representative: cities, municipalities, counties, townships, schools and school districts, drainage and levee districts, and utilities.

*b. "Instrumentality of the state or a political subdivision"* means an independent entity that is organized to carry on some specific function of government. Public instrumentalities are created by some form of governmental body, including federal and state statutes and regulations, and are characterized by being under the control of a governmental body. Such control may include final budgetary authorization, general policy development, appointment of a board by a governmental body, and allocation of funds.

*c. "Public agency"* means state agencies and agencies of political subdivisions. Representative examples include an executive board, commission, bureau, division, office, or department of the state or a political subdivision.

*d.* Effective July 1, 1994, the definition of employer includes an area agency on aging that does not offer an alternative plan to all of its employees that is qualified under the federal Internal Revenue Code.

Covered employers include, but are not limited to: the state of Iowa and its administrative agencies; counties, including their hospitals and county homes; cities, including their hospitals, park boards and commissions; recreation commissions; townships; public libraries; cemetery associations; municipal utilities including waterworks, gasworks, electric light and power; school districts including their lunch and activity programs; state colleges and universities; and state hospitals and institutions.

An entity not already reporting to IPERS which meets the conditions for becoming an IPERS-covered employer shall immediately contact IPERS to provide notice which includes the name and address of the entity and other information required by IPERS. If, after review of this information, IPERS determines that the entity should be enrolled as a covered employer, IPERS will notify the entity and provide an IPERS account number for the entity to use when submitting information. IPERS shall not be required to provide benefits otherwise available under Iowa Code chapter 97B for periods of service prior to the effective date for which IPERS actually approves the entity for coverage, unless the employer agrees to pay the full actuarial cost of providing such benefits.

An employer may request a revised beginning date for its status as a covered employer. The employer must submit acceptable proof to IPERS that its status as a covered employer began earlier than the date previously provided. In such case, the employer shall provide IPERS coverage retroactively to all employees providing services to that employer on or after the revised beginning date and shall pay all actuarial costs.

**4.1(2) Name change.** Any employer which has a change of name, address, title of the employer, its reporting official or any other identifying information shall immediately give notice in writing to IPERS. The notice shall provide IPERS with the following information:

- a.* Former name;
- b.* Former address;
- c.* IPERS account number;
- d.* New name, address, and telephone number of the employer;
- e.* Reason for the change if other than a change of reporting official; and
- f.* Effective date of the change.

**4.1(3) Termination.** Any employer which terminates or is dissolved for any reason shall provide IPERS with the following:

- a. Complete name and address of the dissolved entity;
- b. Assigned IPERS account number;
- c. Last date on which wages were paid;
- d. Date on which the entity dissolved;
- e. Reason for the dissolution;
- f. Whether or not the entity expects to pay wages in the future;
- g. Whether the entity is being absorbed by another covered employer;
- h. Name and address of absorbing employer if applicable; and
- i. Name and address of employer that will retain the records of the dissolved entity.

**4.1(4) Reports of dissolved or absorbed employers.** An employer that has been dissolved or entirely absorbed by another employer is required to file a monthly report with IPERS through the effective date on which it was dissolved or absorbed. Any wages paid after this date are reported under the account number assigned to the new or successor employer, if any.

**4.1(5) IPERS account number.** Each employer is assigned an IPERS account number. This number should be used on all correspondence and reporting forms directed to IPERS.

**4.1(6) Patient advocates.** For patient advocates employed under Iowa Code section 229.19, the county or counties for which services are performed shall be treated as the covered employer(s) of such individuals, and each such employer is responsible for forwarding reports and for withholding and forwarding the applicable IPERS contributions on wages paid by each employer.

[ARC 3684C, IAB 3/14/18, effective 4/18/18]

#### **495—4.2(97B) Records to be kept by the employer.**

**4.2(1) General.** Each employer shall maintain records to show the information hereinafter indicated. Records shall be kept in the form and manner prescribed by IPERS. Records shall be open to inspection and may be copied by IPERS and its authorized representatives at any reasonable time.

**4.2(2) Required information.** Records shall show with respect to each employee:

- a. Employee's name, address, gender, and social security account number, and other demographic information that may be required;
- b. Each date the employee was paid wages or other wage equivalent (e.g., room, board);
- c. Total amount of wages paid on each date including noncash wage equivalents;
- d. Total amount of wages including wage equivalents on which IPERS contributions are payable;
- e. Amount withheld from wages or wage equivalents for the employee's share of IPERS contributions; and
- f. Effective January 1, 1995, records will show, with respect to each employee, member contributions picked up by the employer.

**4.2(3) Reports.**

a. Each employer shall make reports as IPERS may require and shall comply with the instructions provided by IPERS for the reports.

b. Effective July 1, 1991, employers must report all terminating employees to IPERS within seven working days following the employee's termination date. This report shall contain the employee's last-known mailing address and such other information as IPERS might require.

c. The Iowa department of administrative services and the Iowa department of corrections shall notify IPERS prior to adding additional job classifications to the protection occupation class. The notification shall include the effective date, names and social security numbers of the employees involved.

**4.2(4) Fees.** IPERS may assess to the employer a fee for administrative costs as described in subrule 4.3(6).

[ARC 8601B, IAB 3/10/10, effective 4/14/10; ARC 2981C, IAB 3/15/17, effective 4/19/17]

#### **495—4.3(97B) Wage reporting and payment of contributions by employers.**

**4.3(1) Payment of contributions.** For wages paid on or after July 1, 2008, all covered employers are required to pay contributions on a monthly basis. Upon enrollment as an IPERS-covered employer,

the employer shall receive the appropriate forms and instructions from IPERS to submit contributions. IPERS will provide monthly statements to each employer.

IPERS accepts the payment of contributions through electronic funds transfer. Payments utilizing the electronic funds transfer system shall be made according to the procedure described in subrule 4.3(3).

IPERS accepts the payment of contributions using checks and remittance advice forms. Employers filing monthly employer remittance advice forms on paper for two or more employers shall attach the checks to each remittance form. Checks shall be made payable to the Iowa Public Employees' Retirement System and mailed with the employer remittance advice form to IPERS, P.O. Box 9117, Des Moines, Iowa 50306-9117. Effective August 1, 2008, such payments and reports shall be subject to a fee as described in subrule 4.3(6).

**4.3(2) *Wage reports.*** For wages paid on or after July 1, 2008, all IPERS-covered employers are required to file wage reports on a monthly basis. IPERS will provide the forms and instructions for wage reporting to employers. Each wage report must include the required information for all employees who earned reportable wages or wage equivalents under IPERS. The reports must be received by IPERS on or before the fifteenth day of the month following the month in which the wages were paid. If the fifteenth day falls on a weekend or state-observed holiday, the wage report is due on the next regularly scheduled business day.

Effective August 1, 2008, IPERS shall accept wage reports electronically via IPERS' employer self-service Internet application or as a paper report. However, for those employers submitting reports other than via IPERS' employer self-service Internet application, IPERS shall charge a fee as described in subrule 4.3(6).

**4.3(3) *Deadlines for payment of contributions.***

*a.* Contributions must be paid monthly and must be received by IPERS on or before the fifteenth day of the month following the month in which wages were paid. If the fifteenth day falls on a weekend or state-observed holiday, the contribution is due on the next regularly scheduled business day.

*b.* For employers paying contributions by electronic funds transfer, wage reports and contributions may be submitted at the same time.

**4.3(4) *Request for time extension.*** A request for an extension of time to file a wage report or pay a contribution may be granted by IPERS for good cause if a request is made before the due date, but no extension shall exceed 15 days beyond the due date. If an employer that has been granted an extension fails to submit the wage report or pay the contribution on or before the end of the extension period, the applicable interest and fees shall be charged and paid from the original due date as if no extension had been granted. If the fifteenth day falls on a weekend or state-observed holiday, the contribution or wage report is due on the next regularly scheduled business day.

To establish good cause for an extension of time to file a wage report or pay contributions, the employer must show that the delinquency was not due to mere negligence, carelessness or inattention. The employer must affirmatively show that it did not file the wage report or timely pay a contribution because of some occurrence beyond the control of the employer.

**4.3(5) *No reportable wages.*** When an employer has no reportable wages during the applicable reporting period, the wage reporting document shall be filed according to subrule 4.3(2). Even if there are no reportable wages, the employer's account is considered delinquent for the reporting period and is subject to a fee until the report is filed. However, if the employer has notified IPERS on or before the due date that there are no wages to report, IPERS will adjust the due date, and no fee will be charged.

**4.3(6) *Fees for noncompliance.*** IPERS is authorized to impose reasonable fees on employers that do not file wage reports through the IPERS' employer self-service Internet application as described in subrule 4.3(2), that fail to timely file accurate wage reports, or that fail to pay contributions when due pursuant to subrule 4.3(3).

For submissions filed on or after August 1, 2008, IPERS shall charge employers a processing fee of \$20 plus 25 cents per employee for late submissions and manual processing of wage reports by IPERS. Employers that are late or that do not use IPERS' employer self-service Internet application may be charged both fees. In addition, if a fee for noncompliance is not paid by the fifteenth day of the month after the fee is assessed, the fee will accrue interest daily at the interest rate provided in Iowa Code

sections 97B.9 and 97B.70. No fee will be charged on late contributions received as a result of a wage adjustment, but interest on the amount due will be charged until paid in full.

If the due date for a fee falls on a weekend or state-observed holiday, the due date shall be the next regularly scheduled business day.

**4.3(7) *Erroneously reported wages for employees not covered under IPERS.*** Employers that erroneously report wages for employees who are not eligible for coverage under IPERS may file an IPERS wage reporting adjustment form. IPERS shall return a warrant or issue a credit for both the employer and employee contributions made in error. The employer is responsible for returning the employees' share and for filing corrected federal and state wage reporting forms. Adjustments in such cases will be reported on the employer's monthly statement. Under no circumstance shall the employer adjust these wages by underreporting wages on a future periodic wage reporting document. Wages shall never be reported as a negative amount. An employer that completes the employer portion of an employee's request for a refund on an IPERS refund application form will not be permitted to file a periodic wage reporting adjustment form for that employee for the same time period. No fee will be assessed to employers that correct information as provided under this subrule.

**4.3(8) *Contributions paid on wages in excess of the annual covered wage maximum.*** For wages paid on or after July 1, 2008, whenever IPERS determines that an employee's wages will exceed the annual maximum established under Section 401(a)(17)(A) and the cost-of-living adjustments to that maximum permitted under Section 401(a)(17)(B) of the Internal Revenue Code during a given month, IPERS shall notify the applicable employer and shall return the related excess contributions. IPERS will detail on the monthly report those employees for whom wages were reported in excess of the covered wage ceiling. The employer is responsible for returning the employee's share of excess contributions and making the applicable tax corrections.

**4.3(9) *Termination within less than six months of the date of employment.*** If an employee hired for permanent employment terminates within six months of the date of employment, the employer may file an IPERS form for reporting adjustments to receive a warrant or a credit, as elected by the employer, for both the employer's and employee's portions of the contributions. It is the responsibility of the employer to return the employee's share. "Termination within less than six months of the date of employment" means employment is terminated prior to the day before the employee's six-month anniversary date. For example, an employee hired on February 10 whose last day is August 8 would be treated as having resigned within less than six months. An employee hired on February 10 whose last day is August 9 (the day before the six-month anniversary date, August 10) would be treated as having worked six months and would be eligible for a refund.

**4.3(10) *Reinstatement following an employment dispute.*** Employees who are reinstated following an employment dispute may restore membership service credit as described in 495—9.5(97B).

[ARC 9397B, IAB 2/23/11, effective 3/30/11; ARC 2981C, IAB 3/15/17, effective 4/19/17; ARC 3684C, IAB 3/14/18, effective 4/18/18]

**495—4.4(97B) *Accrual of interest and application of employer payments.*** Interest or charges as provided under Iowa Code section 97B.9 shall accrue on all employer payments not received by IPERS by the due date, except that interest or charges may be waived by IPERS if the employer requests an extension of time under subrule 4.3(4) prior to the due date. Effective August 1, 2008, employers that remit late contributions shall be charged a minimum of \$20 or interest at the rate provided in Iowa Code section 97B.70, whichever is greater. No fee will be charged on late contributions received as a result of a wage adjustment, but interest on the amount due will be charged until paid in full. Payments received from employers having unpaid account balances shall first be applied to the oldest outstanding balance.

**495—4.5(97B) *Credit memos voided.*** Rescinded IAB 3/26/08, effective 4/30/08.

**495—4.6(97B) *Contribution rates.*** The following contribution rate schedule, payable on the covered wage of the member, is determined by the position or classification and the occupation class code of the member.

**4.6(1) *Contribution rates for regular class members.***

a. The following contribution rates were established by the Iowa legislature for all regular class members for the indicated periods:

	Effective July 1, 2007	Effective July 1, 2008	Effective July 1, 2009	Effective July 1, 2010	Effective July 1, 2011
Combined rate	9.95%	10.45%	10.95%	11.45%	13.45%
Employer	6.05%	6.35%	6.65%	6.95%	8.07%
Employee	3.90%	4.10%	4.30%	4.50%	5.38%

b. Effective July 1, 2012, and every year thereafter, the contribution rates for regular members shall be publicly declared by IPERS staff no later than the preceding December as determined by the annual valuation of the preceding fiscal year. The public declaration of contribution rates will be followed by rule making that will include a notice and comment period and that will become effective July 1 of the next fiscal year. Contribution rates for regular members are as follows.

	Effective July 1, 2015	Effective July 1, 2016	Effective July 1, 2017	Effective July 1, 2018	Effective July 1, 2019
Combined rate	14.88%	14.88%	14.88%	15.73%	15.73%
Employer	8.93%	8.93%	8.93%	9.44%	9.44%
Employee	5.95%	5.95%	5.95%	6.29%	6.29%

**4.6(2)** Contribution rates for sheriffs and deputy sheriffs are as follows.

	Effective July 1, 2015	Effective July 1, 2016	Effective July 1, 2017	Effective July 1, 2018	Effective July 1, 2019
Combined rate	19.76%	19.26%	18.76%	19.52%	19.02%
Employer	9.88%	9.63%	9.38%	9.76%	9.51%
Employee	9.88%	9.63%	9.38%	9.76%	9.51%

**4.6(3)** Contribution rates for protection occupations are as follows.

	Effective July 1, 2015	Effective July 1, 2016	Effective July 1, 2017	Effective July 1, 2018	Effective July 1, 2019
Combined rate	16.40%	16.40%	16.40%	17.02%	16.52%
Employer	9.84%	9.84%	9.84%	10.21%	9.91%
Employee	6.56%	6.56%	6.56%	6.81%	6.61%

**4.6(4)** Members employed in a “protection occupation” shall include:

a. Conservation peace officers. Effective July 1, 2002, all conservation peace officers, state and county, as described in Iowa Code sections 350.5 and 456A.13.

b. Effective July 1, 1994, a marshal in a city not covered under Iowa Code chapter 400 or a firefighter or police officer of a city not participating under Iowa Code chapter 410 or 411. (See employee classifications in rule 495—5.1(97B).) Effective January 1, 1995, part-time police officers shall be included.

c. Correctional officers as provided for in Iowa Code section 97B.49B. Employees who, prior to December 22, 1989, were in a “correctional officer” position but whose position is found to no longer meet this definition on or after that date shall retain coverage, but only for as long as the employee is in that position or another “correctional officer” position that meets this definition. Movement to a position that does not meet this definition shall cancel “protection occupation” coverage.

d. Airport firefighters employed by the military division of the department of public defense (airport firefighters). Effective July 1, 2004, airport firefighters become part of and shall make the same contributions as the other members covered under Iowa Code section 97B.49B. From July 1, 1994, through June 30, 2004, airport firefighters were grouped with and made the same contributions

as sheriffs and deputy sheriffs. From July 1, 1988, through June 30, 1994, airport firefighters were grouped with and made the same contributions as the other members covered under Iowa Code section 97B.49B. From July 1, 1986, through June 30, 1988, airport firefighters were a separate protection occupation group and made contributions at a rate calculated for members of that group. Prior to July 1, 1986, airport firefighters were grouped with regular members and made the same contributions as regular members.

Notwithstanding the foregoing, all airport firefighter service prior to July 1, 2004, shall be coded by IPERS as sheriff/deputy sheriff/airport firefighter service, and all airport firefighter service after June 30, 2004, shall be coded by IPERS as protection occupation service. This coding, however, shall not supersede provisions of this title that require members to make contributions at higher rates in order to receive certain benefits, such as in the hybrid formula pursuant to 495—12.4(97B).

*e.* Airport safety officers employed under Iowa Code chapter 400 by an airport commission in a city with a population of 100,000 or more, and employees covered by the Iowa Code chapter 8A merit system whose primary duties are providing airport security and who carry or are licensed to carry firearms while performing those duties.

*f.* Effective July 1, 1990, an employee of the state department of transportation who is designated as a “peace officer” by resolution under Iowa Code section 321.477.

*g.* Effective July 1, 1992, a fire prevention inspector peace officer employed by the department of public safety. Effective July 1, 1994, a fire prevention inspector peace officer employed before that date who does not elect coverage under Iowa Code chapter 97A in lieu of IPERS.

*h.* Effective July 1, 1994, through June 30, 1998, a parole officer III with a judicial district department of correctional services.

*i.* Effective July 1, 1994, through June 30, 1998, a probation officer III with a judicial district department of correctional services.

*j.* Effective July 1, 2008, county jailers and detention officers working as jailers.

*k.* Effective July 1, 2008, National Guard installation security officers.

*l.* Effective July 1, 2008, emergency medical care providers.

*m.* Effective July 1, 2008, special investigators who are employed by county attorneys.

*n.* Effective July 1, 2014, an employee of the insurance division of the department of commerce who as a condition of employment is required to be certified by the Iowa law enforcement academy and who is required to perform the duties of a peace officer as provided in Iowa Code section 507E.8.

*o.* Effective July 1, 2014, an employee of a judicial district department of correctional services whose condition of employment requires the employee to be certified by the Iowa law enforcement academy and who is required to perform the duties of a parole officer as provided in Iowa Code section 906.2.

*p.* Effective July 1, 2016, a peace officer employed by an institution under the control of the state board of regents whose position requires law enforcement certification pursuant to Iowa Code section 262.13.

*q.* Effective July 1, 2016, a person employed by the department of human services as a psychiatric security specialist at a civil commitment unit for sexually violent offenders facility.

**4.6(5) Service reclassification.**

*a.* Prior to July 1, 2006, except as otherwise indicated in the implementing legislation or these rules, for a member whose prior regular service position is reclassified by the legislature as a special service position, all prior service by the member in such regular service position shall be coded by IPERS staff as special service if certified by the employer as constituting special service under current law. No additional contributions shall be required by regular service reclassified as special service under this paragraph.

*b.* Effective July 1, 2006, for a member whose prior regular service position is reclassified by the legislature as a special service position, all prior service by the member in such regular service position shall continue to be coded by IPERS staff as regular service unless the legislature specifically provides in its legislation for payment of the related actuarial costs of such reclassified service as required under Iowa Code section 97B.65.

**4.6(6)** Effective July 1, 2006, in the determination of a sheriff's or deputy sheriff's eligibility for benefits and the amount of such benefits under Iowa Code section 97B.49C, all protection occupation service credits for that member shall count toward the total years of eligible service as a sheriff or deputy sheriff. However, this subrule shall not be construed to alter the statutory requirement that a sheriff or deputy sheriff must be employed as a sheriff or deputy sheriff at termination of covered employment in order to qualify for benefits under Iowa Code section 97B.49C.

**4.6(7) Pretax.**

*a.* Effective January 1, 1995, employers must pay member contributions on a pretax basis for federal income tax purposes only. Such contributions are considered employer contributions for federal income tax purposes and employee contributions for all other purposes. Employers must reduce the member's salary reportable for federal income tax purposes by the amount of the member's contribution.

*b.* Salaries reportable for purposes other than federal income tax will not be reduced, including for IPERS, FICA, and, through December 31, 1998, state income tax purposes.

*c.* Effective January 1, 1999, employers must pay member contributions on a pretax basis for both federal and state income tax purposes.

[ARC 7591B, IAB 2/25/09, effective 7/1/09; ARC 7759B, IAB 5/6/09, effective 4/17/09; ARC 7916B, IAB 7/1/09, effective 8/5/09; ARC 8601B, IAB 3/10/10, effective 4/14/10; ARC 9397B, IAB 2/23/11, effective 3/30/11; ARC 0017C, IAB 2/22/12, effective 3/28/12; ARC 0662C, IAB 4/3/13, effective 5/8/13; ARC 1348C, IAB 2/19/14, effective 3/26/14; ARC 1887C, IAB 2/18/15, effective 3/25/15; ARC 2402C, IAB 2/17/16, effective 3/23/16; ARC 2981C, IAB 3/15/17, effective 4/19/17; ARC 3684C, IAB 3/14/18, effective 4/18/18; ARC 4337C, IAB 3/13/19, effective 4/17/19]

**495—4.7(97B) Employee information to be provided by covered employers.** Covered employers are required to enroll new employees prior to reporting wages for the new employees using IPERS' employer self-service Internet application. Enrollment information shall include, but is not limited to, the following: member's name, social security number, date of birth, date of hire, occupation code, gender, mailing address, and employer identification number. When an employee terminates employment with a covered employer, the employer shall provide the termination date and the date of the employee's final paycheck.

[ARC 2981C, IAB 3/15/17, effective 4/19/17]

**495—4.8(97B) Additional employer contributions from employer-mandated reduction in hours or by the exercise of bumping rights to avoid a layoff.** Rescinded ARC 2981C, IAB 3/15/17, effective 4/19/17.

These rules are intended to implement Iowa Code sections 97B.4, 97B.9, 97B.14, 97B.14A, 97B.38, 97B.49A to 97B.49I, 97B.65 and 97B.70 and 2009 Iowa Acts, chapter 170, section 51, as amended by 2010 Iowa Acts, House File 2518, sections 36 and 41.

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[Filed ARC 1348C (Notice ARC 1256C, IAB 12/25/13), IAB 2/19/14, effective 3/26/14]  
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[Filed ARC 2402C (Notice ARC 2331C, IAB 12/23/15), IAB 2/17/16, effective 3/23/16]  
[Filed ARC 2981C (Notice ARC 2892C, IAB 1/18/17), IAB 3/15/17, effective 4/19/17]  
[Filed ARC 3684C (Notice ARC 3537C, IAB 1/3/18), IAB 3/14/18, effective 4/18/18]  
[Filed ARC 4337C (Notice ARC 4238C, IAB 1/16/19), IAB 3/13/19, effective 4/17/19]

CHAPTER 6  
COVERED WAGES  
[Prior to 6/9/04, see 581—Ch 21]

**495—6.1(97B) IRS requirements.** Wages as discussed in this chapter shall not exceed the amount permitted for a given year under Sections 401(a)(17)(A) and (B) of the Internal Revenue Code, which are incorporated herein by this reference.

[ARC 9397B, IAB 2/23/11, effective 3/30/11]

**495—6.2(97B) Definition of wages.** “Wages” means all compensation earned by employees including, except as otherwise provided under this chapter, vacation pay; sick pay; back pay; amounts deducted from the employee’s pay at the employee’s discretion for tax-sheltered annuities, dependent care and cafeteria plans; and the cash value of wage equivalents. This definition applies to these rules, regulations, interpretations, forms and other IPERS publications unless the context otherwise requires.

**495—6.3(97B) IPERS coverage for various forms of compensation.** The following is a list of various types of compensation and the corresponding IPERS coverage treatment:

**6.3(1) *Vacation pay or annual leave pay.*** Vacation pay or annual leave pay means the amount paid to an employee during a period of vacation.

**6.3(2) *Sick pay.*** Sick pay means the amount paid to an employee during a period of sick leave.

**6.3(3) *Workers’ compensation payments and other third-party payments.*** Workers’ compensation payments, unemployment payments, or short-term and long-term disability payments made by an insurance company or third-party payer, such as a trust, are not included as wages. Payments for sick leave which are a continuation of salary payments if paid from the employer’s general assets, regardless of whether the employer labels the payments as sick leave, short-term disability, or long-term disability, are covered wages.

**6.3(4) *Compensatory time.*** Wages include amounts paid for compensatory time taken in lieu of regular work hours or when paid as a lump sum. However, compensatory time paid in a lump sum shall not exceed 240 hours per employee per year or any lesser number of hours set by the employer. Each employer shall determine whether to use the calendar year or a fiscal year other than the calendar year when setting its compensatory time policy. The wages reported to IPERS must reflect the employer’s policy.

**6.3(5) *Banked holiday pay.*** If an employer codes banked holiday time as holiday or additional accrued vacation time, the banked holiday pay will be vacation pay under subrule 6.3(1). If an employer codes banked holiday time as compensatory time, the banked holiday pay will be combined with compensatory pay and subject to the limits set forth in subrule 6.3(4).

**6.3(6) *Special lump sum payments.*** Wages do not include special lump sum payments made during or at the end of service as a payoff of unused accrued sick leave or of unused accrued vacation. Wages do not include special lump sum payments made during or at the end of service as an incentive to retire early or as payments made upon dismissal, severance, or a special bonus payment intended as an early retirement incentive. Wages do not include: catastrophic leave paid in a lump sum, bonuses, tips, honoraria, or student loan repayment compensation. Exclusion of payments as described in this subrule applies whether the payment is in a lump sum or in installments.

**6.3(7) *Covered wage treatment for supplemental payments.***

*a.* Payments excluded from covered wages as bonuses include the following:

- (1) Recruitment payments.
- (2) Retention payments.
- (3) Payments to members who achieve improvements in their employer’s financial status or performance ratings.
- (4) Employee performance incentive payments.
- (5) Extraordinary job performance payments.

(6) Payments for the possession, attainment, or maintenance of special skills or professional certifications (does not apply to advancements in a member's placement in wage or salary schedule, or placement in a higher tier wage or salary schedule).

(7) Payments to members made in lieu of merit increases because the members' wage or salary scales are capped.

(8) Payments similar in substance to those enumerated above without regard to the payments' titles, tag lines, labels or classifications by employers.

*b.* Payments included in covered wages that are not to be treated as bonuses include the following:

(1) Payments authorized by statute and used to increase the general level of teacher pay, except as otherwise provided in this subrule (for example, when such moneys are used to pay retention bonuses).

(2) Payments for which additional, or new and different, job duties are required in order to receive the payment.

(3) Payments for employment longevity.

*c.* Payments that are otherwise to be treated as covered wages under paragraph "b" shall not be covered if IPERS determines that the payments are made for paragraph "a," subparagraphs (1) to (8), of this subrule or other subrules, including, but not limited to, recruitment or retention bonuses, retirement incentive and severance payments, reimbursements of business expenses, and payment of allowances.

*d.* IPERS shall have the final authority to determine if supplemental payments not described in paragraphs "a," "b" and "c" of this subrule should be treated as excluded bonus payments or covered wages. In making its determination, IPERS may consider, but is not limited to, such factors as the supplemental payments' similarity to payments described in paragraphs "a," "b" and "c" of this subrule, whether such payments are discretionary with the employer, and whether, on the one hand, the payments are regular and periodic over the working careers of a broad group of individuals or, on the other hand, are short-term, irregular, or ad hoc payments whose primary effect is to spike certain members' final average salaries.

**6.3(8) *Other special payment arrangements.*** Wages do not include amounts paid pursuant to special arrangements between an employer and employee whereby the employer pays increased wages and the employee reimburses the employer or a third-party obligor for all or part of the wage increase. This limitation includes, but is not limited to, the practice of increasing an employee's wages by the employer's share of health care costs and having the employee reimburse the employer or a third-party provider for such health care costs. Wages do not include amounts paid pursuant to a special arrangement between an employer and employee whereby wages in excess of the covered wage ceiling for a particular year are deferred to one or more subsequent years. Wages do not include employer contributions to a plan, program, or arrangement that are not included in the employee's federal taxable income. However, certain employer contributions under IRC Section 125 plans are permitted to be treated as covered wages under rule 495—6.5(97B) subject to the terms of that rule.

Employers and employees that knowingly and willfully enter into the types of arrangements described in this subrule, causing an impermissible increase in the payments authorized under Iowa Code chapter 97B, may be prosecuted under Iowa Code section 97B.40 for engaging in a fraudulent practice. If IPERS determines that its calculation of a member's monthly benefit includes amounts paid under an arrangement described in this subrule, IPERS shall recalculate the member's monthly benefit, after making the appropriate wage adjustments. IPERS may recover the amount of overpayments caused by the inclusion of the payments described in this subrule from the monthly amounts plus interest payable to the member or amounts payable to the member's successor(s) in interest, regardless of whether or not IPERS chooses to prosecute the employers and employees under Iowa Code section 97B.40.

**6.3(9) *Wage equivalents.*** Items such as food, lodging and transportation are includable as employee income, if they are paid as compensation for employment. The basic test is whether or not such wage equivalent was given for the convenience of the employee or employing unit. Wage equivalents are not reportable under IPERS if given for the convenience of the employing unit or are not reasonably quantifiable. Wage equivalents that are not included in the member's federal taxable income shall be deemed to be for the convenience of the employer. A wage equivalent is not reportable if the employer

certifies that there was a substantial business reason for providing the wage equivalent, even if the wage equivalent is included in the employee's federal taxable income. Wages paid in any other form than money are measured by the fair market value of the meals, lodging, travel or other wage equivalents.

**6.3(10) *Members of the general assembly.*** Wages for a member of the general assembly means the total compensation received by a member of the general assembly, whether paid in the form of per diem or annual salary. Wages include per diem payments paid to members of the general assembly during interim periods between sessions of the general assembly. Wages do not include expense payments except that, effective July 1, 1990, wages include daily allowances to members of the general assembly for nontravel expenses of office during a session of the general assembly. Such nontravel expenses of office during a session of the general assembly shall not exceed the maximum established by law for members from Polk County. A member of the general assembly who has elected to participate in IPERS shall receive four quarters of service credit for each calendar year during the member's term of office, even if no wages are reported in one or more quarters during a calendar year.

**6.3(11) *Wages restored following an employer-mandated reduction in hours.*** Rescinded IAB 3/15/17, effective 4/19/17.

**6.3(12) *Wages paid as a back pay settlement.*** IPERS contributions must be calculated on the gross amount of a back pay settlement before the settlement is reduced for taxes, interim wages, unemployment compensation, and similar mitigation of damages adjustments. IPERS contributions must be calculated by reducing the gross amount of a back pay settlement by any amounts not considered covered wages such as, but not limited to, lump sum payments for medical expenses.

Notwithstanding the foregoing, a back pay settlement that does not require the reinstatement of a terminated employee and payment of the amount of wages that would have been paid during the period of severance (before adjustments) shall be treated by IPERS as a "special lump sum payment" under subrule 6.3(6) and shall not be covered.

**6.3(13) *Limitations on benefits and contributions.***

*a. Section 415(b) limitations on benefits.* A member may not receive an annual benefit that exceeds the dollar amount specified in Section 415(b)(1)(A) of the Internal Revenue Code, subject to the applicable adjustments in Internal Revenue Code Sections 415(b) and 415(d). For purposes of applying the limits under Internal Revenue Code Section 415(b) (Limit), the following will apply:

(1) With respect to a member who does not receive a portion of the member's annual benefit in a lump sum:

1. The member's Limit will be applied to the member's annual benefit in the first limitation year without regard to any automatic cost-of-living increases;

2. To the extent the member's annual benefit equals or exceeds the Limit, the member will no longer be eligible for cost-of-living increases under the IPERS trust fund until such time as the benefit plus the accumulated increases are less than the applicable Limit; and

3. Thereafter, in any subsequent limitation year, the member's annual benefit including any automatic cost-of-living increase shall be tested under the then applicable benefit Limit, including any adjustment to the Internal Revenue Code Section 415(b)(1)(A) dollar limit under Internal Revenue Code Section 415(d) (cost-of-living adjustments) and the regulations thereunder; and

(2) With respect to a member who receives a portion of the member's annual benefit in a lump sum:

1. The member's applicable Limit shall be applied taking into consideration automatic cost of living increases as required by Internal Revenue Code Section 415(b) and applicable Treasury Regulations; and

2. In no event shall a member's annual benefit payable under the system in any limitation year be greater than the Limit applicable at the annuity starting date, as increased in subsequent years pursuant to Internal Revenue Code Section 415(d) and the regulations thereunder. If the form of benefit without regard to the automatic benefit increase feature is not a straight life or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the Limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent straight life annuity benefit determined using the assumptions required by Treasury Regulations, including the mortality table specified in Revenue Ruling 2001-62 or Revenue Ruling 2007-67, as applicable.

*b. Section 415(c) limitations on contributions and other member additions.* Member contributions and other additions paid to the system may not exceed the annual limits on contributions and other additions allowed by Internal Revenue Code Section 415(c). For purposes of applying these limits, the definition of “compensation,” where applicable, will be compensation as defined in Treasury Regulation Section 1.415(c)-2(d)(3), or successor regulation. The foregoing definition of compensation will exclude member contributions picked up under Internal Revenue Code Section 414(h)(2) and, for plan years beginning after December 31, 1997, compensation will include the amount of any elective deferrals, as defined in Internal Revenue Code Section 402(g)(3), and any amount contributed or deferred by the employer at the election of the member and which is not includible in the gross income of the member by reason of Internal Revenue Code Section 125 or 457 and, for plan years beginning on and after January 1, 2001, pursuant to Internal Revenue Code Section 132(f)(4).

*c. Limitation year.* The limitation year is the calendar year.

**6.3(14)** *Employer payments treated as remuneration counted against the reemployment earnings limit.* All taxable or nontaxable compensation, regardless of the title, tag line, label, or classification attributed to that compensation paid by IPERS-covered employers to retired reemployed IPERS members, shall be considered remuneration when determining reemployment earnings limits and reductions as set forth under Iowa Code section 97B.48A and rule 495—12.8(97B). This rule shall apply whether the compensation is paid pursuant to individual contracts or otherwise, and regardless of whether it is considered covered or noncovered compensation under Iowa Code section 97B.1A(26) and the administrative rules thereunder, except for:

- a.* Contributions to health insurance plans and programs, and
- b.* Reimbursements of actual work-related expenses required by the retired reemployed members’ jobs.

**6.3(15)** *Employer contributions as remuneration counted against the reemployment earnings limit.* Employer contributions made on behalf of retired reemployed members to tax qualified and nonqualified retirement and deferred compensation plans and to other fringe benefit arrangements, excluding health insurance plans and programs, shall constitute remuneration from employment which shall be applied to the reemployment earnings limits and reductions set forth under rule 495—12.8(97B). Such contributions, even if counted as remuneration hereunder, shall not be counted as covered wages, unless the facts in the particular case indicate that, under the circumstances, the arrangement should be treated as covered wages under rules 495—6.1(97B) through 495—6.5(97B). Nonelective employer contributions to the following shall constitute remuneration when determining reemployment earnings limits: tax qualified retirement and deferred compensation plans; all nonqualified retirement plans and deferred compensation arrangements; IRAs; rabbi, secular, and other trust arrangements; split dollar and other life insurance arrangements; and long-term care insurance.

[ARC 7759B, IAB 5/6/09, effective 4/17/09; ARC 7916B, IAB 7/1/09, effective 8/5/09; ARC 2981C, IAB 3/15/17, effective 4/19/17; ARC 4337C, IAB 3/13/19, effective 4/17/19]

**495—6.4(97B) Month for which wages are to be reported.** Wages are reportable for the month in which they are actually paid to the employee, except when employees are awarded lump sum payments of back wages, whether as a result of litigation or otherwise, receive lump sum payments of extra duty pay, and similar situations involving regular and periodic lump sum payments which IPERS in its sole discretion determines should be treated as covered wages. The employer shall file with IPERS wage adjustments allocating the wages to the periods of service for which such payments are awarded. Employers shall forward the required employer and employee contributions and interest to IPERS.

**6.4(1)** *Actual and constructive receipt.* An employer cannot report wages as having been paid to employees as of a monthly reporting date if the employee has not actually or constructively received the payments in question. For example, wages that are mailed, transmitted via electronic funds transfer for direct deposit, or handed to an employee on June 30 would be reported as June wages, but wages that are mailed, transmitted via electronic funds transfer for direct deposit, or handed to an employee on July 3 would be reported as July wages.

**6.4(2)** One quarter of service will be credited for each quarter in which a member is paid IPERS-covered wages.

*a.* “Covered wages” means wages of a member during periods of service that do not exceed the annual covered wage maximum as permitted for a given year under Sections 401(a)(17)(A) and (B) of the Internal Revenue Code, which are incorporated herein by this reference.

*b.* If a member is employed by more than one employer during the calendar year, the total amount of wages paid by all covered employers shall be included in determining the annual covered wage limit established under Sections 401(a)(17)(A) and (B) of the Internal Revenue Code. If the amount of wages paid to a member by several employers during any given month exceeds the covered wage limit as determined for that calendar year, the amount of the excess shall not be subject to contributions required by Iowa Code section 97B.11. IPERS shall not accept excess wages and applicable contributions from employers and shall return excess contributions as provided in 495—subrule 4.3(8).

[ARC 7759B, IAB 5/6/09, effective 4/17/09; ARC 7916B, IAB 7/1/09, effective 8/5/09; ARC 9397B, IAB 2/23/11, effective 3/30/11; ARC 2981C, IAB 3/15/17, effective 4/19/17; ARC 4337C, IAB 3/13/19, effective 4/17/19]

**495—6.5(97B) Covered wage treatment for employer contributions to IRC Section 125 plans.** If certain conditions are met, employer contributions to fringe benefit programs that qualify under IRC Section 125 may be treated as covered wages. The following subrules set forth IPERS’ regulations for determining covered wage treatment and for making wage adjustments when employer-paid contributions have been covered or excluded in violation of the standards set forth below.

**6.5(1) Section 125 plans.** For purposes of this rule, a Section 125 plan means an employer-sponsored fringe benefit plan that is subject to Section 125 of the federal Internal Revenue Code (IRC). Some of the common names for this type of plan are cafeteria plan, flexible benefits plan, flex plan, and flexible spending arrangement.

*a.* Effective January 1, 2017, employers must annually certify to IPERS, on a form approved by the system, that their Section 125 plans meet all IRC requirements.

*b.* If an employer does not certify its Section 125 plan’s compliance with the IRC, all employer contributions to fringe benefit plans will be excluded from IPERS coverage.

**6.5(2) Elective employer contributions.** For purposes of this rule, “elective employer contributions” means employer contributions made to a Section 125 plan that can be received in cash or used to purchase benefits under the Section 125 plan. Generally, elective employer contributions that are not subject to special eligibility requirements qualify as covered wages.

**6.5(3) Mandatory minimum coverage requirements.** The term “elective employer contributions” does not include employer contributions that must be used to purchase benefits under a Section 125 plan. For example, if an employer provides \$2,500 to its employees to purchase benefits in a Section 125 plan, but requires that all employees must use \$1,000 of that amount to purchase single health coverage, the cost of the single coverage is deducted. In this example, \$1,000 would be subtracted from the \$2,500 provided, resulting in \$1,500 of covered wages.

**6.5(4) Uniformity determined coverage group by coverage group.** Iowa Code section 97B.1A(26) “a”(1) “b” states that elective employer contributions shall be treated as covered wages only if made uniformly available and not limited to highly compensated employees. The application of the uniformity concept may be illustrated as follows: Employer Z has two major groupings of employees covered under its cafeteria plan: teaching staff and support staff. Every member of the teaching staff is provided \$3,000 to purchase benefits under the Section 125 plan. Every member of the teaching staff must take single coverage costing \$1,500. Every member of the support staff is provided \$2,500 and must also take the single coverage costing \$1,500. Each member of the teaching staff would have \$1,500 treated as covered wages, and each member of the support staff would have \$1,000 treated as covered wages. This would be considered uniform treatment.

Uniformity is not destroyed by the fact that the amount available to members of a coverage group varies because the actual cost of mandatory minimum coverage varies depending on actuarial factors that apply to each individual. For example, assume Employer Z above also requires each employee to have long-term disability coverage. In Employer Z’s case, the actual cost of disability coverage will vary

from individual to individual. In that case, Employer Z would also deduct the actual cost of the required disability coverage, individual by individual, when determining IPERS-covered wages.

Uniformity is not destroyed if an employer has two groups of employees who, as a result of collective bargaining, have differing entitlements to employer contributions. For example, Employer Y has a contract that provides \$3,500 to each employee to purchase benefits under the Section 125 plan. Every employee may take all the cash by waiving participation in the plan, or may use all or part of the employer contributions to the Section 125 plan. In the collective bargaining process, a new contract is adopted which states that the employer will still provide \$3,500 to each employee to purchase benefits under the Section 125 plan. However, under the new contract, persons who waived participation before April 15 may still waive participation in the plan and take all the cash, but persons who did not waive participation and those hired after April 15 must have single coverage costing \$1,700. Employer Y would be treated as having two groups of employees with different elective employer contribution amounts. The grandfathered group (employees who waived participation before April 15) would have covered wages of \$3,500, and the group consisting of those who did not waive participation before April 15 and new employees would have covered wages of \$1,800.

**6.5(5) *Highly compensated employee test.*** Iowa Code chapter 97B provides that, in addition to being uniformly available, employer contributions must not discriminate in favor of highly compensated employees (HCEs). For purposes of this subrule, an HCE is an employee who has reported wages and tips subject to Medicare tax in excess of the IRC Section 414(q) limit then in effect. IPERS shall apply the HCE limitation as follows. If elective employer contributions are made available to HCEs, the total elective employer contributions made available to the HCE group must not exceed 25 percent of the total elective employer contributions made available under the Section 125 plan to all employees, including the HCEs. If the elective employer contributions available to the HCE group exceed the 25 percent limit (or if it is determined that the Section 125 plan discriminates in favor of HCEs under other IRS rules), elective employer contributions for HCEs shall not exceed the highest amount available to a nonexecutive coverage group of employees covered under such plan. The general application of these principles is illustrated below, using the 2002 IRC Section 414(q) dollar limit of \$90,000.

Employer W has a Section 125 plan that provides elective employer contributions totaling \$7,000 to executive staff, \$4,500 to teaching staff, and \$3,500 to support staff. There are no other limits or exclusions that apply. These amounts are treated as covered wages for each member of each group, provided that the total amount of contributions made available to HCEs does not exceed 25 percent of the total elective employer contributions for all employees covered under the plan. If elective employer contributions for the executive staff totaled \$70,000, and total elective employer contributions for the remainder of the staff totaled \$500,000, the HCE percentage of total elective employer contributions would be 12 percent (\$70,000 divided by \$570,000), and all elective employer contributions would be treated as covered wages for all groups. However, if elective employer contributions for the executive staff totaled \$70,000, and elective employer contributions for the remainder of the staff totaled \$200,000, the HCE percentage would be 26 percent (\$70,000 divided by \$270,000), and HCEs' elective employer contributions would be limited to \$4,500 per HCE for covered wage purposes.

**6.5(6) *Elective employer contributions limited to dual coverage employees.*** In some cases, a Section 125 plan provides for what appear to be mandatory employer contributions for health plan coverage, but the terms of the Section 125 plan permit dual coverage employees to waive coverage and receive the employer contributions in cash, if the employee can prove coverage under another health care plan. IPERS shall continue to treat the full amount of employer contributions in such cases as not being IPERS-covered wages, even though individual employees with the described dual coverage may actually receive the employer contribution in cash.

[ARC 8929B, IAB 7/14/10, effective 6/21/10; ARC 9068B, IAB 9/8/10, effective 10/13/10; ARC 2402C, IAB 2/17/16, effective 3/23/16; ARC 4337C, IAB 3/13/19, effective 4/17/19]

**495—6.6(97B) Corrections of overpayments and underpayments of contributions and benefits caused by misreporting of covered wages.** IPERS shall use the following guidelines in requiring corrections of overpayments and underpayments of contributions caused by misreported wages or

IPERS-covered service. Corrections must be made for all current employees omitted in error, active, retired, and inactive members, subject to the following limitations:

**6.6(1)** If employer and employee contributions were underreported, wage adjustments shall be filed and employers shall be billed for all shortages of employer and employee contributions plus interest. Employers shall be entitled to collect reimbursement for the employee share of contributions as provided in Iowa Code section 97B.9. If retirement benefits have been underpaid as a result of the error, IPERS shall, upon receipt of the contribution shortage, make the appropriate adjustments and pay all back benefits.

**6.6(2)** If employer and employee contributions were overreported, wage adjustments shall be filed and the appropriate contribution amounts shall be credited to employers for distribution to the respective employee and employer contributors. If the reporting error caused an overpayment of retirement benefits, IPERS may offset excess contributions received against overpayments and shall request a repayment of the remainder of the overpayment, if any, from the recipient.

Wage adjustments, overpayments and underpayments, and unintentional reporting errors shall be determined as of the onset of the error. Notwithstanding the foregoing adjustment and collection standards, IPERS reserves the right to negotiate adjustments with individual employers in special situations, and no negotiated settlement with an employer shall be deemed to constitute a waiver of this rule or a binding precedent for other employers.

[ARC 4337C, IAB 3/13/19, effective 4/17/19]

These rules are intended to implement Iowa Code sections 97B.1A(26), 97B.9, 97B.11, 97B.14 and 97B.14A.

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CHAPTER 7  
SERVICE CREDIT AND VESTING STATUS  
[Prior to 11/24/04, see 581—Ch 21]

**495—7.1(97B) Service credit.**

**7.1(1) General.**

*a.* A member shall receive membership service credit for service rendered after July 4, 1953. Service is counted to the complete quarter calendar year. A calendar year shall not include more than four quarters.

*b.* From July 4, 1953, through June 30, 1965, a member received one quarter of service credit for each quarter in which the member's covered wages totaled at least \$200. From July 1, 1965, through June 30, 1992, a member received one quarter of service credit for each quarter in which the member's covered wages totaled at least \$300. For quarters beginning July 1, 1992, and later, a member shall receive one quarter of service credit for each calendar quarter in which at least \$1 of covered wages is reported.

*c.* Notwithstanding paragraph 7.1(1) "b" above, a member who is on an unpaid leave of absence and who during the period covered by the unpaid leave performs services for the covered employer granting the unpaid leave shall not receive service credit for such services until the employer has reported \$1,000 in each of two consecutive quarters included in the unpaid leave period, and such service credit shall be granted only with respect to quarters beginning after said two consecutive quarters.

*d.* A nonvested member who terminates covered employment prior to attaining the age of 55, but who has covered wages in the year in which the member attains the age of 55 shall be treated as a vested member.

*e.* Notwithstanding paragraph 7.1(1) "d" above, effective July 1, 2012, a nonvested member who is not vested by age as of June 30, 2012, can only become vested by age if the member terminates employment at age 65 or older while in covered employment.

**7.1(2) Service credit for persons employed by institutions operating on a nine-month basis.** An employee working in a position for a school district or other educational institution which operates on a nine-month basis shall receive credit for the third quarter when covered wages are reported in the second and fourth quarters. A member who was on an approved leave of absence in the second quarter, but who has service credit for that quarter, whether by operation of law or through a service purchase, and who returns to work in the fourth quarter immediately following shall also receive credit for the missing third quarter. In order for the member to receive this service credit, the quarters before and after the third quarter must be reported for the same occupation class code.

**7.1(3) Approved leave periods.**

*a.* Effective July 1, 1998, a member's service is not deemed interrupted while a member is on a leave of absence that qualifies for protection under the Family and Medical Leave Act of 1993 (FMLA), or would qualify but for the fact that the type of employment precludes coverage under the FMLA, or during the time a member is engaged in military service for which the member is entitled to receive credit under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) (38 U.S.C. Sections 4301 to 4333).

*b.* Reentry into public employment by an employee on military leave can be achieved if the individual accepts employment with a covered employer. Reemployment may begin anytime within 12 months of the individual's discharge from military service or, if longer, within the period provided under USERRA. Upon reemployment the member shall receive credit for all service to which the member is entitled pursuant to USERRA.

Notwithstanding any provision of Iowa Code chapter 97B or these rules to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Internal Revenue Code Section 414(u).

For reemployments initiated on or after December 12, 1994, a member shall be treated as receiving compensation for each quarter during the member's period of military service equal to the compensation that the member would have received but for the period of military service, as certified by the member's

employer on forms supplied by IPERS. The member's deemed compensation during the period of military service shall be taken into consideration in determining a member's make-up contributions, if any, and the member's high three-year average covered wage.

For reemployments initiated on or after December 12, 1994, following a military leave described in this subrule, make-up contributions shall be permitted with respect to employee contributions that would have been made during the period of military service if the member had actually been in covered employment during the period earning the deemed compensation provided for under this subrule. Make-up contributions shall be permitted during the five-year period that begins on the date of reemployment or, if less, a period equal to three times the period of military service.

The member shall request the foregoing make-up contributions (except contributions for periods prior to January 1, 1995, which shall be made as posttax contributions) on forms to be filed with the employer, which shall forward a copy to the system. Make-up contributions shall be made as pretax contributions under Internal Revenue Code Section 414(h)(2). Employers must comply with a member's request to begin make-up contributions during a period not exceeding that described in the preceding paragraph and shall forward said amounts to the system in the same manner as provided for pick-up contributions under Iowa Code section 97B.11A. An election to make up employee contributions under this subrule shall be irrevocable.

c. Effective for leaves of absence beginning on or after July 1, 1998, an eligible member must make contributions to the system in order to receive service credit for the period of the leave (except for leaves under paragraphs "a" and "b" above).

d. Reentry into public employment by an employee on a leave of absence under paragraphs "a" and "b" can be achieved by the employee by accepting employment with any public employer, provided that any interruption between the end of the period of leave of absence and reentry into public employment meets the requirements of the FMLA, USERRA and this subrule.

e. Credit for a leave of absence shall not be granted and cannot be purchased for any time period which begins after or extends beyond an employee's termination of employment as certified by the employer. This includes a certification of termination of employment made by an employer on a refund application. Employers shall be required to certify all leaves of absence for which credit is being requested using an affidavit furnished by IPERS and accompanied by a copy of the official record(s) which authorized the leave of absence. The provisions of this subrule denying credit for leaves of absence in cases in which the member takes a refund shall not apply to employees who were on leaves of absence that began before November 27, 1996, and took a refund before such date. The provisions of the subrule requiring employers to certify all leaves of absence using an affidavit furnished by IPERS shall apply to all requests for leave of absence credit filed after November 27, 1996, regardless of when the leave of absence was granted.

f. Effective July 1, 2008, free service credit will be given in the calculation of death benefits for members who served military duty and met the following conditions:

- (1) Served in a combat zone or hazardous duty area,
- (2) Sustained a service-related injury or disease that prevented the member from returning to IPERS-covered employment, and
- (3) Died of the service-related injury or disease within two years after suffering the injury or disease.

[ARC 8601B, IAB 3/10/10, effective 4/14/10; ARC 0017C, IAB 2/22/12, effective 3/28/12; ARC 4337C, IAB 3/13/19, effective 4/17/19]

#### **495—7.2(97B) Vesting status.**

##### **7.2(1) General.**

a. Effective July 1, 1990, through June 30, 2005, a member achieves vested status when the member has served and made contributions in 16 or more quarters of IPERS covered employment or attains the age of 55. The vested status of a member may also be determined when the member's contribution payments cease. At that time a comparison of the membership date and termination date will be made. If service sufficient to indicate vested status is present, after any periods of interruption in

service have been taken into consideration, the member shall be considered a vested member. All vested members receive all the rights and benefits of a vested member in IPERS until or unless the member files for a refund of accumulated contributions.

*b.* Effective July 1, 2005, a terminated nonvested member who has not attained the age of 55 shall not become vested upon attainment of the age of 55 while an inactive member. However, a member who terminates before attaining the age of 55 who has covered wages in the calendar year when the member terminates and the member attains the age of 55 in that year shall become vested, even if the member has less than 16 quarters of service credit on file at termination.

*c.* Effective July 1, 2012, vesting by age and vesting by service shall be determined as provided in Iowa Code section 97B.1A(25) “a” through “d.” A member who is vested by age or by service as of June 30, 2012, shall remain vested following the implementation of new vesting requirements on July 1, 2012.

**7.2(2)** *Inactive members who become vested due to a statutory reduction in years.* Effective July 1, 1988, an inactive member who had accumulated, as of the date of the member’s last termination of employment, years of membership service equal to or exceeding the years of membership service specified in this rule for qualifying as a vested member on the date of termination shall be considered vested.

**7.2(3)** *Vesting upon complete or partial termination.* In the case of a complete or partial termination of this fund, any affected member shall have a vested interest in the accrued benefit as of the date of such termination, to the extent such benefit is then funded.

**7.2(4)** *Benefit nonforfeitable upon attaining normal retirement age.* For purposes of compliance with the Internal Revenue Code and related guidance, the normal retirement benefit, which is the benefit calculated under Iowa Code sections 97B.49A through 97B.49D, is nonforfeitable upon attainment of normal retirement age, which: (1) prior to July 1, 2012, is age 55 or the completion of 16 quarters of IPERS covered employment, whichever is later; and (2) for members who are not vested under one of the methods under (1) on July 1, 2012, is age 65 or completion of 28 quarters of IPERS covered employment, whichever is later. The retirement benefit is subject to the provisions of Iowa Code section 97B.52A. This subrule is not to be construed as a reduction or limitation of rights heretofore existing, nor as an indication that vested benefits would be forfeitable before the stated age is attained.

**7.2(5)** *Vesting at age 55 prior to July 1, 2012.* IPERS shall interpret Iowa Code section 97B.1A(25) “a”(3) as follows: for periods prior to July 1, 2012, the phrase “has attained the age of fifty-five or greater while in covered employment” means “has attained the age of fifty-five or greater while an active member, as defined in Iowa Code section 97B.1A(3)”.

**7.2(6)** *Vesting after June 30, 2012.* For periods after June 30, 2012, the member becomes vested if the member meets one of the following requirements:

*a.* For a member in a special service, has attained the age of 55 or greater while in covered employment.

*b.* For a member in regular service, has attained the age of 65 or greater while in covered employment.

The phrase “covered employment” means “active member” as defined by Iowa Code section 97B.1A(3).

[ARC 0017C, IAB 2/22/12, effective 3/28/12; ARC 4337C, IAB 3/13/19, effective 4/17/19]

These rules are intended to implement Iowa Code sections 97B.1A, 97B.1A(13), 97B.1A(20), 97B.1A(25), and 97B.43.

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CHAPTER 8  
SERVICE PURCHASES  
[Prior to 11/24/04, see 581—Ch 21]

**495—8.1(97B) Service eligible for purchase.**

**8.1(1) *Estimates and cost quotes.*** All service purchase estimates and cost quotes shall be calculated at actuarial cost. The following procedures and calculations shall apply:

*a. Service purchase estimate prior to retirement.* Members who are vested by service may request a service purchase estimate by completing and submitting a service purchase application. Once the application is submitted, IPERS shall complete a cost estimate. This calculation is an estimate only and is not considered binding. The cost estimate shall be calculated as follows:

(1) IPERS will calculate the actuarial cost by capturing the projected baseline benefit attributes at the member's anticipated retirement date without any service purchase quarterly credits including: average salary, years of service, the Option 2 benefit amount, accumulated member contributions and the calculated present-day reserve value. The present-day reserve value is a lump sum value calculated with actuarial tables provided by the system's actuary which represents the lump sum value sufficient to pay the monthly benefits over the member's expected life span.

(2) With each potential purchasable quarterly service credit, IPERS will recalculate the Option 2 benefit amount. A new present-day reserve value will also be calculated. The cost of each quarterly service credit will be the difference between the new reserve amount and the previous one.

*b. Final service purchase cost quote at retirement.* On or before the date that a member's first benefit payment is issued, a member who is vested by service may request a final service purchase cost quote by completing and submitting an application for retirement/disability benefit indicating the member's desire to receive a final service purchase cost quote. After the completed application has been submitted, IPERS shall generate a final service purchase cost quote once all of the member's wages are submitted to IPERS, which may be after the member's first month of entitlement. The final cost quote shall be calculated as follows:

(1) IPERS will calculate the cost by capturing the baseline benefit attributes at the member's first month of entitlement without any service purchase quarterly credits including: average salary, years of service, the Option 2 benefit amount, accumulated member contributions and the calculated present-day reserve value. The present-day reserve value is a lump sum value calculated with actuarial tables provided by the system's actuary which represents the lump sum value sufficient to pay the monthly benefits over the member's expected life span. With each potential purchasable service credit, IPERS will recalculate the Option 2 benefit amount. A new present-day reserve value will also be calculated. The cost of each purchasable quarter of service credit will be the difference between the new reserve amount and the previous one.

(2) The retired member will have six months from the date in which IPERS generates the final service purchase cost quote to purchase additional service.

(3) If the retired member purchases service within the six-month deadline, the increase in the retirement benefit shall be made effective with the month of the service purchase payment.

(4) Retired members who do not indicate their desire for a final service purchase cost quote on or before the date their first payment is issued or do not complete the purchase within the six-month deadline indicated on the final service purchase cost quote shall not be eligible to purchase additional credit.

(5) Retired members who selected Option 1 upon retirement may request the lump sum death benefit to be increased to take into account the additional contributions from making a service purchase. If the member requests an increase in the death benefit, the monthly benefit will be reduced to take into account the increased death benefit.

*c. Cost adjustments due to changes in the original retirement benefit.* If an error in the service purchase cost is discovered or a retired member's account is adjusted in any manner after a purchase is made, IPERS may rescind the service purchase, make adjustments to the service purchase cost, or adjust the retirement allowance to ensure the member paid the actuarial cost of buying additional service. In

the event that a retired member overpays due to an adjustment, IPERS will issue a refund to the retired member directly or to the rollover institution.

**8.1(2) *Service credit for other public employment.***

*a.* A member may make application to IPERS for purchasing credit for service rendered to another public employer. In order to be eligible, a member must:

(1) Have been a public employee in a position comparable to an IPERS covered position at the time the application for buy-in is processed. Effective July 1, 1990, “public employee” includes a member who had service as a public employee in another state, or for the federal government, or within other retirement systems established in the state of Iowa; and

(2) Submit verification of service for that other public employer to IPERS.

*b.* A period of service is defined as follows: (1) if a member was continuously employed by an employer, the entire time is one period of employment, regardless of whether a portion or all of the service was covered by one or more retirement systems; and (2) if a member is continuously employed by multiple employers within a single retirement system, the entire service credited by that retirement system is one period of employment. A member with service credit under another public employee retirement system who wishes to transfer only a portion of the service value of the member’s public service in another public system to IPERS must provide a waiver of that service time to IPERS together with proof that the other public system has accepted this waiver and allowed partial withdrawal of service credit. Members are allowed to purchase time credited by the other public employer as a leave of absence in the same manner as other service credit. However, members wishing to receive free credit for military service performed while in the employ of a qualifying non-IPERS covered public employer must purchase the entire period of service encompassing the service time for that public employer or in the other retirement system, excluding the military time. Veterans’ credit originally purchased in another retirement system may be purchased in the same manner as other service credit.

**8.1(3) *IPERS buy-back.*** Members may buy back previously refunded IPERS service credit under the methodology of subrule 8.1(1).

**8.1(4) *Veterans’ credit.*** A member may make a service credit purchase for a period of active duty service in the armed forces of the United States if the member produces verification of active duty service in the armed forces of the United States.

**8.1(5) *Legislative members.***

*a. Active members.* Persons who are members of the Seventy-first General Assembly or a succeeding general assembly during any period beginning July 4, 1953, may, upon proof of such membership in the general assembly, make contributions to the system for all or a portion of the period of such service in the general assembly.

*b. Vested or retired former members of the general assembly.*

(1) The member shall submit to IPERS proof of membership in the general assembly for the period claimed.

(2) Upon determining a member eligible and receiving the appropriate contributions from the member, IPERS shall credit the member with the period of membership service for which contributions are made.

*c. Actuarial cost.* Effective January 1, 2016, the member must be vested by service and must pay 40 percent and the Iowa legislature shall pay 60 percent of the actuarial cost of a service purchase, as certified by IPERS. In calculating the actuarial cost, IPERS shall apply the same actuarial assumptions, procedures and cost methods as those described in subrule 8.1(1).

**8.1(6) *Employer-approved leaves of absence.*** Service credit for employer-approved leaves of absence that begin on or after July 1, 1998, may be purchased.

**8.1(7) *Service credit for elective coverage positions—coverage not elected.*** Service credit for periods of time prior to January 1, 1999, when the member was employed in a position for which coverage could have been elected, but was not, may be purchased.

**8.1(8) *Service credit for noncovered public employment in Iowa.*** A member who was previously employed in public employment for which optional coverage was not available, such as substitute teaching or other temporary employment, may purchase service credit for such employment subject

to the requirements of Iowa Code section 97B.80C. Service credit may not be purchased under this subrule for periods in which the individual was performing services as an independent contractor.

[ARC 1887C, IAB 2/18/15, effective 3/25/15; ARC 2402C, IAB 2/17/16, effective 3/23/16; ARC 4337C, IAB 3/13/19, effective 4/17/19]

**495—8.2(97B) Revocation of service purchase application and refund of amounts paid.** A member may revoke a service purchase application and receive a refund without interest of all or a portion of amounts paid to IPERS to buy back prior service credit or to purchase credit for other service pursuant to Iowa Code chapter 97B. The revocation must be made in writing and must be made within 60 days after the date of receipt of such amounts by IPERS. Such refunds shall be in increments representing one or more quarters. Furthermore, this rule shall not limit IPERS' ability to refund service purchase amounts when required in order to meet the provisions of the Internal Revenue Code that apply to IPERS. This rule shall be effective for revocation requests received by IPERS on or after May 3, 1996.

[ARC 4337C, IAB 3/13/19, effective 4/17/19]

**495—8.3(97B) IRC Section 415(n) compliance.** Service purchases made under this chapter, including buy-backs and buy-ups, shall not exceed the defined contribution dollar limit then in effect under Internal Revenue Code Section 415(c)(1), per calendar year, as provided under IRC Section 415(n)(2)(B). In addition, the amounts contributed for service purchases under this chapter shall not exceed the amount required to purchase the service according to the current cost schedules. In implementing these and the other requirements of IRC Section 415(n), IPERS shall use the following procedures.

**8.3(1)** If the member's total benefit at retirement passes the fully reduced IRC Section 415(b) dollar limit test, IPERS shall pay the total benefit.

**8.3(2)** If the member's total benefit at retirement fails the fully reduced IRC Section 415(b) dollar limit test, and the member made one or more service purchases, IPERS shall perform the applicable IRC Section 415 tests, with adjustments for posttax service purchases and other posttax contributions, and pay excess amounts, if any, under a qualified benefits arrangement authorized under Iowa Code section 97B.49I.

**8.3(3)** IPERS permits the purchase of nonqualified service credit, as defined under IRC Section 415(n). "Nonqualified service" means:

- a. Service that is not qualified service under Iowa Code section 97B.80C; and
- b. Service for which no services were performed; and
- c. Service for which the member is entitled to receive retirement benefits under another retirement plan.

A member must have 20 quarters of existing service to make such a purchase. Nonqualified service credit purchased shall not exceed 20 quarters. This limit is an aggregate limit that applies to all quarters categorized as nonqualified service credit.

**8.3(4)** The limitations of this rule shall apply to buy-backs of prior refunds. In addition, the annual limit under this rule shall not apply to service purchases grandfathered under the provisions of the Iowa Code and Section 1526 of the Taxpayer Relief Act of 1997.

**8.3(5)** If IPERS adopts rules and procedures permitting service to be purchased on a pretax basis, the amounts contributed will not be combined with posttax service purchases and other posttax contributions in applying the foregoing procedures.

**8.3(6)** The IRC Section 415(c) limitations shall not apply to a service purchase that qualifies as a direct rollover from an eligible retirement plan or a direct transfer from a plan qualified under IRC Section 403(b) or 457.

**8.3(7)** IPERS reserves the right to apply the limitations of IRC Section 415(n) on a case-by-case basis to ensure that such limits are not exceeded.

[ARC 4337C, IAB 3/13/19, effective 4/17/19]

**495—8.4(97B) Required quarters of wages on file.** Rescinded ARC 4337C, IAB 3/13/19, effective 4/17/19.

**495—8.5(97B) Additional information, procedures and limitations.**

**8.5(1) Additional service purchase procedures.**

a. Service purchase cost quotes for members currently in special service positions shall be prepared as special service credit.

b. Members covered under another retirement plan. Members who wish to buy service credit for employment that is covered by another retirement plan qualified under IRC Section 401, IRC Section 403 or 457 and similar plans and retirement pay from the United States government for active duty in the armed forces (except retirement pay for nonregular service pursuant to 10 U.S.C. Sections 12731-12739) must waive their right to benefits based on the service credit that is being purchased under IPERS.

c. Effective January 1, 2007, IPERS may, notwithstanding certain provisions of Iowa Code section 97B.82 adopted in order to comply with prior rollover provisions of the Internal Revenue Code, utilize forms and procedures permitting direct rollover service purchases to include after-tax amounts as provided under the applicable rollover provisions of the Internal Revenue Code as amended subsequent to the enactment of Iowa Code section 97B.82.

**8.5(2) Additional service purchase limitations.**

a. Under no circumstances shall service purchases be allowed for quarters already on file with IPERS as covered quarters.

b. If a member has requested a service purchase cost quote and, before the six-month expiration has passed, submits another request for a service purchase cost quote for the same or different employer, the new service purchase cost quote will be based on a combination of the two service purchase cost quotes. The latest service purchase cost quote shall supersede all prior cost quotes provided to the member for the quarters that the member purchases after the issuance of the second cost quote.

c. Self-employed and independent contractor members. Members shall not be permitted to purchase service credit for periods of self-employment or as an independent contractor.

**8.5(3) Buy-up of service credit through service purchase.** Effective July 1, 2008, IPERS members may be allowed to “buy up” service credit. The term “buy up” means to convert regular service credit to special service credit by payment of the actuarial cost pursuant to the requirements of subrule 8.1(1).

a. *Mixture of service time.* If a member’s service time contains a mixture of regular, protection and sheriff service credit, IPERS shall prepare buy-up cost quotes prior to other service credit purchases and shall process the buy-up as follows:

(1) If the member is currently employed in the sheriff class or retired as a sheriff, the cost quote shall be prepared reflecting a buy-up to sheriff service credit.

(2) If the member is not currently employed in the sheriff class or did not retire as a sheriff, the cost quote shall be prepared reflecting a buy-up to protection occupation service credit.

b. *Wage adjustment after a buy-up.* If an employer wage adjustment completely removes a member’s service credit in a buy-up quarter, IPERS shall correct the service credit and perform the necessary recalculations.

c. *IRS limitations.* Buy-up service purchases will be aggregated with buy-in and buy-back service purchases during a calendar year and shall not exceed the defined contribution dollar limit then in effect under Section 415(c) of the Internal Revenue Code. Amounts that are rolled over from other qualified plans for service purchases are excluded from these limits.

[ARC 1887C, IAB 2/18/15, effective 3/25/15; ARC 4337C, IAB 3/13/19, effective 4/17/19]

**495—8.6(97B) Adjustments.** If an error in the service purchase cost is discovered or a member’s account is adjusted in any manner after a purchase is made, IPERS may rescind the service purchase, make adjustments to the service purchase cost, or adjust the retirement allowance to ensure the active or retired member is paying the actuarial cost of buying additional service.

[ARC 1887C, IAB 2/18/15, effective 3/25/15]

These rules are intended to implement Iowa Code sections 97B.1A, 97B.1A(13), 97B.1A(20), 97B.43, 97B.80, 97B.80C, and 97B.82.

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CHAPTER 9  
REFUNDS

[Prior to 11/24/04, see 581—Ch 21]

**495—9.1(97B) Refunds for members with only one type of service credit.** A member is eligible for a refund of the employee accumulated contributions as soon as practicable after the last date the member is considered an employee, provided that the employee has filed the required forms and has not returned to covered employment before the date the refund is paid. Effective July 1, 1999, a vested member's refund shall also include a portion of the employer accumulated contributions. Refund amounts are determined as follows:

**9.1(1)** Employee accumulated contributions. Upon receiving an eligible member's application for refund, IPERS shall pay to the terminated member the amount of the employee accumulated contributions currently reported to, and processed by, IPERS as of the date of the refund. Upon reconciliation of the final employee contributions for that member, a supplemental refund of the employee accumulated contributions will be paid if funds remain in the member account.

**9.1(2)** Employer accumulated contributions. IPERS shall also pay to vested members, in addition to the employee accumulated contributions, a refund of a portion of the employer accumulated contributions. The refundable portion shall be calculated by multiplying the employer accumulated contributions by the "service factor." The "service factor" is a fraction, the numerator of which is the member's quarters of service and the denominator of which is the "applicable quarters." The "applicable quarters" shall be 120 for regular members and 88 for all special service members.

All quarters of service credit shall be included in the numerator of the service factor. In no event will a member ever receive an amount in excess of 100 percent of the employer accumulated contributions for that member.

In addition to the foregoing provisions, IPERS shall calculate the refundable portion of the employer accumulated contributions as follows:

*a.* Upon reconciliation of the final employer contributions for that member, the member's portion of the employer accumulated contributions will be recalculated. IPERS will add the additional quarter(s) of service to the numerator of the service factor. The adjusted service factor will be multiplied by the sum of the original employer accumulated contributions plus the supplemental employer accumulated contributions. The employer accumulated contributions included in the original refund will then be subtracted from that recalculated figure to determine the amount of employer accumulated contributions to be included in the supplemental refund.

*b.* The member's portion of employer accumulated contributions shall be determined under rule 495—9.2(97B) if the member had a combination of regular service and special service, or a combination of different types of special service.

**9.1(3)** In making calculations under this rule and rule 495—9.2(97B), IPERS shall round to not less than six decimal places to the right of the decimal point.

**495—9.2(97B) Refunds for members eligible for a hybrid refund.** The calculation of the member's portion of employer accumulated contributions for a "hybrid refund" shall be as follows:

**9.2(1)** A "hybrid refund" is a refund that is calculated for a member who has a combination of regular service and special service quarters.

**9.2(2)** If a member is eligible for a hybrid refund, the member's portion of employer accumulated contributions shall be calculated by multiplying the total employer accumulated contributions by: (a) the member's regular service factor, if any; and (b) the special service factor, if any (except as otherwise provided in this subrule). The amounts obtained will be added together to determine the amount of the employer accumulated contributions payable. In no event will a member ever receive an amount in excess of 100 percent of the employer accumulated contributions for that member.

**9.2(3)** Upon reconciliation of the final contributions from a member's employer, the member's portion of the employer accumulated contributions under this rule will be recalculated. IPERS will add the additional quarter(s) of service to the numerator of the applicable service factor. The adjusted

service factor will be multiplied by the sum of the original employer accumulated contributions plus the supplemental employer accumulated contributions. The employer accumulated contributions included in the original refund will then be subtracted from that recalculated figure to determine the amount of the employer accumulated contributions to be included in the supplemental refund.

**9.2(4)** If wages reported for a quarter are a combination of regular and special service wages, IPERS will classify the service credit for each quarter based on the largest dollar amount reported for that quarter. A member shall not receive more than one quarter of service credit for any calendar quarter, even though more than one type of service credit is recorded for that quarter.

**9.2(5)** If a member is last employed in a sheriff or deputy sheriff position, all quarters of “eligible service” shall be counted as quarters of sheriff or deputy sheriff service credit.

**9.2(6)** A special limitation applies to hybrid refunds where the member and employer contributed at regular rates for quarters that are eligible for coverage under Iowa Code section 97B.49B or Iowa Code section 97B.49C. If a member has regular service credit and special service credit and any part of the special service credit consists of quarters for which only regular contributions were made, such quarters will be counted as regular service quarters. However, the foregoing limitation will not apply if the member only has service credit eligible for coverage under Iowa Code section 97B.49B or only has service credit eligible for coverage under Iowa Code section 97B.49C.

**495—9.3(97B) Refund of retired reemployed members’ contributions.** Rescinded IAB 7/14/10, effective 6/21/10.

**495—9.4(97B) General administrative provisions.** In addition to the foregoing, IPERS shall administer a member’s request for a refund as follows:

**9.4(1)** To obtain a refund, a member must file a refund application form, which is available directly from IPERS or which can be reprinted from IPERS’ website: [www.ipers.org](http://www.ipers.org). Effective December 31, 2002, refund application forms shall only be available from IPERS. If the member is married, election of a refund under this chapter requires the written acknowledgment of the member’s spouse. However, the system may accept a married member’s election of a refund under this chapter without the written acknowledgment of the member’s spouse if the member submits a notarized statement affirming that, after reasonable diligent efforts, the member has been unable to locate the member’s spouse to obtain the written acknowledgment of the spouse. The member’s election of a refund shall become effective upon filing the necessary forms, including the notarized statement, with the system. The system shall not be liable to the member, the member’s spouse, nor to any other person affected by the member’s election of a refund based upon an election of a refund accomplished without the written acknowledgment of the member’s spouse.

**9.4(2)** The last date the member is considered an employee and the date of the last paycheck from which IPERS contributions will be deducted must be certified by the employer on the refund application unless the member has not been paid covered wages for at least one year or the employer has provided the termination date and date of the last paycheck on the monthly wage reports filed with IPERS. Terminated employees must keep IPERS advised in writing of any change in address so that refunds and tax documents may be delivered. Unless an electronic funds transfer is requested by the member, the refund warrant will be mailed to the member at the address listed on the application for refund.

**9.4(3)** No payment of any kind is required under this rule if the amount due is less than \$1.

**9.4(4)** Effective July 1, 2004, an employee must sever all covered employment for 30 days after the date the employee was last considered an employee of a covered employer.

**9.4(5)** Effective November 2006, an individual who previously stopped participating in IPERS to begin participating in an alternative plan shall not receive a refund of that individual’s IPERS account while still employed by a covered employer, even if the member is no longer in IPERS covered employment.

[ARC 1348C, IAB 2/19/14, effective 3/26/14; ARC 1887C, IAB 2/18/15, effective 3/25/15; ARC 4337C, IAB 3/13/19, effective 4/17/19]

**495—9.5(97B) Termination of employment—refund option.** If a member is involuntarily terminated from covered employment, has been issued payment for a refund, and is retroactively reinstated in covered employment as a remedy for an employment dispute, the member may receive credit for membership service for the period covered by the refund payment upon repayment to the system, within 90 days after the date of the order or agreement requiring reinstatement, of the amount of the refund plus interest that would have accrued, as determined by the system. A reinstatement following an employment dispute shall not constitute a violation of Iowa Code section 97B.53(4), even if the reinstatement occurs less than 30 days after the date of termination.

[ARC 2402C, IAB 2/17/16, effective 3/23/16]

**495—9.6(97B) Refund followed by commencement of disability benefits under Iowa Code section 97B.50(2).** If a vested member terminates covered employment, takes a refund, and is subsequently approved for disability under the federal Social Security Act or the federal Railroad Retirement Act, the member may reinstate membership service credit for the period covered by the refund by paying the actuarial cost as determined in 495—subrule 8.1(1) and within 90 days after the date federal social security disability or railroad retirement disability payments begin. Repayments must be made by:

1. For members whose federal social security or railroad retirement disability payments begin before July 1, 2000, within 90 days after July 1, 2000; or

2. For members whose social security or railroad retirement disability payments begin on or after July 1, 2000, within 90 days after the date federal social security or railroad retirement payments begin.

[ARC 4337C, IAB 3/13/19, effective 4/17/19]

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CHAPTER 11  
APPLICATION FOR, MODIFICATION OF, AND TERMINATION OF BENEFITS

[Prior to 11/24/04, see 581—Ch 21]

**495—11.1(97B) Application for benefits.**

**11.1(1) Form used.** It is the responsibility of the member to notify IPERS of the intention to retire. This should be done 60 days before the expected retirement date. The application for monthly retirement benefits is obtainable from IPERS, 7401 Register Drive, P.O. Box 9117, Des Moines, Iowa 50306-9117. The printed application form shall be completed by each member applying for benefits and shall be mailed, sent by fax or brought in person to IPERS. An application that is incomplete or incorrectly completed will be returned to the member. To be considered complete, an application must include the following:

- a. Proof of date of birth for the member.
- b. Option selected, and
  - (1) If Option 1 is selected, the death benefit amount.
  - (2) If Option 4 or 6 is selected, the contingent annuitant's name, social security number, proof of date of birth, and relationship to member. The member must designate the survivor benefit percentage, which shall be limited to one of the following:
    1. One hundred percent of the member's benefit amount.
    2. Seventy-five percent of the member's benefit amount.
    3. Fifty percent of the member's benefit amount.
    4. Twenty-five percent of the member's benefit amount.
  - (3) If Option 1, 2, or 5 is selected, a list of beneficiaries.
- c. If the member has been terminated less than one year, or is applying for disability benefits, the employer certification page must be completed by the employer unless the employer has provided the termination date and date of the last paycheck on the monthly wage reports.
- d. Signature of member and spouse, both properly notarized unless witnessed by an authorized employee of the system.
- e. If the member has no spouse, "NONE" must be designated.
- f. If the member is applying for regular disability benefits, a copy of the award letter from the Social Security Administration or railroad retirement.

A retirement application is deemed to be valid and binding on the date the first payment is paid. Members shall not cancel their applications, change their option choice, or change an IPERS option containing contingent annuitant benefits after that date.

**11.1(2) Proof required in connection with application.** Proof of date of birth to be submitted with an application for benefits shall be in the form of a birth certificate, a U.S. passport, an infant baptismal certificate, an identification card or driver's license issued by the state of Iowa, a state identification card that is issued in compliance with the REAL ID Act of 2005, or a driver's license that is issued in compliance with the REAL ID Act of 2005. If these records do not exist, the applicant shall submit two other documents or records which will verify the day, month and year of birth. A photographic identification record may be accepted even if now expired unless the passage of time has made it impossible to determine if the photographic identification record is that of the applicant. The following records or documents are among those deemed acceptable to IPERS as proof of date of birth:

- a. United States census record;
- b. Military record or identification card;
- c. Naturalization record;
- d. A marriage license showing age of applicant in years, months and days on date of issuance;
- e. A life insurance policy;
- f. Records in a school's administrative office;
- g. An official document from the U.S. Citizenship and Immigration Services, such as a "green card," containing such information;
- h. Driver's license or Iowa nondriver identification card;

- i.* Adoption papers;
- j.* A family Bible record. A photocopy will be accepted with a notarized certification that the record appears to be genuine; or
- k.* Any other document or record ten or more years old, or certification from the custodian of such records which verifies the day, month, and year of birth.

If the member, the member's representative, or the member's beneficiary is unable or unwilling to provide proof of birth, or in the case of death, proof of death, IPERS may rely on such resources as it has available, including but not limited to records from the Social Security Administration, Iowa division of records and statistics, IPERS' own internal records, or reports derived from other public records, and other departmental or governmental records to which IPERS may have access.

IPERS is required to begin making payments to a member or beneficiary who has reached the required beginning date specified by Internal Revenue Code Section 401(a)(9). In order to begin making such payments and to protect IPERS' status as a plan qualified under Internal Revenue Code Section 401(a), IPERS may rely on its internal records with regard to date of birth, if the member or beneficiary is unable or unwilling to provide the proofs required by this subrule within 30 days after written notification of IPERS' intent to begin mandatory payments.

**11.1(3) *Benefits estimates.*** Prior to submitting an application for benefits, a member may request IPERS to prepare estimates of projected benefits under the various options as described under Iowa Code section 97B.51. A benefit estimate shall not bind IPERS to payment of the projected benefits under the various options specified in Iowa Code chapter 97B. A member cannot rely on the benefit estimate in making any retirement-related decision or taking any action with respect to the member's account, nor shall IPERS assume any liability for such actions. An estimate will not include deductions for a QDRO or any other legal assignments or orders on a member's account, unless specifically requested by the member. A member's actual benefit can only be known and officially calculated when an eligible member applies for benefits.

**11.1(4) *Revocation of application.*** If IPERS determines an application for benefits is invalid for any reason, IPERS shall revoke, in whole or in pertinent part, the application for benefits and the recipient shall repay all payments made under the revoked application or all payments made pursuant to the revoked part of the application. The terms of repayment shall be subject to the provisions of 495—11.7(97B).

[ARC 8601B, IAB 3/10/10, effective 4/14/10; ARC 1348C, IAB 2/19/14, effective 3/26/14; ARC 1887C, IAB 2/18/15, effective 3/25/15; ARC 2402C, IAB 2/17/16, effective 3/23/16; ARC 2981C, IAB 3/15/17, effective 4/19/17]

#### **495—11.2(97B) Retirement benefits and the age reduction factor.**

##### **11.2(1) *Normal retirement.***

*a.* A member shall be eligible for monthly retirement benefits with no age reduction effective with the first of the month in which the member attains the age of 65, if otherwise eligible.

*b.* Effective July 1, 1998, a member shall be eligible for full monthly retirement benefits with no age reduction effective with the first of the month in which the member attains the age of 62, if the member has 20 full years of service and is otherwise eligible.

*c.* Effective July 1, 1997, a member shall be eligible to receive monthly retirement benefits with no age reduction effective the first of the month in which the member's age on the last birthday and the member's years of service equal or exceed 88, provided that the member is at least the age of 55 and is otherwise eligible.

**11.2(2) *Early retirement.*** A member shall be eligible to receive benefits for early retirement effective with the first of the month in which the member attains the age of 55 or the first of any month after attaining the age of 55 before the member's normal retirement date, provided the date is after the last day of service and the member is otherwise eligible.

**11.2(3) *Aged 70 and older retirees.*** A member shall be eligible to receive monthly retirement benefits with no age reduction effective with the first day of the month in which the member attains the age of 70, even if the member continues to be employed.

##### **11.2(4) *Required beginning date.***

a. Notwithstanding the foregoing, IPERS shall commence payment of a member's retirement benefit under Iowa Code sections 97B.49A to 97B.49I (under Option 2) no later than the "required beginning date" specified under Internal Revenue Code Section 401(a)(9), even if the member has not submitted the application for benefits. If the lump sum actuarial equivalent could have been elected by the member, payments shall be made in such a lump sum rather than as a monthly allowance. The "required beginning date" is defined as the later of: (1) April 1 of the year following the year that the member attains the age of 70½, or (2) April 1 of the year following the year that the member actually terminates all employment with employers covered under Iowa Code chapter 97B.

b. If IPERS distributes a member's benefits without the member's consent in order to begin benefits on or before the required beginning date, the member may elect to receive benefits under an option other than the default option described above, or as a refund, if the member contacts IPERS in writing within 60 days of the first mandatory distribution. IPERS shall inform the member which adjustments or repayments are required in order to make the change.

c. If a member cannot be located to commence payment on or before the required beginning date described above, the member's benefit shall be forfeited. However, if a member later contacts IPERS and wishes to file an application for retirement benefits, the member's benefits shall be reinstated.

d. For purposes of determining benefits, the life expectancy of a member, a member's spouse, or a member's beneficiary shall not be recalculated after benefits commence.

e. If an IPERS member has a qualified domestic relations order (QDRO) on file when a mandatory distribution is required, and the QDRO requires the member to choose a specific retirement option, IPERS shall pay benefits under the option required by the order.

**11.2(5) Mandatory distribution of small inactive accounts.** As soon as practicable after July 1, 2004, IPERS shall distribute small inactive accounts to members and beneficiaries as authorized in Iowa Code section 97B.48(5).

**11.2(6) Federal tax code limitation for selection of survivor percentages for same gender spouses.** Rescinded IAB 2/19/14, effective 3/26/14.

[ARC 8601B, IAB 3/10/10, effective 4/14/10; ARC 1348C, IAB 2/19/14, effective 3/26/14; ARC 1887C, IAB 2/18/15, effective 3/25/15]

#### **495—11.3(97B) First month of entitlement (FME).**

**11.3(1) General.** A member shall submit a written application to IPERS setting forth the retirement date, provided the member has attained at least age 55 by the retirement date and the retirement date is after the member's last day of service. A member's first month of entitlement shall be no earlier than the first day of the first month after the member's last day of service or, if later, the month provided for under subrule 11.3(2). No payment shall be made for any month prior to the month the completed application for benefits is received by IPERS.

If a member files a retirement application but fails to select a valid first month of entitlement, IPERS will select by default the earliest month possible. A member may appeal this default selection by sending written notice of the appeal postmarked on or before 30 days after a notice of the default selection was mailed to the member. Notice of the default selection is deemed sufficient if sent to the member at the member's address.

##### **11.3(2) Additional FME provisions.**

a. Effective through December 31, 1992, the first month of entitlement of a member who qualifies for retirement benefits is the first month following the member's date of termination or last day of leave, with or without pay, whichever is later.

b. Effective January 1, 1993, the first month of entitlement of an employee who qualifies for retirement benefits shall be the first month after the employee is paid the last paycheck, if paid more than one calendar month after termination. If the final paycheck is paid within the month after termination, the first month of entitlement shall be the month following termination.

c. Effective January 1, 2001, employees of a school corporation who are permitted by the terms of their employment contracts to receive their annual salaries in monthly installments over periods ranging from 9 to 12 months may retire at the end of a school year and receive trailing wages through the end of

the contract year if they have completely fulfilled their contract obligations at the time of retirement. For purposes of this paragraph, “school corporation” means body politic described in Iowa Code sections 260C.16 (community colleges), 273.2 (area education agencies) and 273.1 (K-12 public schools). For purposes of this paragraph, “trailing wages” means previously earned wage payments made to such employees of a school corporation after the first month of entitlement. This exception does not apply to hourly employees, including those who make arrangements with their employers to hold back hourly wages for payment at a later date, to employees who are placed on sick or disability leave or leave of absence, or to employees who receive lump sum leave, vacation leave, early retirement incentive pay or any other lump sum payments in installments.

For all employees of all IPERS-covered employers who terminate employment in January 2003, or later, if the final paycheck is paid within the same quarter or within one quarter after termination and wages are reported under the normal pay schedule, the first month of entitlement shall be the month following termination. However, if the last paycheck is paid more than one quarter after the termination, the first month of entitlement shall be the first month after the employee is paid the last paycheck. Under no circumstances shall such trailing wages result in more than one quarter of service credit being added to retiring members’ earning records.

**11.3(3) *Survival into designated FME.*** To be eligible for a monthly retirement benefit, the member must survive into the designated first month of entitlement. If the member dies prior to the first month of entitlement, the member’s application for monthly benefits is canceled and the distribution of the member’s account is made pursuant to Iowa Code section 97B.52. Cancellation of the application shall not invalidate a beneficiary designation. If the application is dated later in time than any other designations, IPERS will accept the designation in a canceled application as binding until a subsequent designation is filed.

**11.3(4) *Members retiring under the rule of 88.*** The first month of entitlement of a member qualifying under the rule of 88 shall be the first of the month when the member’s age as of the last birthday and years of service equal 88. The fact that a member’s birthday allowing a member to qualify for the rule of 88 is the same month as the first month of entitlement does not affect the retirement date.

**495—11.4(97B) Termination of monthly retirement allowance.** A member’s retirement benefit shall terminate after payment is made to the member for the entire month during which the member’s death occurs. Death benefits shall begin with the month following the month in which the member’s death occurs.

Upon the death of the retired member, IPERS will reconcile the decedent’s account to determine if an overpayment was made to the retired member and if further payment(s) is due to the retired member’s named beneficiary, contingent annuitant, heirs at law or estate. If an overpayment has been made to the retired member, IPERS will determine if steps should be taken to seek collection of the overpayment from the named beneficiary, contingent annuitant, estate, heirs at law, or other interested parties.

**495—11.5(97B) Bona fide retirement and bona fide refund.**

**11.5(1) *Bona fide retirement—general.*** To receive retirement benefits, a member under the age of 70 must officially leave employment with all IPERS-covered employers, give up all rights as an employee, and complete a period of bona fide retirement. A period of bona fide retirement means four or more consecutive calendar months for which the member qualifies for monthly retirement benefit payments. The qualification period begins with the member’s first month of entitlement for retirement benefits as approved by IPERS. A member may not return to covered employment before filing a completed application for benefits. Notwithstanding the foregoing, the continuation of group insurance coverage at employee rates for the remainder of the school year for a school employee who retires following completion of services by that individual shall not cause that person to be in violation of IPERS’ bona fide retirement requirements.

A member will not be considered to have a bona fide retirement if the member is a school or university employee and returns to work with the employer after the normal summer vacation. In other positions, temporary or seasonal interruption of service which does not terminate the period of employment does not

constitute a bona fide retirement. A member also will not be considered to have a bona fide retirement if the member has, prior to or during the member's first month of entitlement, entered into verbal or written arrangements with the employer to return to employment after the expiration of the four-month bona fide retirement period.

Effective July 1, 1990, a school employee will not be considered terminated if, while performing the normal duties, the employee performs for the same employer additional duties which take the employee beyond the expected termination date for the normal duties. Only when all the employee's compensated duties cease for that employer will that employee be considered terminated.

The bona fide retirement period shall be waived for an elected official covered under Iowa Code section 97B.1A(8) "a"(1), and for a member of the general assembly covered under Iowa Code section 97B.1A(8) "a"(2), when the elected official or legislator notifies IPERS of the intent to terminate IPERS coverage for the elective office and, at the same time, terminates all other IPERS-covered employment prior to the issuance of the retirement benefit. Such an elected official or legislator may remain in the elective office and receive an IPERS retirement without violating IPERS' bona fide retirement rules. If such elected official or legislator terminates coverage for the elective office and also terminates all other IPERS-covered employment but is then reemployed in covered employment, and has not received a retirement as of the date of hire, the retirement shall not be made. Furthermore, if such elected official or legislator is reemployed in covered employment, the election to revoke IPERS coverage for the elective position shall remain in effect, and the elected official or legislator shall not be eligible for new IPERS coverage for such elected position. The prior election to revoke IPERS coverage for the elected position shall also remain in effect if such elected official or legislator is reelected to the same position without an intervening term out of office.

The bona fide retirement period will be waived if the member has been elected to public office which term begins during the normal four-month bona fide retirement period. This includes elected officials who shall be covered under this chapter as defined in Iowa Code section 97B.1A. This waiver does not apply if the member was an elected official who was reelected to the same position for another term.

Effective July 1, 2000, a member does not have a bona fide retirement until all employment with covered employers, including employment which is not covered under this chapter, is terminated for at least one month, and the member does not return to covered employment for an additional three months. In order to receive retirement benefits, the member must file a completed application for benefits before returning to any employment with a covered employer.

Effective July 1, 2018, a member will not have a bona fide retirement if the member enters into a verbal or written arrangement to perform duties for the member's former employer(s) as an independent contractor prior to or during the member's first month of entitlement or performs any duties for the member's former employer(s) as an independent contractor prior to receiving four months of retirement benefits.

**11.5(2) *Bona fide retirement—licensed health care professionals.*** For retirees whose first month of entitlement is no earlier than July 2004 and no later than June 2014, a retiree who is reemployed as a "licensed health care professional" by a "public hospital" does not have a bona fide retirement until all employment with covered employers is terminated for at least one calendar month. In order to receive retirement benefits, the member must file a completed application for benefits form before returning to any employment with a covered employer.

"Licensed health care professional" means a public employee who is a physician, surgeon, podiatrist, osteopath, psychologist, physical therapist, physical therapist assistant, nurse, speech pathologist, audiologist, occupational therapist, respiratory therapist, pharmacist, social worker, dietitian, mental health counselor, or physician assistant who is required to be licensed under Iowa Code chapter 147.

"Public hospital" means a governmental entity of a political subdivision of the state of Iowa that is authorized by legislative authority. For purposes of this subrule, a "public hospital" must also meet the requirements of Iowa Code section 249J.3. Under Iowa Code section 249J.3, a "public hospital" must be licensed pursuant to Iowa Code chapter 135B and governed pursuant to Iowa Code chapter 145A (merged hospitals), Iowa Code chapter 347 (county hospitals), Iowa Code chapter 347A (county hospitals payable from revenue), or Iowa Code chapter 392 (creation by city of a hospital or health care

facility). For the purposes of this definition, “public hospital” does not include a hospital or medical care facility that is funded, operated, or administered by the Iowa department of human services, Iowa department of corrections, or board of regents, or the Iowa Veterans Home.

A “public hospital” possesses the powers conferred upon it by statute, the Iowa Constitution, and regulatory provisions that are unique to governmental entities and hospitals. For example, a “public hospital” may finance its activities by tax levies or the issuance of bonds, condemn property, hold elections, and join forces with other governmental entities in cooperative ventures that are authorized under Iowa Code chapter 28D and Iowa Code chapter 28E. “Public hospitals” are subject to scrutiny by the public by complying with Iowa Code chapter 21 (open meetings Act) and Iowa Code chapter 22 (open records Act). Public employees of a “public hospital” are covered by Iowa Code chapter 20 (public employment relations Act). A “public hospital” can be distinguished from a profit or not-for-profit hospital by examining whether the focus of the hospital is community service with profits being applied not to rates of return to investors, but to enhance community services, facility upgrading, or subsidized care for persons unable to pay the full cost of service.

This subrule only applies to reemployments that meet all the foregoing requirements and in addition occur following a “complete termination of employment.” A “complete termination of employment” means: (1) the employer must post the opening and conduct a job search; (2) the retired member must receive all termination payouts that are mandatory for other terminated employees of that employer; (3) the retired member must give up all perquisites of seniority, to the extent applicable to all other terminated employees of that employer; and (4) the retired member must not enter into a reemployment agreement with the prior employer or another public hospital as defined in this subrule prior to or during the first month of entitlement.

**11.5(3) *Bona fide refund.*** For a member to be eligible for a lump sum refund, the member must terminate the member’s covered employment and remain out of employment for 30 days with all covered employers. The 30-day bona fide refund period shall be waived for an elected official covered under Iowa Code section 97B.1A(8)“a”(1), and for a member of the general assembly covered under Iowa Code section 97B.1A(8)“a”(2), when the elected official or legislator notifies IPERS of the intent to terminate IPERS coverage for the elective office and, at the same time, terminates all other IPERS-covered employment prior to the issuance of the refund. Such an official may remain in the elective office and receive an IPERS refund without violating IPERS’ bona fide refund rules. If such elected official terminates coverage for the elective office and also terminates all other IPERS-covered employment but is then reemployed in covered employment, and has not received a refund as of the date of hire, the refund shall not be made. Furthermore, if such elected official is reemployed in covered employment, the election to revoke IPERS coverage for the elective position shall remain in effect, and the public official shall not be eligible for new IPERS coverage for such elected position.

The prior election to revoke IPERS coverage for the elected position shall also remain in effect if such elected official is reelected to the same position without an intervening term out of office. The waiver granted in this subrule shall be applicable to such elected officials who were in violation of the prior bona fide refund rules on and after November 1, 2002, when such individuals have not repaid the previously invalid refund.

If a member takes a refund in violation of the bona fide refund requirements of Iowa Code section 97B.53(4), the member may return the refund during the bona fide retirement period and restore the member’s account.

**11.5(4) *Part-time appointed members of boards or commissions receiving minimal noncovered wages.*** Solely for purposes of determining whether a member has severed all employment with all covered employers and has remained out of employment as required under Iowa Code section 97B.52A, persons who have been appointed as part-time members of boards or commissions prior to or during their first month of entitlement and who receive only per diem and reimbursements for reasonable business expenses for such positions will be deemed not to be in employment prohibited under Iowa Code section 97B.52A.

For purposes of this subrule, per diem shall not exceed the amount authorized under Iowa Code section 7E.6(1)“a” for members of boards, committees, commissions, and councils within the executive

branch of state government. This limit shall apply regardless of whether or not the position in question is within the executive branch of state government.

Members of boards and commissions not exempted under this subrule include: (a) those who are entitled to the payment of per diem regardless of attendance at board or commission meetings, and (b) those who would have received per diem in excess of the amount authorized under Iowa Code section 7E.6(1) “a” were it not for an agreement by the member to waive such compensation.

Persons appointed as part-time board or commission members who receive only per diem as set forth above and reimbursements of reasonable business expenses may continue in or accept appointments to such positions without violating the bona fide retirement rules under Iowa Code section 97B.52A.

**11.5(5)** *Members of the national guard who are called into state active duty.* Effective May 25, 2008, members of the national guard who are called into state active duty as defined in Iowa Code section 29A.1 in noncovered positions during the required period of complete severance will not be in violation of the bona fide retirement requirements of Iowa Code section 97B.52A as amended by 2010 Iowa Acts, House File 2518, section 33.

[ARC 8929B, IAB 7/14/10, effective 6/21/10; ARC 9068B, IAB 9/8/10, effective 10/13/10; ARC 0662C, IAB 4/3/13, effective 5/8/13; ARC 3684C, IAB 3/14/18, effective 4/18/18; ARC 4100C, IAB 10/24/18, effective 11/28/18; ARC 4337C, IAB 3/13/19, effective 4/17/19]

#### **495—11.6(97B) Payment processing and administration.**

**11.6(1)** *Monthly paper warrants processing fee.* Effective July 1, 2005, IPERS shall charge a per-warrant processing fee to members who choose to receive paper warrants in lieu of electronic deposits of their monthly retirement allowance. The fee may be waived if the person establishes that it would be an undue hardship for the person to do what is necessary to receive payment of the person’s IPERS monthly retirement allowance by electronic deposit. The processing fee will be deducted from the member’s retirement allowance on a posttax basis.

For purposes of this subrule, a member claiming undue hardship must establish that the cost normally assessed for the processing of paper warrants would be unduly burdensome because of the member’s limited income, or is otherwise financially burdensome or physically impracticable.

**11.6(2)** *Repeated requests for replacement warrants.* Effective July 1, 2002, for a member or beneficiary who, due to the member’s or beneficiary’s own actions or inactions, has benefits warrants replaced twice in a six-month period, except when the need for a replacement warrant is caused by IPERS’ failure to mail to the address specified by the recipient, payment shall be suspended until such time as the recipient establishes a direct deposit account in a bank, credit union or similar financial institution and provides IPERS with the information necessary to make electronic transfer of said monthly payments. Persons subject to said cases may be required to provide a face-to-face interview and additional documentation to prove that such a suspension would result in an undue hardship.

**11.6(3)** *Forgery claims.* When a forgery of a warrant issued in payment of an IPERS refund or benefit is alleged, the claimant must complete and sign an affidavit before a notary public that the endorsement is a forgery. A supplementary statement must be attached to the affidavit setting forth the details and circumstances of the alleged forgery.

**11.6(4)** *Rollover fees.* Effective January 1, 2007, if the recipient of a lump-sum distribution which qualifies to be rolled over requests that a rollover be made to more than one IRA or other qualified plan, IPERS may assess a \$5 administrative fee for each additional rollover beyond the first one. The fee will be deducted from the gross amount of each distribution, less federal and state income tax.

**11.6(5)** *Offsets against amounts payable.* IPERS may, with or without consent and upon reasonable proof thereof, offset amounts currently payable to a member or the member’s designated beneficiaries, heirs, assigns or other successors in interest by the amount of IPERS benefits paid in error to or on behalf of such member or the member’s designated beneficiaries, heirs, assigns or other successors in interest.

**11.6(6)** *Lump sum paper warrants processing fee.* Effective April 1, 2012, and thereafter, IPERS shall charge \$1 for paper warrants issued in payment of all nonrecurring lump sum distributions. If a nonrecurring lump sum distribution is followed by a supplemental lump sum distribution due to the reporting of additional covered wages, the \$1 processing fee shall also be charged. This \$1 processing fee shall not apply to a direct rollover described under Iowa Code section 97B.53B (however, processing

fees may be charged for multiple rollover requests), lump sum mandatory account distributions required under Iowa Code section 97B.48(5), mandatory lump sum distributions required under Internal Revenue Code Section 401(9), or warrants reissued in forged endorsement or other fraudulent payment situations. [ARC 0017C, IAB 2/22/12, effective 3/28/12]

#### **495—11.7(97B) Overpayment of IPERS benefits.**

##### **11.7(1) *Overpayments—general.***

*a.* An “overpayment” means a payment of money by IPERS that results in a recipient receiving a higher payment than the recipient is entitled to under the provisions of Iowa Code chapter 97B.

*b.* A “recipient” is a person or beneficiary, heir, assign, or other successor in interest who receives an overpayment from an IPERS benefit and is liable to repay the amount(s) upon receipt of a written explanation and request for the amounts to be repaid.

*c.* If IPERS determines that the cost of recovering the amount of an overpayment is estimated to exceed the overpayment, the repayment may be deemed to be unrecoverable.

*d.* If the overpayment is equal to or less than \$50 and cannot be recovered from other IPERS payments, IPERS may limit its recovery efforts to written requests for repayment and other nonjudicial remedies.

**11.7(2) *Overpayment made to a retired member.*** A retired member shall receive written notice of overpayment, including the reason for the overpayment, the amount of the overpayment, and a limited opportunity to repay the overpayment in full without interest. If a retired member repays an overpayment in full within 30 days after the date of the notice, there will be no interest charge. A retired member may repay an overpayment out of pocket or direct IPERS to recover the overpayment from future retirement benefit payments, or a combination of both. If the retired member cannot repay an overpayment in full, either out of pocket or from the next monthly installment of retirement benefits, or both, interest shall be charged. A retired member who cannot repay the full amount of the overpayment within 30 days after the date of the notice must enter into an agreement with IPERS to make monthly installment payments, or to have the overpayment offset against future monthly benefit payments or death benefits, if any, and authorize any unpaid balance as a first priority claim in the recipient’s estate.

**11.7(3) *Overpayment made to a person other than a retired member.*** A recipient other than a retired member, except a recipient listed in subrule 11.7(4), shall receive written notice of overpayment, including the reason for the overpayment, the amount of the overpayment, and the opportunity to repay the overpayment in full without interest. If such a recipient repays an overpayment in full within 30 days after the date of the notice, there will be no interest charge. If such a recipient cannot repay an overpayment in full within 30 days after the date of the notice, interest shall be charged. If repayment in full cannot be made within 30 days, such a recipient shall make repayment arrangements subject to IPERS’ approval within 30 days of the written notice and request for repayment.

If the overpayment recipient cannot be located to receive notice of the overpayment at the recipient’s last-known address, IPERS shall, after trying to locate the person, consider the recipient to have waived entitlement to the quarters covered by the refund.

**11.7(4) *Overpayment made to a person who violates a bona fide severance period.*** If a recipient takes a refund and does not complete the required period of severance, the recipient shall receive a written notice of overpayment, including the reason for the overpayment, the amount of the overpayment, and the opportunity to repay the overpayment in full without interest. The recipient shall have 30 days after the date of notice to repay the full amount of the refund without interest. If the repayment is not made within 30 days after the date of notice, the person shall receive no credit for the period of employment covered by the refund and shall be required to buy back the refund at its actuarial cost if the member later decides that the member wants service credit for any portion of the period of employment covered by the refund.

##### **11.7(5) *Interest charges.***

*a.* *Overpayment not fraudulent.* If the overpayment of benefits, other than an overpayment that results from a violation described in subrule 11.7(4), was not the result of wrongdoing, negligence, misrepresentation, or omission of the recipient, the recipient is liable to pay interest charges at the rate

of 5 percent, or the rate IPERS determines, on the outstanding balance, beginning 30 days after the date of notice of the overpayment(s) is provided by IPERS.

*b. Overpayments in violation of Iowa Code section 97B.40 or 715A.8.* If the overpayment of benefits, other than an overpayment that results from a violation described in subrule 11.7(4), was the result of wrongdoing, negligence, misrepresentation, or omission of the recipient, the recipient is liable to pay interest charges at the rate of 7 percent on the outstanding balance, beginning on the date of the overpayment(s).

*c. Overpayments that result in a judgment.* In addition to other remedies, IPERS may file a civil action to recover overpayments, and the interest rate may be set by the court.

**11.7(6) Recovery of overpayment from a deceased recipient.** If a recipient dies prior to the full repayment of an erroneous overpayment of benefits, IPERS shall be entitled to apply to the estate of the deceased to recover the remaining balance.

**11.7(7) Offsets against amounts payable.** IPERS may, in addition to other remedies and after notice to the recipient, request an offset against amounts owing to the recipient by the state according to the offset procedures pursuant to Iowa Code sections 8A.504 and 421.17.

**11.7(8) Rights of appeal.** A recipient who is notified of an overpayment and required to make repayments under this rule may appeal IPERS' determination in writing to the CEO or CEO's designee. The written request must explain the basis of the appeal and must be received by IPERS' office within 30 days of overpayment notice pursuant to 495—Chapter 26.

**11.7(9) Release of overpayment.** IPERS may release a recipient from liability to repay an overpayment, in whole or in part, if IPERS determines that the receipt of overpayment is not the fault of the recipient, and that it would be contrary to equity and good conscience to collect the overpayment. No release of an individual recipient's obligation to repay an overpayment shall stand as precedent for release of another recipient's obligation to repay an overpayment.

[ARC 8601B, IAB 3/10/10, effective 4/14/10; ARC 1887C, IAB 2/18/15, effective 3/25/15; ARC 2981C, IAB 3/15/17, effective 4/19/17; ARC 3684C, IAB 3/14/18, effective 4/18/18]

These rules are intended to implement Iowa Code sections 97B.4, 97B.9A, 97B.15, 97B.25, 97B.38, 97B.40, 97B.45, 97B.47, 97B.48, 97B.48A, 97B.49A to 97B.49I, 97B.50, 97B.51, 97B.52, 97B.52A, 97B.53, and 97B.53B.

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CHAPTER 12  
CALCULATION OF MONTHLY RETIREMENT BENEFITS  
[Prior to 11/24/04, see 581—Ch 21]

**495—12.1(97B) General.**

**12.1(1) *Formula benefit versus money purchase benefit.*** If a member is vested by years of service credit in IPERS, a monthly payment allowance will be paid in accordance with the formulas set forth in Iowa Code sections 97B.49A through 97B.49I, the applicable paragraphs of this chapter, and the option the member elects pursuant to Iowa Code section 97B.51(1). IPERS shall determine on the applicable forms which designated fractions of a member's monthly retirement allowance payable to contingent annuitants shall be provided as options under Iowa Code section 97B.51(1). Any option elected by a member under Iowa Code section 97B.51(1) must comply with the requirements of the Internal Revenue Code that apply to governmental pension plans, including but not limited to Internal Revenue Code Section 401(a)(9). If a member is not vested by years of service credit in IPERS, the benefit receivable will be computed on a money purchase basis, with reference to annuity tables used by IPERS in accordance with the member's age and option choice.

**12.1(2) *Reduction for early retirement.***

*a.* Effective July 1, 1988, through December 31, 2000, a member's benefit formula will be reduced by .25 percent for each month the member's retirement precedes the normal retirement date, as defined in Iowa Code section 97B.45 excluding section 97B.45(4). The following are situations in which a member is considered to be taking early retirement:

(1) If a member has not attained the age of 65 in the member's first month of entitlement and has less than 20 years of service; or

(2) If a member has not attained the age of 62 in the month of the member's retirement and has 20 years of service.

*b.* Effective July 1, 1997, a member shall be eligible to receive monthly retirement benefits with no age reduction effective the first of the month in which the member's age on the last birthday and the member's years of service equal or exceed 88, provided that the member is at least the age of 55.

*c.* Effective July 1, 1991, a member qualifying for early retirement due to disability under Iowa Code section 97B.50 shall not be subject to a reduction in benefits due to age.

*d.* If a member retires with at least 20 years of service but has not attained the age of 62, the age reduction shall be calculated by deducting .25 percent per month for each month that the first month of entitlement precedes the month in which the member attains the age of 62. If a member retires with less than 20 years of service, the age reduction shall be calculated by deducting .25 percent per month for each month that the first month of entitlement precedes the month in which the member attains the age of 65.

*e.* Effective January 1, 2001, the age reduction shall be calculated by deducting .25 percent per month for each month that the first month of entitlement precedes the earliest possible normal retirement date for that member based on the age and years of service at the member's actual retirement.

*f.* For the portion of the member's retirement allowance based on service through June 30, 2012, the early retirement reduction shall be calculated as provided in paragraphs 12.1(2)"a" through "e." For the portion of the retirement allowance based on years of service beginning July 1, 2012, and later, the member's early retirement reduction shall be one-half of one percent for each month that the early retirement precedes the date the member attains age 65.

**12.1(3) *Early retirement date.*** A member's early retirement date shall be the first day of the month of the fifty-fifth birthday or any following month before the normal retirement date, provided that date is after the member's termination date.

**12.1(4) *Members employed before January 1, 1976, and retiring after January 1, 1976.*** Members employed before January 1, 1976, and retiring after January 1, 1976, with four or more complete years of membership service shall be eligible to receive the larger of a monthly formula benefit equal to the member's total covered wages multiplied by one-twelfth of one and fifty-seven hundredths percent,

multiplied by the percentage calculated in subrule 12.1(2), if applicable, or a benefit as calculated in subrule 12.1(6).

**12.1(5) *Members employed before January 1, 1976, who qualified for prior service credit.*** Members employed before January 1, 1976, who qualified for prior service credit shall be eligible to receive a monthly formula benefit of eight-tenths of one percent multiplied by each year of prior service multiplied by the monthly rate of the member's total remuneration during the 12 consecutive months of prior service for which the total remuneration was the highest, disregarding any monthly rate amount in excess of \$250, plus three-tenths of one percent of the monthly rate amount not in excess of \$250 for each year in which accrued liability for benefit payments created by the abolished system is funded.

**12.1(6) *Benefit formulas for members retiring on or after July 1, 1994.***

*a.* For each active member retiring on or after July 1, 1994, with four or more complete years of service, the monthly benefit will be equal to one-twelfth of an amount equal to 60 percent of the three-year average covered wage multiplied by a fraction of years of service.

*b.* For all active and inactive vested members, the monthly retirement allowance shall be determined on the basis of the formula in effect on the date of the member's retirement. If the member takes early retirement, the benefit shall be adjusted as provided in subrule 12.1(2).

*c.* Effective July 1, 1996, through June 30, 1998, in addition to the 60 percent multiplier identified above, members who retire with years of service in excess of their "applicable years" shall have the percentage multiplier increased by 1 percent for each year in excess of their "applicable years," not to exceed an increase of 5 percent. For regular members, "applicable years" means 30 years; for protection occupation members, "applicable years" means 25 years; for sheriffs, deputy sheriffs, and airport firefighters, "applicable years" means 22 years.

*d.* Effective July 1, 1998, sheriffs, deputy sheriffs, and airport firefighters who retire with years of service in excess of their applicable years shall have their percentage multiplier increased by 1.5 percent for each year in excess of their applicable years, not to exceed an increase of 12 percent.

*e.* Effective July 1, 2000, the "applicable years" and increases in the percentage multiplier for years in excess of the applicable years for protection occupation members shall be determined under Iowa Code section 97B.49B(1), as set forth in paragraph "*f*" below.

*f.* For special service members covered under Iowa Code section 97B.49B, the applicable percentage and applicable years for members retiring on or after July 1, 2000, shall be determined as follows:

(1) For each member retiring on or after July 1, 2000, and before July 1, 2001, 60 percent plus, if applicable, an additional .25 percent for each additional quarter of eligible service beyond 24 years of service (the "applicable years"), not to exceed 6 additional percentage points;

(2) For each member retiring on or after July 1, 2001, and before July 1, 2002, 60 percent plus, if applicable, .25 percent for each additional quarter of eligible service beyond 23 years of service (the "applicable years"), not to exceed a total of 7 additional percentage points;

(3) For each member retiring on or after July 1, 2002, and before July 1, 2003, 60 percent plus, if applicable, .25 percent for each additional quarter of eligible service beyond 22 years of service (the "applicable years"), not to exceed a total of 8 additional percentage points;

(4) For each member retiring on or after July 1, 2003, 60 percent plus, if applicable, an additional .375 percent for each additional quarter of eligible service beyond 22 years of service (the "applicable years"), not to exceed a total of 12 additional percentage points.

(5) Regular service does not count as "eligible service" in determining a special service member's applicable percentage.

**12.1(7) *Average covered wages.***

*a.* "Three-year average covered wage" means a member's covered calendar year wages averaged for the highest three years of the member's service. However, if a member's final quarter of a year of employment does not occur at the end of a calendar year, IPERS may determine the wages for the third year by computing the final quarter or quarters of wages to complete the year. The computed year wages shall not exceed the maximum covered wage in effect for that calendar year. Furthermore, for members whose first month of entitlement is January of 1999 or later, the computed year shall not exceed

the member's highest actual calendar year of covered wages by more than 3 percent. Effective July 1, 2007, a member's high three-year average wage shall be the greater of (1) the member's high three-year average covered wage based on covered wages reported through June 30, 2007; or (2) the member's high three-year average covered wage after application of the antispiking control as described in paragraph "c" below.

For members whose first month of entitlement is January 1995 or later, a full third year will be created when the final quarter or quarters reported are combined with a computed average quarter to complete the last year. The value of this average quarter will be computed by selecting the highest covered wage year not used in the computation of the three high years and dividing the covered salary by four quarters. This value will be combined with the final quarter or quarters to complete a full calendar year. If the member's final quarter of wages will reduce the three-year average covered wage, it can be dropped from the computation. However, if the covered wages for that quarter are dropped, the service credit for that quarter will be forfeited as well. If the final quarter is the first quarter of a calendar year, those wages must be used in order to give the member a computed year. The three-year average covered wage cannot exceed the highest maximum covered wages in effect during the member's service.

If the three-year average covered wage of a member who retires on or after January 1, 1997, and before January 1, 2002, exceeds the limits set forth in paragraph "b" below, the longer period specified in paragraph "b" shall be substituted for the three-year averaging period described above. No quarters from the longer averaging period described in paragraph "b" shall be combined with the final quarter or quarters to complete the last year.

*b.* For the persons retiring during the period beginning January 1, 1997, and ending December 31, 2001, the three-year average covered wage shall be computed as follows:

(1) For a member who retires during the calendar year beginning January 1, 1997, and whose three-year average covered wage at the time of retirement exceeds \$48,000, the member's covered wages averaged for the highest four years of the member's service or \$48,000, whichever is greater.

(2) For a member who retires during the calendar year beginning January 1, 1998, and whose three-year average covered wage at the time of retirement exceeds \$52,000, the member's covered wages averaged for the highest five years of the member's service or \$52,000, whichever is greater.

(3) For a member who retires during the calendar year beginning January 1, 1999, and whose three-year average covered wage at the time of retirement exceeds \$55,000, the member's covered wages averaged for the highest six years of the member's service or \$55,000, whichever is greater.

(4) For a member who retires on or after January 1, 2000, but before January 1, 2001, and whose three-year average covered wage at the time of retirement exceeds \$65,000, the member's covered wages averaged for the highest six years of the member's service or \$65,000, whichever is greater. For the calendar year beginning January 1, 2001, the six-year wage averaging trigger shall be increased to \$75,000.

(5) Effective January 1, 2002, the computation of average covered wages shall be as provided in paragraph 12.1(7)"a."

For purposes of paragraph 12.1(7)"b," the highest years of the member's service shall be determined using calendar years and may be determined using one computed year. The computed year shall be calculated in the manner and subject to the restrictions provided in paragraph 12.1(7)"a."

*c.* Antispiking limit on the growth of a member's high three-year average.

(1) Selection of the control year shall give highest priority to calendar years of wages in which there are four quarters of service credit for wages on file not used in the high three-year average wage calculation. For example, if the member receives \$20,000 of wages for a calendar year with four quarters of service credit for wages, and the member also has received \$30,000 of wages for a calendar year with three quarters of service credit for wages, the control year selection process shall give preference to the calendar year with \$20,000 of reported wages.

(2) If there is a calendar year of covered wages outside the high three-year average wage calculation that has four quarters, but the covered wages for that year are less than the covered wages for the fourth highest calendar year of covered wages, and that fourth highest calendar year of covered wages does not have four quarters of service credit for wages, the control year will be the lowest of the high three calendar

years of wages with service credits for wages in all four quarters being used in the high three-year average wage calculation.

- (3) “Service credit for wages” means service credit recorded for:
1. Quarters in which the member receives covered wages from covered employment.
  2. Quarters in which the member is credited with covered wages due to a military leave.
  3. Quarters in which the member would have had covered wages but for the application of the IRS covered wage limitations.
  4. Quarters in which an employee of a nine-month institution receives service credit for a qualifying leave of absence under 495—subrule 7.1(2).
  5. Quarters in which a legislator, legislative employee, or elected official receives service credit for employment.

(4) If none of the calendar years of wages that fall outside of the high three-year average wage calculation have service credit for wages reported in all four quarters, the control year will then be the lowest of the high three calendar years of wages with service credit for wages in all four quarters being used in the high three-year average wage calculation.

(5) If none of the wage years used in the high three-year average wage calculation have service credits for wages reported in all four quarters, the control year will then revert to the highest calendar year of wages not included in the high three-year average wage calculation, regardless of whether there are fewer than four quarters with service credits for wages on file.

(6) For high three-year average wage calculations that utilize the computed year, the control year may be the calendar year from which the “average quarters” used in the computed year are drawn. However, the control year cannot be the computed year, as the computed year will never be a calendar year with service credit for wages in all four quarters.

*d.* Effective July 1, 2012, a nonvested member’s average covered wage shall be the member’s five-year average covered wage calculated as provided in Iowa Code section 97B.1A(10A) “a.”

*e.* Effective July 1, 2012, for members vested as of June 30, 2012, the member’s average covered wage shall be the greater of the member’s three-year average covered wage calculated as provided under paragraphs 12.1(7) “a” through “c,” or the member’s five-year average covered wage calculated as provided in Iowa Code section 97B.1A(10A) “a.”

[ARC 8601B, IAB 3/10/10, effective 4/14/10; ARC 0017C, IAB 2/22/12, effective 3/28/12; ARC 1348C, IAB 2/19/14, effective 3/26/14; ARC 1887C, IAB 2/18/15, effective 3/25/15]

#### **495—12.2(97B) Initial benefit determination.**

**12.2(1)** The initial monthly benefit for the retired member will be calculated utilizing the wages that have been reported as of the member’s retirement and subject to the requirements of subrule 12.1(7). When the final quarter(s) of wages is reported for the retired member, a recalculation of benefits will be performed by IPERS to redetermine the member’s benefit amount. In cases where the recalculation determines that the benefit will be changed, the adjustment in benefits will be made retroactive to the first month of entitlement. The wages for the “computed year” shall not exceed the highest covered wage ceiling in effect during the member’s period of employment.

**12.2(2)** In cases where the member’s final quarter’s wages have been reported to IPERS prior to retirement, the original benefit will be calculated utilizing all available wages.

**12.2(3)** The Option 1 death benefit amount cannot exceed the member’s investment and cannot lower the member’s benefit below the minimum distribution required by federal law.

**495—12.3(97B) Minimum benefits.** Effective January 1, 1997, those members and beneficiaries of members who retired prior to July 1, 1990, and who upon retirement had years of service equal to or greater than 10, will receive a minimum benefit as follows.

**12.3(1)** The minimum benefit is \$200 per month for those members with 10 years of service who retired under Option 2. The minimum shall increase by \$10 per year or \$2.50 per each additional quarter of service to a maximum benefit of \$400 per month for members with 30 years of service. No increase is payable for years in excess of 30. The minimum benefit will be adjusted by a percentage that reflects option choices other than Option 2, and a percentage that reflects any applicable early retirement penalty.

**12.3(2)** In determining minimum benefits under this rule, IPERS shall use only the years of service the member had at first month of entitlement (FME). Reemployment periods and service purchases completed after FME shall not be used to determine eligibility.

**12.3(3)** The adjusted minimum benefit amount shall be determined using the option and early retirement adjustment factors set forth below.

a. The option adjustment factor is determined as follows:

Option 1	.94
Option 2	1.00
Option 3	1.00
Option 4 (100%)	.87
Option 4 (50%)	.93
Option 4 (25%)	.97
Option 5	.97

b. The early retirement adjustment factor is determined as follows:

(1) There is no early retirement adjustment if the member's age at first month of entitlement equals or exceeds 65, or if the member's age at first month of entitlement is at least 62 and the member had 30 or more years of service.

(2) The early retirement adjustment for a member having 30 years of service whose first month of entitlement occurred before the member attained age 62 is .25 percent per month for each month the first month of entitlement precedes the member's sixty-second birthday.

(3) The early retirement adjustment for a member having less than 30 years of service whose first month of entitlement occurred before the member attained age 65 is .25 percent per month for each month the first month of entitlement precedes the member's sixty-fifth birthday.

(4) IPERS shall calculate the early retirement adjustment factor to be used in subrule 12.3(4) as follows:

$$100\% - \text{early retirement adjustment percentage} = \text{early retirement adjustment factor}$$

(5) The early retirement adjustment shall not be applied to situations in which the member's retirement was due to a disability that qualifies under Iowa Code section 97B.50 or 97B.50(2).

**12.3(4)** IPERS shall use the following formula to calculate the adjusted minimum benefit:

$$\text{unadjusted minimum benefit} \times \text{option adjustment factor} \times \text{early retirement adjustment factor} = \text{adjusted minimum benefit}$$

**12.3(5)** IPERS shall compare the member's current benefit to the adjusted benefit determined as provided in subrules 12.3(3) and 12.3(4). If the member's current benefit is greater than or equal to the adjusted minimum benefit, no change shall be made. Otherwise, the member shall receive the adjusted minimum benefit.

**12.3(6)** Effective January 1, 1999, the monthly allowance of certain retired members and their beneficiaries, including those whose monthly allowance was increased by the operation of subrules 12.3(3) to 12.3(5), shall be increased. If the member retired from the system before July 1, 1986, the monthly allowance currently being received by the member or the member's beneficiary shall be increased by 15 percent. If the member retired from the system on or after July 1, 1986, and before July 1, 1990, the monthly allowance currently being received by the member or the member's beneficiary shall be increased by 7 percent.

**495—12.4(97B) Hybrid formula for members with more than one type of service credit.**

**12.4(1) Eligibility.** Effective July 1, 1996, members having both regular and special service (as defined in Iowa Code section 97B.1A(22)) shall receive the greater of the benefit amount calculated under this subrule or the benefit amount calculated under the applicable nonhybrid benefit formula.

*a.* Members who are vested by service as defined in Iowa Code section 97B.1A(25) “d” may utilize the hybrid formula.

*b.* The following classes of members are not eligible for the hybrid formula:

- (1) Members who have only regular service credit.
- (2) Members who have 22 years of special service credit.
- (3) Members who have 30 years of regular service.
- (4) Members who are not vested by service as defined in Iowa Code section 97B.1A(25) “d.”

**12.4(2) Assumptions.** IPERS shall utilize the following assumptions in calculating benefits under this rule.

*a.* The member’s average covered wage shall be determined in the same manner as it is determined for the nonhybrid formula.

*b.* Increases in the benefit formula under this rule shall be determined as provided under Iowa Code section 97B.49D. The percentage multiplier shall only be increased for total years of service over 30.

*c.* Years of service shall be utilized as follows:

(1) Quarters which have two or more occupation class codes shall be credited as the class that has the highest reported wage for said quarter. A member shall not receive more than one quarter of credit for any calendar quarter, even though more than one type of service credit is recorded for that quarter.

(2) Quarters shall not be treated as special service quarters unless the applicable employer and employee contributions have been made.

**12.4(3) Years of service fraction not to exceed one.**

*a.* In no event shall a member’s years of service fraction under the hybrid formula exceed, in the aggregate, one.

*b.* If the years of service fraction does, in the aggregate, exceed one, the member’s quarters of service credit shall be reduced until the member’s years of service fraction equals, in the aggregate, one.

*c.* Service credit shall first be subtracted from the member’s regular service credit and, if necessary, shall next be subtracted from the member’s special service credit.

**12.4(4) Age reduction.** The portion of the member’s benefit calculated under this rule that is based on the member’s regular service shall be subject to a reduction for early retirement. In calculating the age reduction to be applied to the portion of the member’s benefit based on the member’s regular service, the system shall use all quarters of service credit, including both regular and special service quarters.

**12.4(5) Calculations.** A member’s benefit under the hybrid formula shall be the sum of the following:

*a.* The applicable percentage multiplier divided by 22 times the years of special service credit times the member’s high three-year average covered wage, plus

*b.* The applicable percentage multiplier divided by 30 times the years of regular service credit (if any) times the member’s high three-year average prior to July 1, 2012, or the member’s high five-year average after June 30, 2012, covered wage minus the applicable wage reduction (if any).

*c.* If the sum of the percentages obtained exceeds the applicable percentage multiplier for that member, the percentage obtained above for each class of service shall be subject to reduction so that the total shall not exceed the member’s applicable percentage multiplier in the order specified in paragraph 12.4(3) “c.”

[ARC 0017C, IAB 2/22/12, effective 3/28/12; ARC 4337C, IAB 3/13/19, effective 4/17/19]

#### **495—12.5(97B) Money purchase benefits.**

**12.5(1)** For each member who is vested prior to July 1, 2012, and is retiring prior to July 1, 2012, with less than four complete years of service, a monthly annuity shall be determined by applying the total reserve as of the effective retirement date (plus any retirement dividends standing to the member’s credit on December 31, 1966) to the annuity tables in use by the system according to the member’s age

(or member's and contingent annuitant's ages, if applicable). If the member's retirement occurs before January 1, 1995, IPERS' revised 6.50 percent tables shall be used. If the member's retirement occurs after December 31, 1994, IPERS' 6.75 percent tables shall be used. If the member's retirement occurs after December 31, 2009, IPERS' 7.50 percent tables shall be used. If the member's retirement occurs after December 31, 2019, IPERS' 7.00 percent tables shall be used.

**12.5(2)** For each vested member for whom the present value of future benefits under Option 2 is less than the member reserve as of the effective retirement date, a monthly annuity shall be determined by applying the member reserve to the annuity tables in use by the system according to the member's age (or member's and contingent annuitant's ages, if applicable). If the member's retirement occurs before January 1, 1995, IPERS' revised 6.50 percent tables shall be used. If the member's retirement occurs after December 31, 1994, IPERS' 6.75 percent tables shall be used.

**12.5(3)** For calculations under subrule 12.5(1), the term "total reserve" means the total of the member's investment and the employer's investment as of the effective retirement date, plus any retirement dividends standing to the member's credit as of December 31, 1966. For calculations under subrule 12.5(2), the term "member reserve" means the member's total investment, excluding all other amounts standing to the member's credit.

**12.5(4)** For calculations under subrule 12.5(1), Options 2, 3, 4, 5 and 6 shall be calculated by dividing the member's total reserve by the applicable Option 2, 3, 4, 5 or 6 annuity factor taken from the system's tables to determine the monthly amount. For calculations under subrule 12.5(2), Options 2, 3, 4, 5 and 6 shall be calculated by dividing the member reserve by the applicable Option 2, 3, 4, 5 or 6 annuity factor taken from the system's tables to determine the monthly amount.

**12.5(5)** For Option 1, the cost per \$1,000 of death benefit shall be determined according to the system's tables. That cost shall be subtracted from the Option 3 monthly amount to determine the Option 1 monthly benefit amount. The Option 1 death benefit amount shall be reduced as necessary so that the Option 1 monthly benefit amount is not less than one-half of the Option 2 monthly benefit amount.

**12.5(6)** If the member has prior service (service prior to July 4, 1953), the Option 2 benefit amount calculated under subrules 12.5(1) and 12.5(2) shall be calculated by determining the amount of the member's Option 2 benefit based on the member's prior service and the applicable plan formula, plus the amount of the member's Option 2 benefit based on the member's membership service as determined under this rule. The Option 2 benefit amount based on prior service shall be adjusted for early retirement.

**12.5(7)** For members retiring after June 30, 2012, the money purchase benefit calculated pursuant to this rule shall be provided to members who are not vested by service as defined in Iowa Code section 97B.1A(25) "d."

[ARC 0017C, IAB 2/22/12, effective 3/28/12; ARC 0662C, IAB 4/3/13, effective 5/8/13; ARC 4337C, IAB 3/13/19, effective 4/17/19]

**495—12.6(97B) Recalculation for a member aged 70.** A member remaining in covered employment after attaining the age of 70 years may receive a retirement allowance without terminating the covered employment. A member who is in covered employment, attains the age of 70 and begins receiving a retirement allowance must terminate all covered employment before the member's retirement allowance can be recalculated to take into account service after the member's original FME. The termination of employment must be a true severance lasting at least 30 days. The formula to be used in recalculating such a member's retirement allowance depends on the date of the member's FME and the member's termination date, as follows:

If the member is receiving a retirement allowance with an FME prior to July 1, 2000, and terminates covered employment on or after January 1, 2000, the member's retirement formula for recalculation purposes shall be the formula in effect at the time of the member's termination from covered employment or, if later, the date the member applies for a recalculation.

In all other cases, the recalculation for a member aged 70 who retires while actively employed shall use the retirement formula in effect at the time of the member's FME.

Payments under this rule shall begin no earlier than the month following the month of termination, upon IPERS' receipt of a member's application for recalculation. It is the member's responsibility to apply for the recalculation by completing and submitting the form specified by IPERS.

A member receiving a recalculation under this rule after June 30, 2012, will have the member's average covered wage calculated as follows. IPERS will calculate the average high three covered wage as of June 30, 2012. IPERS will next calculate the average high five covered wage at the time of the member's termination from covered employment or, if later, the date the member applies for a recalculation. IPERS will determine the benefit amount based on the calculation that produces the greatest benefit to the member.

[ARC 0662C, IAB 4/3/13, effective 5/8/13; ARC 2981C, IAB 3/15/17, effective 4/19/17]

**495—12.7(97B) Level payment choice for special service members.** A level payment choice is created effective July 1, 2002. IPERS shall implement the level payment choice by preparing factors to convert nonhybrid IPERS Options 1, 2, 3, 4, and 5 to the level payment choice. The new benefit feature applies solely to special service members, and any reference to members in this rule shall only apply to special service members.

**12.7(1) Conversion rights window.** A special service member who qualifies for a July 2002 or later first month of entitlement (FME) may elect to retire under the regular IPERS Option 1, 2, 3, 4 or 5, and later have the member's option converted to the level payment choice. Retroactive adjustments in monthly amounts and death benefits, without interest, shall be provided.

In order to qualify for the conversion and retroactive payments, the member must request the level payment choice in writing no later than six months after the member's first monthly payment. If the member is married, the member's spouse must also consent to the requested change. Election of conversion to the level payment choice shall be irrevocable upon receipt of the first payment under the level payment choice.

A member who has retired under Iowa Code section 97B.49D or under IPERS Option 6 on or after July 1, 2002, and who wishes to receive benefits under this rule may revoke the member's initial election and choose IPERS Option 1, 2, 3, 4, or 5 to be paid as a level payment choice. The conversion to the level payment choice under this subrule is mandatory and irrevocable.

The conversion rights granted in this subrule shall not apply to members whose FME is January 2003 and later. Those members must select the level payment choice at the time they submit an IPERS retirement application.

**12.7(2) Member's social security retirement amount.** Calculations of a member's level payment choice shall be based on the member's social security retirement amount at age 62 as verified by Social Security Administration statements provided by the member. No adjustments shall be made if subsequent social security statements indicate an increase in the age 62 social security retirement amount. Verification of the social security benefits shall not precede the member's first month of entitlement by more than 12 months.

**12.7(3) Death benefit assumptions.** In preparing level payment choice factors, IPERS shall assume:

a. For IPERS Options 1 and 2, death benefits under those options shall not be reduced as a result of a member's attaining the age of 62 and having the member's monthly allowance reduced under this rule.

b. For IPERS Options 4 and 5, IPERS shall assume that the contingent annuitant's or beneficiary's monthly payments and death benefits, if any, prior to the date the member attains, or would have attained, age 62 shall be based on the amount that was payable to the member for periods before the member attains, or would have attained, age 62. Beginning with the month after the month that the member attains, or would have attained, age 62, a contingent annuitant's or beneficiary's monthly payments and death benefits, except death benefits under IPERS Options 1 and 2, shall be based on the reduced amount that would have been payable to the member in the month after the month that the member attained age 62.

**12.7(4) Favorable experience dividends.** An eligible member's or beneficiary's favorable experience dividend, if any, shall be based on the member's or beneficiary's level payment choice monthly amount as of the preceding December 31.

**12.7(5) Prohibitions.** The following special service members shall be prohibited from receiving benefits under this rule:

- a. Those who retire under Iowa Code section 97B.49D, 97B.50(2), or 97B.50A.
- b. Those who retire under Option 6.
- c. Those who request a level payment amount that reflects less than a full offset for the social security retirement amount at age 62.
- d. Those reemployed in covered employment and subsequently retiring, for the period of reemployment. A member who has elected the level payment choice shall have retirement benefits calculated solely for the period of reemployment, except for vesting credit.

**12.7(6) *Limit on reductions.*** For a member who has substantial noncovered employment, the application of the level payment choice factors shall not reduce the monthly amount payable to a member at age 62 to less than 50 percent of the monthly amount that would have been payable under IPERS Option 2. Accordingly, payments before age 62 to such members shall be reduced in the same manner, with the corresponding adjustments made to death benefits.

**12.7(7) *Commencement of level payment option reduction.*** The monthly benefit of a member who selects the level payment option shall be reduced beginning with the month after the member reaches age 62.

[ARC 0017C, IAB 2/22/12, effective 3/28/12; ARC 1887C, IAB 2/18/15, effective 3/25/15]

#### **495—12.8(97B) Reemployment of retired members.**

**12.8(1)** Effective July 1, 1998, the monthly benefit payments for a member under the age of 65 who has a bona fide retirement and is then reemployed in covered employment shall be reduced by 50 cents for each dollar the member earns in excess of the annual limit. Effective July 1, 2002, this reduction is not required until the member earns the amount of remuneration permitted for a calendar year for a person under the age of 65 before a reduction in federal social security retirement benefits is required, or earns \$30,000, whichever is greater. The foregoing reduction shall apply only to IPERS benefits payable for the applicable year that the member has reemployment earnings and after the earnings limit has been reached. Said reductions shall be applied as provided in subrule 12.8(2).

Effective January 1, 1991, this earnings limitation does not apply to covered employment as an elected official. A member aged 65 or older who has completed at least four full calendar months of bona fide retirement and is later reemployed in covered employment shall not be subject to any wage-earning disqualification.

**12.8(2)** Beginning on or after July 1, 1996, the retirement allowance of a member subject to reduction pursuant to subrule 12.8(1) shall be reduced as follows:

a. A member's monthly retirement allowance in the following calendar year shall be reduced by the excess benefit paid in the preceding year after the excess benefit payment amount has been determined.

b. Employers shall be required to complete IPERS wage reporting forms for reemployed individuals which shall reflect the prior year's wage payments on a month-to-month basis. These reports shall be used by IPERS to determine the amount which must be recovered to offset overpayments in the prior calendar year due to reemployment wages.

c. The member's overpayment shall be collected as follows:

(1) IPERS will reduce the member's gross monthly benefit by 30 percent until the overpayment is repaid. If the 30 percent reduction will not recover the overpayment by the end of the current calendar year, IPERS will calculate the monthly reduction amount so that the overpayment will be recovered within the current calendar year. Other monthly reduction amounts may be made by an agreement in writing between the member and IPERS; or

(2) A member may elect to make repayments of the overpayment amounts out of pocket in lieu of having the member's monthly benefit reduced. An out-of-pocket repayment may be made in one check or in installments. However, an election to make repayment in installments must be agreed to in writing between the member and IPERS.

(3) If a member dies and the full amount of overpayment determined under this subrule has not been repaid, the remaining amounts shall be deducted from the payments to be made, if any, to the member's designated beneficiary or contingent annuitant. If the member has selected an option under which there

are no remaining amounts to be paid, or the remaining amounts are insufficient, the unrecovered amounts shall be a charge on the member's estate.

(4) A member may elect in writing to have the member's monthly retirement allowance suspended in the month in which the member's remuneration exceeds the amount of remuneration permitted under this subrule in lieu of receiving a reduced retirement allowance under subparagraph (1). In order to become effective, the member's written election must be delivered to IPERS in person, by regular mail, E-mail, facsimile or by private carrier. Oral elections shall not be accepted. The member's election to suspend benefit payments in the month when the member's remuneration exceeds the amount of reimbursement permitted under this subrule shall remain in effect for all subsequent calendar years until revoked by the member in writing. If the member's written election is not received in time to avoid overpayment, the overpayment must be recovered, to the extent possible, from monthly amounts beginning in January of the next calendar year or under one of the alternate arrangements permitted under this rule. Effective July 1, 2007, remuneration shall include those amounts as described in 495—subrule 6.3(13).

**12.8(3)** A member who is reemployed in covered employment after retirement may, after again retiring from employment, request a recomputation of benefits. The member's retirement benefit shall be increased if possible by the addition of a second annuity, which is based on years of reemployment service, reemployment covered wages and the benefit formula in place at the time of the recomputation. A maximum of 30 years of service is creditable to an individual retired member. If a member's combined years of service exceed 30, a member's initial annuity may be reduced by a fraction of the years in excess of 30 divided by 30. The second retirement benefit will be treated as a separate annuity by IPERS.

Effective July 1, 1998, a member who is reemployed in covered employment after retirement may, after again terminating employment for at least one full calendar month, elect to receive a refund of the employee and employer contributions made during the period of reemployment in lieu of a second annuity. If a member requests a refund in lieu of a second annuity, the related service credit shall be forfeited.

Effective July 1, 2007, employer contributions described in 495—subrule 6.3(13) shall constitute "remuneration" for purposes of applying the reemployment earnings limit and determining reductions in the member's monthly benefits but shall not be considered covered wages for IPERS benefits calculations.

It is the member's responsibility to apply for the recomputation or lump sum by completing and submitting the form specified by IPERS.

**12.8(4)** In recomputing a retired member's monthly benefit, IPERS shall use the following assumptions.

- a. The member cannot change the option or beneficiary with respect to the reemployment period.
- b. If the member would only qualify for a money purchase benefit under rule 495—12.5(97B) based solely on the period of reemployment, then the money purchase formula shall be used to compute the additional benefit amount due to the reemployment.
- c. If the member would qualify for a non-money purchase retirement allowance based solely on the period of reemployment, the benefit formula in effect as of the first month of entitlement (FME) for the reemployment period shall be used. If the FME is July 1998 or later, and the member has more than 30 years of service, including both original and reemployment service, the percentage multiplier for the reemployment period only will be at the applicable percentage (up to 65 percent) for the total years of service.
- d. If a period of reemployment would increase the monthly benefit a member is entitled to receive, the member may elect between the increase and a refund of the employee and employer contributions without regard to reemployment FME.
- e. If a member previously elected IPERS Option 1, is eligible for an increase in the Option 1 monthly benefits, and elects to receive the increase in the member's monthly benefits, the member's Option 1 death benefit shall also be increased if the investment is at least \$1,000. The amount of the increase shall be at least the same percentage of the maximum death benefit permitted with respect to the reemployment as the percentage of the maximum death benefit elected at the member's original

retirement. In determining the increase in Option 1 death benefits, IPERS shall round up to the nearest \$1,000. For example, if a member's investment for a period of reemployment is \$1,900 and the member elected at the member's original retirement to receive 50 percent of the Option 1 maximum death benefit, the death benefit attributable to the reemployment shall be \$1,000 (50 percent times \$1,900, rounded up to the nearest \$1,000). Notwithstanding the foregoing, if the member's investment for the period of reemployment is less than \$1,000, the benefit formula for a member who originally elected new IPERS Option 1 shall be calculated under IPERS Option 3.

*f.* A retired reemployed member whose reemployment FME precedes July 1998 shall not be eligible to receive the employer contributions made available to retired reemployed members under Iowa Code section 97B.48A(4) effective July 1, 1998.

*g.* A retired reemployed member who requests a return of the employee and employer contributions made during a period of reemployment cannot repay the distribution and have the service credit for the period of reemployment restored.

*h.* If a retired reemployed member selected IPERS Option 5 at retirement, and after the period of reemployment requests an increase in the member's monthly allowance, at death all remaining guaranteed payments with respect to both periods of employment shall be paid in a commuted lump sum.

*i.* If a retired reemployed member selected IPERS Option 2 (or old IPERS Option 1) at retirement, and after the period of reemployment requests an increase in the member's monthly allowance, at death the member's monthly payments following the increase shall be prorated between the member's two annuities to determine the amount of the member's remaining accumulated contributions that may be paid as a death benefit.

*j.* A retired reemployed member who has attained the age of 70 may take an actuarial equivalent (AE) payment. However, such a member must terminate covered employment for at least 30 days before taking an additional AE payment.

**12.8(5)** Mandatory distribution of active wages. If a retired reemployed member whose annual benefit would be increased by less than \$600 does not request a second annuity or a lump sum payment of reemployment accruals by the end of the fourth quarter after the last quarter in which the member had covered wages, IPERS shall proceed to pay the member the applicable lump sum amount. The member shall have 60 days after the postmark date of the mandatory payment to return the payment and request a benefit increase.

[ARC 8601B, IAB 3/10/10, effective 4/14/10; ARC 0017C, IAB 2/22/12, effective 3/28/12; ARC 1887C, IAB 2/18/15, effective 3/25/15; ARC 2981C, IAB 3/15/17, effective 4/19/17]

#### **495—12.9(97B) Actuarial equivalent (AE) payments.**

**12.9(1)** If a member aged 55 or older requests an estimate of benefits which results in a monthly benefit amount under Option 2 of less than \$50, the member shall receive, under Iowa Code section 97B.48(1), a lump sum actuarial equivalent (AE) payment in lieu of a monthly benefit. Once the AE payment has been paid to the member, the member shall not be entitled to any further benefits based on the contributions included in the AE payment and the employment period represented thereby. If the member later returns to covered employment, any future benefits the member accrues shall be based solely on the new employment period. If an estimate of benefits based on the new employment period again results in any one of the options having a monthly benefit amount of less than \$50, the member may again elect to receive an AE payment.

**12.9(2)** If a member, upon attaining the age of 70 or later, requests a retirement allowance without terminating employment and the member's monthly benefit amount under Option 2 is less than \$50, the member shall receive an AE payment based on the member's employment up to, but not including, the quarter in which the application is filed. When the member subsequently terminates covered employment, any benefits due to the member will be based only on the period of employment not used in computing the AE paid when the member first applied for a retirement allowance. If an estimate of benefits based on the later period of employment again results in a monthly benefit amount under Option 2 of less than \$50, the member shall receive another AE payment. However, a member who

elects to receive an AE payment upon or after attaining age 70 without terminating employment may not elect to receive additional AE payments unless the member terminates all covered employment for at least one full calendar month.

**12.9(3)** An AE payment under this rule shall be equal to the sum of the member's and employer's accumulated contributions and the retirement dividends standing to the member's credit before December 31, 1966.

**495—12.10(97B) Conforming rules for lump sum payments.** Effective January 1, 2007, IPERS may, notwithstanding certain provisions of Iowa Code section 97B.53B enacted in order to comply with prior rollover provisions of the Internal Revenue Code, utilize forms and procedures affording payees of lump sum distributions with broader rollover rights as permitted under the applicable rollover provisions of the Internal Revenue Code as amended subsequent to the enactment of Iowa Code section 97B.53B.

These rules are intended to implement Iowa Code sections 97B.1A, 97B.1A(24), 97B.15, 97B.25, 97B.45, 97B.47 to 97B.48A, 97B.49A to 97B.49I, 97B.51, and 97B.53B.

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CHAPTER 14  
DEATH BENEFITS AND BENEFICIARIES

[Prior to 11/24/04, see 581—Ch 21]

**495—14.1(97B) Internal Revenue Code limitations.** The death benefits payable under Iowa Code sections 97B.51 and 97B.52 shall not exceed the maximum amount possible under Internal Revenue Code Section 401(a)(9).

To ensure that the limit is not exceeded, a member's combined lump sum death benefit under Iowa Code sections 97B.52(1) and 97B.52(2) shall not exceed 100 times the Option 2 amount that would have been payable to the member at the member's earliest normal retirement age. If a beneficiary of a special service member is eligible for an in-the-line-of-duty death benefit, any reduction required under this rule shall be taken first from a death benefit payable under Iowa Code section 97B.52(1). The "100 times" limit shall apply to active and inactive members. The death benefits payable under this chapter for a period of reemployment for a retired reemployed member who dies during the period of reemployment shall also be subject to the limits described in this rule.

The maximum claims period for IPERS lump sum death benefits shall not exceed the period required under Internal Revenue Code Section 401(a)(9), which may be less than five years for a member who dies after the member's required beginning date, unless the beneficiary is a spouse. The claims period for all cases in which the member's death occurs during the same calendar year in which a claim must be filed under this rule shall end April 1 of the year following the year of the member's death.

A member's beneficiary or heir may file a claim for previously forfeited death benefits. Interest, if any, for periods prior to the date of the claim will only be credited through the quarter that the death benefit was required to be forfeited by law. Interest for periods following the quarter of forfeiture will accrue beginning with the quarter that the claim for reinstatement is received by IPERS. For death benefits required to be forfeited in order to satisfy Section 401(a)(9) of the federal Internal Revenue Code, in no event will the forfeiture date precede January 1, 1988. IPERS shall not be liable for any excise taxes imposed by the Internal Revenue Service on reinstated death benefits.

Effective January 14, 2004, all claims for a previously forfeited death benefit shall be processed under the procedure set forth at rule 495—14.13(97B).

The system recognizes the validity of same gender marriages executed in Iowa on or after April 27, 2009, if the domestic relations order or other assignment otherwise meets the system's minimum requirements for such orders; the system shall modify the tax treatment of distributions under such orders as required by the federal laws governing such distributions. IPERS shall adopt such rules and procedures as are deemed necessary to fully implement the provisions of this rule. The Iowa Supreme Court decision recognizing same gender marriages in Iowa specifically states that this recognition does not extend to same gender marriages of other states. The system recognizes the validity of same gender marriages based on the U.S. Supreme Court's decision in *United States v. Windsor*, 133 S.Ct. 2675 (2013) and the direction of Rev. Rul. 2013-17 and IRS Notice 2014-19. IPERS shall recognize the federal tax treatment of distributions as required by the sources listed in this paragraph.

[ARC 8601B, IAB 3/10/10, effective 4/14/10; ARC 1348C, IAB 2/19/14, effective 3/26/14; ARC 1887C, IAB 2/18/15, effective 3/25/15]

**495—14.2(97B) Survival into first month of entitlement.** When a member who has filed an application for retirement benefits and has survived into the first month of entitlement dies prior to the issuance of the first benefit check, IPERS will pay the death benefit allowed under the retirement option elected by the member in the application for retirement benefits.

**495—14.3(97B) Designation of beneficiaries.**

**14.3(1) Designation of beneficiaries.** To designate a beneficiary, the member must complete an IPERS designation of beneficiary form, which must be filed with IPERS. The designation of a beneficiary by a retiring member on the application for monthly benefits revokes all prior designation of beneficiary forms. IPERS may consider as valid a designation of beneficiary form filed with the member's employer prior to the death of the member, even if that form was not forwarded to

IPERS prior to the member's death. If a retired member is reemployed in covered employment, the most recently filed beneficiary form shall govern the payment of all death benefits for all periods of employment. Notwithstanding the foregoing sentence, a reemployed IPERS Option 4 or 6 retired member may name someone other than the member's contingent annuitant as beneficiary, but only for lump sum death benefits accrued during the period of reemployment and only if the contingent annuitant has died or has been divorced from the member before or during the period of reemployment unless a qualified domestic relations order (QDRO) directs otherwise. If a reemployed IPERS Option 4 or 6 retired member dies without filing a new beneficiary form, the death benefits accrued for the period of reemployment shall be paid to the member's contingent annuitant, unless the contingent annuitant has died or been divorced from the member. If the contingent annuitant has been divorced from the member, any portion of the lump sum death benefits awarded in a QDRO shall be paid to the contingent annuitant as alternate payee, and the remainder of the lump sum death benefits shall be paid to the member's estate or, if applicable, to the member's heirs if no estate is probated.

**14.3(2) *Deceased beneficiary.*** If a named beneficiary predeceased the member, that beneficiary's share shall be paid to the surviving named beneficiaries in equal shares.

**14.3(3) *Change of beneficiary.*** The beneficiary may be changed by the member by filing a new designation of beneficiary form with IPERS. The latest dated designation of beneficiary form on file shall determine the identity of the beneficiary. Payment of a refund to a terminated member cancels the designation of beneficiary on file with IPERS.

**14.3(4) *Spousal signature.*** If the member designates someone other than a spouse as the sole primary beneficiary, the beneficiary designation form must contain a spousal signature, pursuant to Iowa Code section 97B.44. If a member's spouse cannot be located, the spousal signature requirement may be waived upon receipt of the notarized form specified by IPERS.

[ARC 1887C, IAB 2/18/15, effective 3/25/15; ARC 2981C, IAB 3/15/17, effective 4/19/17; ARC 4337C, IAB 3/13/19, effective 4/17/19]

**495—14.4(97B) Applications for death benefits.** Before death benefit payments can be made, application in writing must be submitted to IPERS with a copy of the member's death certificate, or if a death certificate cannot be obtained, IPERS may rely on such resources as it has available, including but not limited to records from the Social Security Administration, bureau of health statistics, IPERS' own internal records, or reports derived from other public records, and other departmental or governmental records to which IPERS may have access together with information establishing the claimant's right to payment. A named beneficiary must complete an IPERS application for death benefits based on the deceased member's account. If the claimant's claim is based on dissolution of marriage that revoked the IPERS beneficiary designation, the claim must be processed pursuant to rule 495—14.17(97B).

[ARC 1887C, IAB 2/18/15, effective 3/25/15; ARC 2402C, IAB 2/17/16, effective 3/23/16]

**495—14.5(97B) Commuted lump sums.**

**14.5(1) *Designated beneficiary is an estate, trust, church, charity, or similar organization.*** Where the designated beneficiary is an estate, trust, church, charity or similar organization, or is a person, such as a trustee, executor, or administrator who has been appointed to receive funds on behalf of such entities, payment of benefits shall be made in a lump sum only.

**14.5(2) *Multiple beneficiaries.*** Where multiple beneficiaries have been designated by the member, payment, including the payment of the remainder of a series of guaranteed annuity payments, shall be made in a lump sum only. The lump sum payment shall be paid to the multiple beneficiaries in equal shares.

**14.5(3) *Guaranteed payments.*** Where a member has selected Option 5 and dies before receiving all guaranteed payments, and the member's designated beneficiary also dies before all guaranteed payments are made, any remaining guaranteed payments shall be paid in a commuted lump sum.

[ARC 8929B, IAB 7/14/10, effective 6/21/10; ARC 9068B, IAB 9/8/10, effective 10/13/10]

**495—14.6(97B) Payment of the death benefit when no designation of beneficiary or an invalid designation of beneficiary form is on file.** When no designation of beneficiary or an invalid designation of beneficiary form is on file with IPERS, payment shall be made in one of the following ways.

**14.6(1)** Where the estate is open, payment shall be made to the administrator or executor where said executor or administrator shall be duly appointed and serving under Iowa Code chapter 633 or 635.

**14.6(2)** Where no estate is probated or the estate is closed prior to the filing with IPERS of an application for death benefits, payment will be made to the surviving spouse. The following documents shall be presented as supporting evidence:

- a. Copy of the will, if any;
- b. Copy of any letters of appointment; and
- c. Copy of the court order closing the estate and discharging the executor or administrator.

**14.6(3)** Where no estate is probated or the estate is closed prior to the filing with IPERS of an application for death benefits and there is no surviving spouse, payment will be made to the heirs-at-law as determined by the intestacy laws of the state of Iowa.

**14.6(4)** Where a trustee has been named as designated beneficiary and is not willing to accept the death benefit or otherwise serve as trustee, IPERS may apply but is not required to apply to the applicable district court for an order to distribute the funds to the clerk of court on behalf of the beneficiaries of the member's trust. Upon the issuance of an order and the giving of such notice as the court prescribes, IPERS may deposit the death benefit with the clerk of court for distribution. IPERS shall be discharged from all liability upon deposit with the clerk of court.

**495—14.7(97B) Waiver of beneficiary rights.** A named beneficiary of a deceased member may waive current and future rights to payments to which the beneficiary would have been entitled. The waiver of the rights shall occur prior to the receipt of a payment from IPERS to the beneficiary. The waiver of rights shall be binding and will be executed on a form provided by IPERS. The waiver of rights may be general, in which case payment shall be divided equally among all remaining designated beneficiaries or, if there are none, to the member's estate. The waiver of rights may also expressly be made in favor of one or more of the member's designated beneficiaries or the member's estate. If the waiver of rights operates in favor of the member's estate and no estate is probated or claim made, or if the executor or administrator expressly waives payment to the estate, payment shall be paid to the member's surviving spouse unless there is no surviving spouse or the surviving spouse has waived the surviving spouse's rights. In that case, payment shall be made to the member's heirs excluding any person who waived the right to payment. Any waiver filed by an executor, administrator, or other fiduciary must be accompanied by a release acceptable to IPERS indemnifying IPERS from all liability to beneficiaries, heirs, or other claimants for any waiver executed by an executor, administrator, or other fiduciary.

**495—14.8(97B) Beneficiaries under the age of 18.** Payment may be made to a conservator if the beneficiary is under the age of 18 and the total dollar amount to be paid by IPERS to a single beneficiary is \$25,000 or more. Payment may be made to a custodian if the total dollar amount to be paid by IPERS to a single beneficiary is less than \$25,000.

**495—14.9(97B) Simultaneous deaths.** IPERS will apply the provisions of the Uniform Simultaneous Death Act, Iowa Code sections 633.523 et seq., in determining the proper beneficiaries of death benefits in applicable cases.

**495—14.10(97B) Felonious deaths.** IPERS will apply the provisions of the Felonious Death Act, Iowa Code sections 633.535 et seq., in determining the proper beneficiaries of death benefits in applicable cases.

**495—14.11(97B) No interest on postretirement death benefits.** Interest is only accrued on a member's death benefit if the member dies before the member's first month of entitlement (FME) or, for a retired reemployed member, before the member's reemployment FME, and is only accrued with respect to the retired or retired reemployed member's accumulated contributions account.

**495—14.12(97B) Preretirement death benefits.**

**14.12(1) Pre-January 1, 1999, deaths.** Where the member dies prior to the first month of entitlement, the death benefit shall include the accumulated contributions of the member plus the product of an amount equal to the highest year of covered wages of the deceased member and the number of years of membership service divided by the “applicable denominator,” as provided in Iowa Code section 97B.52(1). The amount payable shall not be less than the amount that would have been payable on the death of the member on June 30, 1984. The calculation of the highest year of covered wages shall use the highest calendar year of covered wages reported to IPERS.

**14.12(2) Post-January 1, 1999, deaths—death benefits under Iowa Code section 97B.52(1).**

a. Definitions.

“*Accrued benefit*” means the monthly amount that would have been payable to the deceased member under IPERS Option 2 at the member’s earliest normal retirement age, based on the member’s covered wages and service credits at the date of death. If a deceased member’s wage record consists of a combination of regular and special service credits, the monthly amount that would have been payable to the deceased member under Option 2 at the member’s earliest normal retirement age shall be determined separately for regular and special service credits, and then combined.

“*Beneficiary(ies)*” shall, unless the context indicates otherwise, refer to both window period beneficiaries and post-window period beneficiaries.

“*Implementation date*” means January 1, 2001.

“*Nearest age*” means a member’s or beneficiary’s age expressed in whole years, after rounding for partial years of age. Ages shall be rounded down to the nearest whole year if less than six complete months have passed following the month of the member’s or beneficiary’s last birthday, and shall be rounded up if six complete months or more have passed following the month of the member’s or beneficiary’s last birthday.

“*Post-window period beneficiary*” means a beneficiary of a member who dies before the member’s first month of entitlement and on or after January 1, 2001.

“*Window period beneficiary*” means a beneficiary of a member who dies before the member’s first month of entitlement during the period January 1, 1999, through December 31, 2000.

b. Any window period beneficiary or post-window period beneficiary may elect to receive the lump sum amount available under Iowa Code section 97B.52(1). Sole beneficiaries may elect, in lieu of the foregoing lump sum amount, to receive a single life annuity that is the actuarial equivalent of such lump sum amount.

A window period beneficiary must repay any prior preretirement death benefit received as follows:

(1) If a window period beneficiary wishes to receive the larger lump sum amount, if any, the system shall pay the difference between the prior death benefit lump sum amount and the new death benefit lump sum amount.

(2) If a sole window period beneficiary wishes to receive a single life annuity under Iowa Code section 97B.52(1), the sole window period beneficiary may either:

1. Annuitize the difference between the previously paid lump sum amount and the new larger lump sum amount, if any; or

2. Annuitize the full amount of the largest of the lump sum amounts available under the revised statute, but must repay the full amount of the previously paid lump sum amount.

(3) To the extent possible, repayment costs shall be recovered from retroactive monthly payments, if any, and the balance shall be offset against current and future monthly payments until the system is repaid in full.

c. A claim for a single life annuity under this subrule must be filed as follows:

(1) A sole window period beneficiary must file a claim for a single life annuity within 12 months of the implementation date.

(2) A sole post-window period beneficiary must file a claim for a single life annuity within 12 months of the member’s death.

(3) A beneficiary who is a surviving spouse must file a claim for a single life annuity within the period specified in subparagraph (1) or (2), as applicable, or by the date that the member would have attained the age of 70½, whichever period is longer.

*d.* Elections to receive the lump sum amount or single life annuity available under Iowa Code section 97B.52(1) and this subrule shall be irrevocable once the first payment is made. Election shall be irrevocable as of the date the first paycheck is issued, or would have been issued but for the fact that the payment is being offset against a prior preretirement death benefit payment.

*e.* No further benefits will be payable following the death of any beneficiary who qualifies and elects to receive the single life annuity provided under this subrule.

*f.* The provisions of this subrule shall not apply to members who die before January 1, 1999.

*g.* Procedures and assumptions to be used in calculating the lump sum present value of a member's accrued benefit are as follows:

(1) IPERS shall calculate a member's retirement benefit at earliest normal retirement age under IPERS Option 2, based on the member's covered wages and service credits at the date of death, and the retirement benefit formula in effect in the month following the date of death.

(2) For purposes of determining the "member date of death annuity factor" under the conversion tables supplied by IPERS' actuary, IPERS shall assume that "age" means the member's nearest age at the member's date of death.

(3) For purposes of determining the "member unreduced retirement annuity factor" under the conversion tables supplied by IPERS' actuary, IPERS shall assume that "age" means the member's nearest age at the member's earliest normal retirement date. If a member had already attained the member's earliest normal retirement date, IPERS shall assume that "age" means the member's nearest age at the date of death.

*h.* Procedures and assumptions for converting the lump sum present value of a deceased member's preretirement death benefit to a single life annuity are as follows:

(1) For purposes of determining the "age of beneficiary annuity factor" under the conversion tables supplied by IPERS' actuary, IPERS shall assume that "age" means the beneficiary's nearest age as of the beneficiary's first month of entitlement.

(2) A beneficiary's first month of entitlement is the month after the date of the member's death.

(3) Effective for claims filed after June 30, 2004, no retroactive payments of the single life annuity shall be made under this subrule.

(4) Effective for claims filed after June 30, 2004, the beneficiary whose single life annuity is less than \$600 per year shall be able to receive only the lump sum payment under this rule.

*i.* Eligibility for favorable experience dividend (FED) payments. Any sole beneficiary who is eligible for and elects to receive a single life annuity under this subrule shall also qualify for the dividend payments authorized under rule 495—15.2(97B), subject to the requirements of that rule.

*j.* Retired reemployed members and aged 70 members who retire without terminating employment. Preretirement death benefits for retired reemployed members and aged 70 members who retire without terminating employment shall be calculated as follows:

(1) For beneficiaries of such members who elect IPERS Option 4 or 6 at retirement, IPERS shall recompute (for retired reemployed members) or recalculate/recompute (for aged 70 members who retired without terminating employment) the member's monthly benefits as though the member had elected to terminate employment as of the date of death, to have the member's benefits adjusted for postretirement wages, and then lived into the recomputation or recalculation/recomputation (as applicable) first month of entitlement.

(2) The recomputation provided under subparagraph (1) shall apply only to beneficiaries of members who elected IPERS Option 4 or 6, where the member's monthly benefit would have been increased by the period of reemployment, and is subject to the limitations of Iowa Code sections 97B.48A, 97B.49A, 97B.49B, 97B.49C, 97B.49D, and 97B.49G. The recalculation/recomputations provided under subparagraph (1) shall apply only to beneficiaries of members who elected IPERS Option 4 or 6, where the member's monthly benefit would have been increased by the period of employment after the initial retirement, and is subject to the limitations of Iowa Code sections 97B.49A,

97B.49B, 97B.49C, 97B.49D, and 97B.49G. In all other cases, including cases where members previously received a lump sum payment under Iowa Code section 97B.48(1) in lieu of a monthly retirement allowance, preretirement death benefits under this subparagraph shall be the lump sum amount equal to the accumulated employee and accumulated employer contributions.

(3) Beneficiaries of members who had elected IPERS Option 4 or 6 may also elect to receive the accumulated employer and accumulated employee contributions described in subparagraph 14.12(2)“j”(2), in lieu of the increased monthly annuity amount. Notwithstanding subparagraph (2) above, if the member elected IPERS Option 5 at retirement, the lump sum amount payable under this paragraph shall be the greater of the applicable commuted lump sum or the accumulated employee and accumulated employer contributions.

*k.* Inactive members with less than 16 quarters of service credit. For deaths occurring after June 30, 2004, and before July 1, 2012, preretirement death benefits shall be provided solely under Iowa Code section 97B.52(1)“a,” and shall only be payable in lump sum amounts for inactive members who have less than 16 quarters of service credit. For purposes of this paragraph, an inactive member is a member as defined under Iowa Code section 97B.1A(12).

*l.* Inactive members not vested by service. For deaths occurring after June 30, 2012, preretirement death benefits shall be provided solely under Iowa Code section 97B.52(1)“a,” and shall only be payable in lump sum amounts for inactive members who are not vested by service. For purposes of this paragraph, an inactive member is a member as defined under Iowa Code section 97B.1A(12).

[ARC 0017C, IAB 2/22/12, effective 3/28/12; ARC 2402C, IAB 2/17/16, effective 3/23/16]

#### **495—14.13(97B) Payment procedures for heirs that cannot be located.**

**14.13(1) Order of priority.** If a death benefit cannot be paid because heirs cannot be located, IPERS will pay a death benefit to the member’s heirs according to the following procedure.

*a. Children.* If there is no surviving spouse, but at least one child survives, the death benefit shall be divided equally among the member’s children. If there are living and deceased children, the shares that would have been payable to deceased children shall be payable in equal shares to the surviving children of each such deceased child.

*b. Grandchildren.* If neither the spouse nor children survive, but at least one grandchild survives, the death benefit shall be divided equally among the member’s grandchildren. If there are living and deceased grandchildren, the shares that would have been payable to any deceased grandchild shall be payable in equal shares to the surviving children of such deceased grandchild.

*c. Parent(s).* If there is no surviving spouse, child, or grandchild, but at least one parent survives, the death benefit shall be divided equally between the member’s parents.

*d. Siblings.* If there is no surviving spouse, child, grandchild, or parent, but at least one sibling survives, the death benefit shall be divided equally among the member’s siblings. If there are living and deceased siblings, the shares that would have been payable to any deceased sibling shall be payable in equal shares to the surviving children of such deceased siblings.

*e. Nephew(s) and niece(s).* If no one from the above-mentioned groups survives, but there is at least one surviving niece or nephew, the death benefit shall be divided equally among the member’s surviving nieces and nephews.

*f. Estate.* If someone other than a member of one of the groups listed above claims the member’s death benefit, an estate must be opened and the death benefit shall only be payable to the administrator of that estate.

**14.13(2) Procedures for initial distribution for identified heirs.** IPERS shall distribute the death benefit to the heirs making a claim for such benefit in descending order listed in 14.13(1)“a” to “f.” A claimant shall be required to submit an affidavit suitable to IPERS that verifies the claimant’s share or, to the best of the claimant’s knowledge, that there are no other surviving persons from the claimant’s group and that there are no living persons in any lower-numbered group that would have a higher priority claim to the death benefit. IPERS shall have no responsibility to determine or search out the member’s heirs at law, nor shall IPERS incur any liability for relying on a claimant’s affidavits in paying the death benefit hereunder.

**14.13(3) Procedures for final distribution to heirs who have filed claims.** If a claimant has identified other persons in the claimant's group who would be entitled to a share of the member's death benefit, but such persons have not filed a claim within five years after the member's death, or by the date required under IRC Section 401(a)(9) if earlier, the remainder of the member's death benefit shall be paid in pro-rata shares to the claimants who were previously paid a share of the death benefit. In order to comply with the applicable IRS limitations, the final payments under this subrule shall be made by December 31 of the fifth year that begins after the member's date of death, or by December 31 of the year that distribution is required under IRC Section 401(a)(9), if earlier. The sole recourse of any claimant who is a member of a group receiving payments hereunder or of any lower-numbered group that should have received all of such payments shall be against the claimants of the group that received death benefit payments.

**495—14.14(97B) Procedures for deaths of certain voluntary emergency services personnel occurring in the line of duty.** Effective July 1, 2006, for a member who dies while performing the functions of a voluntary emergency services provider as described under Iowa Code section 85.61 or 147A.1, benefits for deaths occurring in the line of duty shall be paid pursuant to Iowa Code section 100B.31.

**495—14.15(97B) Rollovers by nonspouse beneficiaries.** Effective January 1, 2007, nonspouse beneficiaries shall be permitted to request a direct rollover of such beneficiaries' death benefit payments to traditional IRA accounts established in accordance with Section 829 of the Pension Protection Act of 2006 and IRS Notice 2007-7. IPERS shall determine the amount eligible for direct rollover under IRC Section 401(a)(9), if any, and the procedural requirements for requesting such rollovers. It shall be the beneficiaries' responsibility to determine that the recipient IRAs meet the structural and operational requirements of Section 829 and Notice 2007-7. IPERS shall bear no responsibility for rollovers to IRA accounts that fail to meet such requirements.

Effective January 1, 2008, IPERS will also allow rollovers under this rule to Roth IRA accounts established in accordance with the structural and operational requirements of Section 829 and Notice 2007-7.

**495—14.16(97B) Required minimum distribution (RMD) basic calculation.**

**14.16(1)** The RMD for a member who retired under an option with a lump sum death benefit and died after the member's required beginning date (RBD) is calculated as follows:

- a. Step 1. Determine the number of payments remaining for the calendar year in which the member died. The current month's payment is not used in this calculation.
- b. Step 2. Multiply the number of remaining payments determined in Step 1 by the gross amount of the member's last monthly payment to get the RMD amount. If the lump sum death benefit is less than the RMD, then the RMD is the lump sum death benefit amount.
- c. Step 3. Determine the total non-RMD amount by subtracting the RMD as determined in Step 2 from the lump sum death benefit.
- d. The eligible rollover amount is the total non-RMD amount as determined in Step 3.

**14.16(2)** In order to allocate nontaxable amounts between RMD and non-RMD, the calculation is performed as follows:

- a. Nontaxable amounts are allocated first to the RMD portion of the lump sum death benefit.
- b. If the nontaxable amounts are greater than the RMD amount, the remaining nontaxable amounts are allocated to the non-RMD portion of the lump sum amount.
- c. If the nontaxable amounts are less than the RMD amount, the remaining portion of the RMD amount is composed of taxable amounts.

[ARC 8929B, IAB 7/14/10, effective 6/21/10; ARC 9068B, IAB 9/8/10, effective 10/13/10]

**495—14.17(97B) Beneficiary revocation pursuant to Iowa Code section 598.20B, dissolution of marriage.** IPERS is not liable for the payment of death benefits to a beneficiary pursuant to a beneficiary designation that has been revoked or reinstated by a divorce, annulment, or remarriage before IPERS

receives the written notice set forth in subrule 14.17(1). Furthermore, IPERS shall only be liable for payments made after receipt of such written notice if the written notice is received at least ten calendar days prior to the payment.

**14.17(1) Form of notice.** The written notice shall include the following information:

- a. The name of the deceased member,
- b. The name of the person(s) whose entitlement to IPERS death benefits is being challenged,
- c. The name, address, and telephone number of the person(s) asserting an interest,
- d. A statement that the decedent's divorce, annulment, or remarriage revoked the entitlement of the person(s) whose status is being challenged to the IPERS death benefits in question, and
- e. A copy of the divorce decree upon which the claim is based.

In addition to the above information, if the person whose entitlement is being challenged is not the former spouse, the written notice must indicate that the person was related to the former spouse, but not the member, by blood, adoption or affinity, and state the nature of the relationship.

**14.17(2) Delivery of notice.** Written notice under this rule must be addressed to IPERS General Counsel and mailed to IPERS by registered mail or served upon IPERS in the same manner as a summons in a civil action.

**14.17(3) Administration.** Upon receipt of written notice that meets the requirements of subrules 14.17(1) and 14.17(2):

- a. IPERS shall review the deceased member's account and determine if there are moneys left to be distributed from the account.
- b. IPERS shall pay the amounts owed, if any, to the probate court having jurisdiction over the decedent's estate, if the deceased member has an open estate.
- c. IPERS shall pay the amounts owed, if any, to the probate court that had or would have had jurisdiction over the decedent's estate, if the deceased member's estate is closed or an estate was not opened.
- d. As IPERS makes applicable payments, a copy of the written notice received by IPERS shall be filed with the probate court.

If the probate court charges a filing fee for the deposit of amounts payable hereunder, IPERS shall deduct such filing fees and other court costs from the amounts payable prior to transfer. The probate court shall hold the funds and, upon its determination, shall order disbursement or transfer in accordance with the determination. Additional filing fees and court costs, if any, shall be charged upon disbursement either to the recipient or against the funds on deposit with the probate court, in the discretion of the court.

**14.17(4) Release of claims.** Payments made to a probate court under this rule shall discharge IPERS from all claims by all persons for the value of amounts paid the court.

[ARC 8601B, IAB 3/10/10, effective 4/14/10; ARC 8929B, IAB 7/14/10, effective 6/21/10; ARC 9068B, IAB 9/8/10, effective 10/13/10]

**495—14.18(97B) Special rules for tax treatment of distributions to same gender spouse and same gender former spouse alternate payees.** Rescinded ARC 1348C, IAB 2/19/14, effective 3/26/14.

These rules are intended to implement Iowa Code sections 97B.1A(8), 97B.1A(18), 97B.1A(19), 97B.34, 97B.34A, 97B.44, 97B.52 and 97B.53B and 2000 Iowa Acts, chapter 1077, section 75.

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CHAPTER 16  
DOMESTIC RELATIONS ORDERS AND OTHER ASSIGNMENTS

[Prior to 11/24/04, see 581—Ch 21]

**495—16.1(97B) Garnishments and income withholding orders.**

**16.1(1)** For the limited purposes of this rule, the term “member” includes IPERS members, beneficiaries, contingent annuitants and any other third-party payees to whom IPERS is paying a monthly benefit or a lump sum distribution.

**16.1(2)** A member’s right to any payment from IPERS is not transferable or assignable and is not subject to execution, levy, attachment, garnishment, or other legal process, including bankruptcy or insolvency law, except for the purpose of enforcing child, spousal, or medical support.

**16.1(3)** Only members receiving payment from IPERS, including monthly benefits and lump sum distributions, may be subject to garnishment, attachment, or execution against funds that are payable. Such garnishment, attachment, or execution is not valid and enforceable for members who have not applied for and have not been approved to receive funds from IPERS.

**16.1(4)** Upon receipt of an income withholding order issued by the Iowa department of human services or a court, IPERS shall send a copy of the withholding order to the member. If a garnishment has been issued by a court, the party pursuing the garnishment shall send a notice pursuant to Iowa law to the member against whom the garnishment is issued.

**16.1(5)** IPERS shall continue to withhold a portion of the member’s monthly benefit as specified in the initial withholding order until instructed by the court or the Iowa department of human services issuing the order to amend or cease payment. IPERS shall continue to withhold a portion of the member’s monthly benefit as specified in the garnishment until the garnishment expires or is released.

**16.1(6)** Funds withheld or garnished are taxable to the member. IPERS may assess a fee of \$2 per payment in accordance with Iowa Code section 252D.18A(2). The fee will be deducted from the gross amount, less federal and state income tax, before a distribution is divided.

**16.1(7)** A garnishment, attachment or execution may not be levied upon funds which are already the subject of a levy, including a levy placed upon funds by the United States Internal Revenue Service, unless the requirements of IRC Section 6334(a)(8) are met. Multiple garnishments, attachments and executions are allowed as long as the amount levied upon does not exceed the limitations prescribed in 15 U.S.C. Section 1673(b).

**16.1(8)** IPERS may release information relating to entitlement to funds to a court or to the Iowa department of human services prior to receipt of a valid garnishment, attachment, execution, or income withholding order when presented with a written request stating the information requested and reasons for the request. This request must be signed by a magistrate, judge, or child support recovery unit director or the director’s designee, including an attorney representing the Iowa department of human services. In addition, IPERS may release information to the Iowa department of human services through automated matches.

**495—16.2(97B) Domestic relations orders.** This rule shall apply only to marital property orders. All support orders shall continue to be administered under rule 495—16.1(97B).

**16.2(1) Definitions.**

“*Alternate payee*” means a spouse or former spouse, regardless of gender, of a member who is recognized by a domestic relations order as having a right to receive all or a portion of the benefits payable by IPERS with respect to such member.

“*Benefits*” means, for purposes of this rule and depending on the context, a refund, monthly allowance (including monthly allowance paid as an actuarial equivalent (AE)), or death benefit payable with respect to a member covered under IPERS. “Benefits” does not include dividends payable under Iowa Code section 97B.49 or other cost-of-living increases unless specifically provided for in a QDRO.

“*Domestic relations order*” means any judgment, decree, or order which relates to the provision of marital property rights to a spouse or former spouse, regardless of gender, of a member and is made pursuant to the domestic relations laws of a state.

“*Member*” means, for purposes of this rule, IPERS members, beneficiaries, and contingent annuitants.

“*Qualified domestic relations order*” or “*QDRO*” means a domestic relations order that divides the marital property of former spouses and assigns to a former spouse alternate payee the right to receive all or a portion of the benefits payable with respect to a member under IPERS and meets the requirements of this rule.

“*Successor alternate payee*” means a person or persons named in a domestic relations order prior to July 1, 2019, to receive the amounts payable to the former spouse alternate payee under the QDRO if the alternate payee dies before the member. Successor alternate payees must be named individuals, not a class of individuals, a trust or an estate.

“*Trigger event*” means a distribution or series of distributions of benefits made with respect to a member.

**16.2(2) Requirements.**

*a. Mandatory provisions.* A domestic relations order is a QDRO if such order:

(1) Clearly specifies the member’s name and last-known mailing address, member identification number or social security number, and the names and last-known mailing addresses and social security numbers of alternate payees. This information shall be provided to IPERS on IPERS’ Confidential Information form;

(2) Clearly specifies a fixed dollar amount or a percentage, but not both, of the member’s benefits to be paid by IPERS to the alternate payee or the manner in which the fixed dollar amount or percentage is to be determined, provided that no such method shall require IPERS to perform present value calculations of the member’s accrued benefit;

(3) Clearly specifies the period to which such order applies;

(4) Clearly specifies that the order applies to IPERS;

(5) Clearly specifies that the order is for purposes of making a property division;

(6) Conforms IPERS with IRS reporting requirements for distributions to successor alternate payees. Prior to July 1, 2019, the taxable portion and basis will be prorated to each respective recipient if the payee is the alternate payee. If the payee is a successor alternate payee, the taxable portion and basis will be borne by the member, pursuant to IRC Pub. L. 99-514, 100 Stat. 2085, enacted October 22, 1986. Effective July 1, 2019, a domestic relations order must conform IPERS with IRS reporting requirements for distributions to alternate payees. The taxable portion and basis will be prorated to each respective recipient; and

(7) Is clearly signed by the judge and filed with the clerk of court. IPERS will consider an order duly signed if it carries an original signature, a stamp bearing the judge’s signature, an electronic clerk-of-court stamp and judge’s signature page via the electronic data management system (EDMS) or is conformed in accordance with local court rules.

*b. Prohibited provisions.* A domestic relations order is not a QDRO if such order:

(1) Requires IPERS to provide any type or form of benefit or any option not otherwise provided under Iowa Code chapter 97B;

(2) Requires IPERS to provide increased benefits determined on the basis of actuarial value;

(3) Requires the payment of benefits to an alternate payee which are required to be paid to another alternate payee under another order previously determined by IPERS to be a QDRO;

(4) Requires any action by IPERS that is contrary to its governing statutes or plan provisions;

(5) Awards any future benefit increases that are provided by the legislature, except as provided in subparagraph 16.2(2)“c”(2);

(6) Requires the payment of benefits to an alternate payee prior to a trigger event; or

(7) Appoints a successor alternate payee after June 30, 2019.

*c. Permitted provisions.* A QDRO may also:

(1) If a trigger event has not occurred as of the date the order is received by IPERS, name an alternate payee as a designated beneficiary or contingent annuitant or require the payment of benefits under a particular benefit option, or both;

(2) Specify that the alternate payee shall be entitled to a fixed dollar amount or percentage of dividend payments, or cost-of-living increase or any other postretirement benefit increase to the member (all known as dividend payments), as follows:

1. If the court order awards a fixed dollar amount of benefits to the alternate payee, the dollar amount of dividend payments to be added or method for determining the dollar amount shall be stated in the court order or an award of a share of dividend payments shall be given no effect; and

2. If the court order awards a specified percentage of benefits to the alternate payee, IPERS shall add dividends to the alternate payee's share of the retirement allowance as necessary to keep the alternate payee's share of payments at the percentage specified in the court order;

(3) Bar a vested member from requesting a refund of the member's accumulated contributions without the alternate payee's written consent. If a member applies for a refund, a consent form will be sent to the alternate payee at the address of record at IPERS. The completed consent form must be received by IPERS within 60 days. If returned undeliverable or no response is received, the member's portion of the refund amount will be payable to the member. If returned marked "no consent," the refund will not be payable to either the member or alternate payee;

(4) Allow benefits to be paid to an alternate payee based on a period of reemployment for a retired member.

**16.2(3) Administrative provisions.**

a. IPERS uses the shared payment method for payments under a domestic relations order. IPERS will not create a separate account for the alternate payee or any successor alternate payee(s). Payment to the alternate payee (or successor alternate payee(s)) shall be in a lump sum if the member's benefits are paid in a lump sum distribution or as monthly payments if the member's benefits are paid under a retirement option. A member shall not be able to receive an actuarial equivalent (AE) under Iowa Code section 97B.48(1) unless the total benefit payable with respect to that member meets the applicable requirements. All divisions of benefits shall be based on the gross amount of monthly or lump sum benefits payable. Federal and state income taxes shall be deducted from the member's and former spouse alternate payee's respective shares and reported under their respective federal tax identification numbers. Unrecovered basis shall be allocated on a pro rata basis to the member and alternate payee. Federal and state income taxes shall be deducted from the member's gross payment when a successor alternate payee(s) receives a payment. Federal and state income taxes shall be reported under the member's federal tax identification number. Unrecovered basis shall be allocated to the member.

b. The alternate payee shall not be entitled to any share of the member's death benefits except to the extent such entitlement is so provided in a QDRO or in a beneficiary designation filed subsequent to the dissolution.

c. Upon acceptable proof from a member that a preretirement divorce is final, a member may submit a new enrollment/beneficiary designation form to IPERS. IPERS will place the new designation in the member's record. However, if a domestic relations order is later received and qualified by IPERS, the provisions of the QDRO shall be deemed, except as revoked or modified in a subsequent QDRO, to operate as a beneficiary designation, and shall be given first priority by IPERS in the determination and payment of such member's death benefits. Death benefits remaining after payments are made as required by the QDRO, to the extent possible, shall then be made according to the terms of the member's most recent beneficiary designation. If a QDRO does not contain a form of benefit paragraph requiring the member to select a specific IPERS option at retirement, the member is allowed to select any option at retirement, including an option that does not provide for payment of postretirement death benefits. Once a divorce is final postretirement, a member may submit a new enrollment/beneficiary designation form to IPERS if the member has retired under Option 1, 2 or 5, unless otherwise specified in a QDRO.

d. If an alternate payee has been awarded a share of the member's benefits and dies before the member, the alternate payee's entire share shall be restored to the member unless otherwise specified in the order and in the manner required under this rule. In order for the alternate payee's entire share to be restored to the member, IPERS requires proof of death of the alternate payee in the form of a death certificate. If a death certificate cannot be obtained, IPERS may rely on such resources as it has available, including but not limited to records from the Social Security Administration, bureau of health statistics,

IPERS' own internal records, or reports derived from other public records, and other departmental or governmental records to which IPERS may have access.

*e.* An alternate payee shall not receive a share of dividends or other cost-of-living increases, unless so provided in a QDRO.

*f.* The CEO, or CEO's designee, shall have exclusive authority to determine whether a domestic relations order is a QDRO. A final determination by the CEO, or CEO's designee, may be appealed in the same manner as any other final agency determination under Iowa Code chapter 97B.

*g.* A person who attempts to make IPERS a party or requires IPERS to appear as a witness to a domestic relations action in order to determine an alternate payee's right to receive a portion of the benefits payable to a member shall be liable to IPERS for its costs and attorney's fees.

*h.* A domestic relations order shall not become effective until it is approved by IPERS. If a member is receiving a retirement allowance at the time a domestic relations order is received by the system, the order shall be effective only with respect to payments made after the order is determined to be a QDRO. Payment to the alternate payee will be withheld from the member's payment the month the alternate payee's application is mailed by IPERS. If the member is not receiving a retirement allowance at the time a domestic relations order is approved by IPERS and the member applies for a refund or monthly allowance, or dies, no distributions shall be made until the respective rights of the parties under the domestic relations order are determined by IPERS. If IPERS has placed a hold on the member's account following written or verbal notification from the member, member's spouse, or legal representative of either party of a pending dissolution of marriage, and no further contacts are received from either party or their representatives within the following one-year period, or IPERS has not received and qualified a domestic relations order, IPERS shall release the hold.

*i.* IPERS and its staff shall have no liability for making or withholding payments in accordance with the provisions of this rule.

*j.* IPERS has no duty or responsibility to search for alternate payees. Alternate payees must notify IPERS of any change in their mailing addresses. IPERS shall mail the alternate payee an application once an application for a distribution has been received from the member and considered a complete application by IPERS. For monthly benefit applications, the alternate payee is eligible for monthly payments as of the member's first month of entitlement.

*k.* If a QDRO requires the member to select an option with joint and survivor provisions (Option 4 or 6) and name the alternate payee as contingent annuitant, the order must state the percentage in Option 4 or 6 to be payable to the alternate payee as contingent annuitant (the currently available percentages under Option 4 or 6 are 25, 50, 75 and 100 percent). Acceptable birth proof for the alternate payee as the named contingent annuitant, pursuant to 495—subrule 11.1(2), must also be provided to IPERS prior to approval of the order by IPERS.

*l.* For both lump sum and monthly payments, the alternate payee's tax withholding and rollover elections, if eligible, must be received before the first or current month's benefit is certified for payment or IPERS will use the applicable default tax withholding elections.

*m.* If an order that is determined to be a QDRO divides a member's account using a service factor formula and the member's IPERS benefits are based on a number of quarters less than the member's total covered quarters, notwithstanding any terms of the order to the contrary, IPERS shall limit the number of quarters used in the numerator and the denominator of the service fraction to the number of quarters actually used in the calculation of IPERS benefits, not to exceed 120 quarters for special service members and 140 quarters for regular and hybrid members. IPERS will not accept or administer a service factor formula fraction in excess of 1.

*n.* Service credit that is purchased during the period when the member is married to the alternate payee shall be added to the numerator and the denominator of the service fraction when calculating the service factor pursuant to a domestic relations order. Service credit that is purchased during a period when the member is not married to the alternate payee shall only be added to the denominator of the service fraction when calculating the service factor pursuant to a domestic relations order. Under no circumstances shall the number of quarters in the denominator be more than the number of quarters used

to calculate the member's benefit. Service purchase after retirement shall not increase or decrease the alternate payee's payment amount that was deducted and was payable at the time of retirement.

*o.* The parties or their attorneys in a dissolution action involving an IPERS member shall decide between themselves which attorney will submit a proposed domestic relations order to IPERS for review. IPERS shall not review a proposed order that has not been approved as to form by both parties or their counsel by enclosure of the Administrative Rule Compliance for QDROs form. A rejection under this paragraph shall not preclude IPERS from placing a hold on a member's account until the status of a proposed order as a QDRO is resolved or the hold is released pursuant to the terms of paragraph 16.2(3) "h."

*p.* If a member has filed for and is receiving monthly pension benefits, or wishes to file an application for retirement or a refund and has a qualified domestic relations order pending on the member's account, the parties (the member and the alternate payee or their counsel of record) may execute a waiver of the 30-day appeal period following review and qualification of the member's domestic relations order, using a form approved by the system.

*q.* If a member with an IPERS-approved QDRO is receiving a distribution according to a qualified benefits arrangement (QBA), the alternate payee shall share in the distribution to the member unless the order specifically states otherwise.

[ARC 8601B, IAB 3/10/10, effective 4/14/10; ARC 8929B, IAB 7/14/10, effective 6/21/10; ARC 9068B, IAB 9/8/10, effective 10/13/10; ARC 9397B, IAB 2/23/11, effective 3/30/11; ARC 0662C, IAB 4/3/13, effective 5/8/13; ARC 1348C, IAB 2/19/14, effective 3/26/14; ARC 1887C, IAB 2/18/15, effective 3/25/15; ARC 2402C, IAB 2/17/16, effective 3/23/16; ARC 4337C, IAB 3/13/19, effective 4/17/19]

These rules are intended to implement Iowa Code sections 97B.4, 97B.15, 97B.25, 97B.38 and 97B.39.

[Filed 11/5/04, Notice 9/15/04—published 11/24/04, effective 12/29/04]

[Filed 5/3/07, Notice 3/28/07—published 5/23/07, effective 6/27/07]

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[Filed ARC 8601B (Notice ARC 8477B, IAB 1/13/10), IAB 3/10/10, effective 4/14/10]

[Filed Emergency ARC 8929B, IAB 7/14/10, effective 6/21/10]

[Filed ARC 9068B (Notice ARC 8928B, IAB 7/14/10), IAB 9/8/10, effective 10/13/10]

[Filed ARC 9397B (Notice ARC 9310B, IAB 12/29/10), IAB 2/23/11, effective 3/30/11]

[Filed ARC 0662C (Notice ARC 0598C, IAB 2/6/13), IAB 4/3/13, effective 5/8/13]

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[Filed ARC 4337C (Notice ARC 4238C, IAB 1/16/19), IAB 3/13/19, effective 4/17/19]



CHAPTER 2  
BUDGET AMENDMENTS AND FUND TRANSFERS

[Prior to 11/30/88, see City Finance Committee[230] Ch 2]

PREAMBLE

Consistent with home rule legislation, the city finance committee encourages as much flexibility as possible in the municipal budget administration. At the same time, it is the responsibility of the city finance committee to require those procedures and processes necessary to ensure adequate notice to citizens of proposed and adopted changes in the local budget and to provide an opportunity for citizen involvement in the reallocation process.

**545—2.1(384,388) Definitions.** The following terms when used in the rules of this part have the following meanings:

“*Act*” means the home rule Act, Acts of the Sixty-fourth General Assembly, chapter 1088, as amended.

“*Budget amendment*” means any change in the appropriations of a city’s budget after the budget has been finally adopted, and that requires preparation and adoption as provided in Iowa Code section 384.16 and subject to protest in Iowa Code section 384.19.

If in these rules the committee has provided that amendments of certain types or up to certain amounts do not require preparation and adoption as provided in Iowa Code section 384.15 and are not subject to protest as provided in Iowa Code section 384.19, then these types of amendments are not considered to be budget amendments.

“*Budget appropriation*” means the allocation of the total appropriation to each program for the following fiscal year, as provided for by a city’s budget as finally adopted. All appropriations shall be allocated to one or more of the nine programs as defined in this rule.

Any expenditure authorized in Iowa Code sections 384.23 to 384.94 shall be deemed appropriated.

“*Detailed budget*” shall mean documenting revenues and transfer in by sources and funds, and documenting expenditures and transfers out by funds, functions and objects.

“*Fund*” means a fiscal and accounting entity with a self-balancing set of accounts recording cash and other financial resources, together with all related liabilities and residual equities or balances, and changes therein, which are segregated for the purpose of carrying on specific activities or attaining certain objectives in accordance with special regulations, restrictions or limitations.

“*Fund transfer resolution*” means a resolution of the city council which must be passed to allow for transfers between funds. A fund transfer resolution must be completed for all transfers between funds and must include a clear statement of reason or purpose for the transfer, the name of the fund from which the transfer is originating, the name of the fund into which the transfer is to be received, and the dollar amount to be transferred. For transfers of utility surpluses outlined in subrule 2.5(5), the calculation proving the surplus must also be shown in the resolution. Intrafund transfers do not require a fund transfer resolution. Multiple transfers between funds may be approved in one resolution, so long as each transfer’s purpose, originating fund or subfund, and receiving fund or subfund, and the amount of transferred dollars are separately identified. Fund transfer resolutions may also be included in budget or budget amendment adoption resolutions, so long as each transfer’s purpose, originating fund or subfund and receiving fund or subfund, and the amount of transferred dollars are separately identified.

“*Intrafund transfer*” means a transfer between accounts or subfunds within a fund.

“*Program*” means any one of the following nine major functions of public service that the city finance committee requires a city to use in defining the city’s program structure:

1. Public safety;
2. Public works;
3. Health and social services;
4. Culture and recreation;
5. Community and economic development;
6. General government;
7. Debt service;

8. Capital projects;
9. Business-type activities.

“*Transfers between funds*” means the transfer of amounts from one fund to another fund.  
[ARC 4334C, IAB 3/13/19, effective 4/17/19]

**545—2.2(384,388) Appropriation of unanticipated amount.** Budget amendments to the adopted city budget to permit the appropriation and expenditure of unencumbered and unanticipated balances, or amounts anticipated to be available from sources other than property taxes but which have not been appropriated in the adopted budget shall be prepared as provided in Iowa Code section 384.16 and subject to protest as provided in Iowa Code section 384.19.

All adopted budget amendments to appropriate and expend unanticipated amounts must be certified to the auditor of the county or counties where the city is located and to the director of the department of management.

**545—2.3(384,388) Transfers between programs.** Except as specifically provided elsewhere in these rules, all appropriation transfers between programs are budget amendments and shall be prepared as provided in Iowa Code section 384.16 and subject to protest as provided in Iowa Code section 384.19.

All adopted budget amendments to permit the transfer of adopted budget appropriations between programs must be certified to the auditor of the county or counties where the city is located and to the director of the department of management.

**545—2.4(384,388) Transfers within programs.** Transfers within programs are not budget amendments within the meaning of Iowa Code section 348.18. It is the responsibility of the governing body of each city to provide its own written rules for transfers within programs.

**545—2.5(384,388) Fund transfers.**

**2.5(1) General provisions.** All transfers of moneys between funds found in the city budget forms must be approved by a fund transfer resolution. Transfers between funds in one program are types of amendments that do not require preparation and adoption as provided in Iowa Code section 384.16 and are not subject to protest as provided in Iowa Code section 384.19, but such transfers must comply with the state laws regarding the funds and the following subrules:

**2.5(2) Emergency fund.** No transfer may be made from any fund to the emergency fund.

**2.5(3) Debt service fund.** Except where specifically prohibited by state law, moneys may be transferred from any other city fund to the debt service fund to meet outstanding principal and interest. Such transfers must be authorized by the original budget or a budget amendment which has been adopted as provided in Iowa Code section 384.16 and subject to protest as provided in Iowa Code section 384.19.

**2.5(4) Capital improvements reserve fund.** Except where specifically prohibited by state law, moneys may be transferred from any city fund to the capital improvements reserve fund for purposes specified in Iowa Code section 384.7. Such transfers must be authorized by the original budget or a budget amendment which has been adopted as provided in Iowa Code section 384.16 and subject to protest as provided in Iowa Code section 384.19.

**2.5(5) City utility fund and city enterprise fund.** Any governing body of a city utility, combined utility system, city enterprise, or combined city enterprise which has a surplus in its fund may transfer such surpluses to any other city fund, except the emergency fund, by resolution of the appropriate governing body. For the purposes of this subrule:

*a.* A surplus may exist only after all required transfers have been made to any restricted accounts in accordance with the terms and provisions of any revenue bonds or loan agreements relating to the utility or enterprise fund.

*b.* A surplus shall be defined as the cash balance in the operating account or the unrestricted net position calculated in accordance with GAAP, after adding back the net pension and other postemployment benefits liabilities and the related deferred inflows of resources and deducting the related deferred outflows of resources, in excess of:

- (1) The amount of the expenses of disbursements for operating and maintaining the utility or enterprise for the preceding three months, and
- (2) The amount necessary to make all required transfers to restricted accounts for the succeeding three months.

[ARC 2811C, IAB 11/9/16, effective 12/14/16; ARC 4334C, IAB 3/13/19, effective 4/17/19]

These rules are intended to implement Iowa Code chapters 384 and 388.

[Filed 11/4/74]

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[Filed emergency 10/2/02—published 10/30/02, effective 1/1/03]

[Filed ARC 2811C (Notice ARC 2687C, IAB 8/31/16), IAB 11/9/16, effective 12/14/16]

[Filed ARC 4334C (Notice ARC 4234C, IAB 1/16/19), IAB 3/13/19, effective 4/17/19]



TITLE II  
AIR QUALITY

## CHAPTER 20

## SCOPE OF TITLE—DEFINITIONS

[Prior to 12/3/86, Water, Air and Waste Management[900]]

**567—20.1(455B,17A) Scope of title.** The department has jurisdiction over the atmosphere of the state to prevent, abate and control air pollution, by establishing standards for air quality and by regulating potential sources of air pollution through a system of general rules or specific permits. The construction and operation of any new or existing stationary source which emits or may emit any air pollutant requires a specific permit from the department, unless exempted by the department.

This chapter provides general definitions applicable to this title.

Chapter 21 contains the provisions requiring compliance schedules, allowing for variances, and setting forth the emission reduction program. Chapter 22 contains the standards and procedures for the permitting of emission sources. Chapter 23 contains the air emission standards for contaminants. Chapter 24 provides for the reporting of excess emissions and the equipment maintenance and repair requirements. Chapter 25 contains the testing and sampling requirements for new and existing sources. Chapter 26 identifies air pollution emergency episodes and the preplanned abatement strategies. Chapter 27 sets forth the conditions political subdivisions must meet in order to secure acceptance of a local air pollution control program. Chapter 28 identifies the state ambient air quality standards. Chapter 29 sets forth the qualifications for an observer for reading visible emissions. Chapter 30 sets forth requirements to pay fees for specified activities. Chapter 31 contains rules for the nonattainment major new source review (NSR) program and general conformity. Chapter 32 specifies requirements for conducting the animal feeding operations field study. Chapter 33 contains special regulations and construction permit requirements for major stationary sources and includes the requirements for prevention of significant deterioration (PSD). Chapter 34 contains provisions for air quality emissions trading programs. Chapter 35 specifies the requirements for the department to provide financial assistance to eligible applicants for the purpose of reducing air pollution emissions.

All dates specified in reference to the Code of Federal Regulations (CFR) are the dates of publication of the last amendments to the portion of the CFR being cited.

[ARC 1227C, IAB 12/11/13, effective 1/15/14; ARC 2352C, IAB 1/6/16, effective 12/16/15; ARC 2949C, IAB 2/15/17, effective 3/22/17]

**567—20.2(455B) Definitions.** For the purpose of these rules, the following terms shall have the meaning indicated in this chapter. The definitions set out in Iowa Code section 455B.411 shall be considered to be incorporated verbatim in these rules.

*“Air pollution alert”* means that action condition declared when the concentrations of air contaminants reach the level at which the first stage control actions are to begin.

*“Air pollution emergency”* means that action condition declared when the air quality is continuing to degrade to a level that should never be reached, and that the most stringent control actions are necessary.

*“Air pollution episode”* means a combination of forecast or actual meteorological conditions and emissions of air contaminants which may or do present an imminent and substantial endangerment to the health of persons, during which the chief meteorological factors are the absence of winds that disperse air contaminants horizontally and a stable atmospheric layer which tends to inhibit vertical mixing through relatively deep layers.

*“Air pollution forecast”* means an air stagnation advisory issued to the department, the commission, and to appropriate air pollution control agencies by an authorized Air Stagnation Advisory Office of the National Weather Service predicting that meteorological conditions conducive to an air pollution episode may be imminent. This advisory may be followed by a prediction of the duration and termination of such meteorological conditions.

*“Air pollution warning”* means that action condition declared when the air quality is continuing to degrade from the levels classified as an air pollution alert, and where control actions in addition to those conducted under an air pollution alert are necessary.

“*Air quality standard*” means an allowable level of air contaminant or atmospheric air concentration established by the commission.

“*Ambient air*” means that portion of the atmosphere, external to buildings, to which the general public has access. Ambient air does not include the atmosphere over land owned or controlled by the source and to which public access is precluded by a fence or other physical barriers.

“*Anaerobic lagoon*” means an impoundment, the primary function of which is to store and stabilize organic wastes. The impoundment is designed to receive wastes on a regular basis and the design waste loading rates are such that the predominant biological activity in the impoundment will be anaerobic. An anaerobic lagoon does not include:

a. A runoff control basin which collects and stores only precipitation induced runoff from an open feedlot feeding operation; or

b. A waste slurry storage basin which receives waste discharges from confinement feeding operations and which is designed for complete removal of accumulated wastes from the basin at least semiannually; or

c. Any anaerobic treatment system which includes collection and treatment facilities for all off gases.

“*ASME*” means the American Society of Mechanical Engineers.

“*ASTM*” means the American Society for Testing and Materials.

“*Auxiliary fuel firing equipment*” means equipment to supply additional heat, by the combustion of an auxiliary fuel, for the purpose of attaining temperatures sufficient to dry and ignite the waste material, to maintain ignition thereof, and to promote complete combustion of combustible gases, solids and vapors.

“*Backyard burning*” means the disposal of residential waste by open burning on the premises of the property where such waste is generated.

“*Biodiesel fuel*” means a renewable, biodegradable, mono alkyl ester combustible liquid fuel derived from agricultural plant oils or animal fat such as, but not limited to, soybean oil. For purposes of this definition, “biodiesel fuel” must also meet the specifications of American Society for Testing and Material Specifications (ASTM) D 6751-02, “Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels,” and be registered with the U.S. Environmental Protection Agency as a fuel and a fuel additive under Section 211(b) of the Clean Air Act, 42 U.S.C. Sections 7401, et seq. as amended through November 15, 1990.

“*Btu*” means British thermal unit, the quantity of heat required to raise the temperature of one pound of water from 59°F to 60°F.

“*Carbonaceous fuel*” means any form of combustible matter (whether solid, liquid, vapor or gas) consisting primarily of carbon-containing compounds in either fixed or volatile form, and which is burned primarily for its heat content.

“*Chimney or stack*” means any flue, conduit or duct permitting the discharge or passage of air contaminants into the open air, or constructed or arranged for this purpose.

“*COH/1,000 linear feet*” means coefficient of haze per 1,000 linear feet, which is a measure of the optical density of a filtered deposit of particulate matter as given in ASTM Standard D-1704-61, and indicated by the following formula:

$$\text{COH/1,000 linear feet} = \frac{(\text{Area tape, ft}^2)(100,000)}{(\text{Volume of air sample, ft}^3)} \log \frac{100}{\% \text{ transmission}}$$

“*Combustion for indirect heating*” means the combustion of fuel to produce usable heat that is to be transferred through a heat-conducting materials barrier or by a heat storage medium to a material to be heated so that the material being heated is not contacted by, and adds no substance to, the products of combustion.

“*Control equipment*” means any equipment that has the function to prevent the formation of or the emission to the atmosphere of air contaminants from any fuel burning, incinerator or process equipment.

“*Country grain elevator*” shall have the same definition as “country grain elevator” set forth in 567—subrule 22.10(1).

“*Criteria*” means information used as guidelines for decisions when establishing air quality goals, air quality standards and the various air quality levels, and which in no case is to be confused or used interchangeably with air quality goals or standards.

“*Diesel fuel*” means a low sulfur fuel oil that complies with the specifications for grade 1-D or 2-D, as defined by the American Society of Testing and Materials (ASTM) D 975-02, “Standard Specification for Diesel Fuel Oils,” grade 1-GT or 2-GT, as defined by ASTM D 2880-00, “Standard Specification for Gas Turbine Fuel Oils,” or grade 1 or 2, as defined by ASTM D 396-02, “Standard Specification for Fuel Oils.”

1. For purposes of the air quality rules contained in Title II, and unless otherwise specified, diesel fuel may contain a blend of up to 2.0 percent biodiesel fuel, by volume, as “biodiesel fuel” is defined in this rule.

2. The department shall consider air pollutant emissions calculations for the biodiesel fuel blends specified in numbered paragraph “1” to be equivalent to the air pollutant emissions calculations for unblended diesel fuel.

3. Construction permits or operating permits issued under 567—Chapter 22 which restrict equipment fuel use to diesel fuel shall be considered by the department to include the biodiesel fuel blends specified in numbered paragraph “1,” unless otherwise specified in 567—Chapter 22 or in a permit issued under 567—Chapter 22.

“*Director*” means the director of the department of natural resources or the director’s designee.

“*Electric furnace*” means a furnace in which the melting and refining of metals are accomplished by means of electrical energy.

“*Emergency generator*” means any generator of which the sole function is to provide emergency backup power during an interruption of electrical power from the electric utility. An emergency generator does not include:

1. Peaking units at electric utilities; or
2. Generators at industrial facilities that typically operate at low rates, but are not confined to emergency purposes; or
3. Any standby generators that are used during time periods when power is available from the electric utility.

An emergency is an unforeseeable condition that is beyond the control of the owner or operator.

“*Emission limitation*” and “*emission standard*” mean a requirement established by a state, local government, or the administrator which limits the quantity, rate or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications or prescribe operation or maintenance procedures for a source to ensure continuous emission reduction.

“*EPA conditional method*” means any method of sampling and analyzing for air pollutants that has been validated by the administrator but that has not been published as an EPA reference method.

“*EPA reference method*” means the following methods used for performance tests and continuous monitoring systems:

1. Performance test (stack test). A stack test shall be conducted according to EPA reference methods specified in 40 CFR 51, Appendix M (as amended through August 30, 2016); 40 CFR 60, Appendix A (as amended through August 30, 2016); 40 CFR 61, Appendix B (as amended through August 30, 2016); and 40 CFR 63, Appendix A (as amended through August 30, 2016).

2. Continuous monitoring systems. Minimum performance specifications and quality assurance procedures for performance evaluations of continuous monitoring systems are as specified in 40 CFR 60, Appendix B (as amended through August 7, 2017); 40 CFR 60, Appendix F (as amended through August 30, 2016); 40 CFR 75, Appendix A (as amended through August 30, 2016); 40 CFR 75, Appendix B (as amended through August 30, 2016); and 40 CFR 75, Appendix F (as amended through August 30, 2016).

*“Equipment”* means equipment capable of emitting air contaminants to produce air pollution such as fuel burning, combustion or process devices or apparatus including but not limited to fuel-burning equipment, refuse burning equipment used for the burning of fuel or other combustible material from which the products of combustion are emitted; and including but not limited to apparatus, equipment or process devices which generate heat and may emit products of combustion, and manufacturing, chemical, metallurgical or mechanical apparatus or process devices which may emit smoke, particulate matter or other air contaminants.

*“Excess air”* means that amount of air supplied in addition to the theoretical quantity necessary for complete combustion of all fuel or combustible waste material present.

*“Excess emission”* means any emission which exceeds any applicable emission standard prescribed in 567—Chapter 23 or rule 567—22.4(455B), 567—22.5(455B), 567—31.3(455B), or 567—33.3(455B) or any emission limit specified in a permit or order.

*“Existing equipment”* means equipment, machines, devices or installations that are in operation prior to September 23, 1970.

*“Foundry cupola”* means a stack-type furnace used for melting of metals consisting of, but not limited to, the furnace proper, tuyeres, fans or blowers, tapping spout, charging equipment, gas cleaning devices and other auxiliaries.

*“Fugitive dust”* means any airborne solid particulate matter emitted from any source other than a flue or stack.

*“Garbage”* means all solid and semisolid putrescible and nonputrescible animal and vegetable wastes resulting from the handling, preparing, cooking, storing and serving of food or of material intended for use as food, but excluding recognized industrial by-products.

*“Gas cleaning device”* means a facility designed to remove air contaminants from gases exhausted from equipment as defined herein.

*“Goal”* means a level of air quality which is expected to be obtained.

*“Grain processing”* means the equipment, or the combination of different types of equipment, used in the processing of grain to produce a product primarily for wholesale or retail sale for human or animal consumption, including the processing of grain for production of biofuels, except for “feed mill equipment,” as “feed mill equipment” is defined in rule 567—22.10(455B).

*“Grain storage elevator”* means any plant or installation at which grain is unloaded, handled, cleaned, dried, stored, or loaded and that is located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean oil extraction plant which has a permanent grain storage capacity (grain storage capacity which is inside a building, bin, or silo) of more than 35,200 m<sup>3</sup> (ca. 1 million U.S. bushels).

*“Greenhouse gas”* means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

*“Heating value”* means the heat released by combustion of one pound of waste or fuel measured in Btu on an as received basis. For solid fuels, the heating value shall be determined by use of ASTM Standard D2015-66.

*“Incinerator”* means a combustion apparatus designed for high temperature operation in which solid, semisolid, liquid or gaseous combustible refuse is ignited and burned efficiently, and from which the solid residues contain little or no combustible material.

*“Initiation of construction, installation or alteration”* means significant permanent modification of a site to install equipment, control equipment or permanent structures. Not included are activities incident to preliminary engineering, environmental studies, or acquisition of a site for a facility.

*“Landscape waste”* means any vegetable or plant wastes except garbage. The term includes trees, tree trimmings, branches, stumps, brush, weeds, leaves, grass, shrubbery and yard trimmings.

*“Level”* means a certain specified degree, quality or characteristic.

*“Malfunction”* means any sudden and unavoidable failure of control equipment or of a process to operate in a normal manner. Any failure that is caused entirely or in part by poor maintenance, careless operation, lack of an adequate maintenance program, or any other preventable upset condition or preventable equipment breakdown shall not be considered a malfunction.

*“Maximum achievable control technology (MACT)”* means the following regarding regulated hazardous air pollutant sources:

1. For existing sources, the emissions limitation reflecting the maximum degree of reduction in emissions that the administrator or the department, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable by sources in the category of stationary sources, that shall not be less stringent than the MACT floor.

2. For new sources, the emission limitation which is not less stringent than the emission limitation achieved in practice by the best-controlled similar source and which reflects the maximum degree of reduction in emissions that the administrator or the department, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable by the affected source.

*“Maximum achievable control technology (MACT) floor”* means the following:

1. For existing sources, the average emission limitation achieved by the best 12 percent of the existing sources in the United States (for which the administrator or the department has or could reasonably obtain emissions information), excluding those sources that have, within 18 months before the emission standard is proposed or within 30 months before such standard is promulgated, whichever is later, first achieved a level of emission rate or emission reduction which complies, or would comply if the source is not subject to such standard, with the lowest achievable emission rate applicable to the source category and prevailing at the time, for categories and subcategories of stationary sources with 30 or more sources in the category or subcategory, or the average emission limitation achieved by the best-performing five sources in the United States (for which the administrator or the department has or could reasonably obtain emissions information), for a category or subcategory of stationary sources with fewer than 30 sources in the category or subcategory.

2. For new sources, the emission limitation achieved in practice by the best-controlled similar source.

*“New equipment”* means except for any equipment or modified equipment to which 567—subrule 23.1(2) applies, any equipment or control equipment not under construction or for which components have not been purchased on or before September 23, 1970, and any equipment which is altered or modified after such date, which may cause the emission of air contaminants or eliminate, reduce or control the emission of air contaminants.

*“Number 1 fuel oil”* and *“number 2 fuel oil,”* also known as “distillate oil,” mean fuel oil that complies with the specifications for fuel oil number 1 or fuel oil number 2, as defined by the American Society of Testing and Materials (ASTM) D 396-02, “Standard Specification for Fuel Oils.”

1. For purposes of the air quality rules contained in Title II, and unless otherwise specified, number 1 fuel oil or number 2 fuel oil may contain a blend of up to 2.0 percent biodiesel fuel, by volume, as “biodiesel fuel” is defined in this rule.

2. The department shall consider air pollutant emissions calculations for the biodiesel fuel blends specified in numbered paragraph “1” to be equivalent to the air pollutant emissions calculations for unblended number 1 fuel oil or unblended number 2 fuel oil.

3. Construction permits or operating permits issued under 567—Chapter 22 which restrict equipment fuel use to number 1 fuel oil or number 2 fuel oil shall be considered by the department to include the biodiesel fuel blends specified in numbered paragraph “1,” unless otherwise specified in 567—Chapter 22 or in a permit issued under 567—Chapter 22.

*“Objective”* means a certain specified degree, quality or characteristic expected to be attained.

*“Odor”* means that which produces a response of the human sense of smell to an odorous substance.

*“Odorous substance”* means a gaseous, liquid, or solid material that elicits a physiological response by the human sense of smell.

*“Odorous substance source”* means any equipment, installation operation, or material which emits odorous substances; such as, but not limited to, a stack, chimney, vent, window, opening, basin, lagoon, pond, open tank, storage pile, or inorganic or organic discharges.

*“One-hour period”* means any 60-minute period commencing on the hour.

“*Opacity*” means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background (See 567—Chapter 29).

“*Open burning*” means any burning of combustible materials where the products of combustion are emitted into the open air without passing through a chimney or stack.

“*Particulate matter*” (except for the purposes of new source performance standards as defined in 40 CFR 60) means any material, except uncombined water, that exists in a finely divided form as a liquid or solid at standard conditions and includes gaseous emissions that condense to liquid or solid form as measured by EPA-approved reference methods.

“*Parts per million (PPM)*” means a term which expresses the volumetric concentration of one material in one million unit volumes of a carrier material.

“*Plan documents*” means the reports, proposals, preliminary plans, survey and basis of design data, general and detail construction plans, profiles, specifications and all other information pertaining to equipment.

“*PM<sub>10</sub>*” means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by an EPA-approved reference method.

“*PM<sub>2.5</sub>*” means particulate matter as defined in this rule with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by an EPA-approved reference method.

“*Potential to emit*” means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the administrator. This term does not alter or affect the use of this term for any other purposes under the Act, or the term “capacity factor” as used in Title IV of the Act or the regulations relating to acid rain.

For the purpose of determining potential to emit for country grain elevators, the provisions set forth in 567—subrule 22.10(2) shall apply.

For purposes of calculating potential to emit for emergency generators, “maximum capacity” means one of the following:

1. 500 hours of operation annually, if the generator has actually been operated less than 500 hours per year for the past five years;
2. 8,760 hours of operation annually, if the generator has actually been operated more than 500 hours in one of the past five years; or
3. The number of hours specified in a state or federally enforceable limit.

If the source is subject to new source construction permit review, then potential to emit is defined as stated above or as established in a federally enforceable permit.

“*Privileged communication*” means information other than air pollutant emissions data the release of which would tend to affect adversely the competitive position of the owner or operator of the equipment.

“*Process*” means any action, operation or treatment, and all methods and forms of manufacturing or processing, that may emit smoke, particulate matter, gaseous matter or other air contaminant.

“*Process weight*” means the total weight of all materials introduced into any source operation. Solid fuels charged will be considered as part of the process weight, but liquid and gaseous fuels and combustion air will not.

“*Process weight rate*” means continuous or long-run steady-state source operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof; or for a cyclical or batch source operation, the total process weight for a period that covers a complete operation or an integral number of cycles, divided by the number of hours of actual process operation during such a period. Where the nature of any process or operation, or the design of any equipment is such as to permit more than one interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply.

“*Refuse*” means garbage, rubbish and all other putrescible and nonputrescible wastes, except sewage and water-carried trade wastes.

“*Residential waste*” means any refuse generated on the premises as a result of residential activities. The term includes landscape waste grown on the premises or deposited thereon by the elements, but excludes garbage, tires, trade wastes, and any locally recyclable goods or plastics.

“*Rubbish*” means all waste materials of nonputrescible nature.

“*Salvage operations*” means any business, industry or trade engaged wholly or in part in salvaging or reclaiming any product or material, including, but not limited to, chemicals, drums, metals, motor vehicles or shipping containers.

“*Shutdown*” means the cessation of operation of any control equipment or process equipment or process for any purpose.

“*Six-minute period*” means any one of the ten equal parts of a one-hour period.

“*Smoke*” means gas-borne particles resulting from incomplete combustion, consisting predominantly, but not exclusively, of carbon, and other combustible material, or ash, that form a visible plume in the air.

“*Smoke monitor*” means a device using a light source and a light detector which can automatically measure and record the light-obscuring power of smoke at a specific location in the flue or stack of a source.

“*Source operation*” means the last operation preceding the emission of an air contaminant, and which results in the separation of the air contaminant from the process materials or in the conversion of the process materials into air contaminants, but is not an air pollution control operation.

“*Standard conditions*” means a temperature of 68°F and a pressure of 29.92 inches of mercury absolute.

“*Standard cubic foot (SCF)*” means the volume of one cubic foot of gas at standard conditions.

“*Standard metropolitan statistical area (SMSA)*” means an area which has at least one city with a population of at least 50,000 and such surrounding areas as geographically defined by the U.S. Bureau of the Budget (Department of Commerce).

“*Startup*” means the setting into operation of any control equipment or process equipment or process for any purpose.

“*Stationary source*” means any building, structure, facility or installation which emits or may emit any air pollutant.

“*Theoretical air*” means the exact amount of air required to supply the required oxygen for complete combustion of a given quantity of a specific fuel or waste.

“*Total suspended particulate*” means particulate matter as defined in this rule.

“*Trade waste*” means any refuse resulting from the prosecution of any trade, business, industry, commercial venture (including farming and ranching), or utility or service activity, and any governmental or institutional activity, whether or not for profit.

“*12-month rolling period*” means a period of 12 consecutive months determined on a rolling basis with a new 12-month period beginning on the first day of each calendar month.

“*Untreated*” as it refers to wood or wood products includes only wood or wood products that have not been treated with compounds such as, but not limited to, paint, pigment-stain, adhesive, varnish, lacquer, or resin or that have not been pressure treated with compounds such as, but not limited to, chromate copper acetate, pentachlorophenol or creosote. “Untreated” as it refers to seeds, pellets or other vegetative matter includes only seeds, pellets or other vegetative matter that has not been treated with pesticides or fungicides.

“*Urban area*” means any Iowa city of 100,000 or more population in the current census and all Iowa cities contiguous to such city.

“*Variance*” means a temporary waiver from rules or standards governing the quality, nature, duration or extent of emissions granted by the commission for a specified period of time.

“*Volatile organic compounds*” or “*VOC*” means any compound included in the definition of “volatile organic compounds” found at 40 CFR Section 51.100(s) as amended through August 1, 2016. [ARC 8215B, IAB 10/7/09, effective 11/11/09; ARC 0330C, IAB 9/19/12, effective 10/24/12; ARC 1227C, IAB 12/11/13, effective 1/15/14; ARC 1913C, IAB 3/18/15, effective 4/22/15; ARC 2949C, IAB 2/15/17, effective 3/22/17; ARC 3679C, IAB 3/14/18, effective 4/18/18; ARC 4335C, IAB 3/13/19, effective 4/17/19]

**567—20.3(455B) Air quality forms generally.** Rescinded **ARC 1913C**, IAB 3/18/15, effective 4/22/15.

These rules are intended to implement Iowa Code section 17A.3 and chapter 455B.

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IAB 9/19/12, effective 10/24/12]

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[Filed ARC 4335C (Notice ARC 4178C, IAB 12/19/18), IAB 3/13/19, effective 4/17/19]

<sup>1</sup> Effective date of 20.2(455B), definition of “12-month rolling period,” delayed 70 days by the Administrative Rules Review Committee at its meeting held October 10, 1995; delay lifted by this Committee December 13, 1995, effective December 14, 1995.

CHAPTER 22  
CONTROLLING POLLUTION

[Prior to 7/1/83, DEQ Ch 3]

[Prior to 12/3/86, Water, Air and Waste Management[900]]

**567—22.1(455B) Permits required for new or existing stationary sources.**

**22.1(1) Permit required.** Unless exempted in subrule 22.1(2) or to meet the parameters established in paragraph “c” of this subrule, no person shall construct, install, reconstruct or alter any equipment, control equipment or anaerobic lagoon without first obtaining a construction permit, or permit pursuant to rule 567—22.8(455B), or permits required pursuant to rules 567—22.4(455B), 567—22.5(455B), 567—31.3(455B), and 567—33.3(455B) as required in this subrule. A permit shall be obtained prior to the initiation of construction, installation or alteration of any portion of the stationary source or anaerobic lagoon.

*a.* Existing sources. Sources built prior to September 23, 1970, are not subject to this subrule, unless they have been modified, reconstructed, or altered on or after September 23, 1970.

*b.* New or reconstructed major sources of hazardous air pollutants. No person shall construct or reconstruct a major source of hazardous air pollutants, as defined in 40 CFR 63.2 and 40 CFR 63.41 as adopted by reference in 567—subrule 23.1(4), unless a construction permit has been obtained from the department, which requires maximum achievable control technology for new sources to be applied. The permit shall be obtained prior to the initiation of construction or reconstruction of the major source.

*c.* New, reconstructed, or modified sources may initiate construction prior to issuance of the construction permit by the department if they meet the eligibility requirements stated in subparagraph (1) below. The applicant must assume any liability for construction conducted on a source before the permit is issued. In no case will the applicant be allowed to hook up the equipment to the exhaust stack or operate the equipment in any way that may emit any pollutant prior to receiving a construction permit.

(1) Eligibility.

1. The applicant has submitted a construction permit application to the department, as specified in subrule 22.1(3);

2. The applicant has notified the department of the applicant’s intentions in writing five working days prior to initiating construction; and

3. The source is not subject to rule 567—22.4(455B), 567—subrule 23.1(2), 567—subrule 23.1(3), 567—subrule 23.1(4), 567—subrule 23.1(5), rule 567—31.3(455B), or paragraph “b” of this subrule. Prevention of significant deterioration (PSD) provisions and prohibitions remain applicable until a proposed project legally obtains PSD synthetic minor status (i.e., obtains permitted limits which limit the source below the PSD thresholds).

(2) The applicant must cease construction if the department’s evaluation demonstrates that the construction, reconstruction or modification of the source will interfere with the attainment or maintenance of the national ambient air quality standards or will result in a violation of a control strategy required by 40 CFR Part 51, Subpart G, as amended through February 19, 2015.

(3) The applicant will be required to make any modification to the source that may be imposed in the issued construction permit.

(4) The applicant must notify the department of the date that construction or reconstruction actually started. All notifications shall be submitted to the department in writing no later than 30 days after construction or reconstruction started. All notifications shall include all of the information listed in 22.3(3) “b.”

*d.* Permit requirements for country grain elevators, country grain terminal elevators, grain terminal elevators, and feed mill equipment. The owner or operator of a country grain elevator, country grain terminal elevator, grain terminal elevator or feed mill equipment, as “country grain elevator,” “country grain terminal elevator,” “grain terminal elevator,” and “feed mill equipment” are defined in subrule 22.10(1), may elect to comply with the requirements specified in rule 567—22.10(455B) for equipment at these facilities.

**22.1(2) Exemptions.** The requirement to obtain a permit in subrule 22.1(1) is not required for the equipment, control equipment, and processes listed in this subrule. The permitting exemptions in this subrule do not relieve the owner or operator of any source from any obligation to comply with any other applicable requirements. Equipment, control equipment, or processes subject to rule 567—22.4(455B) and 567—Chapter 33 (except rule 567—33.9(455B)), prevention of significant deterioration requirements, or rule 567—22.5(455B) or 567—31.3(455B), requirements for nonattainment areas, may not use the exemptions from construction permitting listed in this subrule. Equipment, control equipment, or processes subject to 567—subrule 23.1(2), new source performance standards (40 CFR Part 60 NSPS); 567—subrule 23.1(3), emission standards for hazardous air pollutants (40 CFR Part 61 NESHAP); 567—subrule 23.1(4), emission standards for hazardous air pollutants for source categories (40 CFR Part 63 NESHAP); or 567—subrule 23.1(5), emission guidelines, may still use the exemptions from construction permitting listed in this subrule provided that a permit is not needed to create federally enforceable limits that restrict potential to emit. If equipment is permitted under the provisions of rule 567—22.8(455B), then no other exemptions shall apply to that equipment.

Records shall be kept at the facility for exemptions that have been claimed under the following paragraphs: 22.1(2)“a” (for equipment > 1 million Btu per hour input), 22.1(2)“b,” 22.1(2)“e,” 22.1(2)“r” or 22.1(2)“s.” The records shall contain the following information: the specific exemption claimed and a description of the associated equipment. These records shall be made available to the department upon request.

The following paragraphs are applicable to paragraphs 22.1(2)“g” and “i.” A facility claiming to be exempt under the provisions of paragraph 22.1(2)“g” or “i” shall provide to the department the information listed below. If the exemption is claimed for a source not yet constructed or modified, the information shall be provided to the department at least 30 days in advance of the beginning of construction on the project. If the exemption is claimed for a source that has already been constructed or modified and that does not have a construction permit for that construction or modification, the information listed below shall be provided to the department within 60 days of March 20, 1996. After that date, if the exemption is claimed by a source that has already been constructed or modified and that does not have a construction permit for that construction or modification, the source shall not operate until the information listed below is provided to the department:

- A detailed emissions estimate of the actual and potential emissions, specifically noting increases or decreases, for the project for all regulated pollutants (as defined in rule 567—22.100(455B)), accompanied by documentation of the basis for the emissions estimate;
  - A detailed description of each change being made;
  - The name and location of the facility;
  - The height of the emission point or stack and the height of the highest building within 50 feet;
  - The date for beginning actual construction and the date that operation will begin after the changes are made;
- A statement that the provisions of rules 567—22.4(455B), 567—22.5(455B), and 567—31.3(455B) and 567—Chapter 33 (except rule 567—33.9(455B)) do not apply; and
- A statement that the accumulated emissions increases associated with each change under paragraph 22.1(2)“i,” when totaled with other net emissions increases at the facility contemporaneous with the proposed change (occurring within five years before construction on the particular change commences), have not exceeded significant levels, as defined in 40 CFR 52.21(b)(23) as amended through October 20, 2010, and adopted in rules 567—22.4(455B) and 567—33.3(455B), and will not prevent the attainment or maintenance of the ambient air quality standards specified in 567—Chapter 28. This statement shall be accompanied by documentation for the basis of these statements.

The written statement shall contain certification by a responsible official as defined in rule 567—22.100(455B) of truth, accuracy, and completeness. This certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

*a.* Fuel-burning equipment for indirect heating and reheating furnaces or cooling units using natural gas or liquefied petroleum gas with a capacity of less than ten million Btu per hour input per combustion unit.

*b.* Fuel-burning equipment for indirect heating or indirect cooling with a capacity of less than 1 million Btu per hour input per combustion unit when burning untreated wood, untreated seeds or pellets, other untreated vegetative materials, or fuel oil, provided that the equipment and the fuel meet the conditions specified in this paragraph. Used oils meeting the specification from 40 CFR 279.11 as amended through July 14, 2006, are acceptable fuels for this exemption. When combusting used oils, the equipment must have a maximum rated capacity of 50,000 Btu or less per hour of heat input or a maximum throughput of 3,600 gallons or less of used oils per year. When combusting untreated wood, untreated seeds or pellets, or other untreated vegetative materials, the equipment must have a maximum rated capacity of 265,600 Btu or less per hour or a maximum throughput of 378,000 pounds or less per year of each fuel or any combination of fuels. Records shall be maintained on site by the owner or operator for at least two calendar years to demonstrate that fuel usage is less than the exemption thresholds. Owners or operators initiating construction, installation, reconstruction, or alteration of equipment (as defined in rule 567—20.2(455B)) on or before October 23, 2013, burning coal, used oils, untreated wood, untreated seeds or pellets, or other untreated vegetative materials that qualified for this exemption may continue to claim this exemption after October 23, 2013, without being restricted to the maximum heat input or throughput specified in this paragraph.

*c.* Mobile internal combustion and jet engines, marine vessels and locomotives.

*d.* Equipment used for cultivating land, harvesting crops, or raising livestock other than anaerobic lagoons. This exemption is not applicable if the equipment is used to remove substances from grain which were applied to the grain by another person. This exemption is also not applicable to equipment used by a person to manufacture commercial feed, as defined in Iowa Code section 198.3, which is normally not fed to livestock, owned by the person or another person, in a feedlot, as defined in Iowa Code section 172D.1(6), or a confinement building owned or operated by that person and located in this state.

*e.* Incinerators and pyrolysis cleaning furnaces with a rated refuse burning capacity of less than 25 pounds per hour for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred on or before October 23, 2013. Pyrolysis cleaning furnace exemption is limited to those units that use only natural gas or propane. Salt bath units are not included in this exemption. Incinerators or pyrolysis cleaning furnaces for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred after October 23, 2013, shall not qualify for this exemption. After October 23, 2013, only paint clean-off ovens with a maximum rated capacity of less than 25 pounds per hour that do not combust lead-containing materials shall qualify for this exemption.

*f.* Fugitive dust controls unless a control efficiency can be assigned to the equipment or control equipment.

*g.* Equipment or control equipment which reduces or eliminates all emission to the atmosphere. If a source wishes to obtain credit for emission reductions, a permit must be obtained for the reduction prior to the time the reduction is made. If a construction permit has been previously issued for the equipment or control equipment, all other conditions of the construction permit remain in effect.

*h.* Equipment (other than anaerobic lagoons) or control equipment which emits odors unless such equipment or control equipment also emits particulate matter, or any other regulated air contaminant (as defined in rule 567—22.100(455B)).

*i.* Initiation of construction, installation, reconstruction, or alteration (modification) to equipment (as defined in rule 567—20.2(455B)) on or before October 23, 2013, which will not result in a net emissions increase (as defined in 567—subrule 31.3(1)) of more than 1.0 lb/hr of any regulated air pollutant (as defined in rule 567—22.100(455B)). Emission reduction achieved through the installation of control equipment, for which a construction permit has not been obtained, does not establish a limit to potential emissions.

Hazardous air pollutants (as defined in rule 567—22.100(455B)) are not included in this exemption except for those listed in Table 1. Further, the net emissions rate INCREASE must not equal or exceed the values listed in Table 1.

Table 1

Pollutant	Ton/year
Lead	0.6
Asbestos	0.007
Beryllium	0.0004
Vinyl Chloride	1
Fluorides	3

This exemption is ONLY applicable to vertical discharges with the exhaust stack height 10 or more feet above the highest building within 50 feet. If a construction permit has been previously issued for the equipment or control equipment, the conditions of the construction permit remain in effect. In order to use this exemption, the facility must comply with the information submission to the department as described above.

The department reserves the right to require proof that the expected emissions from the source which is being exempted from the air quality construction permit requirement, in conjunction with all other emissions, will not prevent the attainment or maintenance of the ambient air quality standards specified in 567—Chapter 28. If the department finds, at any time after a change has been made pursuant to this exemption, evidence of violations of any of the department's rules, the department may require the source to submit to the department sufficient information to determine whether enforcement action should be taken. This information may include, but is not limited to, any information that would have been submitted in an application for a construction permit for any changes made by the source under this exemption, and air quality dispersion modeling.

Equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred after October 23, 2013, shall not qualify for this exemption.

*j.* Residential heaters, cookstoves, or fireplaces, which burn untreated wood, untreated seeds or pellets, or other untreated vegetative materials.

*k.* Asbestos demolition and renovation projects subject to 40 CFR 61.145 as amended through January 16, 1991.

*l.* The equipment in laboratories used exclusively for nonproduction chemical and physical analyses. Nonproduction analyses means analyses incidental to the production of a good or service and includes analyses conducted for quality assurance or quality control activities, or for the assessment of environmental impact.

*m.* Storage tanks with a capacity of less than 19,812 gallons and an annual throughput of less than 200,000 gallons.

*n.* Stack or vents to prevent escape of sewer gases through plumbing traps. Systems which include any industrial waste are not exempt.

*o.* A nonproduction surface coating process that uses only hand-held aerosol spray cans.

*p.* Brazing, soldering or welding equipment or portable cutting torches used only for nonproduction activities.

*q.* Cooling and ventilating equipment: Comfort air conditioning not designed or used to remove air contaminants generated by, or released from, specific units of equipment.

*r.* An internal combustion engine with a brake horsepower rating of less than 400 measured at the shaft, provided that the owner or operator meets all of the conditions in this paragraph. For the purposes of this exemption, the manufacturer's nameplate rated capacity at full load shall be defined as the brake horsepower output at the shaft. The owner or operator of an engine that was manufactured, ordered, modified or reconstructed after March 18, 2009, may use this exemption only if the owner or operator, prior to installing, modifying or reconstructing the engine, submits to the department a

completed registration on forms provided by the department (unless the engine is exempted from registration, as specified in this paragraph or on the registration form), certifying that the engine is in compliance with the following federal regulations:

- (1) New source performance standards (NSPS) for stationary compression ignition internal combustion engines (40 CFR Part 60, Subpart IIII); or
- (2) New source performance standards (NSPS) for stationary spark ignition internal combustion engines (40 CFR Part 60, Subpart JJJJ); and
- (3) National emission standards for hazardous air pollutants (NESHAP) for reciprocating internal combustion engines (40 CFR Part 63, Subpart ZZZZ).

Use of this exemption does not relieve an owner or operator from any obligation to comply with NSPS or NESHAP requirements. An engine that meets the definition of a nonroad engine as specified in 40 CFR 1068.30 is exempt from the registration requirements of this paragraph (22.1(2) “r”).

s. Equipment that is not related to the production of goods or services and used exclusively for academic purposes, located at educational institutions (as defined in Iowa Code section 455B.161). The equipment covered under this exemption is limited to: lab hoods, art class equipment, wood shop equipment in classrooms, wood fired pottery kilns, and fuel-burning units with a capacity of less than one million Btu per hour fuel capacity. This exemption does not apply to incinerators.

t. Any container, storage tank, or vessel that contains a fluid having a maximum true vapor pressure of less than 0.75 psia. “Maximum true vapor pressure” means the equilibrium partial pressure of the material considering:

- For material stored at ambient temperature, the maximum monthly average temperature as reported by the National Weather Service, or
- For material stored above or below the ambient temperature, the temperature equal to the highest calendar-month average of the material storage temperature.

u. Equipment for carving, cutting, routing, turning, drilling, machining, sawing, surface grinding, sanding, planing, buffing, sandblast cleaning, shot blasting, shot peening, or polishing ceramic artwork, leather, metals (other than beryllium), plastics, concrete, rubber, paper stock, and wood or wood products, where such equipment is either used for nonproduction activities or exhausted inside a building.

v. Manually operated equipment, as defined in rule 567—22.100(455B), used for buffing, polishing, carving, cutting, drilling, machining, routing, sanding, sawing, scarfing, surface grinding, or turning.

w. Small unit exemption.

(1) “Small unit” means any emission unit and associated control (if applicable) that emits less than the following:

1. 2 pounds per year of lead and lead compounds expressed as lead (40 pounds per year of lead or lead compounds for equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred on or before October 23, 2013);
2. 5 tons per year of sulfur dioxide;
3. 5 tons per year of nitrogen oxides;
4. 5 tons per year of volatile organic compounds;
5. 5 tons per year of carbon monoxide;
6. 5 tons per year of particulate matter (particulate matter as defined in 40 CFR Part 51.100(pp));
7. 2.5 tons per year of PM<sub>10</sub>;
8. 0.52 tons per year of PM<sub>2.5</sub> (does not apply to equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred on or before October 23, 2013); and
9. 5 tons per year of hazardous air pollutants (as defined in rule 567—22.100(455B)).

For the purposes of this exemption, “emission unit” means any part or activity of a stationary source that emits or has the potential to emit any pollutant subject to regulation under the Act. This exemption applies to existing and new or modified “small units.”

An emission unit that emits hazardous air pollutants (as defined in rule 567—22.100(455B)) is not eligible for this exemption if the emission unit is required to be reviewed for compliance with

567—subrule 23.1(3), emission standards for hazardous air pollutants (40 CFR 61, NESHAP), or 567—subrule 23.1(4), emission standards for hazardous air pollutants for source categories (40 CFR 63, NESHAP).

An emission unit that emits air pollutants that are not regulated air pollutants as defined in rule 567—22.100(455B) shall not be eligible to use this exemption.

(2) Permit requested. If requested in writing by the owner or operator of a small unit, the director may issue a construction permit for the emission point associated with that emission unit.

(3) An owner or operator that utilizes the small unit exemption must maintain on site an “exemption justification document.” The exemption justification document must document conformance and compliance with the emission rate limits contained in the definition of “small unit” for the particular emission unit or group of similar emission units obtaining the exemption. Controls which may be part of the exemption justification document include, but are not limited to, the following: emission control devices, such as cyclones, filters, or baghouses; restricted hours of operation or fuel; and raw material or solvent substitution. The exemption justification document for an emission unit or group of similar emission units must be made available for review during normal business hours and for state or EPA on-site inspections, and shall be provided to the director or the director’s representative upon request. If an exemption justification document does not exist, the applicability of the small unit exemption is voided for that particular emission unit or group of similar emission units. The controls described in the exemption justification document establish a limit on the potential emissions. An exemption justification document shall include the following for each applicable emission unit or group of similar emission units:

1. A narrative description of how the emissions from the emission unit or group of similar emission units were determined and maintained at or below the annual small unit exemption levels.

2. If air pollution control equipment is used, a description of the air pollution control equipment used on the emission unit or group of similar emission units and a statement that the emission unit or group of similar emission units will not be operated without the pollution control equipment operating.

3. If air pollution control equipment is used, applicant shall maintain a copy of any report of manufacturer’s testing results of any emissions test, if available. The department may require a test if it believes that a test is necessary for the exemption claim.

4. A description of all production limits required for the emission unit or group of similar emission units to comply with the exemption levels.

5. Detailed calculations of emissions reflecting the use of any air pollution control devices or production or throughput limitations, or both, for applicable emission unit or group of similar emission units.

6. Records of actual operation that demonstrate that the annual emissions from the emission unit or group of similar emission units were maintained below the exemption levels.

7. Facilities designated as major sources with respect to rules 567—22.4(455B) and 567—22.101(455B), or subject to any applicable federal requirements, shall retain all records demonstrating compliance with the exemption justification document for five years. The record retention requirements supersede any retention conditions of an individual exemption.

8. A certification from the responsible official that the emission unit or group of similar emission units have complied with the exemption levels specified in 22.1(2) “w”(1).

(4) Requirement to apply for a construction permit. An owner or operator of a small unit will be required to obtain a construction permit or take the unit out of service if the emission unit exceeds the small unit emission levels.

1. If, during an inspection or other investigation of a facility, the department believes that the emission unit exceeds the emission levels that define a “small unit,” then the department will submit calculations and detailed information in a letter to the owner or operator. The owner or operator shall have 60 days to respond with detailed calculations and information to substantiate a claim that the small unit does not exceed the emission levels that define a small unit.

2. If the owner or operator is unable to substantiate a claim to the satisfaction of the department, then the owner or operator that has been using the small unit exemption must cease operation of that small

unit or apply for a construction permit for that unit within 90 days after receiving a letter of notice from the department. The emission unit and control equipment may continue operation during this period and the associated initial application review period.

3. If the notification of nonqualification as a small unit is made by the department following the process described above, the owner or operator will be deemed to have constructed an emission unit without the required permit and may be subject to applicable penalties.

(5) Required notice for construction or modification of a “substantial small unit.” The owner or operator shall notify the department in writing at least 10 days prior to commencing construction of any new or modified “substantial small unit” as defined in 22.1(2) “w”(6). The owner or operator shall notify the department within 30 days after determining an existing small unit meets the criteria of the “substantial small unit” as defined in 22.1(2) “w”(6). Notification shall include the name of the business, the location where the unit will be installed, and information describing the unit and quantifying its emissions. The owner or operator shall notify the department within 90 days of the end of the calendar year for which the aggregate emissions from substantial small units at the facility have reached any of the cumulative notice thresholds listed below.

(6) For the purposes of this paragraph, “substantial small unit” means a small unit which emits more than the following amounts, as documented in the exemption justification document:

1. 2 pounds per year of lead and lead compounds expressed as lead (30 pounds per year of lead or lead compounds for equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred on or before October 23, 2013);

2. 3.75 tons per year of sulfur dioxide;

3. 3.75 tons per year of nitrogen oxides;

4. 3.75 tons per year of volatile organic compounds;

5. 3.75 tons per year of carbon monoxide;

6. 3.75 tons per year of particulate matter (particulate matter as defined in 40 CFR Part 51.100(pp));

7. 1.875 tons per year of PM<sub>10</sub>;

8. 0.4 tons per year of PM<sub>2.5</sub> (does not apply to equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred on or before October 23, 2013); or

9. 3.75 tons per year of any hazardous air pollutant or 3.75 tons per year of any combination of hazardous air pollutants.

An emission unit is a “substantial small unit” only for those substances for which annual emissions exceed the above-indicated amounts.

(7) Required notice that a cumulative notice threshold has been reached. Once a “cumulative notice threshold,” as defined in 22.1(2) “w”(8), has been reached for any of the listed pollutants, the owner or operator at the facility must apply for air construction permits for all substantial small units for which the cumulative notice threshold for the pollutant(s) in question has been reached. The owner or operator shall have 90 days from the date it determines that the cumulative notice threshold has been reached in which to apply for construction permit(s). The owner or operator shall submit a letter to the department, within 5 working days of making this determination, establishing the date the owner or operator determined that the cumulative notice threshold had been reached.

(8) “Cumulative notice threshold” means the total combined emissions from all substantial small units using the small unit exemption which emit at the facility the following amounts, as documented in the exemption justification document:

1. 0.6 tons per year of lead and lead compounds expressed as lead;

2. 40 tons per year of sulfur dioxide;

3. 40 tons per year of nitrogen oxides;

4. 40 tons per year of volatile organic compounds;

5. 100 tons per year of carbon monoxide;

6. 25 tons per year of particulate matter (particulate matter as defined in 40 CFR Part 51.100(pp));

7. 15 tons per year of PM<sub>10</sub>;

8. 10 tons per year of PM<sub>2.5</sub> (does not apply to equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred on or before October 23, 2013); or

9. 10 tons per year of any hazardous air pollutant or 25 tons per year of any combination of hazardous air pollutants.

x. The following equipment, processes, and activities:

(1) Cafeterias, kitchens, and other facilities used for preparing food or beverages primarily for consumption at the source.

(2) Consumer use of office equipment and products, not including printers or businesses primarily involved in photographic reproduction.

(3) Janitorial services and consumer use of janitorial products.

(4) Internal combustion engines used for lawn care, landscaping, and groundskeeping purposes.

(5) Laundry activities located at a stationary source that uses washers and dryers to clean, with water solutions of bleach or detergents, or to dry clothing, bedding, and other fabric items used on site. This exemption does not include laundry activities that use dry cleaning equipment or steam boilers.

(6) Bathroom vent emissions, including toilet vent emissions.

(7) Blacksmith forges.

(8) Plant maintenance and upkeep activities and repair or maintenance shop activities (e.g., groundskeeping, general repairs, cleaning, painting, welding, plumbing, retarring roofs, installing insulation, and paving parking lots), provided that these activities are not conducted as part of manufacturing process, are not related to the source's primary business activity, and do not otherwise trigger a permit modification. Cleaning and painting activities qualify if they are not subject to control requirements for volatile organic compounds or hazardous air pollutants as defined in rule 567—22.100(455B).

(9) Air compressors and vacuum pumps, including hand tools.

(10) Batteries and battery charging stations, except at battery manufacturing plants.

(11) Equipment used to store, mix, pump, handle or package soaps, detergents, surfactants, waxes, glycerin, vegetable oils, greases, animal fats, sweetener, corn syrup, and aqueous salt or caustic solutions, provided that appropriate lids and covers are utilized and that no organic solvent has been mixed with such materials.

(12) Equipment used exclusively to slaughter animals, but not including other equipment at slaughterhouses, such as rendering cookers, boilers, heating plants, incinerators, and electrical power generating equipment.

(13) Vents from continuous emissions monitors and other analyzers.

(14) Natural gas pressure regulator vents, excluding venting at oil and gas production facilities.

(15) Equipment used by surface coating operations that apply the coating by brush, roller, or dipping, except equipment that emits volatile organic compounds or hazardous air pollutants as defined in rule 567—22.100(455B).

(16) Hydraulic and hydrostatic testing equipment.

(17) Environmental chambers not using gases which are hazardous air pollutants as defined in rule 567—22.100(455B).

(18) Shock chambers, humidity chambers, and solar simulators.

(19) Fugitive dust emissions related to movement of passenger vehicles on unpaved road surfaces, provided that the emissions are not counted for applicability purposes and that any fugitive dust control plan or its equivalent is submitted as required by the department.

(20) Process water filtration systems and demineralizers, demineralized water tanks, and demineralizer vents.

(21) Boiler water treatment operations, not including cooling towers or lime silos.

(22) Oxygen scavenging (deaeration) of water.

(23) Fire suppression systems.

(24) Emergency road flares.

(25) Steam vents, safety relief valves, and steam leaks.

(26) Steam sterilizers.

(27) Application of hot melt adhesives from closed-pot systems using polyolefin compounds, polyamides, acrylics, ethylene vinyl acetate and urethane material when stored and applied at the manufacturer's recommended temperatures. Equipment used to apply hot melt adhesives shall have a safety device that automatically shuts down the equipment if the hot melt temperature exceeds the manufacturer's recommended application temperature.

y. Direct-fired equipment burning natural gas, propane, or liquefied propane with a capacity of less than 10 million Btu per hour input, and direct-fired equipment burning fuel oil with a capacity of less than 1 million Btu per hour input, with emissions that are attributable only to the products of combustion. Emissions other than those attributable to the products of combustion shall be accounted for in an enforceable permit condition or shall otherwise be exempt under this subrule.

z. Closed refrigeration systems, including storage tanks used in refrigeration systems, but excluding any combustion equipment associated with such systems.

aa. Pretreatment application processes that use aqueous-based chemistries designed to clean a substrate, provided that the chemical concentrate contains no more than 5 percent organic solvents by weight. This exemption includes pretreatment processes that use aqueous-based cleaners, cleaner-phosphatizers, and phosphate conversion coating chemistries.

bb. Indoor-vented powder coating operations with filters or powder recovery systems.

cc. Electric curing ovens or curing ovens that run on natural gas or propane with a maximum heat input of less than 10 million Btu per hour and that are used for powder coating operations, provided that the total cured powder usage is less than 75 tons of powder per year at the stationary source. Records shall be maintained on site by the owner or operator for a period of at least two calendar years to demonstrate that cured powder usage is less than the exemption threshold.

dd. Each production painting, adhesive or coating unit using an application method other than a spray system and associated cleaning operations that use 1,000 gallons or less of coating and solvents annually, unless the production painting, adhesive or coating unit and associated cleaning operations are subject to work practice, process limits, emissions limits, stack testing, record-keeping or reporting requirements under 567—subrule 23.1(2), 567—subrule 23.1(3), or 567—subrule 23.1(4). Records shall be maintained on site by the owner or operator for a period of at least two calendar years to demonstrate that paint, adhesive, or solvent usage is at or below the exemption threshold.

ee. Any production surface coating activity that uses only nonrefillable hand-held aerosol cans, where the total volatile organic compound emissions from all these activities at a stationary source do not exceed 5.0 tons per year.

ff. Production welding.

(1) Consumable electrode.

1. Welding operations for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred on or before October 23, 2013, using a consumable electrode, provided that the consumable electrode used falls within American Welding Society specification A5.18/A5.18M for Gas Metal Arc Welding (GMAW), A5.1 or A5.5 for Shielded Metal Arc Welding (SMAW), and A5.20 for Flux Core Arc Welding (FCAW), and provided that the quantity of all electrodes used at the stationary source of the acceptable specifications is below 200,000 pounds per year for GMAW and 28,000 pounds per year for SMAW or FCAW. Records that identify the type and annual amount of welding electrode used shall be maintained on site by the owner or operator for a period of at least two calendar years. For stationary sources where electrode usage exceeds these levels, the welding activity at the stationary source may be exempted if the amount of electrode used (Y) is less than:

Y = the greater of  $1380x - 19,200$  or 200,000 for GMAW, or

Y = the greater of  $187x - 2,600$  or 28,000 for SMAW or FCAW

Where "x" is the minimum distance to the property line in feet and "Y" is the annual electrode usage in pounds per year.

If the stationary source has welding processes that fit into both of the specified exemptions, the most stringent limits must be applied.

2. Welding operations for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred after October 23, 2013, using a consumable electrode, provided that the consumable electrode used falls within American Welding Society specification A5.18/A5.18M for Gas Metal Arc Welding (GMAW), A5.1 or A5.5 for Shielded Metal Arc Welding (SMAW), and A5.20 for Flux Core Arc Welding (FCAW), and provided that the quantity of all electrodes used at the stationary source of the acceptable specifications is below 12,500 pounds per year for GMAW and 1,600 pounds per year for SMAW or FCAW. Records that identify the type and annual amount of welding electrode used shall be maintained on site by the owner or operator for a period of at least two calendar years. For stationary sources where electrode usage exceeds these levels, the welding activity at the stationary source may be exempted if the amount of electrode used (Y) is less than:

Y = the greater of  $84x - 1,200$  or 12,500 for GMAW, or

Y = the greater of  $11x - 160$  or 1,600 for SMAW or FCAW

Where “x” is the minimum distance to the property line in feet and “Y” is the annual electrode usage in pounds per year.

If the stationary source has welding processes that fit into both of the specified exemptions, the most stringent limits must be applied.

(2) Resistance welding, submerged arc welding, or arc welding that does not use a consumable electrode, provided that the base metals do not include stainless steel, alloys of lead, alloys of arsenic, or alloys of beryllium and provided that the base metals are uncoated, excluding manufacturing process lubricants.

gg. Electric hand soldering, wave soldering, and electric solder paste reflow ovens for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred on or before October 23, 2013. Electric hand soldering, wave soldering, and electric solder paste reflow ovens for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred after October 23, 2013, shall be limited to 37,000 pounds or less per year of lead-containing solder. Records shall be maintained on site by the owner or operator for at least two calendar years to demonstrate that use of lead-containing solder is less than the exemption thresholds.

hh. Pressurized piping and storage systems for natural gas, propane, liquefied petroleum gas (LPG), and refrigerants, where emissions could only result from an upset condition.

ii. Emissions from the storage and mixing of paints and solvents associated with the painting operations, provided that the emissions from the storage and mixing are accounted for in an enforceable permit condition or are otherwise exempt.

jj. Product labeling using laser and ink-jet printers with target distances less than or equal to six inches and an annual material throughput of less than 1,000 gallons per year as calculated on a stationary sourcewide basis.

kk. Equipment related to research and development activities at a stationary source, provided that:

(1) Actual emissions from all research and development activities at the stationary source based on a 12-month rolling total are less than the following levels:

2 pounds per year of lead and lead compounds expressed as lead (40 pounds per year for research and development activities that commenced on or before October 23, 2013);

5 tons per year of sulfur dioxide;

5 tons per year of nitrogen oxides;

5 tons per year of volatile organic compounds;

5 tons per year of carbon monoxide;

5 tons per year of particulate matter (particulate matter as defined in 40 CFR Part 51.100(pp) as amended through November 29, 2004);

2.5 tons per year of  $PM_{10}$ ;

0.52 tons per year of  $PM_{2.5}$  (does not apply to research and development activities that commenced on or before October 23, 2013); and

5 tons per year of hazardous pollutants (as defined in rule 567—22.100(455B)); and

(2) The owner or operator maintains records of actual operations demonstrating that the annual emissions from all research and development activities conducted under this exemption are below the levels listed in subparagraph (1) above. These records shall:

1. Include a list of equipment that is included under the exemption;
2. Include records of actual operation and detailed calculations of actual annual emissions, reflecting the use of any control equipment and demonstrating that the emissions are below the levels specified in the exemption;
3. Include, if air pollution equipment is used in the calculation of emissions, a copy of any report of manufacturer's testing, if available. The department may require a test if it believes that a test is necessary for the exemption claim; and
4. Be maintained on site for a minimum of two years, be made available for review during normal business hours and for state and EPA on-site inspections, and be provided to the director or the director's designee upon request. Facilities designated as major sources pursuant to rules 567—22.4(455B) and 567—22.101(455B), or subject to any applicable federal requirements, shall retain all records demonstrating compliance with this exemption for five years.

(3) An owner or operator using this exemption obtains a construction permit or ceases operation of equipment if operation of the equipment would cause the emission levels listed in this exemption to be exceeded.

For the purposes of this exemption, "research and development activities" shall be defined as activities:

1. That are operated under the close supervision of technically trained personnel; and
2. That are conducted for the primary purpose of theoretical research or research and development into new or improved processes and products; and
3. That do not manufacture more than de minimis amounts of commercial products; and
4. That do not contribute to the manufacture of commercial products by collocated sources in more than a de minimis manner.

*ll.* A regional collection center (RCC), as defined in 567—Chapter 211, involved in the processing of permitted hazardous materials from households and conditionally exempt small quantity generators (CESQG), not to exceed 1,200,000 pounds of VOC containing material in a 12-month rolling period. Latex paint drying may not exceed 120,000 pounds per year on a 12-month rolling total. Other nonprocessing emission units (e.g., standby generators and waste oil heaters) shall not be eligible to use this exemption.

*mm.* Cold solvent cleaning machines that are not in-line cleaning machines, where the maximum vapor pressure of the solvents used shall not exceed 0.7 kPa (5 mmHg or 0.1 psi) at 20°C (68°F). The machine must be equipped with a tightly fitted cover or lid that shall be closed at all times except during parts entry and removal. This exemption cannot be used for cold solvent cleaning machines that use solvent containing methylene chloride (CAS # 75-09-2), perchloroethylene (CAS # 127-18-4), trichloroethylene (CAS # 79-01-6), 1,1,1-trichloroethane (CAS # 71-55-6), carbon tetrachloride (CAS # 56-23-5) or chloroform (CAS # 67-66-3), or any combination of these halogenated HAP solvents in a total concentration greater than 5 percent by weight.

*nn.* Emissions from mobile over-the-road trucks, and mobile agricultural and construction internal combustion engines that are operated only for repair or maintenance purposes at equipment repair shops or equipment dealerships, and only when the repair shops or equipment dealerships are not major sources as defined in rule 567—22.100(455B).

*oo.* A non-road diesel fueled engine, as defined in 40 CFR 1068.30 as amended through April 30, 2010, with a brake horsepower rating of less than 1,100 at full load measured at the shaft, used to conduct periodic testing and maintenance on natural gas pipelines. For the purposes of this exemption, the manufacturer's nameplate rating shall be defined as the brake horsepower output at the shaft at full load.

(1) To qualify for the exemption, the engine must:

1. Be used for periodic testing and maintenance on natural gas pipelines outside the compressor station, which shall not exceed 330 hours in any 12-month consecutive period at a single location; or

2. Be used for periodic testing and maintenance on natural gas pipelines within the compressor station, which shall not exceed 330 hours in any 12-month consecutive period.

(2) The owner or operator shall maintain a monthly record of the number of hours the engine operated and a record of the rolling 12-month total of the number of hours the engine operated for each location outside the compressor station and within the compressor station. These records shall be maintained for two years. Records shall be made available to the department upon request.

(3) This exemption shall not apply to the replacement or substitution of engines for backup power generation at a pipeline compressor station.

**22.1(3) Construction permits.** The owner or operator of a new or modified stationary source shall apply for a construction permit. One copy of a construction permit application for a new or modified stationary source shall be presented or mailed to Department of Natural Resources, Air Quality Bureau, 502 East 9th Street, Des Moines, Iowa 50319. Alternatively, the owner or operator may apply for a construction permit for a new or modified stationary source through the electronic submittal format specified by the department. An owner or operator applying for a permit as required pursuant to rule 567—31.3(455B) (nonattainment new source review) or 567—33.3(455B) (prevention of significant deterioration (PSD)) shall present or mail to the department one hard copy of a construction permit application to the address specified above and, upon request from the department, shall also submit one electronic copy and one additional hard copy of the application. Application submission methods may include, but are not limited to, U.S. Postal Service, private parcel delivery services, and hand delivery. Applications are not required to be submitted by certified mail. The owner or operator of any new or modified industrial anaerobic lagoon shall apply for a construction permit as specified in this subrule and as provided in 567—Chapter 22. The owner or operator of a new or modified anaerobic lagoon for an animal feeding operation shall apply for a construction permit as provided in 567—Chapter 65.

*a. Regulatory applicability determinations.* If requested in writing, the director will review the design concepts of equipment and associated control equipment prior to application for a construction permit. The purpose of the review would be to determine the acceptability of the location of the equipment. If the review is requested, the requester shall supply the following information and submit a fee as required in 567—Chapter 30:

- (1) Preliminary plans and specifications of equipment and related control equipment.
- (2) The exact site location and a plot plan of the immediate area, including the distance to and height of nearby buildings and the estimated location and elevation of the emission points.
- (3) The estimated emission rates of any air contaminants which are to be considered.
- (4) The estimated exhaust gas temperature, velocity at the point of discharge, and stack diameter at the point of discharge.
- (5) An estimate of when construction would begin and when construction would be completed.

*b. Construction permit applications.* Each application for a construction permit shall be submitted to the department on the permit application forms available on the department's website. Final plans and specifications for the proposed equipment or related control equipment shall be submitted with the application for a permit and shall be prepared by or under the direct supervision of a professional engineer licensed in the state of Iowa in conformance with Iowa Code section 542B.1, or consistent with the provisions of Iowa Code section 542B.26 for any full-time employee of any corporation while the employee is doing work for that corporation. The application for a permit to construct shall include the following information:

- (1) A description of the equipment or control equipment covered by the application;
- (2) A scaled plot plan, including the distance and height of nearby buildings, and the location and elevation of existing and proposed emission points;
- (3) The composition of the effluent stream, both before and after any control equipment with estimates of emission rates, concentration, volume and temperature;
- (4) The physical and chemical characteristics of the air contaminants;
- (5) The proposed dates and description of any tests to be made by the owner or operator of the completed installation to verify compliance with applicable emission limits or standards of performance;

(6) Information pertaining to sampling port locations, scaffolding, power sources for operation of appropriate sampling instruments, and pertinent allied facilities for making tests to ascertain compliance;

(7) Any additional information deemed necessary by the department to determine compliance with or applicability of rules 567—22.4(455B), 567—22.5(455B), 567—31.3(455B) and 567—33.3(455B);

(8) Application for a case-by-case MACT determination. If the source meets the definition of construction or reconstruction of a major source of hazardous air pollutants, as defined in paragraph 22.1(1)“b,” then the owner or operator shall submit an application for a case-by-case MACT determination, as required in 567—subparagraph 23.1(4)“b”(1), with the construction permit application. In addition to this paragraph, an application for a case-by-case MACT determination shall include the following information:

1. The hazardous air pollutants (HAP) emitted by the constructed or reconstructed major source, and the estimated emission rate for each HAP, to the extent this information is needed by the permitting authority to determine MACT;

2. Any federally enforceable emission limitations applicable to the constructed or reconstructed major source;

3. The maximum and expected utilization of capacity of the constructed or reconstructed major source, and the associated uncontrolled emission rates for that source, to the extent this information is needed by the permitting authority to determine MACT;

4. The controlled emissions for the constructed or reconstructed major source in tons/yr at expected and maximum utilization of capacity to the extent this information is needed by the permitting authority to determine MACT;

5. A recommended emission limitation for the constructed or reconstructed major source consistent with the principles set forth in 40 CFR Part 63.43(d) as amended through December 27, 1996;

6. The selected control technology to meet the recommended MACT emission limitation, including technical information on the design, operation, size, estimated control efficiency of the control technology (and the manufacturer’s name, address, telephone number, and relevant specifications and drawings, if requested by the permitting authority);

7. Supporting documentation including identification of alternative control technologies considered by the applicant to meet the emission limitation, and analysis of cost and non-air quality health environmental impacts or energy requirements for the selected control technology;

8. An identification of any listed source category or categories in which the major source is included;

(9) A signed statement that ensures the applicant’s legal entitlement to install and operate equipment covered by the permit application on the property identified in the permit application. A signed statement shall not be required for rock crushers, portable concrete or asphalt equipment used in conjunction with specific identified construction projects which are intended to be located at a site only for the duration of the specific, identified construction project;

(10) Application fee.

1. The owner or operator shall submit a fee as required in 567—Chapter 30 to obtain a permit under subrule 22.1(1), rule 567—22.4(455B), rule 567—22.5(455B), rule 567—22.8(455B), rule 567—22.10(455B), 567—Chapter 31 or 567—Chapter 33;

2. For application submittals from a minor source as defined in 567—Chapter 30, the department shall not initiate review and processing of a permit application submittal until all required application fees have been paid to the department; and

(11) Quantity of greenhouse gas emissions for all applications for projects that will or do have greenhouse gas emissions. For all applications for projects that will not or do not have greenhouse gas emissions, the applicant shall indicate in the application that no greenhouse gases will be emitted, and the applicant will not be required to file an inventory of greenhouse gases with that application, unless requested by the department.

*c. Application requirements for anaerobic lagoons.* The application for a permit to construct an anaerobic lagoon shall include the following information:

(1) The source of the water being discharged to the lagoon;

- (2) A plot plan, including distances to nearby residences or occupied buildings, local land use zoning maps of the vicinity, and a general description of the topography in the vicinity of the lagoon;
- (3) In the case of an animal feeding operation, the information required in rule 567—65.15(455B);
- (4) In the case of an industrial source, a chemical description of the waste being discharged to the lagoon;
- (5) A report of sulfate analyses conducted on the water to be used for any purpose in a livestock operation proposing to use an anaerobic lagoon. The report shall be prepared by using standard methods as defined in 567—60.2(455B);
- (6) A description of available water supplies to prove that adequate water is available for dilution;
- (7) In the case of an animal feeding operation, a waste management plan describing the method of waste collection and disposal and the land to be used for disposal. Evidence that the waste disposal equipment is of sufficient size to dispose of the wastes within a 20-day period per year shall also be provided;
- (8) Any additional information needed by the department to determine compliance with these rules.

**22.1(4) Conditional permits.** Rescinded IAB 3/18/15, effective 4/22/15.

This rule is intended to implement Iowa Code section 455B.133.

[ARC 7565B, IAB 2/11/09, effective 3/18/09; ARC 8215B, IAB 10/7/09, effective 11/11/09; ARC 1013C, IAB 9/18/13, effective 10/23/13; ARC 1227C, IAB 12/11/13, effective 1/15/14; ARC 1913C, IAB 3/18/15, effective 4/22/15; ARC 2352C, IAB 1/6/16, effective 12/16/15; ARC 2949C, IAB 2/15/17, effective 3/22/17; ARC 3440C, IAB 11/8/17, effective 12/13/17; ARC 3679C, IAB 3/14/18, effective 4/18/18; ARC 4335C, IAB 3/13/19, effective 4/17/19]

**567—22.2(455B) Processing permit applications.**

**22.2(1) Incomplete applications.** The department will notify the applicant whether the application is complete or incomplete. If the application is found by the department to be incomplete upon receipt, the applicant will be notified within 30 days of that fact and of the specific deficiencies. Sixty days following such notification, the application may be denied for lack of information. When this schedule would cause undue hardship to an applicant, or the applicant has a compelling need to proceed promptly with the proposed installation, modification or location, a request for priority consideration and the justification therefor shall be submitted to the department.

**22.2(2) Public notice and participation.** A notice of intent to issue a construction permit to a major stationary source shall be published by the department in a newspaper having general circulation in the area affected by the emissions of the proposed source. The notice and supporting documentation shall be made available for public inspection upon request from the department's central office. Publication of the notice shall be made at least 30 days prior to issuing a permit and shall include the department's evaluation of ambient air impacts. The public may submit written comments or request a public hearing. If the response indicates significant interest, a public hearing may be held after due notice.

**22.2(3) Final notice.** The department shall notify the applicant in writing of the issuance or denial of a construction permit as soon as practicable and at least within 120 days of receipt of the completed application. This shall not apply to applicants for electric generating facilities subject to Iowa Code chapter 476A.

This rule is intended to implement Iowa Code section 455B.133.

[ARC 1913C, IAB 3/18/15, effective 4/22/15]

**567—22.3(455B) Issuing permits.**

**22.3(1) Stationary sources other than anaerobic lagoons.** In no case shall a construction permit which results in an increase in emissions be issued to any facility which is in violation of any condition found in a permit involving PSD, NSPS, NESHAP or a provision of the Iowa state implementation plan. If the facility is in compliance with a schedule for correcting the violation and that schedule is contained in an order or permit condition, the department may consider issuance of a construction permit. A construction permit shall be issued when the director concludes that the preceding requirement has been met and:

- a. That the required plans and specifications represent equipment which reasonably can be expected to comply with all applicable emission standards, and

*b.* That the expected emissions from the proposed source or modification in conjunction with all other emissions will not prevent the attainment or maintenance of the ambient air quality standards specified in 567—Chapter 28, and

*c.* That the applicant has not relied on emission limits based on stack height that exceeds good engineering practice or any other dispersion techniques as defined in 567—subrule 23.1(6), and

*d.* That the applicant has met all other applicable requirements.

**22.3(2) Anaerobic lagoons.** A construction permit for an industrial anaerobic lagoon shall be issued when the director concludes that the application for permit represents an approach to odor control that can reasonably be expected to comply with the criteria in 567—subrule 23.5(2). A construction permit for an animal feeding operation using an anaerobic lagoon shall be issued when the director concludes that the application has met the requirements of rule 567—65.15(455B).

**22.3(3) Conditions of approval.** A permit may be issued subject to conditions which shall be specified in writing. Such conditions may include but are not limited to emission limits, operating conditions, fuel specifications, compliance testing, continuous monitoring, and excess emission reporting.

*a.* Each permit shall specify the date on which it becomes void if work on the installation for which it was issued has not been initiated.

*b.* Each permit shall list the requirements for notifying the department of the dates of intended startup, start of construction and actual equipment startup. All notifications shall be in writing and include the following information:

- (1) The date or dates required by 22.3(3) “*b*” for which the notice is being submitted.
- (2) Facility name.
- (3) Facility address.
- (4) DNR facility number.
- (5) DNR air construction permit number.
- (6) The name or the number of the emission unit or units in the notification.
- (7) The emission point number or numbers in the notification.
- (8) The name and signature of a company official.
- (9) The date the notification was signed.

*c.* Each permit shall specify that no review has been undertaken on the various engineering aspects of the equipment other than the potential of the equipment for reducing air contaminant emissions.

*d.* Rescinded IAB 3/18/15, effective 4/22/15.

*e.* If changes in the final plans and specifications are proposed by the permittee after a construction permit has been issued, a supplemental permit shall be obtained.

*f.* A permit is not transferable from one location to another or from one piece of equipment to another unless the equipment is portable. When portable equipment for which a permit has been issued is to be transferred from one location to another, the department shall be notified in writing at least 7 days prior to the transfer of the portable equipment to the new location. Written notification shall be submitted to the department through one of the following methods: electronic mail (email), mail delivery service (including U.S. Mail), hand delivery, facsimile (fax), or by electronic format specified by the department (at such time as an Internet-based submittal system or other, similar electronic submittal system becomes available). However, if the owner or operator is relocating the portable equipment to an area currently classified as nonattainment for ambient air quality standards or to an area under a maintenance plan for ambient air quality standards, the owner or operator shall notify the department at least 14 days prior to transferring the portable equipment to the new location. A list of nonattainment and maintenance areas may be obtained from the department, upon request, or on the department’s Internet website. The owner or operator will be notified by the department at least 10 days prior to the scheduled relocation if said relocation will prevent the attainment or maintenance of ambient air quality standards and thus require a more stringent emission standard and the installation of additional control equipment. In such a case, the owner or operator shall obtain a supplemental permit prior to the initiation of construction, installation, or alteration of such additional control equipment.

g. The issuance of a permit (approval to construct) shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the state implementation plan and any other requirement under local, state or federal law.

**22.3(4) Denial of a permit.**

a. When an application for a construction permit is denied, the applicant shall be notified in writing of the reasons therefor. A denial shall be without prejudice to the right of the applicant to file a further application after revisions are made to meet the objections specified as reasons for the denial.

b. The department may deny an application based upon the applicant's failure to provide a signed statement of the applicant's legal entitlement to install and operate equipment covered by the permit application on the property identified in the permit application.

**22.3(5) Modification of a permit.** The director may, after public notice of such decision, modify a condition of approval of an existing permit for a major stationary source or an emission limit contained in an existing permit for a major stationary source if necessary to attain or maintain an ambient air quality standard, or to mitigate excessive deposition of mercury.

**22.3(6) Limits on hazardous air pollutants.** The department may limit a source's hazardous air pollutant potential to emit, as defined at rule 567—22.100(455B), in the source's construction permit for the purpose of establishing federally enforceable limits on the source's hazardous air pollutant potential to emit.

**22.3(7) Revocation of a permit.** The department may revoke a permit upon obtaining knowledge that a permit holder has lost legal entitlement to use the property identified in the permit to install and operate equipment covered by the permit, upon notice that the property owner does not wish to have continued the operation of the permitted equipment, or upon notice that the owner of the permitted equipment no longer wishes to retain the permit for future operation.

**22.3(8) Ownership change of permitted equipment.** The new owner shall notify the department in writing no later than 30 days after the change in ownership of equipment covered by a construction permit pursuant to rule 567—22.1(455B). The notification to the department shall be mailed to the Air Quality Bureau, Iowa Department of Natural Resources, 502 East 9th Street, Des Moines, Iowa 50319, and shall include the following information:

- a. The date of ownership change;
- b. The name, address and telephone number of the responsible official, the contact person and the owner of the equipment both before and after ownership change; and
- c. The construction permit number of the equipment changing ownership.

This rule is intended to implement Iowa Code section 455B.133.

[ARC 8215B, IAB 10/7/09, effective 11/11/09; ARC 0330C, IAB 9/19/12, effective 10/24/12; ARC 1913C, IAB 3/18/15, effective 4/22/15; ARC 4335C, IAB 3/13/19, effective 4/17/19]

**567—22.4(455B) Special requirements for major stationary sources located in areas designated attainment or unclassified (PSD).** As applicable, the owner or operator of a stationary source shall comply with the rules for prevention of significant deterioration (PSD) as set forth in 567—Chapter 33. An owner or operator required to apply for a construction permit under this rule shall submit all required fees as required in 567—Chapter 30.

[ARC 2352C, IAB 1/6/16, effective 12/16/15]

**567—22.5(455B) Special requirements for nonattainment areas.** As applicable, the owner or operator of a stationary source shall comply with the requirements for the nonattainment major NSR program as set forth in rule 567—31.20(455B). An owner or operator required to apply for a construction permit under this rule shall submit all required fees as required in 567—Chapter 30.

[ARC 1227C, IAB 12/11/13, effective 1/15/14; ARC 2352C, IAB 1/6/16, effective 12/16/15]

**567—22.6(455B) Nonattainment area designations.** Rescinded ARC 1227C, IAB 12/11/13, effective 1/15/14.

**567—22.7(455B) Alternative emission control program.**

**22.7(1) Applicability.** The owner or operator of any source located in an area with attainment or unclassified status (as published at 40 CFR §81.316 amended August 5, 2013) or located in an area with an approved state implementation plan (SIP) demonstrating attainment by the statutory deadline may apply for an alternative set of emission limits if:

- a. The applicant is presently in compliance with EPA approved SIP requirements, or
- b. The applicant is subject to a consent order to meet an EPA approved compliance schedule and the final compliance date will not be delayed by the use of alternative emission limits.

**22.7(2) Demonstration requirements.** The applicant for the alternative emission control program shall have the burden of demonstrating that:

- a. The alternative emission control program will not interfere with the attainment and maintenance of ambient air quality standards, including the reasonable further progress or prevention of significant deterioration requirements of the Clean Air Act;
- b. The alternative emission limits are equivalent to existing emission limits in pollution reduction, enforceability, and environmental impact; (In the case of a particulate nonattainment area, the difference between the allowable emission rate and the actual emission rate, as of January 1, 1978, cannot be credited in the emissions tradeoff.)
- c. The pollutants being exchanged are comparable and within the same pollutant category;
- d. Hazardous air pollutants designated in 40 CFR Part 61, as amended through July 20, 2004, will not be exchanged for nonhazardous air pollutants;
- e. The alternative program will not result in any delay in compliance by any source.

Specific situations may require additional demonstration as specified at 44 FR 71780-71788, December 11, 1979, or as requested by the director.

**22.7(3) Approval process.**

- a. The director shall review all alternative emission control program proposals and shall make recommendations on all completed demonstrations to the commission.
- b. After receiving recommendations from the director and public comments made available through the hearing process, the commission may approve or disapprove the alternative emission control program proposal.
- c. If approved by the commission, the program will be forwarded to the EPA regional administrator as a revision to the State Implementation Plan. The alternative emission control program must receive the approval of the EPA regional administrator prior to becoming effective.

[ARC 1227C, IAB 12/11/13, effective 1/15/14]

### **567—22.8(455B) Permit by rule.**

**22.8(1) Permit by rule for spray booths.** Spray booths which comply with the requirements contained in this rule will be deemed to be in compliance with the requirements to obtain an air construction permit and an air operating permit. Spray booths which comply with this rule will be considered to have federally enforceable limits so that their potential emissions are less than the major source limits for regulated air pollutants and hazardous air pollutants as defined in rule 567—22.100(455B). An owner or operator required to apply for a permit by rule under this subrule shall submit fees as required in 567—Chapter 30.

a. Definition. “Sprayed material” is material applied by spray equipment when used in a surface coating process in a spray booth, including but not limited to paint, solvents, and mixtures of paint and solvents. Powder coatings applied in an indoor-vented spray booth equipped with filters or overspray powder recovery systems are not considered sprayed material for purposes of this rule (567—22.8(455B)).

b. Facilities which facilitywide spray one gallon per day or less of sprayed material are exempt from all other requirements in 567—Chapter 22, except that they must submit the certification in 22.8(1)“e” to the department and keep records of daily sprayed material use. Any spray booth or associated equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred after October 23, 2013, shall use sprayed material with a maximum lead content of 0.35 pounds or less per gallon if the booth or associated equipment is

subject to the following NESHAP: 40 CFR Part 63, Subpart HHHHHH or Subpart XXXXXX. Any spray booth or associated equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred after October 23, 2013, that is not subject to the NESHAP or is otherwise exempt from the NESHAP shall use sprayed material with a maximum lead content of 0.02 pounds or less per gallon. The owner or operator must keep the records of daily sprayed material use for 18 months from the date to which the records apply and shall keep safety data sheets (SDS) or equivalent records for at least two calendar years to demonstrate that the sprayed materials contain lead at less than the exemption thresholds. The owner or operator must also certify that the facility is in compliance with or otherwise exempt from the federal regulations specified in 22.8(1)“e.”

c. Facilities which facilitywide spray more than one gallon per day but never more than three gallons per day are exempt from all other requirements in 567—Chapter 22, except that they must submit the certification in 22.8(1)“e” to the department, keep records of daily sprayed material use, and vent emissions from a spray booth(s) through a stack(s) which is at least 22 feet tall, measured from ground level. Any spray booth or associated equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred after October 23, 2013, shall use sprayed material with a maximum lead content of 0.35 pounds or less per gallon if the booth or associated equipment is subject to the following NESHAP: 40 CFR Part 63, Subpart HHHHHH or Subpart XXXXXX. Any spray booth or associated equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred after October 23, 2013, that is not subject to the NESHAP or is otherwise exempt from the NESHAP shall use sprayed material with a maximum lead content of 0.02 pounds or less per gallon. The owner or operator must keep the records of daily sprayed material use for 18 months from the date to which the records apply and shall keep safety data sheets (SDS) or equivalent records for at least two calendar years to demonstrate that the sprayed materials contain lead at less than the exemption thresholds. The owner or operator must also certify that the facility is in compliance with or otherwise exempt from the federal regulations specified in 22.8(1)“e.”

d. Facilities which facilitywide spray more than three gallons per day are not eligible to use the permit by rule for spray booths and must apply for a construction permit as required by subrules 22.1(1) and 22.1(3) unless otherwise exempt.

e. Notification letter.

(1) Facilities which claim to be permitted by provisions of this rule must submit to the department a written notification letter, on forms provided by the department, certifying that the facility meets the following conditions:

1. All paint booths and associated equipment are in compliance with the provisions of subrule 22.8(1);

2. All paint booths and associated equipment are in compliance with all applicable requirements including, but not limited to, the allowable particulate emission rate for painting and surface coating operations of 0.01 gr/scf of exhaust gas as specified in 567—subrule 23.4(13); and

3. All paint booths and associated equipment currently are or will be in compliance with or otherwise exempt from the national emissions standards for hazardous air pollutants (NESHAP) for paint stripping and miscellaneous surface coating at area sources (40 CFR Part 63, Subpart HHHHHH) and the NESHAP for metal fabricating and finishing at area sources (40 CFR Part 63, Subpart XXXXXX) by the applicable NESHAP compliance dates.

(2) The certification must be signed by one of the following individuals:

1. For corporations, a principal executive officer of at least the level of vice president, or a responsible official as defined at rule 567—22.100(455B).

2. For partnerships, a general partner.

3. For sole proprietorships, the proprietor.

4. For municipal, state, county, or other public facilities, the principal executive officer or the ranking elected official.

**22.8(2) Reserved.**

[ARC 7565B, IAB 2/11/09, effective 3/18/09; ARC 8215B, IAB 10/7/09, effective 11/11/09; ARC 1013C, IAB 9/18/13, effective 10/23/13; ARC 2352C, IAB 1/6/16, effective 12/16/15; ARC 3679C, IAB 3/14/18, effective 4/18/18]

**567—22.9(455B) Special requirements for visibility protection.**

**22.9(1) Definitions.** Definitions included in this subrule apply to the provisions set forth in rule 567—22.9(455B).

“*Best available retrofit technology (BART)*” means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant which is emitted by an existing stationary facility. The emission limitation must be established, on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and non-air quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.

“*Deciview*” means a haze index derived from calculated light extinction, such that uniform changes in haziness correspond to uniform incremental changes in perception across the entire range of conditions, from pristine to highly impaired. The deciview haze index is calculated based on an equation found in 40 CFR 51.301, as amended on July 1, 1999.

“*Mandatory Class I area*” means any Class I area listed in 40 CFR Part 81, Subpart D, as amended through October 5, 1989.

**22.9(2) Best available retrofit technology (BART) applicability.** A source shall comply with the provisions of subrule 22.9(3) if the source falls within numbers 1 through 20 or 22 through 26 of the “stationary source categories” of air pollutants listed in rule 22.100(455B) or is a fossil-fuel fired boiler individually totaling more than 250 million Btu’s per hour heat input and meets the following criteria:

- a. Any emission unit for which startup began after August 7, 1962; and
- b. Construction of the emission unit commenced on or before August 7, 1977; and
- c. The sum of the potential to emit, as “potential to emit” is defined in 567—20.2(455B), from emission units identified above is equal to or greater than 250 tons per year or more of one of the following pollutants: nitrogen oxides, sulfur dioxide, particulate matter (PM<sub>10</sub>), or volatile organic compounds.

**22.9(3) Duty to self-identify.** The owner or operator or designated representative of a facility meeting the conditions of subrule 22.9(2) shall submit two copies of a completed BART Eligibility Certification Form #542-8125, which shall include all information necessary for the department to complete eligibility determinations. The information submitted shall include source identification, description of processes, potential emissions, emission unit and emission point characteristics, date construction commenced and date of startup, and other information required by the department. The completed form was required to be submitted to the Air Quality Bureau, Department of Natural Resources, by September 1, 2005.

**22.9(4) Notification.** The department shall notify in writing the owner or operator or designated representative of a source of the department’s determination that either:

- a. A source meets the conditions listed in 22.9(2) (a source that meets these conditions is BART-eligible); or
- b. For the purposes of the regional haze program, a source may cause or contribute to visibility impairment in any mandatory Class I area, as identified during either:
  - (1) Regional haze plan development required by 40 CFR 51.308(d) as amended on July 6, 2005; or
  - (2) A five-year periodic review on the progress toward the reasonable progress goals required by 40 CFR 51.308(g) as amended on July 6, 2005; or
  - (3) A ten-year comprehensive periodic revision of the implementation plan required by 40 CFR 51.308(f) as amended on July 6, 2005.

**22.9(5) Analysis.** The department may request in writing an analysis from the owner or operator or designated representative of a source that the department has determined may be causing or contributing to visibility impairment in a mandatory Class I area.

- a. *BART control analysis.* For the purposes of BART, a source that is responsible for an impact of 1.0 deciview or more at a mandatory Class I area is considered to cause visibility impairment. A source

that is responsible for an impact of 0.5 deciview or more at a mandatory Class I area is considered to contribute to visibility impairment. If a source meets either of these criteria, the owner or operator or designated representative shall prepare the BART analysis in accordance with Section IV of Appendix Y of 40 CFR Part 51 as amended through July 5, 2005, and shall submit the BART analysis 180 days after receipt of written notification by the department that a BART analysis is required.

*b. Regional haze analysis.* The owner or operator or designated representative of a source subject to 22.9(4) “b” shall prepare and submit an analysis after receipt of written notification by the department that an analysis is required.

**22.9(6) Control technology implementation.** Following the department’s review of the analysis submitted pursuant to 22.9(5), an owner or operator of a source identified in 22.9(4) shall:

*a.* Submit all necessary permit applications to achieve the emissions requirements established following the completion of analysis performed in accordance with 22.9(5).

*b.* Install, operate, and maintain the control technology as required by permits issued by the department.

**22.9(7) BART exemption.** The owner or operator of a source subject to the BART emission control requirements may apply for an exemption from subrule 22.9(5) in accordance with 40 CFR 51.303 as amended on July 1, 1999.

[ARC 8215B, IAB 10/7/09, effective 11/11/09; ARC 4335C, IAB 3/13/19, effective 4/17/19]

**567—22.10(455B) Permitting requirements for country grain elevators, country grain terminal elevators, grain terminal elevators and feed mill equipment.** The requirements of this rule apply only to country grain elevators, country grain terminal elevators, grain terminal elevators and feed mill equipment, as these terms are defined in subrule 22.10(1). The requirements of this rule do not apply to equipment located at grain processing plants or grain storage elevators, as “grain processing” and “grain storage elevator” are defined in rule 567—20.2(455B). Compliance with the requirements of this rule does not alleviate any affected person’s duty to comply with any applicable state or federal regulations. In particular, the emission standards set forth in 567—Chapter 23, including the regulations for grain elevators contained in 40 CFR Part 60, Subpart DD (as adopted by reference in 567—paragraph 23.1(2) “ooo”), may apply. An owner or operator subject to this rule shall submit fees as required in 567—Chapter 30.

**22.10(1) Definitions.** For purposes of rule 567—22.10(455B), the following terms shall have the meanings indicated in this subrule.

“*Country grain elevator*” means any plant or installation at which grain is unloaded, handled, cleaned, dried, stored, or loaded and which meets the following criteria:

1. Receives more than 50 percent of its grain, as “grain” is defined in this subrule, from farmers in the immediate vicinity during harvest season;
2. Is not located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean oil extraction plant.

“*Country grain terminal elevator*” means any plant or installation at which grain is unloaded, handled, cleaned, dried, stored, or loaded and which meets the following criteria:

1. Receives 50 percent or less of its grain, as “grain” is defined in this subrule, from farmers in the immediate vicinity during harvest season;
2. Has a permanent storage capacity of less than or equal to 2.5 million U.S. bushels, as “permanent storage capacity” is defined in this subrule;
3. Is not located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean oil extraction plant.

“*Feed mill equipment*,” for purposes of rule 567—22.10(455B), means grain processing equipment that is used to make animal feed including, but not limited to, grinders, crackers, hammermills, and pellet coolers, and that is located at a country grain elevator, country grain terminal elevator or grain terminal elevator.

“*Grain*,” as set forth in Iowa Code section 203.1(9), means any grain for which the United States Department of Agriculture has established standards including, but not limited to, corn, wheat, oats, soybeans, rye, barley, grain sorghum, flaxseeds, sunflower seed, spelt (emmer), and field peas.

“*Grain processing*” shall have the same definition as “grain processing” set forth in rule 567—20.2(455B).

“*Grain storage elevator*” shall have the same definition as “grain storage elevator” set forth in rule 567—20.2(455B).

“*Grain terminal elevator*,” for purposes of rule 567—22.10(455B), means any plant or installation at which grain is unloaded, handled, cleaned, dried, stored, or loaded and which meets the following criteria:

1. Receives 50 percent or less of its grain, as “grain” is defined in this subrule, from farmers in the immediate vicinity during harvest season;
2. Has a permanent storage capacity of more than 88,100 m<sup>3</sup> (2.5 million U.S. bushels), as “permanent storage capacity” is defined in this subrule;
3. Is not located at an animal food manufacturer, pet food manufacturer, cereal manufacturer, brewery, or livestock feedlot;
4. Is not located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean oil extraction plant.

“*Permanent storage capacity*” means grain storage capacity which is inside a building, bin, or silo.

**22.10(2) Methods for determining potential to emit (PTE).** The owner or operator of a country grain elevator, country grain terminal elevator, grain terminal elevator or feed mill equipment shall use the following methods for calculating the potential to emit (PTE) for particulate matter (PM) and for particulate matter with an aerodynamic diameter less than or equal to 10 microns (PM<sub>10</sub>).

*a. Country grain elevators.* The owner or operator of a country grain elevator shall calculate the PTE for PM and PM<sub>10</sub> as specified in the definition of “potential to emit” in rule 567—20.2(455B), except that “maximum capacity” means the greatest amount of grain received at the country grain elevator during one calendar, 12-month period of the previous five calendar, 12-month periods, multiplied by an adjustment factor of 1.2. The owner or operator may make additional adjustments to the calculations for air pollution control of PM and PM<sub>10</sub> if the owner or operator submits the calculations to the department using the PTE calculation tool provided by the department, and only if the owner or operator fully implements the applicable air pollution control measures no later than March 31, 2009, or upon startup of the equipment, whichever event first occurs. Credit for the application of some best management practices, as specified in subrule 22.10(3) or in a permit issued by the department, may also be used to make additional adjustments in the PTE for PM and PM<sub>10</sub> if the owner or operator submits the calculations to the department using the PTE calculation tool provided by the department, and only if the owner or operator fully implements the applicable best management practices no later than March 31, 2009, or upon startup of the equipment, whichever event first occurs.

*b. Country grain terminal elevators.* The owner or operator of a country grain terminal elevator shall calculate the PTE for PM and PM<sub>10</sub> as specified in the definition of “potential to emit” in rule 567—20.2(455B).

*c. Grain terminal elevators.* For purposes of the permitting and other requirements specified in subrule 22.10(3), the owner or operator of a grain terminal elevator shall calculate the PTE for PM and PM<sub>10</sub> as specified in the definition of “potential to emit” in rule 567—20.2(455B). For purposes of determining whether the stationary source is subject to the prevention of significant deterioration (PSD) requirements set forth in 567—Chapter 33, or for determining whether the source is subject to the operating permit requirements set forth in rules 567—22.100(455B) through 567—22.300(455B), the owner or operator of a grain terminal elevator shall include fugitive emissions, as “fugitive emissions” is defined in 567—subrule 33.3(1) and in rule 567—22.100(455B), in the PTE calculation.

*d. Feed mill equipment.* The owner or operator of feed mill equipment, as “feed mill equipment” is defined in subrule 22.10(1), shall calculate the PTE for PM and PM<sub>10</sub> for the feed mill equipment as specified in the definition of “potential to emit” in rule 567—20.2(455B). For purposes of determining whether the stationary source is subject to the prevention of significant deterioration (PSD) requirements

set forth in 567—Chapter 33, or for determining whether the stationary source is subject to the operating permit requirements set forth in rules 567—22.100(455B) through 567—22.300(455B), the owner or operator of feed mill equipment shall sum the PTE of the feed mill equipment with the PTE of the country grain elevator, country grain terminal elevator or grain terminal elevator.

**22.10(3)** *Classification and requirements for permits, emissions controls, record keeping and reporting for Group 1, Group 2, Group 3 and Group 4 grain elevators.* The requirements for construction permits, operating permits, emissions controls, record keeping and reporting for a stationary source that is a country grain elevator, country grain terminal elevator or grain terminal elevator are set forth in this subrule.

*a. Group 1 facilities.* A country grain elevator, country grain terminal elevator or grain terminal elevator may qualify as a Group 1 facility if the PTE at the stationary source is less than 15 tons of PM<sub>10</sub> per year, as PTE is specified in subrule 22.10(2). For purposes of this paragraph, an “existing” Group 1 facility is one that commenced construction or reconstruction before February 6, 2008. A “new” Group 1 facility is one that commenced construction or reconstruction on or after February 6, 2008.

(1) Group 1 registration. The owner or operator of a Group 1 facility shall submit to the department a Group 1 registration, including PTE calculations, on forms provided by the department, certifying that the facility’s PTE is less than 15 tons of PM<sub>10</sub> per year. The owner or operator of an existing facility shall provide the Group 1 registration to the department on or before March 31, 2008. The owner or operator of a new facility shall provide the Group 1 registration to the department prior to initiating construction or reconstruction of a facility. The registration becomes effective upon the department’s receipt of the signed registration form and the PTE calculations.

1. If the owner or operator registers with the department as specified in subparagraph 22.10(3) “a”(1), the owner or operator is exempt from the requirement to obtain a construction permit as specified under subrule 22.1(1).

2. Upon department receipt of a Group 1 registration and PTE calculations, the owner or operator is allowed to add, remove and modify the emissions units or change throughput or operations at the facility without modifying the Group 1 registration, provided that the owner or operator calculates the PTE for PM<sub>10</sub> on forms provided by the department prior to making any additions to, removals of or modifications to equipment, and only if the facility continues to meet the emissions limits and operating limits (including restrictions on material throughput and hours of operation, if applicable, as specified in the PTE for PM<sub>10</sub> calculations) specified in the Group 1 registration.

3. If equipment at a Group 1 facility currently has an air construction permit issued by the department, that permit shall remain in full force and effect, and the permit shall not be invalidated by the subsequent submittal of a registration made pursuant to subparagraph 22.10(3) “a”(1).

(2) Best management practices (BMP). The owner or operator of a Group 1 facility shall implement best management practices (BMP) for controlling air pollution at the facility and for limiting fugitive dust at the facility from crossing the property line. The owner or operator shall implement BMP according to the department manual, Best Management Practices (BMP) for Grain Elevators (December 2007; revised July 15, 2014), as adopted by the commission on January 15, 2008, and July 15, 2014, and adopted by reference herein (available from the department, upon request, and on the department’s Internet website). No later than March 31, 2009, the owner or operator of an existing Group 1 facility shall fully implement applicable BMP, except that BMPs for grain vacuuming operations shall be fully implemented no later than September 10, 2014. Upon startup of equipment at the facility, the owner or operator of a new Group 1 facility shall fully implement applicable BMP.

(3) Record keeping. The owner or operator of a Group 1 facility shall retain a record of the previous five calendar years of total annual grain handled and shall calculate the facility’s potential PM<sub>10</sub> emissions annually by January 31 for the previous calendar year. These records shall be kept on site for a period of five years and shall be made available to the department upon request.

(4) Emissions increases. The owner or operator of a Group 1 facility shall calculate any emissions increases prior to making any additions to, removals of or modifications to equipment. If the owner or operator determines that PM<sub>10</sub> emissions at a Group 1 facility will increase to 15 tons per year or more,

the owner or operator shall comply with the requirements set forth for Group 2, Group 3 or Group 4 facilities, as applicable, prior to making any additions to, removals of or modifications to equipment.

(5) Changes to facility classification or permanent grain storage capacity. If the owner or operator of a Group 1 facility plans to change the facility's operations or increase the facility's permanent grain storage capacity to more than 2.5 million U.S. bushels, the owner or operator, prior to making any changes, shall reevaluate the facility's classification and the allowed method for calculating PTE to determine if any increases to the PTE for PM<sub>10</sub> will occur. If the proposed change will alter the facility's classification or will increase the facility's PTE for PM<sub>10</sub> such that the facility PTE increases to 15 tons per year or more, the owner or operator shall comply with the requirements set forth for Group 2, Group 3 or Group 4 facilities, as applicable, prior to making the change.

*b. Group 2 facilities.* A country grain elevator, country grain terminal elevator or grain terminal elevator may qualify as a Group 2 facility if the PTE at the stationary source is greater than or equal to 15 tons of PM<sub>10</sub> per year and is less than or equal to 50 tons of PM<sub>10</sub> per year, as PTE is specified in subrule 22.10(2). For purposes of this paragraph, an "existing" Group 2 facility is one that commenced construction, modification or reconstruction before February 6, 2008. A "new" Group 2 facility is one that commenced construction or reconstruction on or after February 6, 2008.

(1) Group 2 permit for grain elevators. The owner or operator of a Group 2 facility may, in lieu of obtaining air construction permits for each piece of emissions equipment at the facility, submit to the department a completed Group 2 permit application for grain elevators, including PTE calculations, on forms provided by the department. Alternatively, the owner or operator may obtain an air construction permit as specified under subrule 22.1(1). The owner or operator of an existing facility shall provide the appropriate completed Group 2 permit application for grain elevators or the appropriate construction permit applications to the department on or before March 31, 2008. The owner or operator of a new facility shall provide the appropriate, completed Group 2 permit application for grain elevators or the appropriate construction permit applications to the department prior to initiating construction or reconstruction of a facility.

1. Upon department issuance of a Group 2 permit to a facility, the owner or operator is allowed to add, remove and modify the emissions units at the facility, or change throughput or operations, without modifying the Group 2 permit, provided that the owner or operator calculates the PTE for PM<sub>10</sub> prior to making any additions to, removals of or modifications to equipment, and only if the facility continues to meet the emissions limits and operating limits (including restrictions on material throughput and hours of operation, if applicable, as specified in the PTE for PM<sub>10</sub> calculations) specified in the Group 2 permit.

2. If a Group 2 facility currently has an air construction permit issued by the department, that permit shall remain in full force and effect, and the permit shall not be invalidated by the subsequent submittal of a Group 2 permit application for grain elevators made pursuant to this rule. However, the owner or operator of a Group 2 facility may request that the department incorporate any equipment with a previously issued construction permit into the Group 2 permit for grain elevators. The department will grant such requests on a case-by-case basis. If the department grants the request to incorporate previously permitted equipment into the Group 2 permit for grain elevators, the owner or operator of the Group 2 facility is responsible for requesting that the department rescind any previously issued construction permits.

(2) Best management practices (BMP). The owner or operator shall implement BMP, as specified in the Group 2 permit, for controlling air pollution at the source and for limiting fugitive dust at the source from crossing the property line. If the department revises the BMP requirements for Group 2 facilities after a facility is issued a Group 2 permit, the owner or operator of the Group 2 facility may request that the department modify the facility's Group 2 permit to incorporate the revised BMP requirements. The department will issue permit modifications to incorporate BMP revisions on a case-by-case basis. No later than March 31, 2009, the owner or operator of an existing Group 2 facility shall fully implement BMP, as specified in the Group 2 permit. Upon startup of equipment at the facility, the owner or operator of a new Group 2 facility shall fully implement BMP, as specified in the Group 2 permit.

(3) Record keeping. The owner or operator of a Group 2 facility shall retain all records as specified in the Group 2 permit.

(4) Emissions inventory. The owner or operator of a Group 2 facility shall submit an emissions inventory for the facility for all regulated air pollutants as specified under 567—subrule 21.1(3).

(5) Emissions increases. The owner or operator of a Group 2 facility shall calculate any emissions increases prior to making any additions to, removals of or modifications to equipment. If the owner or operator determines that potential PM<sub>10</sub> emissions at a Group 2 facility will increase to more than 50 tons per year, the owner or operator shall comply with the requirements set forth for Group 3 or Group 4 facilities, as applicable, prior to making any additions to, removals of or modifications to equipment.

(6) Changes to facility classification or permanent grain storage capacity. If the owner or operator of a Group 2 facility plans to change the facility's operations or increase the facility's permanent grain storage capacity to more than 2.5 million U.S. bushels, the owner or operator, prior to making any changes, shall reevaluate the facility's classification and the allowed method for calculating PTE to determine if any increases to the PTE for PM<sub>10</sub> will occur. If the proposed change will increase the facility's PTE for PM<sub>10</sub> such that the facility PTE increases to more than 50 tons per year, the owner or operator shall comply with the requirements set forth for Group 3 or Group 4 facilities, as applicable, prior to making the change.

*c. Group 3 facilities.* A country grain elevator, country grain terminal elevator or grain terminal elevator may qualify as a Group 3 facility if the PTE for PM<sub>10</sub> at the stationary source is greater than 50 tons per year, but is less than 100 tons of PM<sub>10</sub> per year, as PTE is specified in subrule 22.10(2). For purposes of this paragraph, an "existing" Group 3 facility is one that commenced construction, modification or reconstruction before February 6, 2008. A "new" Group 3 facility is one that commenced construction or reconstruction on or after February 6, 2008.

(1) Air construction permit. The owner or operator of a Group 3 facility shall obtain the required construction permits as specified under subrule 22.1(1). The owner or operator of an existing facility shall provide the construction permit applications, as specified in subrule 22.1(3), to the department on or before March 31, 2008. The owner or operator of a new facility shall obtain the required permits, as specified in subrule 22.1(1), from the department prior to initiating construction or reconstruction of a facility.

(2) Permit conditions. Construction permit conditions for a Group 3 facility shall include, but are not limited to, the following:

1. The owner or operator shall implement BMP, as specified in the permit, for controlling air pollution at the source and for limiting fugitive dust at the source from crossing the property line. If the department revises the BMP requirements for Group 3 facilities after a facility is issued a permit, the owner or operator of the Group 3 facility may request that the department modify the facility's permit to incorporate the revised BMP requirements. The department will issue permit modifications to incorporate BMP revisions on a case-by-case basis.

2. The owner or operator shall retain all records as specified in the permit.

(3) Emissions inventory. The owner or operator shall submit an emissions inventory for the facility for all regulated air pollutants as specified under 567—subrule 21.1(3).

(4) Changes to facility classification or permanent grain storage capacity. If the owner or operator of a Group 3 facility plans to change its operations or increase the facility's permanent grain storage capacity to more than 2.5 million U.S. bushels, the owner or operator, prior to making any changes, shall reevaluate the facility's classification and the allowed method for calculating PTE to determine if any increases to the PTE for PM<sub>10</sub> will occur. If the proposed change will alter the facility's classification or will increase the facility's PTE for PM<sub>10</sub> such that the facility PTE increases to greater than or equal to 100 tons per year, the owner or operator shall comply with the requirements set forth for Group 4 facilities, as applicable, prior to making the change.

(5) PSD applicability. If the PTE for PM or PM<sub>10</sub> at the Group 3 facility is greater than or equal to 250 tons per year, the owner or operator shall comply with requirements specified in 567—Chapter 33, as applicable. The owner or operator of a Group 3 facility that is a grain terminal elevator shall include fugitive emissions, as "fugitive emissions" is defined in 567—subrule 33.3(1), in the PTE calculation for determining PSD applicability.

(6) Record keeping. The owner or operator shall keep the records of annual grain handled at the facility and annual PTE for PM and PM<sub>10</sub> emissions on site for a period of five years, and the records shall be made available to the department upon request.

*d. Group 4 facilities.* A facility qualifies as a Group 4 facility if the facility is a stationary source with a PTE equal to or greater than 100 tons of PM<sub>10</sub> per year, as PTE is specified in subrule 22.10(2). For purposes of this paragraph, an “existing” Group 4 facility is one that commenced construction, modification or reconstruction before February 6, 2008. A “new” Group 4 facility is one that commenced construction or reconstruction on or after February 6, 2008.

(1) Air construction permit. The owner or operator of a Group 4 facility shall obtain the required construction permits as specified under subrule 22.1(1). The owner or operator of an existing facility shall provide the construction permit applications, as specified by subrule 22.1(3), to the department on or before March 31, 2008. The owner or operator of a new facility shall obtain the required permits, as specified by subrule 22.1(1), from the department prior to initiating construction or reconstruction of a facility.

(2) Permit conditions. Construction permit conditions for a Group 4 facility shall include, but are not limited to, the following:

1. The owner or operator shall implement BMP, as specified in the permit, for controlling air pollution at the facility and for limiting fugitive dust at the facility from crossing the property line. If the department revises the BMP requirements for Group 4 facilities after a facility is issued a permit, the owner or operator of the Group 4 facility may request that the department modify the facility’s permit to incorporate the revised BMP requirements. The department will issue permit modifications to incorporate BMP revisions on a case-by-case basis.

2. The owner or operator shall retain all records as specified in the permit.

(3) PSD applicability. If the PTE for PM or PM<sub>10</sub> at the facility is equal to or greater than 250 tons per year, the owner or operator shall comply with requirements specified in 567—Chapter 33, as applicable. The owner or operator of a Group 4 facility that is a grain terminal elevator shall include fugitive emissions, as “fugitive emissions” is defined in 567—subrule 33.3(1), in the PTE calculation for determining PSD applicability.

(4) Record keeping. The owner or operator shall keep the records of annual grain handled at the facility and annual PTE for PM and PM<sub>10</sub> emissions on site for a period of five years, and the records shall be made available to the department upon request.

(5) Operating permits. The owner or operator of a Group 4 facility shall apply for an operating permit for the facility if the facility’s annual PTE for PM<sub>10</sub> is equal to or greater than 100 tons per year as specified in rules 567—22.100(455B) through 567—22.300(455B). The owner or operator of a Group 4 facility that is a grain terminal elevator shall include fugitive emissions in the calculations to determine if the PTE for PM<sub>10</sub> is greater than or equal to 100 tons per year. The owner or operator also shall submit annual emissions inventories and fees, as specified in rule 567—22.106(455B).

**22.10(4) Feed mill equipment.** This subrule sets forth the requirements for construction permits, operating permits, and emissions inventories for an owner or operator of feed mill equipment as “feed mill equipment” is defined in subrule 22.10(1). For purposes of this subrule, the owner or operator of “existing” feed mill equipment shall have commenced construction or reconstruction of the feed mill equipment before February 6, 2008. The owner or operator of “new” feed mill equipment shall have commenced construction or reconstruction of the feed mill equipment on or after February 6, 2008.

*a. Air construction permit.* The owner or operator of feed mill equipment shall obtain an air construction permit as specified under subrule 22.1(1) for each piece of feed mill equipment that emits a regulated air pollutant. The owner or operator of “existing” feed mill equipment shall provide the appropriate permit applications to the department on or before March 31, 2008. The owner or operator of “new” feed mill equipment shall provide the appropriate permit applications to the department prior to initiating construction or reconstruction of feed mill equipment.

*b. Emissions inventory.* The owner or operator shall submit an emissions inventory for the feed mill equipment for all regulated air pollutants as specified under 567—subrule 21.1(3).

*c. Operating permits.* The owner or operator shall sum the PTE of the feed mill equipment with the PTE of the equipment at the country grain elevator, country grain terminal elevator or grain terminal elevator, as PTE is specified in subrule 22.10(2), to determine if operating permit requirements specified in rules 567—22.100(455B) through 567—22.300(455B) apply to the stationary source. If the operating permit requirements apply, then the owner or operator shall apply for an operating permit as specified in rules 567—22.100(455B) through 567—22.300(455B). The owner or operator also shall begin submitting annual emissions inventories and fees, as specified under rule 567—22.106(455B).

*d. PSD applicability.* For purposes of determining whether the stationary source is subject to the prevention of significant deterioration (PSD) requirements set forth in 567—Chapter 33, the owner or operator shall sum the PTE of the feed mill equipment with the PTE of the equipment at the country grain elevator, country grain terminal elevator or grain terminal elevator. If the PTE for PM or PM<sub>10</sub> for the stationary source is equal to or greater than 250 tons per year, the owner or operator shall comply with requirements for PSD specified in 567—Chapter 33, as applicable.

[ARC 1561C, IAB 8/6/14, effective 9/10/14; ARC 2352C, IAB 1/6/16, effective 12/16/15]

**567—22.11 to 22.99** Reserved.

**567—22.100(455B) Definitions for Title V operating permits.** For purposes of rules 567—22.100(455B) to 567—22.116(455B), the following terms shall have the meaning indicated in this rule:

“*Act*” means the Clean Air Act, 42 U.S.C. Sections 7401, et seq.

“*Actual emissions*” means the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with the following:

1. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which immediately precedes that date and which is representative of normal source operations. The director may allow the use of a different time period upon a demonstration that it is more representative of normal source operations. Actual emissions shall be calculated using the unit’s actual operating hours, production rates, and types of materials processed, stored or combusted during the selected time period. Actual emissions for acid rain affected sources are calculated using a one-year period.

2. Lacking specific information to the contrary, the director may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

3. For any emissions unit which has not begun normal operations on a particular date, actual emissions shall equal the potential to emit of the unit on that date.

4. For purposes of calculating early reductions of hazardous air pollutants, actual emissions shall not include excess emissions resulting from a malfunction or from startups and shutdowns associated with a malfunction.

Actual emissions for purposes of determining fees shall be the actual emissions calculated over a period of one year.

“*Administrator*” means the administrator for the United States Environmental Protection Agency (EPA) or designee.

“*Affected facility*” means, with reference to a stationary source, any apparatus which emits or may emit any regulated air pollutant or contaminant.

“*Affected source*” means a source that includes one or more affected units subject to any emissions reduction requirement or limitation under Title IV of the Act.

“*Affected state*” means any state which is contiguous to the permitting state and whose air quality may be affected through the modification, renewal or issuance of a Title V permit; or which is within 50 miles of the permitted source.

“*Affected unit*” means a unit that is subject to any acid rain emissions reduction requirement or acid rain emissions limitation under Title IV of the Act.

“*Allowable emissions*” means the emission rate of a stationary source calculated using both the maximum rated capacity of the source, unless the source is subject to federally enforceable limits which restrict the operating rate or hours of operation, and the most stringent of the following:

1. The applicable new source performance standards or national emissions standards for hazardous air pollutants, contained in 567—subrules 23.1(2) and 23.1(3);
2. The applicable existing source emission standard contained in 567—Chapter 23; or
3. The emissions rate specified in the air construction permit for the source.

“*Allowance*” means an authorization by the administrator under Title IV of the Act or rules promulgated thereunder to emit during or after a specified calendar year up to one ton of sulfur dioxide.

“*Applicable requirement*” includes the following:

1. Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rule making under Title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in 40 CFR 52;
2. Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rule making under Title I, including Parts C and D, of the Act;
3. Any standard or other requirement under Section 111 of the Act (subrule 23.1(2)), including Section 111(d);
4. Any standard or other requirement under Section 112 of the Act, including any requirement concerning accident prevention under Section 112(r)(7) of the Act;
5. Any standard or other requirement of the acid rain program under Title IV of the Act or the regulations promulgated thereunder;
6. Any requirements established pursuant to Section 504(b) or Section 114(a)(3) of the Act;
7. Any standard or other requirement governing solid waste incineration, under Section 129 of the Act;
8. Any standard or other requirement for consumer and commercial products, under Section 183(e) of the Act;
9. Any standard or other requirement for tank vessels under Section 183(f) of the Act;
10. Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under Section 328 of the Act;
11. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Act, unless the administrator has determined that such requirements need not be contained in a Title V permit; and
12. Any national ambient air quality standard or increment or visibility requirement under Part C of Title I of the Act, but only as it would apply to temporary sources permitted pursuant to Section 504(e) of the Act.

“*Area source*” means any stationary source of hazardous air pollutants that is not a major source as defined in rule 567—22.100(455B).

“*CFR*” means the Code of Federal Regulations, with standard references in this chapter by Title and Part, so that “40 CFR 51” means “Title 40 of the Code of Federal Regulations, Part 51.”

“*Consumer Price Index*” means for any calendar year the average of the Consumer Price Index for all urban consumers published by the United States Department of Labor, as of the close of the 12-month period ending on August 31 of each calendar year.

“*Country grain elevator*” shall have the same definition as “country grain elevator” set forth in subrule 22.10(1).

“*Designated representative*” means a responsible natural person authorized by the owner(s) or operator(s) of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted in accordance with Subpart B of 40 CFR Part 72 as amended through April 28, 2006, to represent and legally bind each owner and operator, as a matter of federal law, in matters pertaining to the acid rain program. Whenever the term “responsible official” is used in Chapter 22, it shall be deemed to refer to the designated representative with regard to all matters under the acid rain program.

“*Draft Title V permit*” means the version of a Title V permit for which the department offers public participation or affected state review.

“*Emergency generator*” means any generator of which the sole function is to provide emergency backup power during an interruption of electrical power from the electric utility. An emergency generator does not include:

1. Peaking units at electric utilities;
2. Generators at industrial facilities that typically operate at low rates, but are not confined to emergency purposes; or
3. Any standby generators that are used during time periods when power is available from the electric utility.

An emergency is an unforeseeable condition that is beyond the control of the owner or operator.

“*Emissions allowable under the permit*” means a federally enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

“*Emissions unit*” means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under Section 112(b) of the Act. This term is not meant to alter or affect the definition of the term “unit” for purposes of Title IV of the Act or any related regulations.

“*EPA conditional method*” means any method of sampling and analyzing for air pollutants that has been validated by the administrator but that has not been published as an EPA reference method.

“*EPA reference method*” means the following methods used for performance tests and continuous monitoring systems:

1. Performance test (stack test). A stack test shall be conducted according to EPA reference methods specified in 40 CFR 51, Appendix M (as amended through August 30, 2016); 40 CFR 60, Appendix A (as amended through August 30, 2016); 40 CFR 61, Appendix B (as amended through August 30, 2016); and 40 CFR 63, Appendix A (as amended through August 30, 2016).
2. Continuous monitoring systems. Minimum performance specifications and quality assurance procedures for performance evaluations of continuous monitoring systems are as specified in 40 CFR 60, Appendix B (as amended through August 7, 2017); 40 CFR 60, Appendix F (as amended through August 30, 2016); 40 CFR 75, Appendix A (as amended through August 30, 2016); 40 CFR 75, Appendix B (as amended through August 30, 2016); and 40 CFR 75, Appendix F (as amended through August 30, 2016).

“*Equipment leaks*” means leaks from pumps, compressors, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, agitators, accumulator vessels, and instrumentation systems.

“*Existing hazardous air pollutant source*” means any source as defined in 40 CFR 61 as adopted by reference in 567—subrule 23.1(3) and 40 CFR 63.72 as adopted by reference in 567—subrule 23.1(4) with respect to Section 112(i)(5) of the Act, the construction or reconstruction of which commenced prior to proposal of an applicable Section 112(d) standard.

“*Facility*” means, with reference to a stationary source, any apparatus which emits or may emit any air pollutant or contaminant.

“*Federal implementation plan*” means a plan promulgated by the administrator to fill all or a portion of a gap or otherwise correct all or a portion of an inadequacy in a state implementation plan, and which includes enforceable emission limitations or other control measures, means or techniques, and provides for attainment of the relevant national ambient air quality standard.

“*Federally enforceable*” means all limitations and conditions which are enforceable by the administrator including, but not limited to, the requirements of the new source performance standards and national emission standards for hazardous air pollutants contained in 567—subrules 23.1(2) and 23.1(3); the requirements of such other state rules or orders approved by the administrator for inclusion in the SIP; and any construction, Title V or other federally approved operating permit conditions.

“*Final Title V permit*” means the version of a Title V permit issued by the department that has completed all required review procedures.

“*Fugitive emissions*” are those emissions which could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening.

“*Hazardous air pollutant*” means any of the following air pollutants listed in Section 112 of the Act:

cas #	chemical name
75343	1,1-Dichloroethane
57147	1,1-Dimethyl hydrazine
71556	1,1,1-Trichloroethane
79005	1,1,2-Trichloroethane
79345	1,1,2,2-Tetrachloroethane
106887	1,2-Butylene oxide
96128	1,2-Dibromo-3-chloropropane
106934	1,2-Dibromoethane
107062	1,2-Dichloroethane
78875	1,2-Dichloropropane
122667	1,2-Diphenylhydrazine
120821	1,2,4-Trichlorobenzene
106990	1,3-Butadiene
542756	1,3-Dichloropropylene
106467	1,4-Dichlorobenzene
123911	1,4-Dioxane
53963	2-Acetylaminofluorene
532274	2-Chloroacetophenone
79469	2-Nitropropane
540841	2,2,4-Trimethylpentane
1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin (TC-DD)
94757	2,4-D salts and esters
95807	2,4-Diaminotoluene
51285	2,4-Dinitrophenol
121142	2,4-Dinitrotoluene
95954	2,4,5-Trichlorophenol
88062	2,4,6-Trichlorophenol
91941	3,3'-Dichlorobenzidine
119904	3,3'-Dimethoxybenzidine
119937	3,3'-Dimethylbenzidine
92671	4-Aminobiphenyl
60117	4-Dimethylaminoazobenzene
92933	4-Nitrobiphenyl
100027	4-Nitrophenol
101144	4,4'-Methylenebis(2-chloroaniline)
101779	4,4'-methylenedianiline
534521	4,6-Dinitro-o-cresol, and salts

cas #	chemical name
75070	Acetaldehyde
60355	Acetamide
75058	Acetonitrile
98862	Acetophenone
107028	Acrolein
79061	Acrylamide
79107	Acrylic acid
107131	Acrylonitrile
107051	Allyl chloride
62533	Aniline
0	Antimony Compounds
0	Arsenic Compounds (inorganic including arsine)
1332214	Asbestos (friable)
71432	Benzene
92875	Benzidine
98077	Benzoic trichloride
100447	Benzyl chloride
0	Beryllium Compounds
57578	Beta-Propiolactone
92524	Biphenyl
111444	Bis(2-chloroethyl) ether
542881	Bis(chloromethyl) ether
75252	Bromoform
74839	Bromomethane
0	Cadmium Compounds
156627	Calcium cyanamide
133062	Captan
63252	Carbaryl
75150	Carbon disulfide
56235	Carbon tetrachloride
463581	Carbonyl sulfide
120809	Catechol
133904	Chloramben
57749	Chlordane
7782505	Chlorine
79118	Chloroacetic acid
108907	Chlorobenzene
510156	Chlorobenzilate
75003	Chloroethane
67663	Chloroform
74873	Chloromethane

cas #	chemical name
107302	Chloromethyl methyl ether
126998	Chloroprene
0	Chromium Compounds
0	Cobalt Compounds
0	Coke Oven Emissions
1319773	Cresol/Cresylic acid (isomers & mixture)
98828	Cumene
0	Cyanide Compounds <sup>1</sup>
72559	DDE
117817	Di(2-ethylhexyl) phthalate
334883	Diazomethane
132649	Dibenzofuran
84742	Dibutyl phthalate
75092	Dichloromethane
62737	Dichlorvos
111422	Diethanolamine
64675	Diethyl sulfate
68122	Dimethyl formamide
131113	Dimethyl phthalate
77781	Dimethyl sulfate
79447	Dimethylcarbonyl chloride
106898	Epichlorohydrin
140885	Ethyl acrylate
100414	Ethylbenzene
107211	Ethylene glycol
75218	Ethylene oxide
96457	Ethylene thiourea
151564	Ethyleneimine
0	Fine Mineral Fibers <sup>3</sup>
50000	Formaldehyde
0	Glycol Ethers <sup>2</sup> , except cas #111-76-2, ethylene glycol mono-butyl ether, also known as EGBE or 2-Butoxyethanol
76448	Heptachlor
87683	Hexachloro-1,3-butadiene
118741	Hexachlorobenzene
77474	Hexachlorocyclopentadiene
67721	Hexachloroethane
822060	Hexamethylene-1,6-diisocyanate
680319	Hexamethylphosphoramide
110543	Hexane
302012	Hydrazine

cas #	chemical name
7647010	Hydrochloric acid
7664393	Hydrogen fluoride
123319	Hydroquinone
78591	Isophorone
0	Lead Compounds
58899	Lindane (all isomers)
108394	m-Cresol
108383	m-Xylene
108316	Maleic anhydride
0	Manganese Compounds
0	Mercury Compounds
67561	Methanol
72435	Methoxychlor
60344	Methyl hydrazine
74884	Methyl iodide
108101	Methyl isobutyl ketone
624839	Methyl isocyanate
80626	Methyl methacrylate
1634044	Methyl tertbutyl ether
101688	Methylene bis(phenylisocyanate)
684935	N-Nitroso-N-methylurea
62759	N-Nitrosodimethylamine
59892	N-Nitrosomorpholine
91203	Naphthalene
0	Nickel Compounds
98953	Nitrobenzene
121697	N,N-Dimethylaniline
90040	o-Anisidine
95487	o-Cresol
95534	o-Toluidine
95476	o-Xylene
106445	p-Cresol
106503	p-Phenylenediamine
106423	p-Xylene
56382	Parathion
87865	Pentachlorophenol
108952	Phenol
75445	Phosgene
7803512	Phosphine
7723140	Phosphorus (yellow or white)
85449	Phthalic anhydride

cas #	chemical name
1336363	Polychlorinated biphenyls
0	Polycyclic Organic Matter <sup>4</sup>
1120714	Propane sultone
123386	Propionaldehyde
114261	Propoxur
75569	Propylene oxide
75558	Propyleneimine
91225	Quinoline
106514	Quinone
82688	Quintozene
0	Radionuclides (including Radon) <sup>5</sup>
0	Selenium Compounds
100425	Styrene
96093	Styrene oxide
127184	Tetrachloroethylene
7550450	Titanium tetrachloride
108883	Toluene
584849	Toluene-2,4-diisocyanate
8001352	Toxaphene
79016	Trichloroethylene
121448	Triethylamine
1582098	Trifluralin
51796	Urethane
108054	Vinyl acetate
593602	Vinyl bromide
75014	Vinyl chloride
75354	Vinylidene chloride
1330207	Xylene (mixed isomers)

NOTE: For all listings above which contain the word “compounds” and for glycol ethers, the following applies: Unless otherwise specified, these listings are defined as including any unique chemical substance that contains the named chemical (i.e., antimony, arsenic, etc.) as part of that chemical’s infrastructure.

<sup>1</sup>X’CN where X=H’ or any other group where a formal dissociation may occur. For example KCN or Ca(CN)<sub>2</sub>

<sup>2</sup>Includes mono- and di-ethers of ethylene glycol, diethylene glycol, and triethylene glycol R(OCH<sub>2</sub>CH<sub>2</sub>)<sub>n</sub>-OR’ where n=1,2, or 3; R=alkyl or aryl groups; R’=R,H, or groups which, when removed, yield glycol ethers with the structure R(OCH<sub>2</sub>CH)<sub>n</sub>-OH. Polymers are excluded from the glycol category.

<sup>3</sup>Includes mineral fiber emissions from facilities manufacturing or processing glass, rock, or slag fibers (or other mineral derived fibers) of average diameter 1 micrometer or less.

<sup>4</sup>Includes organic compounds with more than one benzene ring, and which have a boiling point greater than or equal to 100 degrees C.

<sup>5</sup>A type of atom which spontaneously undergoes radioactive decay.

“*High-risk pollutant*” means one of the following hazardous air pollutants listed in Table 1 in 40 CFR 63.74 as adopted by reference in 567—subrule 23.1(4).

cas #	chemical name	weighting factor
53963	2-Acetylaminofluorene	100
107028	Acrolein	100
79061	Acrylamide	10
107131	Acrylonitrile	10
0	Arsenic compounds	100
1332214	Asbestos	100
71432	Benzene	10
92875	Benzidine	1000
0	Beryllium compounds	10
542881	Bis(chloromethyl) ether	1000
106990	1,3-Butadiene	10
0	Cadmium compounds	10
57749	Chlordane	100
532274	2-Chloroacetophenone	100
0	Chromium compounds	100
107302	Chloromethyl methyl ether	10
0	Coke oven emissions	10
334883	Diazomethane	10
132649	Dibenzofuran	10
96128	1,2-Dibromo-3-chloropropane	10
111444	Dichloroethyl ether(Bis(2-chloroethyl) ether)	10
79447	Dimethylcarbamoyl chloride	100
122667	1,2-Diphenylhydrazine	10
106934	Ethylene dibromide	10
151564	Ethylenimine (Aziridine)	100
75218	Ethylene oxide	10
76448	Heptachlor	100
118741	Hexachlorobenzene	100
77474	Hexachlorocyclopentadiene	100
302012	Hydrazine	100
0	Manganese compounds	10
0	Mercury compounds	100
60344	Methyl hydrazine	10
624839	Methyl isocyanate	10
0	Nickel compounds	10
62759	N-Nitrosodimethylamine	100
684935	N-Nitroso-N-methylurea	1000
56382	Parathion	10
75445	Phosgene	10

cas #	chemical name	weighting factor
7803512	Phosphine	10
7723140	Phosphorus	10
75558	1,2-Propylenimine	100
1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin	100,000
8001352	Toxaphene (chlorinated camphene)	100
75014	Vinyl chloride	10

“*Major source*” means any stationary source (or any group of stationary sources located on one or more contiguous or adjacent properties and under common control of the same person or of persons under common control) belonging to a single major industrial grouping that is any of the following:

1. A major stationary source of air pollutants, as defined in Section 302 of the Act, that directly emits or has the potential to emit 100 tons per year (tpy) or more of any air pollutant subject to regulation (including any major source of fugitive emissions of any such pollutant). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of Section 302(j) of the Act, unless the source belongs to one of the stationary source categories listed in this chapter.

2. A major source of hazardous air pollutants according to Section 112 of the Act as follows:

For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tpy or more of any hazardous air pollutant which has been listed pursuant to Section 112(b) of the Act and these rules or 25 tpy or more of any combination of such hazardous air pollutants. Notwithstanding the previous sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emission from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

For Title V purposes, all fugitive emissions of hazardous air pollutants are to be considered in determining whether a stationary source is a major source.

For radionuclides, “major source” shall have the meaning specified by the administrator by rule.

3. A major stationary source as defined in Part D of Title I of the Act, including:

For ozone nonattainment areas, sources with the potential to emit 100 tpy or more of volatile organic compounds or oxides of nitrogen in areas classified or treated as classified as “marginal” or “moderate,” 50 tpy or more in areas classified or treated as classified as “serious,” 25 tpy or more in areas classified or treated as classified as “severe” and 10 tpy or more in areas classified or treated as classified as “extreme”; except that the references in this paragraph to 100, 50, 25, and 10 tpy of nitrogen oxides shall not apply with respect to any source for which the administrator has made a finding, under Section 182(f)(1) or (2) of the Act, that requirements under Section 182(f) of the Act do not apply;

For ozone transport regions established pursuant to Section 184 of the Act, sources with potential to emit 50 tpy or more of volatile organic compounds;

For carbon monoxide nonattainment areas (1) that are classified or treated as classified as “serious” and (2) in which stationary sources contribute significantly to carbon monoxide levels, and sources with the potential to emit 50 tpy or more of carbon monoxide;

For particulate matter (PM<sub>10</sub>), nonattainment areas classified or treated as classified as “serious,” sources with the potential to emit 70 tpy or more of PM<sub>10</sub>.

For the purposes of defining “major source,” a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same major group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987.

“*Manually operated equipment*” means a machine or tool that is handheld, such as a handheld circular saw or compressed air chisel; a machine or tool for which the work piece is held or manipulated

by hand, such as a bench grinder; a machine or tool for which the tool or bit is manipulated by hand, such as a lathe or drill press; and any dust collection system which is part of such machine or tool; but not including any machine or tool for which the extent of manual operation is to control power to the machine or tool and not including any central dust collection system serving more than one machine or tool.

*“Maximum achievable control technology (MACT)”* means the following regarding regulated hazardous air pollutant sources:

1. For existing sources, the emissions limitation reflecting the maximum degree of reduction in emissions that the administrator or the department, taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impacts and energy requirements, determines is achievable by sources in the category of stationary sources, that shall not be less stringent than the MACT floor.

2. For new sources, the emission limitation which is not less stringent than the emission limitation achieved in practice by the best-controlled similar source, and which reflects the maximum degree of reduction in emissions that the administrator or the department, taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impacts and energy requirements, determines is achievable by sources in the Title IV affected source category.

*“Maximum achievable control technology (MACT) floor”* means the following:

1. For existing sources, the average emission limitation achieved by the best 12 percent of the existing sources in the United States (for which the administrator or the department has or could reasonably obtain emission information), excluding those sources that have, within 18 months before the emission standard is proposed or within 30 months before such standard is promulgated, whichever is later, first achieved a level of emission rate or emission reduction which complies, or would comply if the source is not subject to such standard, with the lowest achievable emission rate applicable to the source category and prevailing at the time, for categories and subcategories of stationary sources with 30 or more sources in the category or subcategory, or the average emission limitation achieved by the best performing 5 sources in the United States (for which the administrator or the department has or could reasonably obtain emissions information) for a category or subcategory or stationary source with fewer than 30 sources in the category or subcategory.

2. For new sources, the emission limitation achieved in practice by the best-controlled similar source.

*“New Title IV affected source or unit”* means a unit that commences commercial operation on or after November 15, 1990, including any such unit that serves a generator with a nameplate capacity of 25 MWe or less or that is a simple combustion turbine.

*“Nonattainment area”* means an area so designated by the administrator, acting pursuant to Section 107 of the Act.

*“Permit modification”* means a revision to a Title V operating permit that cannot be accomplished under the provisions for administrative permit amendments found at rule 567—22.111(455B). A permit modification for purposes of the acid rain portion of the permit shall be governed by the regulations pertaining to acid rain found at rules 567—22.120(455B) to 567—22.147(455B). This definition of “permit modification” shall be used solely for purposes of this chapter governing Title V operating permits.

*“Permit revision”* means any permit modification or administrative permit amendment.

*“Permitting authority”* means the Iowa department of natural resources or the director thereof.

*“Potential to emit”* means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the administrator. This term does not alter or affect the use of this term for any other purposes under the Act, or the term “capacity factor” as used in Title IV of the Act or the regulations relating to acid rain.

For the purpose of determining potential to emit for country grain elevators, the provisions set forth in subrule 22.10(2) shall apply.

For purposes of calculating potential to emit for emergency generators, “maximum capacity” means one of the following:

1. 500 hours of operation annually, if the generator has actually been operated less than 500 hours per year for the past five years;
2. 8,760 hours of operation annually, if the generator has actually been operated more than 500 hours in one of the past five years; or
3. The number of hours specified in a state or federally enforceable limit.

“*Proposed Title V permit*” means the version of a permit that the permitting authority proposes to issue and forwards to the administrator for review in compliance with 22.107(7) “a.”

“*Regulated air contaminant*” shall mean the same thing as “regulated air pollutant.”

“*Regulated air pollutant*” means the following:

1. Nitrogen oxides or any volatile organic compounds;
2. Any pollutant for which a national ambient air quality standard has been promulgated;
3. Any pollutant that is subject to any standard promulgated under Section 111 of the Act;
4. Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act; or
5. Any pollutant subject to a standard promulgated under Section 112 or other requirements established under Section 112 of the Act, including Sections 112(g), (j), and (r) of the Act, including the following:

- Any pollutant subject to requirements under Section 112(j) of the Act. If the administrator fails to promulgate a standard by the date established pursuant to Section 112(e) of the Act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to Section 112(e) of the Act; and

- Any pollutant for which the requirements of Section 112(g)(2) of the Act have been met, but only with respect to the individual source subject to the Section 112(g)(2) requirement.

6. With respect to Title V, particulate matter, except for PM10, is not considered a regulated air pollutant for the purpose of determining whether a source is considered to be a major source.

“*Regulated air pollutant or contaminant (for fee calculation)*,” which is used only for purposes of 567—Chapter 30, means any “regulated air pollutant or contaminant” except the following:

1. Carbon monoxide;
2. Particulate matter, excluding PM10;
3. Any pollutant that is a regulated air pollutant solely because it is a Class I or II substance subject to a standard promulgated under or established by Title VI of the Act;
4. Any pollutant that is a regulated pollutant solely because it is subject to a standard or regulation under Section 112(r) of the Act;
5. Greenhouse gas, as defined in rule 567—20.2(455B).

“*Renewal*” means the process by which a permit is reissued at the end of its term.

“*Responsible official*” means one of the following:

1. For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

- The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or

- The delegation of authority to such representative is approved in advance by the permitting authority.

2. For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

3. For a municipality, state, federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this chapter, a principal executive officer of a federal

agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of EPA); or

4. For Title IV affected sources:

- The designated representative insofar as actions, standards, requirements, or prohibitions under Title IV of the Act or the regulations promulgated thereunder are concerned; and
- The designated representative for any other purposes under this chapter or the Act.

“*Section 502(b)(10) changes*” are changes that contravene an express permit term and which are made pursuant to rule 567—22.110(455B). Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), record keeping, reporting, or compliance certification requirements.

“*State implementation plan (SIP)*” means the plan adopted by the state of Iowa and approved by the administrator which provides for implementation, maintenance, and enforcement of such primary and secondary ambient air quality standards as are adopted by the administrator, pursuant to the Act.

“*Stationary source*” means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under Section 112(b) of the Act.

“*Stationary source categories*” means any of the following classes of sources:

1. Coal cleaning plants with thermal dryers;
2. Kraft pulp mills;
3. Portland cement plants;
4. Primary zinc smelters;
5. Iron and steel mills;
6. Primary aluminum ore reduction plants;
7. Primary copper smelters;
8. Municipal incinerators capable of charging more than 250 tons of refuse per day;
9. Hydrofluoric, sulfuric, or nitric acid plants;
10. Petroleum refineries;
11. Lime plants;
12. Phosphate rock processing plants;
13. Coke oven batteries;
14. Sulfur recovery plants;
15. Carbon black plants using the furnace process;
16. Primary lead smelters;
17. Fuel conversion plants;
18. Sintering plants;
19. Secondary metal production plants;
20. Chemical process plants — The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS code 325193 or 312140;
21. Fossil-fuel boilers, or combinations thereof, totaling more than 250 million Btu’s per hour heat input;
22. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
23. Taconite ore processing plants;
24. Glass fiber processing plants;
25. Charcoal production plants;
26. Fossil fuel-fired steam electric plants of more than 250 million Btu’s per hour heat input;
27. Any other stationary source category, which as of August 7, 1980, is regulated under Section 111 or 112 of the Act.

“*Subject to regulation*” means, for any air pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally applicable regulation codified by the Administrator in 40 CFR Subchapter C (Air Programs) that requires actual control of the quantity of emissions of that pollutant,

and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity, except that:

1. Greenhouse gases (GHGs), the air pollutant defined in 40 CFR §86.1818-12(a) (as amended on May 7, 2010) as the aggregate group of six greenhouse gases that includes carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation unless, as of July 1, 2011, the GHG emissions are at a stationary source emitting or having the potential to emit 100,000 tpy CO<sub>2</sub> equivalent emissions.

2. The term “tpy CO<sub>2</sub> equivalent emissions (CO<sub>2</sub>e)” shall represent an amount of GHGs emitted and shall be computed by multiplying the mass amount of emissions (tpy) for each of the six greenhouse gases in the pollutant GHGs by the associated global warming potential of the gas published at 40 CFR Part 98, Subpart A, Table A-1, “Global Warming Potentials,” (as amended through December 24, 2014) and summing the resultant value for each to compute a tpy CO<sub>2</sub>e.

For purposes of this definition, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material).

“Title V permit” means an operating permit under Title V of the Act.

“12-month rolling period” means a period of 12 consecutive months determined on a rolling basis with a new 12-month period beginning on the first day of each calendar month.

[ARC 9224B, IAB 11/17/10, effective 12/22/10; ARC 9906B, IAB 12/14/11, effective 11/16/11; ARC 0330C, IAB 9/19/12, effective 10/24/12; ARC 1913C, IAB 3/18/15, effective 4/22/15; ARC 2352C, IAB 1/6/16, effective 12/16/15; ARC 2949C, IAB 2/15/17, effective 3/22/17; ARC 3679C, IAB 3/14/18, effective 4/18/18; ARC 4335C, IAB 3/13/19, effective 4/17/19]

#### **567—22.101(455B) Applicability of Title V operating permit requirements.**

**22.101(1)** Except as provided in rule 567—22.102(455B), any person who owns or operates any of the following sources shall obtain a Title V operating permit and shall submit fees as required in 567—Chapter 30:

- a. Any affected source subject to the provisions of Title IV of the Act;
- b. Any major source;
- c. Any source, including any nonmajor source, subject to a standard, limitation, or other requirement under Section 111 of the Act (567—subrule 23.1(2), new source performance standards; 567—subrule 23.1(5), emission guidelines);
- d. Any source, including any area source, subject to a standard or other requirement under Section 112 of the Act (567—subrules 23.1(3) and 23.1(4), emission standards for hazardous air pollutants), except that a source is not required to obtain a Title V permit solely because it is subject to regulations or requirements under Section 112(r) of the Act;
- e. Any solid waste incinerator unit required to obtain a Title V permit under Section 129(e) of the Act;
- f. Any source category designated by the Administrator pursuant to 40 CFR 70.3 as amended through December 19, 2005.

**22.101(2)** Any nonmajor source required to obtain a Title V operating permit pursuant to subrule 22.101(1) is required to obtain a Title V permit only for the emissions units and related equipment causing the source to be subject to the Title V program.

**22.101(3)** Election to apply for permit. Rescinded IAB 7/19/06, effective 8/23/06.  
[ARC 2352C, IAB 1/6/16, effective 12/16/15]

#### **567—22.102(455B) Source category exemptions.**

**22.102(1)** All sources listed in subrule 22.101(1) that are not major sources, affected sources subject to the provisions of Title IV of the Act or solid waste incineration units required to obtain a permit pursuant to Section 129(e) of the Act are exempt from the obligation to obtain a Title V permit until such time as the Administrator completes a rule making to determine how the program should be structured

for nonmajor sources and the appropriateness of any permanent exemptions in addition to those provided for in subrule 22.102(3).

**22.102(2)** In the case of nonmajor sources subject to a standard or other requirement under either Section 111 or Section 112 of the Act after July 21, 1992, publication, the Administrator will determine at the time the new or amended standard is promulgated whether to exempt any or all such applicable sources from the requirement to obtain a Title V permit.

**22.102(3)** The following source categories are exempt from the obligation to obtain a Title V permit:

*a.* All sources and source categories that would be required to obtain a Title V permit solely because they are subject to 40 CFR 60, Subpart AAA, Standards of Performance for New Residential Wood Heaters, as amended through March 16, 2015;

*b.* All sources and source categories that would be required to obtain a Title V permit solely because they are subject to 40 CFR 61, Subpart M, National Emission Standard for Hazardous Air Pollutants for Asbestos, Section 61.145, Standard for Demolition and Renovation, as adopted by reference in 567—subrule 23.1(3);

*c.* All sources and source categories that would be required to obtain a Title V permit solely because they are subject to any of the following subparts from 40 CFR 63:

(1) Subpart M, National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities, as adopted by reference in 567—subrule 23.1(4).

(2) Subpart N, National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks, as adopted by reference in 567—subrule 23.1(4).

(3) Subpart O, Ethylene Oxide Emissions Standards for Sterilization Facilities, as adopted by reference in 567—subrule 23.1(4).

(4) Subpart T, National Emission Standards for Halogenated Solvent Cleaning, as adopted by reference in 567—subrule 23.1(4).

(5) Subpart RRR, National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production, as adopted by reference in 567—subrule 23.1(4).

(6) Subpart VVV, National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works, as adopted by reference in 567—subrule 23.1(4).

[ARC 2949C, IAB 2/15/17, effective 3/22/17]

**567—22.103(455B) Insignificant activities.** The following are insignificant activities for purposes of the Title V application if not needed to determine the applicability of or to impose any applicable requirement. Title V permit emissions fees are not required from insignificant activities pursuant to 567—paragraph 30.4(2)“f.”

**22.103(1)** *Insignificant activities excluded from Title V operating permit application.* In accordance with 40 CFR 70.5 (as amended through October 6, 2009), these activities need not be included in the Title V permit application.

*a.* Mobile internal combustion and jet engines, marine vessels, and locomotives.

*b.* Equipment, other than anaerobic lagoons, used for cultivating land, harvesting crops, or raising livestock. This exemption is not applicable if the equipment is used to remove substances from grain which were applied to the grain by another person. This exemption also is not applicable to equipment used by a person to manufacture commercial feed, as defined in Iowa Code section 198.3, when that feed is normally not fed to livestock:

(1) Owned by that person or another person, and

(2) Located in a feedlot, as defined in Iowa Code section 172D.1(6), or in a confinement building owned or operated by that person, and

(3) Located in this state.

*c.* Equipment or control equipment which eliminates all emissions to the atmosphere.

*d.* Equipment (other than anaerobic lagoons) or control equipment which emits odors unless such equipment or control equipment also emits particulate matter or any other air pollutant or contaminant.

- e.* Air conditioning or ventilating equipment not designed to remove air contaminants generated by or released from associated equipment.
- f.* Residential wood heaters, cookstoves, or fireplaces.
- g.* The equipment in laboratories used exclusively for nonproduction chemical and physical analyses. Nonproduction analyses means analyses incidental to the production of a good or service and includes analyses conducted for quality assurance or quality control activities, or for the assessment of environmental impact.
- h.* Recreational fireplaces.
- i.* Barbecue pits and cookers except at a meat packing plant or a prepared meat manufacturing facility.
- j.* Stacks or vents to prevent escape of sewer gases through plumbing traps for systems handling domestic sewage only. Systems which include any industrial waste are not exempt.
- k.* Retail gasoline and diesel fuel handling facilities.
- l.* Photographic process equipment by which an image is reproduced upon material sensitized to radiant energy.
- m.* Equipment used for hydraulic or hydrostatic testing.
- n.* General vehicle maintenance and servicing activities at the source, other than gasoline fuel handling.
- o.* Cafeterias, kitchens, and other facilities used for preparing food or beverages primarily for consumption at the source.
- p.* Equipment using water, water and soap or detergent, or a suspension of abrasives in water for purposes of cleaning or finishing provided no organic solvent has been added to the water, the boiling point of the additive is not less than 100°C (212°F), and the water is not heated above 65.5°C (150°F).
- q.* Administrative activities including, but not limited to, paper shredding, copying, photographic activities, and blueprinting machines. This does not include incinerators.
- r.* Laundry dryers, extractors, and tumblers processing clothing, bedding, and other fabric items used at the source that have been cleaned with water solutions of bleach or detergents provided that any organic solvent present in such items before processing that is retained from cleanup operations shall be addressed as part of the volatile organic compound emissions from use of cleaning materials.
- s.* Housekeeping activities for cleaning purposes, including collecting spilled and accumulated materials at the source, but not including use of cleaning materials that contain organic solvent.
- t.* Refrigeration systems, including storage tanks used in refrigeration systems, but excluding any combustion equipment associated with such systems.
- u.* Activities associated with the construction, on-site repair, maintenance or dismantlement of buildings, utility lines, pipelines, wells, excavations, earthworks and other structures that do not constitute emission units.
- v.* Storage tanks of organic liquids with a capacity of less than 500 gallons, provided the tank is not used for storage of any material listed as a hazardous air pollutant pursuant to Section 112(b) of the Clean Air Act.
- w.* Piping and storage systems for natural gas, propane, and liquified petroleum gas, excluding pipeline compressor stations and associated storage facilities.
- x.* Water treatment or storage systems, as follows:
  - (1) Systems for potable water or boiler feedwater.
  - (2) Systems, including cooling towers, for process water provided that such water has not been in direct or indirect contact with process steams that contain volatile organic material or materials listed as hazardous air pollutants pursuant to Section 112(b) of the Clean Air Act.
- y.* Lawn care, landscape maintenance, and groundskeeping activities.
- z.* Containers, reservoirs, or tanks used exclusively in dipping operations to coat objects with oils, waxes, or greases, provided no organic solvent has been mixed with such materials.
- aa.* Cold cleaning degreasers that are not in-line cleaning machines, where the vapor pressure of the solvents used never exceeds 2 kPa (15 mmHg or 0.3 psi) measured at 38°C (100°F) or 0.7 kPa (5

mmHg or 0.1 psi) at 20°C (68°F). (Note: Cold cleaners subject to 40 CFR Part 63 Subpart T are not considered insignificant activities.)

*bb.* Manually operated equipment used for buffing, polishing, carving, cutting, drilling, machining, routing, sanding, sawing, scarfing, surface grinding or turning.

*cc.* Use of consumer products, including hazardous substances as that term is defined in the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.), when the product is used at a source in the same manner as normal consumer use.

*dd.* Activities directly used in the diagnosis and treatment of disease, injury or other medical condition.

*ee.* Firefighting activities and training in preparation for fighting fires conducted at the source. (Note: Written notification pursuant to 567—paragraph 23.2(3) “g” is required at least ten working days before such action commences.)

*ff.* Activities associated with the construction, repair or maintenance of roads or other paved or open areas, including operation of street sweepers, vacuum trucks, spray trucks and other vehicles related to the control of fugitive emissions of such roads or other areas.

*gg.* Storage and handling of drums or other transportable containers when the containers are sealed during storage and handling.

*hh.* Individual points of emission or activities as follows:

(1) Individual flanges, valves, pump seals, pressure relief valves and other individual components that have the potential for leaks.

(2) Individual sampling points, analyzers, and process instrumentation, whose operation may result in emissions.

(3) Individual features of an emission unit such as each burner and sootblower in a boiler or each use of cleaning materials on a coating or printing line.

*ii.* Construction activities at a source solely associated with the modification or building of a facility, an emission unit or other equipment at the source. (Note: Notwithstanding the status of this activity as insignificant, a particular activity that entails modification or construction of an emission unit or construction of air pollution control equipment may require a construction permit pursuant to 22.1(455B) and may subsequently require a revised Title V operating permit. A revised Title V operating permit may also be necessary for operation of an emission unit after completion of a particular activity if the existing Title V operating permit does not accommodate the new state of the emission unit.)

*jj.* Activities at a source associated with the maintenance, repair, or dismantlement of an emission unit or other equipment installed at the source, including preparation for maintenance, repair or dismantlement, and preparation for subsequent startup, including preparation of a shutdown vessel for entry, replacement of insulation, welding and cutting, and steam purging of a vessel prior to startup.

**22.103(2)** *Insignificant activities which must be included in Title V operating permit applications.*

*a.* The following are insignificant activities based on potential emissions:

An emission unit which has the potential to emit less than:

5 tons per year of any regulated air pollutant, except:

2.5 tons per year of PM<sub>10</sub>,

0.52 tons per year of PM<sub>2.5</sub> (does not apply to emission units for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred on or before October 23, 2013),

2 lbs per year of lead or lead compounds (40 lbs per year for emission units for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred on or before October 23, 2013),

2500 lbs per year of any combination of hazardous air pollutants except high-risk pollutants,

1000 lbs per year of any individual hazardous air pollutant except high-risk pollutants,

250 lbs per year of any combination of high-risk pollutants, or

100 lbs per year of any individual high-risk pollutant.

The definition of “high-risk pollutant” is found in rule 567—22.100(455B).

*b.* The following are insignificant activities:

(1) Fuel-burning equipment for indirect heating and reheating furnaces or indirect cooling units using natural or liquefied petroleum gas with a capacity of less than 10 million Btu per hour input per combustion unit.

(2) Fuel-burning equipment for indirect heating or indirect cooling for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred on or before October 23, 2013, with a capacity of less than 1 million Btu per hour input per combustion unit when burning coal, untreated wood, or fuel oil.

Fuel-burning equipment for indirect heating or indirect cooling for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred after October 23, 2013, with a capacity of less than 1 million Btu per hour input per combustion unit when burning untreated wood, untreated seeds or pellets, other untreated vegetative materials, or fuel oil provided that the equipment and the fuel meet the condition specified in this subparagraph (22.103(2)“b”(2)). Used oils meeting the specification from 40 CFR 279.11 as amended through July 14, 2006, are acceptable fuels. When combusting used oils, the equipment must have a maximum rated capacity of 50,000 Btu or less per hour of heat input or a maximum throughput of 3600 gallons or less of used oils per year. When combusting untreated wood, untreated seeds or pellets, or other untreated vegetative materials, the equipment must have a maximum rated capacity of 265,600 Btu or less per hour or a maximum throughput of 378,000 pounds or less per year of each fuel or any combination of fuels.

(3) Incinerators with a rated refuse burning capacity of less than 25 pounds per hour for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred on or before October 23, 2013. Incinerators for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred after October 23, 2013, shall not qualify as an insignificant activity. After October 23, 2013, only paint clean-off ovens with a maximum rated capacity of less than 25 pounds per hour that do not combust lead-containing materials shall qualify as an insignificant activity.

(4) Gasoline, diesel fuel, or oil storage tanks with a capacity of 1,000 gallons or less and an annual throughput of less than 40,000 gallons.

(5) A storage tank which contains no volatile organic compounds above a vapor pressure of 0.75 pounds per square inch at the normal operating temperature of the tank when other emissions from the tank do not exceed the levels in paragraph 22.103(2)“a.”

(6) Internal combustion engines that are used for emergency response purposes with a brake horsepower rating of less than 400 measured at the shaft. The manufacturer’s nameplate rating at full load shall be defined as the brake horsepower output at the shaft. Emergency engines that are subject to any of the following federal regulations are not considered to be insignificant activities for purposes of this rule (567—22.103(455B)):

1. New source performance standards (NSPS) for stationary compression ignition internal combustion engines (40 CFR Part 60, Subpart IIII);
2. New source performance standards (NSPS) for stationary spark ignition internal combustion engines (40 CFR Part 60, Subpart JJJJ); or
3. National emission standards for hazardous air pollutants (NESHAP) for reciprocating internal combustion engines (40 CFR Part 63, Subpart ZZZZ).

[ARC 1013C, IAB 9/18/13, effective 10/23/13; ARC 2352C, IAB 1/6/16, effective 12/16/15; ARC 2949C, IAB 2/15/17, effective 3/22/17; ARC 3679C, IAB 3/14/18, effective 4/18/18; Editorial change: IAC Supplement 5/9/18]

**567—22.104(455B) Requirement to have a Title V permit.** No source may operate after the time that it is required to submit a timely and complete application, except in compliance with a properly issued Title V operating permit. However, if a source submits a timely and complete application for permit issuance (including renewal), the source’s failure to have a permit is not a violation of this chapter until the director takes final action on the permit application, except as noted in this rule. In that case, all terms and conditions of the permit shall remain in effect until the renewal permit has been issued or denied.

**22.104(1)** This protection shall cease to apply if, subsequent to the completeness determination, the applicant fails to submit, by the deadline specified in writing by the director, any additional information identified as being needed to process the application.

**22.104(2)** Sources making permit revisions pursuant to rule 567—22.110(455B) shall not be in violation of this rule.

**567—22.105(455B) Title V permit applications.**

**22.105(1) Duty to apply.** For each source required to obtain a Title V operating permit, the owner or operator or designated representative, where applicable, shall present or mail a complete and timely permit application in accordance with this rule to the following locations: Iowa Department of Natural Resources, Air Quality Bureau, 502 East 9th Street, Des Moines, Iowa 50319 (one copy); and U.S. EPA Region VII, 11201 Renner Boulevard, Lenexa, Kansas 66219 (one copy); and, if applicable, the local permitting authority, which is either Linn County Public Health Department, Air Quality Division, 501 13th Street NW, Cedar Rapids, Iowa 52405 (one copy); or Polk County Public Works, Air Quality Division, 5885 NE 14th Street, Des Moines, Iowa 50313 (one copy). Application submission methods may include, but are not limited to, U.S. Postal Service, private parcel delivery services, or hand delivery. Applications are not required to be submitted by certified mail. Alternatively, an owner or operator may submit a complete and timely application through the electronic submittal format specified by the department. An owner or operator of a source required to obtain a Title V permit pursuant to subrule 22.101(1) shall submit all required fees as required in 567—Chapter 30.

*a. Timely application.* Each owner or operator applying for a Title V permit shall submit an application as follows:

(1) Initial application for an existing source. The owner or operator of a stationary source that was existing on or before April 20, 1994, shall make the first time submittals of a Title V permit application to the department by November 15, 1994. However, the owner or operator may choose to defer submittal of Part 2 of the permit application until December 31, 1995. The department will mail notice of the deadline for Part 2 of the permit application to all applicants who have filed Part 1 of the application by October 17, 1995.

(2) Initial application for a new source. The owner or operator of a stationary source that commenced construction or reconstruction after April 20, 1994, or that otherwise became subject to the requirement to obtain a Title V permit after April 20, 1994, shall submit an application to the department within 12 months of becoming subject to the Title V permit requirements.

(3) Application related to 112(g), PSD or nonattainment. The owner or operator of a stationary source that is subject to Section 112(g) of the Act, that is subject to rule 567—22.4(455B) or 567—33.3(455B) (prevention of significant deterioration (PSD)), or that is subject to rule 567—22.5(455B) or 567—31.3(455B) (nonattainment area permitting) shall submit an application to the department within 12 months of commencing operation. In cases in which an existing Title V permit would prohibit such construction or change in operation, the owner or operator must obtain a Title V permit revision before commencing operation.

(4) Renewal application. The owner or operator of a stationary source with a Title V permit shall submit an application to the department for a permit renewal at least 6 months prior to, but not more than 18 months prior to, the date of permit expiration.

(5) Changes allowed without a permit revision (off-permit revision). The owner or operator of a stationary source with a Title V permit who is proposing a change that is allowed without a Title V permit revision (an off-permit revision) as specified in rule 567—22.110(455B) shall submit to the department a written notification as specified in rule 567—22.110(455B) at least 30 days prior to the proposed change.

(6) Application for an administrative permit amendment. Prior to implementing a change that satisfies the requirements for an administrative permit amendment as set forth in rule 567—22.111(455B), the owner or operator shall submit to the department an application for an administrative amendment as specified in rule 567—22.111(455B).

(7) Application for a minor permit modification. Prior to implementing a change that satisfies the requirements for a minor permit modification as set forth in rule 567—22.112(455B), the owner or

operator shall submit to the department an application for a minor permit modification as specified in rule 567—22.112(455B).

(8) Application for a significant permit modification. The owner or operator of a source that satisfies the requirements for a significant permit modification as set forth in rule 567—22.113(455B) shall submit to the department an application for a significant permit modification as specified in rule 567—22.113(455B) within three months after the commencing operation of the changed source. However, if the existing Title V permit would prohibit such construction or change in operation, the owner or operator shall not commence operation of the changed source until the department issues a revised Title V permit that allows the change.

(9) Application for an acid rain permit. The owner or operator of a source subject to the acid rain program, as set forth in rules 567—22.120(455B) through 567—22.148(455B), shall submit an application for an initial Phase II acid rain permit by January 1, 1996 (for sulfur dioxide), or by January 1, 1998 (for nitrogen oxides).

*b. Complete application.* To be deemed complete, an application must provide all information required pursuant to subrule 22.105(2), except that applications for permit revision need supply such information only if it is related to the proposed change.

**22.105(2) Standard application form and required information.** To apply for a Title V permit, applicants shall complete the standard permit application form available only from the department and supply all information required by the filing instructions found on that form. The information submitted must be sufficient to evaluate the source and its application and to determine all applicable requirements and to evaluate the fee amount required by rule 567—30.4(455B). If a source is not a major source and is applying for a Title V operating permit solely because of a requirement imposed by paragraphs 22.101(1)“c” and “d,” then the information provided in the operating permit application may cover only the emissions units that trigger Title V applicability. The applicant shall submit the information called for by the application form for each emissions unit to be permitted, except for activities which are insignificant according to the provisions of rule 567—22.103(455B). The applicant shall provide a list of all insignificant activities and specify the basis for the determination of insignificance for each activity. Nationally standardized forms shall be used for the acid rain portions of permit applications and compliance plans, as required by regulations promulgated under Title IV of the Act. The standard application form and any attachments shall require that the following information be provided:

*a.* Identifying information, including company name and address (or plant or source name if different from the company name), owner’s name and agent, and telephone number and names of plant site manager/contact.

*b.* A description of the source’s processes and products (by two-digit Standard Industrial Classification Code) including any associated with each alternate scenario identified by the applicant.

*c.* The following emissions-related information shall be submitted to the department on the emissions inventory portion of the application, unless the department notifies the applicant that the emissions-related information is not required because it has already been submitted:

(1) All emissions of pollutants for which the source is major, and all emissions of regulated air pollutants. The permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit except where such units are exempted. The source shall submit additional information related to the emissions of air pollutants sufficient to verify which requirements are applicable to the source, and other information necessary to collect any permit fees owed under the approved fee schedule.

(2) Identification and description of all points of emissions in sufficient detail to establish the basis for fees and the applicability of any and all requirements.

(3) Emissions rates in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method, if any.

(4) The following information to the extent it is needed to determine or regulate emissions: fuels, fuel use, raw materials, production rates, and operating schedules.

(5) Identification and description of air pollution control equipment.

(6) Identification and description of compliance monitoring devices or activities.

(7) Limitations on source operations affecting emissions or any work practice standards, where applicable, for all regulated pollutants.

(8) Other information required by any applicable requirement (including information related to stack height limitations developed pursuant to Section 123 of the Act).

(9) Calculations on which the information in subparagraphs (1) to (8) above is based.

(10) Fugitive emissions from a source shall be included in the permit application in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

*d.* The following air pollution control requirements:

(1) Citation and description of all applicable requirements, and

(2) Description of or reference to any applicable test method for determining compliance with each applicable requirement.

*e.* Other specific information that may be necessary to implement and enforce other applicable requirements of the Act or of these rules or to determine the applicability of such requirements.

*f.* An explanation of any proposed exemptions from otherwise applicable requirements.

*g.* Additional information as determined to be necessary by the director to define alternative operating scenarios identified by the source pursuant to subrule 22.108(12) or to define permit terms and conditions relating to operational flexibility and emissions trading pursuant to subrule 22.108(11) and rule 567—22.112(455B).

*h.* A compliance plan that contains the following:

(1) A description of the compliance status of the source with respect to all applicable requirements.

(2) The following statements regarding compliance status: For applicable requirements with which the stationary source is in compliance, a statement that the stationary source will continue to comply with such requirements. For applicable requirements that will become effective during the permit term, a statement that the stationary source will meet such requirements on a timely basis. For requirements for which the stationary source is not in compliance at the time of permit issuance, a narrative description of how the stationary source will achieve compliance with such requirements.

(3) A compliance schedule that contains the following:

1. For applicable requirements with which the stationary source is in compliance, a statement that the stationary source will continue to comply with such requirements. For applicable requirements that will become effective during the permit term, a statement that the stationary source will meet such requirements on a timely basis. A statement that the stationary source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

2. A compliance schedule for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the stationary source will be in noncompliance at the time of permit issuance.

3. This compliance schedule shall resemble and be at least as stringent as any compliance schedule contained in any judicial consent decree or administrative order to which the source is subject. Any compliance schedule shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

(4) A schedule for submission of certified progress reports no less frequently than every six months for sources required to have a compliance schedule in the permit.

*i.* Requirements for compliance certification, including the following:

(1) A certification of compliance for the prior year with all applicable requirements certified by a responsible official consistent with subrule 22.107(4) and Section 114(a)(3) of the Act.

(2) A statement of methods used for determining compliance, including a description of monitoring, record keeping, and reporting requirements and test methods.

(3) A schedule for submission of compliance certifications for each compliance period (one year unless required for a shorter time period by an applicable requirement) during the permit term, which

shall be submitted annually, or more frequently if required by an underlying applicable requirement or by the director.

(4) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act.

(5) Notwithstanding any other provisions of these rules, for the purposes of submission of compliance certifications, an owner or operator is not prohibited from using monitoring as required by subrules 22.108(3), 22.108(4) or 22.108(5) and incorporated into a Title V operating permit in addition to any specified compliance methods.

*j.* The compliance plan content requirements specified in these rules shall apply and be included in the acid rain portion of a compliance plan for a Title IV affected source, except as specifically superseded by regulations promulgated under Title IV of the Act, with regard to the schedule and method(s) the source shall use to achieve compliance with the acid rain emissions limitations.

**22.105(3) Hazardous air pollutant early reduction application.** Anyone requesting a compliance extension from a standard issued under Section 112(d) of the Act must submit with its Title V permit application information that complies with the requirements established in 567—paragraph 23.1(4) “d.”

**22.105(4) Acid rain application content.** The acid rain application content shall be as prescribed in the acid rain rules found at rules 567—22.128(455B) and 567—22.129(455B).

**22.105(5) More than one Title V operating permit for a stationary source.** Following application made pursuant to subrule 22.105(1), the department may, at its discretion, issue more than one Title V operating permit for a stationary source, provided that the owner or operator does not have, and does not propose to have, a sourcewide emission limit or a sourcewide alternative operating scenario.

[ARC 8215B, IAB 10/7/09, effective 11/11/09; ARC 1227C, IAB 12/11/13, effective 1/15/14; ARC 2352C, IAB 1/6/16, effective 12/16/15; ARC 2949C, IAB 2/15/17, effective 3/22/17; ARC 3440C, IAB 11/8/17, effective 12/13/17; ARC 4335C, IAB 3/13/19, effective 4/17/19]

#### **567—22.106(455B) Annual Title V emissions inventory.**

**22.106(1) Emissions fee.** Fees shall be paid as set forth in 567—Chapter 30.

**22.106(2) Emissions inventory and documentation due dates.** The emissions inventory shall be submitted through the electronic format specified by the department.

An owner or operator shall, by March 31, submit documentation of actual emissions for the previous calendar year.

The department shall calculate the total statewide Title V emissions for the prior calendar year and make this information available to the public no later than April 30 of each year.

**22.106(3) Correction of errors.** If an owner or operator, or the department, finds an error in a Title V emissions inventory, the owner or operator shall submit to the department revised forms making the necessary corrections to the Title V emissions inventory. Corrected forms shall be submitted as soon as possible after the errors are discovered or upon notification by the department.

[ARC 2352C, IAB 1/6/16, effective 12/16/15; ARC 3679C, IAB 3/14/18, effective 4/18/18; ARC 4335C, IAB 3/13/19, effective 4/17/19]

#### **567—22.107(455B) Title V permit processing procedures.**

**22.107(1) Action on application.**

*a. Conditions for action on application.* A permit, permit modification, or renewal may be issued only if all of the following conditions have been met:

(1) The permitting authority has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit under rule 567—22.109(455B);

(2) Except for modifications qualifying for minor permit modification procedures under rule 22.112(455B), the permitting authority has complied with the requirements for public participation under subrule 22.107(6);

(3) The permitting authority has complied with the requirements for notifying and responding to affected states under subrule 22.107(7);

(4) The conditions of the permit provide for compliance with all applicable requirements and the requirements of this chapter;

(5) The administrator has received a copy of the proposed permit and any notices required under subrule 22.107(7), and has not objected to issuance of the permit under subrule 22.107(7) within the time period specified therein;

(6) If the administrator has properly objected to the permit pursuant to the provisions of 40 CFR 70.8(d) as amended to July 21, 1992, or subrule 22.107(7), then the permitting authority may issue a permit only after the administrator's objection has been resolved; and

(7) No permit for a solid waste incineration unit combusting municipal waste subject to the provisions of Section 129(e) of the Act may be issued by an agency, instrumentality or person that is also responsible, in whole or part, for the design and construction or operation of the unit.

*b. Time for action on application.* The permitting authority shall take final action on each complete permit application (including a request for permit modification or renewal) within 18 months of receiving a complete application, except in the following instances:

(1) When otherwise provided under Title V or Title IV of the Act for the permitting of affected sources under the acid rain program.

(2) In the case of initial permit applications, the permitting authority may take up to three years from the effective date of the program to take final action on an application.

(3) Any complete permit applications containing an early reduction demonstration under Section 112(i)(5) of the Act shall be acted upon within nine months of receipt of the complete application.

*c. Prioritization of applications.* The director shall give priority to action on Title V applications involving construction or modification for which a construction permit pursuant to subrule 22.1(1) or Title I of the Act, Parts C and D, is also required. The director also shall give priority to action on Title V applications involving early reduction of hazardous air pollutants pursuant to 567—paragraph 23.1(4) “d.”

*d. Completeness of applications.* The department shall promptly provide notice to the applicant of whether the application is complete. Unless the permitting authority requests additional information or otherwise notifies the applicant of incompleteness within 60 days of receipt of an application, the application shall be deemed complete. If, while processing an application that has been determined to be complete, the permitting authority determines that additional information is necessary to evaluate or take final action on that application, the permitting authority may request in writing such information and set a reasonable deadline for a response. The source's ability to operate without a permit, as set forth in rule 567—22.104(455B), shall be in effect from the date the application is determined to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified by the permitting authority. For modifications processed through minor permit modification procedures, a completeness determination shall not be required.

*e. Decision to deny a permit application.* The director shall decide to issue or deny the permit. The director shall notify the applicant as soon as practicable that the application has been denied. Upon denial of the permit the provisions of paragraph 22.107(1) “d” shall no longer be applicable. The new application shall be regarded as an entirely separate application containing all the required information and shall not depend on references to any documents contained in the previous denied application.

*f. Fact sheet.* A draft permit and fact sheet shall be prepared by the permitting authority. The fact sheet shall include the rationale for issuance or denial of the permit; a brief description of the type of facility; a summary of the type and quantity of air pollutants being emitted; a brief summary of the legal and factual basis for the draft permit conditions, including references to applicable statutes and rules; a description of the procedures for reaching final decision on the draft permit including the comment period, the address where comments will be received, and procedures for requesting a hearing and the nature of the hearing; and the name and telephone number for a person to contact for additional information. The permitting authority shall provide the fact sheet to EPA and to any other person who requests it.

*g. Relation to construction permits.* The submittal of a complete application shall not affect the requirement that any source have a construction permit under Title I of the Act and subrule 22.1(1).

**22.107(2) Confidential information.** If a source has submitted information with an application under a claim of confidentiality to the department, the source shall also submit a copy of such information directly to the administrator. Requests for confidentiality must comply with 561—Chapter 2.

**22.107(3) Duty to supplement or correct application.** Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date the source filed a complete application but prior to release of a draft permit. Applicants who have filed a complete application shall have 60 days following notification by the department to file any amendments. Any MACT determinations in permit applications will be evaluated based on the standards, limitations or levels of technology existing on the date the initial application is deemed complete.

**22.107(4) Certification of truth, accuracy, and completeness.** Any application form, report, or compliance certification submitted pursuant to these rules shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under these rules shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

**22.107(5) Early reduction application evaluation.** Hazardous air pollutant early reduction application evaluation review shall follow the procedures established in 567—paragraph 23.1(4) “d.”

**22.107(6) Public notice and public participation.**

*a.* The permitting authority shall provide public notice and an opportunity for public comments, including an opportunity for a hearing, before taking any of the following actions: issuance, denial or renewal of a permit; or significant modification or revocation or reissuance of a permit.

*b.* Notice shall be given by posting of the notice, including the draft permit, for the duration of the public comment period on a public website identified by the permitting authority and designed to give general public notice. Notice also shall be given to persons on a mailing list developed by the permitting authority, including those who request in writing to be on the list. The department may use other means if necessary to ensure adequate notice to the affected public.

*c.* The public notice shall include the following:

- (1) Identification of the Title V source.
- (2) Name and address of the permittee.
- (3) Name and address of the permitting authority processing the permit.
- (4) The activity or activities involved in the permit action.
- (5) The emissions change involved in any permit modification.
- (6) The air pollutants or contaminants to be emitted.
- (7) The time and place of any possible public hearing.
- (8) A statement that any person may submit written and signed comments, or may request a public hearing, or both, on the proposed permit. A statement of procedures to request a public hearing shall be included.

(9) The name, address, and telephone number of a person from whom additional information may be obtained. Information entitled to confidential treatment pursuant to Section 114(c) of the Act or state law shall not be released pursuant to this provision. However, the contents of a Title V permit shall not be entitled to protection under Section 114(c) of the Act.

(10) Locations where copies of the permit application and the proposed permit may be reviewed, including the closest department office, and the times at which they shall be available for public inspection.

*d.* At least 30 days shall be provided for public comment. Notice of any public hearing shall be given at least 30 days in advance of the hearing.

*e.* Any person may request a public hearing. A request for a public hearing shall be in writing and shall state the person’s interest in the subject matter and the nature of the issues proposed to be raised at

the hearing. The director shall hold a public hearing upon finding, on the basis of requests, a significant degree of relevant public interest in a draft permit. A public hearing also may be held at the director's discretion.

*f.* The director shall keep a record of the commenters and of the issues raised during the public participation process and shall prepare written responses to all comments received. At the time a final decision is made, the record and copies of the director's responses shall be made available to the public.

*g.* The permitting authority shall provide notice and opportunity for participation by affected states as provided by subrule 22.107(7).

**22.107(7) Permit review by EPA and affected states.**

*a. Transmission of information to the administrator.* Except as provided in subrule 22.107(2) or waived by the administrator, the director shall provide to the administrator a copy of each permit application or modification application, including any attachments and compliance plans; each proposed permit; and each final permit. For purposes of this subrule, the application information may be submitted in a computer-readable format compatible with the administrator's national database management system.

*b. Review by affected states.* The director shall provide notice of each draft permit to any affected state on or before the time that public notice is provided to the public pursuant to subrule 22.107(6), except to the extent that subrule 22.112(3) requires the timing of the notice to be different. If the director refuses to accept a recommendation of any affected state, submitted during the public or affected state review period, then the director shall notify the administrator and the affected state in writing. The notification shall include the director's reasons for not accepting the recommendation(s). The director shall not be required to accept recommendations that are not based on applicable requirements.

*c. EPA objection.* No permit for which an application must be transmitted to the administrator shall be issued if the administrator objects in writing to its issuance as not in compliance with the applicable requirements within 45 days after receiving a copy of the proposed permit and necessary supporting information under 22.107(7) "a." Within 90 days after the date of an EPA objection made pursuant to this rule, the director shall submit a response to the objection, if the objection has not been resolved.

**22.107(8) Public petitions to the administrator regarding Title V permits.**

*a.* If the administrator does not object to a proposed permit, any person may petition the administrator within 60 days after the expiration of the administrator's 45-day review period to make an objection pursuant to 40 CFR 70.8(d) as amended to July 21, 1992.

*b.* Any person who petitions the administrator pursuant to the provisions of 40 CFR 70.8(d) as amended to July 21, 1992, shall notify the department by certified mail of such petition immediately, and in no case more than 10 days following the date the petition is submitted to EPA. Such notice shall include a copy of the petition submitted to EPA and a separate written statement detailing the grounds for the objection(s) and whether the objection(s) was raised during the public comment period. A petition for review shall not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day EPA review period and prior to the administrator's objection.

*c.* If the administrator objects to the permit as a result of a petition filed pursuant to 40 CFR 70.8(d) as amended to July 21, 1992, then the director shall not issue a permit until the administrator's objection has been resolved. However, if the director has issued a permit prior to receipt of the administrator's objection, and the administrator modifies, terminates, or revokes such permit, consistent with the procedures in 40 CFR 70.7 as amended to July 21, 1992, then the director may thereafter issue only a revised permit that satisfies the administrator's objection. In any case, the source shall not be in violation of the requirement to have submitted a timely and complete application.

**22.107(9) A Title V permit application may be denied if:**

*a.* The director finds that a source is not in compliance with any applicable requirement; or

*b.* An applicant knowingly submits false information in a permit application.

**22.107(10) Retention of permit records.** The director shall keep all records associated with each permit for a minimum of five years.

[ARC 3679C, IAB 3/14/18, effective 4/18/18]

**567—22.108(455B) Permit content.** Each Title V permit shall include the following elements:

**22.108(1)** Enforceable emission limitations and standards. Each permit issued pursuant to this chapter shall include emissions limitations and standards, including those operational requirements and limitations that ensure compliance with all applicable requirements at the time of permit issuance.

*a.* The permit shall specify and reference the origin of and authority for each term or condition and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

*b.* The permit shall state that, where an applicable requirement of the Act is more stringent than an applicable requirement of regulations promulgated under Title IV of the Act, both provisions shall be incorporated into the permit and shall be enforceable by the administrator.

*c.* If an applicable implementation plan allows a determination of an alternative emission limit at a Title V source, equivalent to that contained in the plan, to be made in the permit issuance, renewal, or significant modification process, and the state elects to use such process, then any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

*d.* If an early reduction demonstration is approved as part of the Title V permit application, the permit shall include enforceable alternative emissions limitations for the source reflecting the reduction which qualified the source for the compliance extension.

*e.* Fugitive emissions from a source shall be included in the permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

*f.* For all major sources, all applicable requirements for all relevant emissions units in the major source shall be included in the permit.

**22.108(2)** Permit duration. The permit shall specify a fixed term not to exceed five years except:

*a.* Permits issued to Title IV affected sources shall have a fixed term of five years.

*b.* Permits issued to solid waste incineration units combusting municipal waste subject to standards under Section 129(e) of the Act shall have a term not to exceed 12 years. Such permits shall be reviewed every five years.

**22.108(3)** Monitoring. Each permit shall contain the following requirements with respect to monitoring:

*a.* All emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods promulgated pursuant to Section 114(a)(3) or 504(b) of the Act;

*b.* Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of record keeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to subrule 22.108(5). Such monitoring shall be determined by application of the "Periodic Monitoring Guidance" (as amended through October 24, 2012) available from the department;

*c.* As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods; and

*d.* As required, Compliance Assurance Monitoring (CAM) consistent with 40 CFR Part 64 (as amended through October 22, 1997).

**22.108(4)** Record keeping. With respect to record keeping, the permit shall incorporate all applicable record-keeping requirements and require, where applicable, the following:

*a.* Records of required monitoring information that include the following:

(1) The date, place as defined in the permit, and time of sampling or measurements;

(2) The date(s) the analyses were performed;

(3) The company or entity that performed the analyses;

(4) The analytical techniques or methods used;

(5) The results of such analyses; and

(6) The operating conditions as existing at the time of sampling or measurement; and

*b.* Retention of records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart and other recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

**22.108(5) Reporting.** With respect to reporting, the permit shall incorporate all applicable reporting requirements and shall require the following:

*a.* Submittal of reports of any required monitoring at least every six months. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with subrule 22.107(4).

*b.* Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The director shall define “prompt” in relation to the degree and type of deviation likely to occur and the applicable requirements.

**22.108(6) Risk management plan.** Pursuant to Section 112(r)(7)(E) of the Act, if the source is required to develop and register a risk management plan pursuant to Section 112(r) of the Act, the permit shall state the requirement for submission of the plan to the air quality bureau of the department. The permit shall also require filing the plan with appropriate authorities and an annual certification to the department that the plan is being properly implemented.

**22.108(7) A permit condition prohibiting emissions exceeding any allowances that the affected source lawfully holds under Title IV of the Act or the regulations promulgated thereunder.**

*a.* No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement.

*b.* No limit shall be placed on the number of allowances held by the Title IV affected source. The Title IV affected source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

*c.* Any such allowances shall be accounted for according to the procedures established in regulations promulgated under Title IV of the Act.

*d.* Any permit issued pursuant to the requirements of these rules and Title V of the Act to a unit subject to the provisions of Title IV of the Act shall include conditions prohibiting all of the following:

(1) Annual emissions of sulfur dioxide in excess of the number of allowances to emit sulfur dioxide held by the owners or operators of the unit or the designated representative of the owners or operators.

(2) Exceedences of applicable emission rates.

(3) The use of any allowance prior to the year for which it was allocated.

(4) Contravention of any other provision of the permit.

**22.108(8) Severability clause.** The permit shall contain a severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.

**22.108(9) Other provisions.** The Title V permit shall contain provisions stating the following:

*a.* The permittee must comply with all conditions of the Title V permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for a permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

*b.* Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

*c.* The permit may be modified, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

*d.* The permit does not convey any property rights of any sort, or any exclusive privilege.

*e.* The permittee shall furnish to the director, within a reasonable time, any information that the director may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee also shall furnish to the director copies of records required to be kept by the permit or, for information claimed

to be confidential, the permittee shall furnish such records directly to the administrator of EPA along with a claim of confidentiality.

**22.108(10) Fees.** The permit shall include a provision to ensure that the Title V permittee pays fees to the director pursuant to rule 567—30.4(455B).

**22.108(11) Emissions trading.** A provision of the permit shall state that no permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

**22.108(12) Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application and as approved by the director.** Such terms and conditions:

*a.* Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating; and

*b.* Must ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of the department's rules.

**22.108(13) Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval of each emissions trade.** Such terms and conditions:

*a.* Shall include all terms required under subrules 22.108(1) to 22.108(13) and subrule 22.108(15) to determine compliance;

*b.* Must meet all applicable requirements of the Act and regulations promulgated thereunder and all requirements of this chapter; and

*c.* May extend the permit shield described in subrule 22.108(18) to all terms and conditions that allow such increases and decreases in emissions.

**22.108(14) Federally enforceable requirements.**

*a.* All terms and conditions in a Title V permit, including any provisions designed to limit a source's potential to emit, are enforceable by the administrator and citizens under the Act.

*b.* Notwithstanding paragraph "a" of this subrule, the director shall specifically designate as not being federally enforceable under the Act any terms and conditions included in the permit that are not required under the Act or under any of its applicable requirements. Terms and conditions so designated are not subject to the requirements of 40 CFR 70.7 or 70.8 (as amended through July 21, 1992).

**22.108(15) Compliance requirements.** All Title V permits shall contain the following elements with respect to compliance:

*a.* Consistent with the provisions of subrules 22.108(3) to 22.108(5), compliance certification, testing, monitoring, reporting, and record-keeping requirements sufficient to ensure compliance with the terms and conditions of the permit. Any documents, including reports, required by a permit shall contain a certification by a responsible official that meets the requirements of subrule 22.107(4).

*b.* Inspection and entry provisions which require that, upon presentation of proper credentials, the permittee shall allow the director or the director's authorized representative to:

(1) Enter upon the permittee's premises where a Title V source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(3) Inspect, at reasonable times, any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

(4) Sample or monitor, at reasonable times, substances or parameters for the purpose of ensuring compliance with the permit or other applicable requirements.

*c.* A schedule of compliance consistent with subparagraphs 22.105(2) "h" and "j" and subrule 22.105(3).

*d.* Progress reports, consistent with an applicable schedule of compliance and with the provisions of paragraphs 22.105(2) "h" and "j," to be submitted at least every six months, or more frequently if

specified in the applicable requirement or by the department in the permit. Such progress reports shall contain the following:

(1) Dates for achieving the activities, milestones or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and

(2) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

*e.* Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:

(1) The frequency of submissions of compliance certifications, which shall not be less than annually.

(2) The means to monitor the compliance of the source with its emissions limitations, standards, and work practices, in accordance with the provisions of all applicable department rules.

(3) A requirement that the compliance certification include: the identification of each term or condition of the permit that is the basis of the certification; the compliance status; whether compliance was continuous or intermittent; the method(s) used for determining the compliance status of the source, currently and over the reporting period consistent with all applicable department rules; and other facts as the director may require to determine the compliance status of the source.

(4) A requirement that all compliance certifications be submitted to the administrator and the director.

*f.* Such additional provisions as the director may require.

*g.* Such additional provisions as may be specified pursuant to Sections 114(a)(3) and 504(b) of the Act.

*h.* If there is a federal implementation plan applicable to the source, a provision that compliance with the federal implementation plan is required.

**22.108(16) Emergency provisions.**

*a.* For the purposes of a Title V permit, an “emergency” means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

*b.* An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of paragraph 22.108(16) “*c*” are met.

*c.* Requirements for affirmative defense. The affirmative defense of emergency shall be demonstrated by the source through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) An emergency occurred and that the permittee can identify the cause(s) of the emergency;

(2) The permitted facility was at the time being properly operated;

(3) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emissions standards or other requirements of the permit; and

(4) The permittee submitted notice of the emergency to the director by certified mail within two working days of the time when emission limitations were exceeded due to the emergency. This notice fulfills the requirement of paragraph 22.108(5) “*b*.” This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

*d.* In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

*e.* This provision is in addition to any emergency or upset provision contained in any applicable requirement.

**22.108(17) Permit reopenings.**

*a.* A Title V permit issued to a major source shall require that revisions be made to incorporate applicable standards and regulations adopted by the administrator pursuant to the Act, provided that:

(1) The reopening and revision on this ground is not required if the permit has a remaining term of less than three years;

(2) The reopening and revision on this ground is not required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions have been extended pursuant to 40 CFR 70.4(b)(10)(i) or (ii) as amended through October 6, 2009; or

(3) The additional applicable requirements are implemented in a general permit that is applicable to the source and the source receives approval for coverage under that general permit.

*b.* The revisions shall be made as expeditiously as practicable, but not later than 18 months after the promulgation of such standards and regulations. Any permit revision required pursuant to this subrule shall be treated as a permit renewal.

**22.108(18) Permit shield.**

*a.* The director may expressly include in a Title V permit a provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that:

(1) Such applicable requirements are included and are specifically identified in the permit; or

(2) The director, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

*b.* A Title V permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.

*c.* A permit shield shall not alter or affect the following:

(1) The provisions of Section 303 of the Act (emergency orders), including the authority of the administrator under that section;

(2) The liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;

(3) The applicable requirements of the acid rain program, consistent with Section 408(a) of the Act;

(4) The ability of the department or the administrator to obtain information from the facility pursuant to Section 114 of the Act.

**22.108(19) Emission trades.** For emission trades at facilities solely for the purpose of complying with a federally enforceable emissions cap that is established in the permit independent of otherwise applicable requirements, permit applications under this provision are required to include proposed replicable procedures and proposed permit terms that ensure the emission trades are quantifiable and enforceable.

[ARC 0330C, IAB 9/19/12, effective 10/24/12; ARC 2352C, IAB 1/6/16, effective 12/16/15; ARC 2949C, IAB 2/15/17, effective 3/22/17]

**567—22.109(455B) General permits.**

**22.109(1) Applicability.** The director may issue a general permit for multiple sources that contain a number of operations and processes which emit pollutants with similar characteristics and that have substantially similar requirements regarding emissions, operations, monitoring and record keeping. General permits shall not be issued to Title IV affected sources except as provided in regulations promulgated by the administrator under Title IV of the Act.

**22.109(2) Issuance of general permits.** General permits may be issued by the director and codified in this chapter following notice and opportunity for public participation consistent with the procedures contained in subrule 22.107(6). Public participation shall be provided for a new general permit, for any revision of an existing general permit, and for renewal of an existing general permit. Permit review by the administrator and affected states shall be provided consistent with subrule 22.107(7). Each general permit shall identify criteria by which sources may qualify to operate under the general permit and shall comply with all requirements applicable to other Title V permits.

**22.109(3) Applications.** Any source that would qualify for a general permit must apply for either (a) coverage under the terms of the general permit or (b) an individual Title V permit. Applications for

authority to operate under the terms of a general permit shall be made on the “General Permit Application Form” and shall specify the general permit concerned by citing the subrule containing that general permit. These applications may deviate from the Title V individual permit application but shall include all information necessary to determine qualification for, and to ensure compliance with, the general permit. If a source is later determined not to qualify for the terms and conditions of the general permit, then the source shall be subject to enforcement action for operation without a Title V operating permit.

**22.109(4) *General permit content.*** A general permit shall include all of the following:

- a. The terms and conditions required for all sources authorized to operate under the permit;
- b. Emission limitations and standards, including those operational requirements and limitations that ensure compliance with all applicable requirements at the time of the permit issuance;
- c. A compliance plan;
- d. Monitoring, record keeping, and reporting requirements to ensure compliance with the terms and conditions of the general permit. These requirements shall ensure the use of consistent terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable emissions limitations, standards, and other requirements contained in the general permit;
- e. The requirement to submit at least every six months the results of any required monitoring;
- f. References to the authority for the term or condition;
- g. A provision specifying permit duration as a fixed term not to exceed five years;
- h. A severability clause provision pursuant to subrule 22.108(8);
- i. A provision for payment of fees pursuant to subrule 22.108(10);
- j. A provision for emissions trading pursuant to subrules 22.108(11) and 22.108(13);
- k. Other provisions pursuant to subrule 22.108(9);
- l. Statement that the Title V permit is to be kept at the site of the source as well as at the corporate offices; and
- m. The process for individual sources to apply for coverage under the general permit.

**22.109(5) *Action on general permit application.***

- a. Once the director has issued a general permit, any source which is a member of the class of sources covered by the general permit may apply to the director for authority to operate under the general permit.
- b. Review of a general permit application. The director shall grant the conditions and terms of a general permit to all sources that apply and qualify under the identified criteria.
- c. The director may grant a source’s request for authorization to operate under a general permit without repeating the public participation procedures followed in subrule 22.109(2). However, such a grant shall not be a final permit action for purposes of judicial review.

**22.109(6) *General permit renewal.*** The director shall review and may renew general permits every five years. A source’s authorization to operate under a general permit shall expire when the general permit expires regardless of when the authorization began during the five-year period.

**22.109(7) *Relationship to individual permits.*** Any source covered by a general permit may request to be excluded from coverage by applying for an individual Title V permit. Coverage under the general permit shall terminate on the date the individual Title V permit is issued.

**22.109(8) *Permit shield for general permit.*** Each general permit issued under this chapter shall specifically identify all federal, state, and local air pollution control requirements applicable to the source at the time the permit is issued. The permit shall state that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance. Any permit under this chapter that does not expressly state that a permit shield exists shall be presumed not to provide such a shield. Notwithstanding the above provisions, the source shall be subject to enforcement action for operation without a permit if the source is later determined not to qualify for the conditions and terms of the general permit.

**22.109(9) *Revocations of authority to operate.***

- a. The director may require any source or a class of sources authorized to operate under a general permit to individually apply for and obtain a Title V permit at any time if:
  - (1) The source is not in compliance with the terms and conditions of the general permit;

(2) The director has determined that the emissions from the source or class of sources is contributing significantly to ambient air quality standard violations and that these emissions are not adequately addressed by the terms and conditions of the general permit; or

(3) The director has information which indicates that the cumulative effects on human health and the environment from the sources covered under the general permit are unacceptable.

*b.* The director shall provide written notice to all sources operating under that general permit of the proposed revocation of that general permit. Such notice shall include an explanation of the basis for the proposed action.

**567—22.110(455B) Changes allowed without a Title V permit revision (off-permit revisions).**

**22.110(1)** A source with a Title V permit may make Section 502(b)(10) changes to the permitted installation/facility without a Title V permit revision if:

*a.* The changes are not major modifications under any provision of any program required by Section 110 of the Act, modifications under Section 111 of the Act, modifications under Section 112 of the Act, or major modifications of this chapter;

*b.* The changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions);

*c.* The changes are not modifications under any provision of Title I of the Act and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions);

*d.* The changes are not subject to any requirement under Title IV of the Act (revisions affecting Title IV permitting are addressed in rules 567—22.140(455B) through 567—22.144(455B));

*e.* The changes comply with all applicable requirements; and

*f.* For each such change, the permitted source provides to the department and the administrator by certified mail, at least 30 days in advance of the proposed change, a written notification, including the following, which shall be attached to the permit by the source, the department, and the administrator:

(1) A brief description of the change within the permitted facility,

(2) The date on which the change will occur,

(3) Any change in emission as a result of the change,

(4) The pollutants emitted subject to the emissions trade,

(5) If the emissions trading provisions of the state implementation plan are invoked, then the Title V permit requirements with which the source shall comply; a description of how the emission increases and decreases will comply with the terms and conditions of the Title V permit;

(6) A description of the trading of emissions increases and decreases for the purpose of complying with a federally enforceable emissions cap as specified in and in compliance with the Title V permit; and

(7) Any permit term or condition no longer applicable as a result of the change.

**22.110(2)** Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), record keeping, reporting, or compliance certification requirements.

**22.110(3)** Notwithstanding any other part of this rule, the director may, upon review of a notice, require a stationary source to apply for a Title V permit if the change does not meet the requirements of subrule 22.110(1).

**22.110(4)** The permit shield provided in subrule 22.108(18) shall not apply to any change made pursuant to this rule. Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to requirements of the state implementation plan authorizing the emissions trade.

**567—22.111(455B) Administrative amendments to Title V permits.**

**22.111(1)** An administrative permit amendment is a permit revision that does any of the following:

*a.* Corrects typographical errors;

*b.* Identifies a change in the name, address, or telephone number of any person identified in the permit, or provides a similar minor administrative change at the source;

- c.* Requires more frequent monitoring or reporting by the permittee; or
- d.* Allows for a change in ownership or operational control of a source where the director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the director.

**22.111(2)** Administrative permit amendments to portions of permits containing provisions pursuant to Title IV of the Act shall be governed by regulations promulgated by the administrator under Title IV of the Act.

**22.111(3)** The director shall take no more than 60 days from receipt of a request for an administrative permit amendment to take final action on such request, and may incorporate such changes without providing notice to the public or affected states provided that the director designates any such permit revisions as having been made pursuant to this rule.

**22.111(4)** The director shall submit to the administrator a copy of each Title V permit revised under this rule.

**22.111(5)** The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

**567—22.112(455B) Minor Title V permit modifications.**

**22.112(1)** Minor Title V permit modification procedures may be used only for those permit modifications that satisfy all of the following:

- a.* Do not violate any applicable requirement;
- b.* Do not involve significant changes to existing monitoring, reporting, or record-keeping requirements in the Title V permit;
- c.* Do not require or change a case-by-case determination of an emission limitation or other standard, or an increment analysis;
- d.* Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed in order to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include any federally enforceable emissions caps which the source would assume to avoid classification as a modification under any provision of Title I of the Act; and an alternative emissions limit approved pursuant to regulations promulgated under Section 112(i)(5) of the Act;
- e.* Are not modifications under any provision of Title I of the Act; and
- f.* Are not required to be processed as a significant modification under rule 567—22.113(455B).

**22.112(2)** An application for minor permit revision shall be on the minor Title V modification application form and shall include at least the following:

- a.* A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;
- b.* The source's suggested draft permit;
- c.* Certification by a responsible official, pursuant to subrule 22.107(4), that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used; and
- d.* Completed forms to enable the department to notify the administrator and affected states as required by subrule 22.107(7).

**22.112(3)** The department shall notify the administrator and affected states within five working days of receipt of a complete permit modification application. Notification shall be in accordance with the provisions of subrule 22.107(7). The department shall promptly send to the administrator any notification required by subrule 22.107(7).

**22.112(4)** The director shall not issue a final Title V permit modification until after the administrator's 45-day review period or until the administrator has notified the director that the administrator will not object to issuance of the Title V permit modification, whichever is first. Within 90 days of the director's receipt of an application under the minor permit modification procedures, or

15 days after the end of the administrator's 45-day review period provided for in subrule 22.107(7), whichever is later, the director shall:

- a. Issue the permit modification as proposed;
- b. Deny the permit modification application;
- c. Determine that the requested permit modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or
- d. Revise the draft permit modification and transmit to the administrator the proposed permit modification, as required by subrule 22.107(7).

**22.112(5)** Source's ability to make change. The source may make the change proposed in its minor permit modification application immediately after it files the application. After the source makes the change allowed by the preceding sentence, and until the director takes any of the actions specified in paragraphs 22.112(4) "a" to "c," the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time, the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

**22.112(6)** Permit shield. The permit shield under subrule 22.108(18) shall not extend to minor Title V permit revisions.

**567—22.113(455B) Significant Title V permit modifications.**

**22.113(1)** Significant Title V modification procedures shall be used for applications requesting Title V permit modifications that do not qualify as minor Title V modifications or as administrative amendments. These include, but are not limited to, all significant changes in monitoring permit terms, every relaxation of reporting or record-keeping permit terms, and any change in the method of measuring compliance with existing requirements.

**22.113(2)** Significant Title V permit modifications shall meet all requirements of this chapter, including those for applications, public participation, review by affected states, and review by the administrator, as those requirements that apply to Title V permit issuance and renewal.

**22.113(3)** Unless the director determines otherwise, review of significant Title V permit modification applications shall be completed within nine months of receipt of a complete application.

**22.113(4)** For a change that is subject to the requirements for a significant permit modification (see rule 567—22.113(455B)), the permittee shall submit to the department an application for a significant permit modification not later than three months after commencing operation of the changed source unless the existing Title V permit would prohibit such construction or change in operation, in which event the operation of the changed source may not commence until the department revises the permit.

**567—22.114(455B) Title V permit reopenings.**

**22.114(1)** Each issued Title V permit shall include provisions specifying the conditions under which the permit may be reopened and revised prior to the expiration of the permit. A permit shall be reopened and revised under any of the following circumstances:

a. The department receives notice that the administrator has granted a petition for disapproval of a permit pursuant to 40 CFR 70.8(d) as amended to July 21, 1992, provided that the reopening may be stayed pending judicial review of that determination;

b. The department or the administrator determines that the Title V permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the Title V permit;

c. Additional applicable requirements under the Act become applicable to a Title V source, provided that the reopening on this ground is not required if the permit has a remaining term of less than three years, the effective date of the requirement is later than the date on which the permit is due to expire, or the additional applicable requirements are implemented in a general permit that is applicable to the source and the source receives approval for coverage under that general permit. Such a reopening shall be complete not later than 18 months after promulgation of the applicable requirement.

*d.* Additional requirements, including excess emissions requirements, become applicable to a Title IV affected source under the acid rain program. Upon approval by the administrator, excess emissions offset plans shall be deemed to be incorporated into the permit.

*e.* The department or the administrator determines that the permit must be revised or revoked to ensure compliance by the source with the applicable requirements.

**22.114(2)** Proceedings to reopen and reissue a Title V permit shall follow the procedures applicable to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists.

**22.114(3)** A notice of intent shall be provided to the Title V source at least 30 days in advance of the date the permit is to be reopened, except that the director may provide a shorter time period in the case of an emergency.

**22.114(4)** Within 90 days of receipt of a notice from the administrator that cause exists to reopen a permit, the director shall forward to the administrator and the source a proposed determination of termination, modification, revocation, or reissuance of the permit, as appropriate.

**567—22.115(455B) Suspension, termination, and revocation of Title V permits.**

**22.115(1)** Permits may be terminated, modified, revoked, or reissued for cause. The following examples shall be considered cause for the suspension, modification, revocation, or reissuance of a Title V permit:

*a.* The director has reasonable cause to believe that the permit was obtained by fraud or misrepresentation.

*b.* The person applying for the permit failed to disclose a material fact required by the permit application form or the rules applicable to the permit, of which the applicant had or should have had knowledge at the time the application was submitted.

*c.* The terms and conditions of the permit have been or are being violated.

*d.* The permittee has failed to pay the Title V permit fees.

*e.* The permittee has failed to pay an administrative, civil or criminal penalty imposed for violations of the permit.

**22.115(2)** If the director suspends, terminates or revokes a Title V permit under this rule, the notice of such action shall be served on the applicant or permittee by certified mail, return receipt requested. The notice shall include a statement detailing the grounds for the action sought, and the proceeding shall in all other respects comply with the requirements of rule 561—7.16(17A,455A).

**567—22.116(455B) Title V permit renewals.**

**22.116(1)** An application for Title V permit renewal shall be subject to the same procedural requirements that apply to initial permit issuance, including those for public participation and review by the administrator and affected states.

**22.116(2)** Except as provided in rule 567—22.104(455B), permit expiration terminates a source's right to operate unless a timely and complete application for renewal has been submitted in accordance with rule 567—22.105(455B).

**567—22.117 to 22.119** Reserved.

**567—22.120(455B) Acid rain program—definitions.** The terms used in rules 567—22.120(455B) through 567—22.147(455B) shall have the meanings set forth in Title IV of the Clean Air Act, 42 U.S.C. 7401, et seq., as amended through November 15, 1990, and in this rule. The definitions set forth in 40 CFR Part 72 as amended through March 28, 2011, and 40 CFR Part 76 as amended through October 15, 1999, are adopted by reference.

“40 CFR Part 72,” or any cited provision therein, shall mean 40 Code of Federal Regulations Part 72, or the cited provision therein, as amended through March 28, 2011.

“40 CFR Part 73,” or any cited provision therein, shall mean 40 Code of Federal Regulations Part 73, or the cited provision therein, as amended through April 28, 2006.

“40 CFR Part 74,” or any cited provision therein, shall mean 40 Code of Federal Regulations Part 74, or the cited provision therein, as amended through April 28, 2006.

“40 CFR Part 75,” or any cited provision therein, shall mean 40 Code of Federal Regulations Part 75, or the cited provision therein, as amended through August 30, 2016.

“40 CFR Part 76,” or any cited provision therein, shall mean 40 Code of Federal Regulations Part 76, or the cited provision therein, as amended through October 15, 1999.

“40 CFR Part 77,” or any cited provision therein, shall mean 40 Code of Federal Regulations Part 77, or the cited provision therein, as amended through May 12, 2005.

“40 CFR Part 78,” or any cited provision therein, shall mean 40 Code of Federal Regulations Part 78, or the cited provision therein, as amended through August 8, 2011.

“Acid rain permit” means the legally binding written document, or portion of such document, issued by the department (following an opportunity for appeal as set forth in 561—Chapter 7, as adopted by reference at 567—Chapter 7), including any permit revisions, specifying the acid rain program requirements applicable to an affected source, to each affected unit at an affected source, and to the owner and operators and the designated representative of the affected source or the affected unit.

“Department” means the department of natural resources and is the state acid rain permitting authority.

“Draft acid rain permit” means the version of the acid rain permit, or the acid rain portion of a Title V operating permit, that the department offers for public comment.

“Permit revision” means a permit modification, fast-track modification, administrative permit amendment, or automatic permit amendment, as provided in rules 567—22.140(455B) through 567—22.144(455B).

“Proposed acid rain permit” means the version of the acid rain permit that the department submits to the Administrator after the public comment period, but prior to completion of the EPA permit review under 40 CFR 70.8(c) as amended through July 21, 1992.

“Title V operating permit” means a permit issued under rules 567—22.100(455B) through 567—22.116(455B) implementing Title V of the Act.

“Ton” or “tonnage” means any short ton (i.e., 2,000 pounds). For purposes of determining compliance with the acid rain emissions limitations and reduction requirements, total tons for a year shall be calculated as the sum of all recorded hourly emissions (or the tonnage equivalent of the recorded hourly emissions) in accordance with rule 567—25.2(455B), with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one ton and any fraction of a ton less than 0.50 ton deemed not equal to a ton.

[ARC 2949C, IAB 2/15/17, effective 3/22/17; ARC 3679C, IAB 3/14/18, effective 4/18/18]

**567—22.121(455B) Measurements, abbreviations, and acronyms.** Measurements, abbreviations, and acronyms used in rules 567—22.120(455B) to 567—22.147(455B) are defined as follows:

“ASTM” means American Society for Testing and Materials.

“Btu” means British thermal unit.

“CFR” means Code of Federal Regulations.

“DOE” means Department of Energy.

“EPA” means Environmental Protection Agency.

“mmBtu” means million Btu.

“MWe” means megawatt electrical.

“SO<sub>2</sub>” means sulfur dioxide.

**567—22.122(455B) Applicability.**

**22.122(1)** Each of the following units shall be an affected unit, and any source that includes such a unit shall be an affected source, subject to the requirements of the acid rain program:

- a. A unit listed in Table 1 of 40 CFR 73.10(a).
- b. An existing unit that is identified in Table 2 or 3 of 40 CFR 73.10, and any other existing utility unit, except a unit under subrule 22.122(2).

- c.* A utility unit, except a unit under subrule 22.122(2), that:
- (1) Is a new unit;
  - (2) Did not serve a generator with a nameplate capacity greater than 25 MWe on November 15, 1990, but serves such a generator after November 15, 1990;
  - (3) Was a simple combustion turbine on November 15, 1990, but adds or uses auxiliary firing after November 15, 1990;
  - (4) Was an exempt cogeneration facility under paragraph 22.122(2)“*d*” but during any three-calendar-year period after November 15, 1990, sold, to a utility power distribution system, an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs electric output, on a gross basis;
  - (5) Was an exempt qualifying facility under paragraph 22.122(2)“*e*” but, at any time after the later of November 15, 1990, or the date the facility commences commercial operation, fails to meet the definition of qualifying facility;
  - (6) Was an exempt independent power production facility under paragraph 22.122(2)“*f*” but, at any time after the later of November 15, 1990, or the date the facility commences commercial operation, fails to meet the definition of independent power production facility; or
  - (7) Was an exempt solid waste incinerator under paragraph 22.122(2)“*g*” but during any three-calendar-year period after November 15, 1990, consumes 20 percent or more (on a Btu basis) fossil fuel.
  - (8) Is a coal-fired substitution unit that is designated in a substitution plan that was not approved and not active as of January 1, 1995, or is a coal-fired compensating unit.

**22.122(2)** The following types of units are not affected units subject to the requirements of the acid rain program:

- a.* A simple combustion turbine that commenced operation before November 15, 1990.
- b.* Any unit that commenced commercial operation before November 15, 1990, and that did not, as of November 15, 1990, and does not currently, serve a generator with a nameplate capacity of greater than 25 MWe.
- c.* Any unit that, during 1985, did not serve a generator that produced electricity for sale and that did not, as of November 15, 1990, and does not currently, serve a generator that produces electricity for sale.
- d.* A cogeneration facility which:
  - (1) For a unit that commenced construction on or prior to November 15, 1990, was constructed for the purpose of supplying equal to or less than one-third its potential electrical output capacity or equal to or less than 219,000 MWe-hrs actual electric output on an annual basis to any utility power distribution system for sale (on a gross basis). If the purpose of construction is not known, it will be presumed to be consistent with the actual operation from 1985 through 1987. However, if in any three-calendar-year period after November 15, 1990, such unit sells to a utility power distribution system an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs actual electric output (on a gross basis), that unit shall be an affected unit, subject to the requirements of the acid rain program; or
  - (2) For units that commenced construction after November 15, 1990, supplies equal to or less than one-third its potential electrical output capacity or equal to or less than 219,000 MWe-hrs actual electric output on an annual basis to any utility power distribution system for sale (on a gross basis). However, if in any three-calendar-year period after November 15, 1990, such unit sells to a utility power distribution system an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs actual electric output (on a gross basis), that unit shall be an affected unit, subject to the requirements of the acid rain program.
- e.* A qualifying facility that:
  - (1) Has, as of November 15, 1990, one or more qualifying power purchase commitments to sell at least 15 percent of its total planned net output capacity; and

(2) Consists of one or more units designated by the owner or operator with total installed net output capacity not exceeding 130 percent of the total planned net output capacity. If the emissions rates of the units are not the same, the administrator may exercise discretion to designate which units are exempt.

*f.* An independent power production facility that:

(1) Has, as of November 15, 1990, one or more qualifying power purchase commitments to sell at least 15 percent of its total planned net output capacity; and

(2) Consists of one or more units designated by the owner or operator with total installed net output capacity not exceeding 130 percent of its total planned net output capacity. If the emissions rates of the units are not the same, the administrator may exercise discretion to designate which units are exempt.

*g.* A solid waste incinerator, if more than 80 percent (on a Btu basis) of the annual fuel consumed at such incinerator is other than fossil fuels. For a solid waste incinerator which began operation before January 1, 1985, the average annual fuel consumption of nonfossil fuels for calendar years 1985 through 1987 must be greater than 80 percent for such an incinerator to be exempt. For a solid waste incinerator which began operation after January 1, 1985, the average annual fuel consumption of nonfossil fuels for the first three years of operation must be greater than 80 percent for such an incinerator to be exempt. If, during any three-calendar-year period after November 15, 1990, such incinerator consumes 20 percent or more (on a Btu basis) fossil fuel, such incinerator will be an affected source under the acid rain program.

*h.* A nonutility unit.

**22.122(3)** A certifying official of any unit may petition the administrator for a determination of applicability under 40 CFR 72.6(c). The administrator's determination of applicability shall be binding upon the department, unless the petition is found to have contained significant errors or omissions.

**567—22.123(455B) Acid rain exemptions.**

**22.123(1)** *New unit exemption.* The new unit exemption, as specified in 40 CFR §72.7, except for 40 CFR §72.7(c)(1)(i), is adopted by reference. This exemption applies to new utility units.

**22.123(2)** *Retired unit exemption.* The retired unit exemption, as specified in 40 CFR §72.8, is adopted by reference. This exemption applies to any affected unit that is permanently retired.

**22.123(3)** *Industrial utility-unit exemption.* The industrial utility-unit exemption, as specified in 40 CFR §72.14, is adopted by reference. This exemption applies to any noncogeneration utility unit.

**567—22.124(455B) Retired units exemption.** Rescinded IAB 9/9/98, effective 10/14/98.

**567—22.125(455B) Standard requirements.**

**22.125(1)** *Permit requirements.*

*a.* The designated representative of each affected source and each affected unit at the source shall:

(1) Submit a complete acid rain permit application under this chapter in accordance with the deadlines specified in rule 567—22.128(455B);

(2) Submit in a timely manner any supplemental information that the department determines is necessary in order to review an acid rain permit application and issue or deny an acid rain permit.

*b.* The owners and operators of each affected source and each affected unit at the source shall:

(1) Operate the unit in compliance with a complete acid rain permit application or a superseding acid rain permit issued by the department; and

(2) Have an acid rain permit.

**22.125(2)** *Monitoring requirements.*

*a.* The owners and operators and, to the extent applicable, designated representative of each affected source and each affected unit at the source shall comply with the monitoring requirements as provided in rule 567—25.2(455B) and Section 407 of the Act and regulations implementing Section 407 of the Act.

*b.* The emissions measurements recorded and reported in accordance with rule 567—25.2(455B) and Section 407 of the Act and regulations implementing Section 407 of the Act shall be used to determine compliance by the unit with the acid rain emissions limitations and emissions reduction requirements for sulfur dioxide and nitrogen oxides under the acid rain program.

c. The requirements of rule 567—25.2(455B) and regulations implementing Section 407 of the Act shall not affect the responsibility of the owners and operators to monitor emissions of other pollutants or other emissions characteristics at the unit under other applicable requirements of the Act and other provisions of the operating permit for the source.

**22.125(3) Sulfur dioxide requirements.**

a. The owners and operators of each source and each affected unit at the source shall:

(1) Hold allowances, as of the allowance transfer deadline, in the unit's compliance subaccount (after deductions under 40 CFR 73.34(c)) not less than the total annual emissions of sulfur dioxide for the previous calendar year from the unit; and

(2) Comply with the applicable acid rain emissions limitation for sulfur dioxide.

b. Each ton of sulfur dioxide emitted in excess of the acid rain emissions limitations for sulfur dioxide shall constitute a separate violation of the Act.

c. An affected unit shall be subject to the requirements under paragraph 22.125(3) "a" as follows: starting January 1, 2000, an affected unit under paragraph 22.122(1) "b"; or starting on the later of January 1, 2000, or the deadline for monitor certification under rule 567—25.2(455B), an affected unit under paragraph 22.122(1) "c."

d. Allowances shall be held in, deducted from, or transferred among allowance tracking system accounts in accordance with the acid rain program.

e. An allowance shall not be deducted, in order to comply with the requirements under paragraph 22.125(3) "a," prior to the calendar year for which the allowance was allocated.

f. An allowance allocated by the administrator under the acid rain program is a limited authorization to emit sulfur dioxide in accordance with the acid rain program. No provision of the acid rain program, the acid rain permit application, the acid rain permit, or the written exemption under rules 567—22.123(455B) and 567—22.124(455B) and no provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization.

g. An allowance allocated by the administrator under the acid rain program does not constitute a property right.

**22.125(4) Nitrogen oxides requirements.** The owners and operators of the source and each affected unit at the source shall comply with the applicable acid rain emission limitation for nitrogen oxides, as specified in 40 CFR Sections 76.5 and 76.7; 76.6; and 76.8, 76.11, 76.12, and 76.15; or by alternative emission limitations provided for by 40 CFR 76.10, as long as the alternative emission limitation has been petitioned and demonstrated according to 40 CFR 76.14 and approved by the department.

**22.125(5) Excess emissions requirements.**

a. The designated representative of an affected unit that has excess emissions in any calendar year shall submit a proposed offset plan to the administrator, as required under 40 CFR Part 77, and submit a copy to the department.

b. The owners and operators of an affected unit that has excess emissions in any calendar year shall:

(1) Pay to the administrator without demand the penalty required, and pay to the administrator upon demand the interest on that penalty, as required by 40 CFR Part 77; and

(2) Comply with the terms of an approved offset plan, as required by 40 CFR Part 77.

**22.125(6) Record-keeping and reporting requirements.**

a. Unless otherwise provided, the owners and operators of the source and each affected unit at the source shall keep on site at the source each of the following documents for a period of five years from the date the document is created. This period may be extended for cause, at any time prior to the end of five years, in writing by the administrator or the department.

(1) The certificate of representation for the designated representative for the source and each affected unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation, in accordance with 40 CFR 72.24; provided that the certificate and documents shall be retained on site at the source beyond such five-year period until such documents are superseded because of the submission of a new certificate of representation changing the designated representative.

(2) All emissions monitoring information, in accordance with rule 567—25.2(455B).

(3) Copies of all reports, compliance certifications, and other submissions and all records made or required under the acid rain program.

(4) Copies of all documents used to complete an acid rain permit application and any other submission under the acid rain program or to demonstrate compliance with the requirements of the acid rain program.

*b.* The designated representative of an affected source and each affected unit at the source shall submit the reports and compliance certifications required under the acid rain program, including those under rules 567—22.146(455B) and 567—22.147(455B) and rule 567—25.2(455B).

**22.125(7) Liability.**

*a.* Any person who knowingly violates any requirement or prohibition of the acid rain program, a complete acid rain permit application, an acid rain permit, or a written exemption under rules 567—22.123(455B) or 567—22.124(455B), including any requirement for the payment of any penalty owed to the United States, shall be subject to enforcement by the administrator pursuant to Section 113(c) of the Act and by the department pursuant to Iowa Code section 455B.146.

*b.* Any person who knowingly makes a false, material statement in any record, submission, or report under the acid rain program shall be subject to criminal enforcement by the administrator pursuant to Section 113(c) of the Act and 18 U.S.C. 1001 and by the department pursuant to Iowa Code section 455B.146.

*c.* No permit revision shall excuse any violation of the requirements of the acid rain program that occurs prior to the date that the revision takes effect.

*d.* Each affected source and each affected unit shall meet the requirements of the acid rain program.

*e.* Any provision of the acid rain program that applies to an affected source (including a provision applicable to the designated representative of an affected source) shall also apply to the owners and operators of such source and of the affected units at the source.

*f.* Any provision of the acid rain program that applies to an affected unit (including a provision applicable to the designated representative of an affected unit) shall also apply to the owners and operators of such unit. Except as provided under rule 567—22.132(455B) (Phase II repowering extension plans), Section 407 of the Act and regulations implementing Section 407 of the Act, and except with regard to the requirements applicable to units with a common stack under rule 567—25.2(455B), the owners and operators and the designated representative of one affected unit shall not be liable for any violation by any other affected unit of which they are not owners or operators or the designated representative and that is located at a source of which they are not owners or operators or the designated representative.

*g.* Each violation of a provision of rules 567—22.120(455B) to 567—22.146(455B) and 40 CFR Parts 72, 73, 75, 76, 77, and 78 and regulations implementing Sections 407 and 410 of the Act by an affected source or affected unit, or by an owner or operator or designated representative of such source or unit, shall be a separate violation of the Act.

**22.125(8) Effect on other authorities.** No provision of the acid rain program, an acid rain permit application, an acid rain permit, or a written exemption under rule 567—22.123(455B) or 567—22.124(455B) shall be construed as:

*a.* Except as expressly provided in Title IV of the Act, exempting or excluding the owners and operators and, to the extent applicable, the designated representative of an affected source or affected unit from compliance with any other provision of the Act, including the provisions of Title I of the Act relating to applicable National Ambient Air Quality Standards or State Implementation Plans;

*b.* Limiting the number of allowances a unit can hold; provided that the number of allowances held by the unit shall not affect the source's obligation to comply with any other provisions of the Act;

*c.* Requiring a change of any kind in any state law regulating electric utility rates and charges, affecting any state law regarding such state rule, or limiting such state rule, including any prudence review requirements under such state law;

*d.* Modifying the Federal Power Act or affecting the authority of the Federal Energy Regulatory Commission under the Federal Power Act; or

*e.* Interfering with or impairing any program for competitive bidding for power supply in a state in which such program is established.

**567—22.126(455B) Designated representative—submissions.**

**22.126(1)** The designated representative shall submit a certificate of representation, and any superseding certificate of representation, to the administrator in accordance with Subpart B of 40 CFR Part 72, and, concurrently, shall submit a copy to the department. Whenever the term “designated representative” is used in this rule, the term shall be construed to include the alternate designated representative.

**22.126(2)** Each submission under the acid rain program shall be submitted, signed, and certified by the designated representative for all sources on behalf of which the submission is made.

**22.126(3)** In each submission under the acid rain program, the designated representative shall certify by signature:

*a.* The following statement, which shall be included verbatim in such submission: “I am authorized to make this submission on behalf of the owners and operators of the affected source or affected units for which the submission is made.”

*b.* The following statement, which shall be included verbatim in such submission: “I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.”

**22.126(4)** The department will accept or act on a submission made on behalf of owners or operators of an affected source and an affected unit only if the submission has been made, signed, and certified in accordance with subrules 22.126(2) and 22.126(3).

**22.126(5)** The designated representative of a source shall serve notice on each owner and operator of the source and of an affected unit at the source:

*a.* By the date of submission, of any acid rain program submissions by the designated representative;

*b.* Within ten business days of receipt of a determination, of any written determination by the administrator or the department; and

*c.* Provided that the submission or determination covers the source or the unit.

**22.126(6)** The designated representative of a source shall provide each owner and operator of an affected unit at the source a copy of any submission or determination under subrule 22.126(5), unless the owner or operator expressly waives the right to receive such a copy.

**567—22.127(455B) Designated representative—objections.**

**22.127(1)** Except as provided in 40 CFR 72.23, no objection or other communication submitted to the administrator or the department concerning the authorization, or any submission, action or inaction, of the designated representative shall affect any submission, action, or inaction of the designated representative, or the finality of any decision by the department, under the acid rain program. In the event of such communication, the department is not required to stay any submission or the effect of any action or inaction under the acid rain program.

**22.127(2)** The department will not adjudicate any private legal dispute concerning the authorization or any submission, action, or inaction of any designated representative, including private legal disputes concerning the proceeds of allowance transfers.

**567—22.128(455B) Acid rain applications—requirement to apply.**

**22.128(1)** *Duty to apply.* The designated representative of any source with an affected unit shall submit a complete acid rain permit application by the applicable deadline in subrules 22.128(2) and

22.128(3), and the owners and operators of such source and any affected unit at the source shall not operate the source or unit without a permit that states its acid rain program requirements.

**22.128(2) Deadlines.**

a. For any source with an existing unit described under paragraph 22.122(1)“b,” the designated representative shall submit a complete acid rain permit application governing such unit to the department on or before January 1, 1996.

b. For any source with a new unit described under subparagraph 22.122(1)“c”(1), the designated representative shall submit a complete acid rain permit application governing such unit to the department at least 24 months before the later of January 1, 2000, or the date on which the unit commences operation.

c. For any source with a unit described under subparagraph 22.122(1)“c”(2), the designated representative shall submit a complete acid rain permit application governing such unit to the department at least 24 months before the later of January 1, 2000, or the date on which the unit begins to serve a generator with a nameplate capacity greater than 25 MWe.

d. For any source with a unit described under subparagraph 22.122(1)“c”(3), the designated representative shall submit a complete acid rain permit application governing such unit to the department at least 24 months before the later of January 1, 2000, or the date on which the auxiliary firing commences operation.

e. For any source with a unit described under subparagraph 22.122(1)“c”(4), the designated representative shall submit a complete acid rain permit application governing such unit to the department before the later of January 1, 1998, or March 1 of the year following the three-calendar-year period in which the unit sold to a utility power distribution system an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs actual electric output (on a gross basis).

f. For any source with a unit described under subparagraph 22.122(1)“c”(5), the designated representative shall submit a complete acid rain permit application governing such unit to the department before the later of January 1, 1998, or March 1 of the year following the calendar year in which the facility fails to meet the definition of qualifying facility.

g. For any source with a unit described under subparagraph 22.122(1)“c”(6), the designated representative shall submit a complete acid rain permit application governing such unit to the department before the later of January 1, 1998, or March 1 of the year following the calendar year in which the facility fails to meet the definition of an independent power production facility.

h. For any source with a unit described under subparagraph 22.122(1)“c”(7), the designated representative shall submit a complete acid rain permit application governing such unit to the department before the later of January 1, 1998, or March 1 of the year following the three-calendar-year period in which the incinerator consumed 20 percent or more fossil fuel (on a Btu basis).

i. For a Phase II unit with a Group 1 or a Group 2 boiler, the designated representative shall submit a complete permit application and compliance plan for NO<sub>x</sub> emissions to the department no later than January 1, 1998.

**22.128(3) Duty to reapply.** The designated representative shall submit a complete acid rain permit application for each source with an affected unit at least six months prior to the expiration of an existing acid rain permit governing the unit.

**22.128(4) Submission of copies.** Two copies of all permit applications shall be presented or mailed to the Air Quality Bureau, Iowa Department of Natural Resources, 502 East 9th Street, Des Moines, Iowa 50319.

[ARC 8215B, IAB 10/7/09, effective 11/11/09; ARC 2949C, IAB 2/15/17, effective 3/22/17; ARC 4335C, IAB 3/13/19, effective 4/17/19]

**567—22.129(455B) Information requirements for acid rain permit applications.** A complete acid rain permit application shall be submitted on a form approved by the department, which includes the following elements:

**22.129(1)** Identification of the affected source for which the permit application is submitted;

**22.129(2)** Identification of each affected unit at the source for which the permit application is submitted;

**22.129(3)** A complete compliance plan for each unit, in accordance with rules 567—22.131(455B) and 567—22.132(455B);

**22.129(4)** The standard requirements under rule 567—22.125(455B); and

**22.129(5)** If the unit is a new unit, the date that the unit has commenced or will commence operation and the deadline for monitor certification.

**567—22.130(455B) Acid rain permit application shield and binding effect of permit application.**

**22.130(1)** Once a designated representative submits a timely and complete acid rain permit application, the owners and operators of the affected source and the affected units covered by the permit application shall be deemed in compliance with the requirement to have an acid rain permit under paragraph 22.125(1) “*b*” and subrule 22.128(1); provided that any delay in issuing an acid rain permit is not caused by the failure of the designated representative to submit in a complete and timely fashion supplemental information, as required by the department, necessary to issue a permit.

**22.130(2)** Prior to the date on which an acid rain permit is issued as a final agency action subject to judicial review, an affected unit governed by and operated in accordance with the terms and requirements of a timely and complete acid rain permit application shall be deemed to be operating in compliance with the acid rain program.

**22.130(3)** A complete acid rain permit application shall be binding on the owners and operators and the designated representative of the affected source and the affected units covered by the permit application and shall be enforceable as an acid rain permit from the date of submission of the permit application until the issuance or denial of such permit as a final agency action subject to judicial review.

**567—22.131(455B) Acid rain compliance plan and compliance options—general.**

**22.131(1)** For each affected unit included in an acid rain permit application, a complete compliance plan shall include:

*a.* For sulfur dioxide emissions, a certification that, as of the allowance transfer deadline, the designated representative will hold allowances in the unit’s compliance subaccount (after deductions under 40 CFR 73.34(c)) not less than the total annual emissions of sulfur dioxide from the unit. The compliance plan may also specify, in accordance with rule 567—22.131(455B), one or more of the acid rain compliance options.

*b.* For nitrogen oxides emissions, a certification that the unit will comply with the applicable limitation established by subrule 22.125(4) or shall specify one or more acid rain compliance options, in accordance with Section 407 of the Act, and 40 CFR Section 76.9.

**22.131(2)** The compliance plan may include a multiunit compliance option under rule 567—22.132(455B) or Section 407 of the Act or regulations implementing Section 407.

*a.* A plan for a compliance option that includes units at more than one affected source shall be complete only if:

(1) Such plan is signed and certified by the designated representative for each source with an affected unit governed by such plan; and

(2) A complete permit application is submitted covering each unit governed by such plan.

*b.* The department’s approval of a plan under paragraph 22.131(2) “*a*” that includes units in more than one state shall be final only after every permitting authority with jurisdiction over any such unit has approved the plan with the same modifications or conditions, if any.

**22.131(3)** Conditional approval. In the compliance plan, the designated representative of an affected unit may propose, in accordance with rules 567—22.131(455B) and 567—22.132(455B), any acid rain compliance option for conditional approval; provided that an acid rain compliance option under Section 407 of the Act may be conditionally proposed only to the extent provided in regulations implementing Section 407 of the Act.

*a.* To activate a conditionally approved acid rain compliance option, the designated representative shall notify the department in writing that the conditionally approved compliance option will actually

be pursued beginning January 1 of a specified year. If the conditionally approved compliance option includes a plan described in paragraph 22.131(2)“a,” the designated representative of each source governed by the plan shall sign and certify the notification. Such notification shall be subject to the limitations on activation under rule 567—22.132(455B) and regulations implementing Section 407 of the Act.

*b.* The notification under paragraph 22.131(3)“a” shall specify the first calendar year and the last calendar year for which the conditionally approved acid rain compliance option is to be activated. A conditionally approved compliance option shall be activated, if at all, before the date of any enforceable milestone applicable to the compliance option. The date of activation of the compliance option shall not be a defense against failure to meet the requirements applicable to that compliance option during each calendar year for which the compliance option is activated.

*c.* Upon submission of a notification meeting the requirements of paragraphs 22.131(3)“a” and “b,” the conditionally approved acid rain compliance option becomes binding on the owners and operators and the designated representative of any unit governed by the conditionally approved compliance option.

*d.* A notification meeting the requirements of paragraphs 22.131(3)“a” and “b” will revise the unit’s permit in accordance with rule 567—22.143(455B) (administrative permit amendment).

**22.131(4) Termination of compliance option.**

*a.* The designated representative for a unit may terminate an acid rain compliance option by notifying the department in writing that an approved compliance option will be terminated beginning January 1 of a specified year. Such notification shall be subject to the limitations on termination under rule 567—22.132(455B) and regulations implementing Section 407 of the Act. If the compliance option includes a plan described in paragraph 22.131(2)“a,” the designated representative for each source governed by the plan shall sign and certify the notification.

*b.* The notification under paragraph 22.131(4)“a” shall specify the calendar year for which the termination will take effect.

*c.* Upon submission of a notification meeting the requirements of paragraphs 22.131(4)“a” and “b,” the termination becomes binding on the owners and operators and the designated representative of any unit governed by the acid rain compliance option to be terminated.

*d.* A notification meeting the requirements of paragraphs 22.131(4)“a” and “b” will revise the unit’s permit in accordance with rule 567—22.143(455B) (administrative permit amendment).

**567—22.132(455B) Repowering extensions.** Rescinded IAB 4/8/98, effective 5/13/98.

**567—22.133(455B) Acid rain permit contents—general.**

**22.133(1)** Each acid rain permit (including any draft acid rain permit) will contain the following elements:

*a.* All elements required for a complete acid rain permit application under rule 567—22.129(455B), as approved or adjusted by the department;

*b.* The applicable acid rain emissions limitation for sulfur dioxide; and

*c.* The applicable acid rain emissions limitation for nitrogen oxides.

**22.133(2)** Each acid rain permit is deemed to incorporate the definitions of terms under rule 567—22.120(455B).

**567—22.134(455B) Acid rain permit shield.** Each affected unit operated in accordance with the acid rain permit that governs the unit and that was issued in compliance with Title IV of the Act, as provided in rules 567—22.120(455B) to 567—22.146(455B), rule 567—25.2(455B), or 40 CFR Parts 72, 73, 75, 76, 77, and 78, and the regulations implementing Section 407 of the Act, shall be deemed to be operating in compliance with the acid rain program, except as provided in paragraph 22.125(7)“f.”

**567—22.135(455B) Acid rain permit issuance procedures—general.** The department will issue or deny all acid rain permits in accordance with rules 567—22.100(455B) to 567—22.116(455B), including

the completeness determination, draft permit, administrative record, statement of basis, public notice and comment period, public hearing, proposed permit, permit issuance, permit revision, and appeal procedures as amended by rules 567—22.135(455B) to 567—22.145(455B).

**567—22.136(455B) Acid rain permit issuance procedures—completeness.** The department will submit a written notice of application completeness to the administrator within ten working days following a determination by the department that the acid rain permit application is complete.

**567—22.137(455B) Acid rain permit issuance procedures—statement of basis.**

**22.137(1)** The statement of basis will briefly set forth significant factual, legal, and policy considerations on which the department relied in issuing or denying the draft acid rain permit.

**22.137(2)** The statement of basis will include the reasons, and supporting authority, for approval or disapproval of any compliance options requested in the permit application, including references to applicable statutory or regulatory provisions and to the administrative record.

**22.137(3)** The department will submit to the administrator a copy of the draft acid rain permit and the statement of basis and all other relevant portions of the Title V operating permit that may affect the draft acid rain permit.

**567—22.138(455B) Issuance of acid rain permits.**

**22.138(1)** Proposed permit. After the close of the public comment and EPA 45-day review period (pursuant to subrules 22.107(6) and 22.107(7)), the department will address any objections by the administrator, incorporate all necessary changes and issue or deny the acid rain permit.

**22.138(2)** The department will submit the proposed acid rain permit or denial of a proposed acid rain permit to the administrator in accordance with rules 567—22.100(455B) to 567—22.116(455B), the provisions of which shall be treated as applying to the issuance or denial of a proposed acid rain permit.

**22.138(3)** Following the administrator's review of the proposed acid rain permit or denial of a proposed acid rain permit, the department, or under 40 CFR 70.8(c) as amended to July 21, 1992, the administrator, will incorporate any required changes and issue or deny the acid rain permit in accordance with rules 567—22.133(455B) and 567—22.134(455B).

**22.138(4)** No acid rain permit including a draft or proposed permit shall be issued unless the administrator has received a certificate of representation for the designated representative of the source in accordance with Subpart B of 40 CFR Part 72.

**22.138(5)** Permit issuance deadline and effective date.

*a.* On or before December 31, 1997, the department will issue an acid rain permit to each affected source whose designated representative submitted a timely and complete acid rain permit application by January 1, 1996, in accordance with rule 567—22.126(455B) and meets the requirements of rules 567—22.135(455B) to 567—22.139(455B) and rules 567—22.100(455B) to 567—22.116(455B).

*b.* Nitrogen oxides. Not later than January 1, 1999, the department will reopen the acid rain permit to add the acid rain program nitrogen oxides requirements; provided that the designated representative of the affected source submitted a timely and complete acid rain permit application for nitrogen oxides in accordance with rule 567—22.126(455B). Such reopening shall not affect the term of the acid rain portion of a Title V operating permit.

*c.* Each acid rain permit issued in accordance with paragraph 22.138(5) "a" shall take effect by the later of January 1, 2000, or, where the permit governs a unit under paragraph 22.122(1) "c," the deadline for monitor certification under rule 567—25.2(455B).

*d.* Each acid rain permit shall have a term of five years commencing on its effective date.

*e.* An acid rain permit shall be binding on any new owner or operator or designated representative of any source or unit governed by the permit.

**22.138(6)** Each acid rain permit shall contain all applicable acid rain requirements, shall be a portion of the Title V operating permit that is complete and segregable from all other air quality requirements,

and shall not incorporate information contained in any other documents, other than documents that are readily available.

**22.138(7)** Invalidation of the acid rain portion of a Title V operating permit shall not affect the continuing validity of the rest of the Title V operating permit, nor shall invalidation of any other portion of the Title V operating permit affect the continuing validity of the acid rain portion of the permit.

**567—22.139(455B) Acid rain permit appeal procedures.**

**22.139(1)** Appeals of the acid rain portion of a Title V operating permit issued by the department that do not challenge or involve decisions or actions of the administrator under 40 CFR Parts 72, 73, 75, 76, 77, and 78 and Sections 407 and 410 of the Act and regulations implementing Sections 407 and 410 shall be conducted according to the procedures in Iowa Code chapter 17A and 561—Chapter 7, as adopted by reference at 567—Chapter 7. Appeals of the acid rain portion of such a permit that challenge or involve such decisions or actions of the administrator shall follow the procedures under 40 CFR Part 78 and Section 307 of the Act. Such decisions or actions include, but are not limited to, allowance allocations, determinations concerning alternative monitoring systems, and determinations of whether a technology is a qualifying repowering technology.

**22.139(2)** No administrative appeal or judicial appeal of the acid rain portion of a Title V operating permit shall be allowed more than 30 days following respective issuance of the acid rain portion of the permit that is subject to administrative appeal or issuance of the final agency action subject to judicial appeal.

**22.139(3)** The administrator may intervene as a matter of right in any state administrative appeal of an acid rain permit or denial of an acid rain permit.

**22.139(4)** No administrative appeal concerning an acid rain requirement shall result in a stay of the following requirements:

- a. The allowance allocations for any year during which the appeal proceeding is pending or is being conducted;
- b. Any standard requirement under rule 567—22.125(455B);
- c. The emissions monitoring and reporting requirements applicable to the affected units at an affected source under rule 567—25.2(455B);
- d. Uncontested provisions of the decision on appeal; and
- e. The terms of a certificate of representation submitted by a designated representative under Subpart B of 40 CFR Part 72.

**22.139(5)** The department will serve written notice on the administrator of any state administrative or judicial appeal concerning an acid rain provision of any Title V operating permit or denial of an acid rain portion of any Title V operating permit within 30 days of the filing of the appeal.

**22.139(6)** The department will serve written notice on the administrator of any determination or order in a state administrative or judicial proceeding that interprets, modifies, voids, or otherwise relates to any portion of an acid rain permit. Following any such determination or order, the administrator will have an opportunity to review and veto the acid rain permit or revoke the permit for cause in accordance with subrules 22.107(7) and 22.107(8).

**567—22.140(455B) Permit revisions—general.**

**22.140(1)** Rules 567—22.140(455B) to 567—22.145(455B) shall govern revisions to any acid rain permit issued by the department.

**22.140(2)** A permit revision may be submitted for approval at any time. No permit revision shall affect the term of the acid rain permit to be revised. No permit revision shall excuse any violation of an acid rain program requirement that occurred prior to the effective date of the revision.

**22.140(3)** The terms of the acid rain permit shall apply while the permit revision is pending.

**22.140(4)** Any determination or interpretation by the state (including the department or a state court) modifying or voiding any acid rain permit provision shall be subject to review by the administrator in accordance with 40 CFR 70.8(c) as amended to July 21, 1992, as applied to permit modifications, unless

the determination or interpretation is an administrative amendment approved in accordance with rule 567—22.143(455B).

**22.140(5)** The standard requirements of rule 567—22.125(455B) shall not be modified or voided by a permit revision.

**22.140(6)** Any permit revision involving incorporation of a compliance option that was not submitted for approval and comment during the permit issuance process, or involving a change in a compliance option that was previously submitted, shall meet the requirements for applying for such compliance option under rule 567—22.132(455B) and Section 407 of the Act and regulations implementing Section 407 of the Act.

**22.140(7)** For permit revisions not described in rules 567—22.141(455B) and 567—22.142(455B), the department may, in its discretion, determine which of these rules is applicable.

**567—22.141(455B) Permit modifications.**

**22.141(1)** Permit modifications shall follow the permit issuance requirements of rules 567—22.135(455B) to 567—22.139(455B) and subrules 22.113(2) and 22.113(3).

**22.141(2)** For purposes of applying subrule 22.141(1), a permit modification shall be treated as an acid rain permit application, to the extent consistent with rules 567—22.140(455B) to 567—22.145(455B).

**22.141(3)** The following permit revisions are permit modifications:

- a. Relaxation of an excess emission offset requirement after approval of the offset plan by the administrator;
- b. Incorporation of a final nitrogen oxides alternative emissions limitation following a demonstration period;
- c. Determinations concerning failed repowering projects under subrule 22.132(6); and
- d. At the option of the designated representative submitting the permit revision, the permit revisions listed in subrule 22.142(2).

**567—22.142(455B) Fast-track modifications.**

**22.142(1)** Fast-track modifications shall follow the following procedures:

a. The designated representative shall serve a copy of the fast-track modification on the administrator, the department, and any person entitled to a written notice under subrules 22.107(6) and 22.107(7). Within five business days of serving such copies, the designated representative shall also give public notice by publication in a newspaper of general circulation in the area where the source is located or in a state publication designed to give general public notice.

b. The public shall have a period of 30 days, commencing on the date of publication of the notice, to comment on the fast-track modification. Comments shall be submitted in writing to the air quality bureau of the department and to the designated representative.

c. The designated representative shall submit the fast-track modification to the department on or before commencement of the public comment period.

d. Within 30 days of the close of the public comment period, the department will consider the fast-track modification and the comments received and approve, in whole or in part or with changes or conditions as appropriate, or disapprove the modification. A fast-track modification shall be effective immediately upon issuance, in accordance with subrule 22.113(2) as applied to significant modifications.

**22.142(2)** The following permit revisions are, at the option of the designated representative submitting the permit revision, either fast-track modifications under this rule or permit modifications under rule 567—22.141(455B):

- a. Incorporation of a compliance option that the designated representative did not submit for approval and comment during the permit issuance process;
- b. Addition of a nitrogen oxides averaging plan to a permit; and
- c. Changes in a repowering plan, nitrogen oxides averaging plan, or nitrogen oxides compliance deadline extension.

**567—22.143(455B) Administrative permit amendment.**

**22.143(1)** Administrative amendments shall follow the procedures set forth at rule 567—22.111(455B). The department will submit the revised portion of the permit to the administrator within ten working days after the date of final action on the request for an administrative amendment.

**22.143(2)** The following permit revisions are administrative amendments:

*a.* Activation of a compliance option conditionally approved by the department; provided that all requirements for activation under subrule 22.131(3) and rule 567—22.132(455B) are met;

*b.* Changes in the designated representative or alternative designated representative; provided that a new certificate of representation is submitted to the administrator in accordance with Subpart B of 40 CFR Part 72;

*c.* Correction of typographical errors;

*d.* Changes in names, addresses, or telephone or facsimile numbers;

*e.* Changes in the owners or operators; provided that a new certificate of representation is submitted within 30 days to the administrator and the department in accordance with Subpart B of 40 CFR Part 72;

*f.* Termination of a compliance option in the permit; provided that all requirements for termination under subrule 22.131(4) shall be met and this procedure shall not be used to terminate a repowering plan after December 31, 1999;

*g.* Changes in the date, specified in a new unit's acid rain permit, of commencement of operation or the deadline for monitor certification; provided that they are in accordance with rule 567—22.125(455B);

*h.* The addition of or change in a nitrogen oxides alternative emissions limitation demonstration period; provided that the requirements of regulations implementing Section 407 of the Act are met; and

*i.* Incorporation of changes that the administrator has determined to be similar to those in paragraphs "a" through "h" of this subrule.

**567—22.144(455B) Automatic permit amendment.** The following permit revisions shall be deemed to amend automatically, and become a part of the affected unit's acid rain permit by operation of law without any further review:

**22.144(1)** Upon recordation by the administrator under 40 CFR Part 73, all allowance allocations to, transfers to, and deductions from an affected unit's allowance tracking system account; and

**22.144(2)** Incorporation of an offset plan that has been approved by the administrator under 40 CFR Part 77.

**567—22.145(455B) Permit reopenings.**

**22.145(1)** As provided in rule 567—22.114(455B), the department will reopen an acid rain permit for cause, including whenever additional requirements become applicable to any affected unit governed by the permit.

**22.145(2)** In reopening an acid rain permit for cause, the department will issue a draft permit changing the provisions, or adding the requirements, for which the reopening was necessary. The draft permit shall be subject to the requirements of rules 567—22.135(455B) to 567—22.139(455B).

**22.145(3)** Any reopening of an acid rain permit shall not affect the term of the permit.

**567—22.146(455B) Compliance certification—annual report.**

**22.146(1)** Applicability and deadline. For each calendar year in which a unit is subject to the acid rain emissions limitations, the designated representative of the source at which the unit is located shall submit to the administrator and the department, within 60 days after the end of the calendar year, an annual compliance certification report for the unit in compliance with 40 CFR 72.90.

**22.146(2)** The submission of complete compliance certifications in accordance with subrule 22.146(1) and rule 567—25.2(455B) shall be deemed to satisfy the requirement to submit compliance certifications under paragraph 22.108(15) "e" with regard to the acid rain portion of the source's Title V operating permit.

**567—22.147(455B) Compliance certification—units with repowering extension plans.** Rescinded IAB 4/8/98, effective 5/13/98.

**567—22.148(455B) Sulfur dioxide opt-ins.** The department adopts by reference the provisions of 40 CFR Part 74, Acid Rain Opt-Ins.

**567—22.149 to 22.199** Reserved.

**567—22.200(455B) Definitions for voluntary operating permits.** Rescinded ARC 1913C, IAB 3/18/15, effective 4/22/15.

**567—22.201(455B) Eligibility for voluntary operating permits.** Rescinded ARC 1913C, IAB 3/18/15, effective 4/22/15.

**567—22.202(455B) Requirement to have a Title V permit.** Rescinded ARC 1913C, IAB 3/18/15, effective 4/22/15.

**567—22.203(455B) Voluntary operating permit applications.** Rescinded ARC 1913C, IAB 3/18/15, effective 4/22/15.

**567—22.204(455B) Voluntary operating permit fees.** Rescinded ARC 1913C, IAB 3/18/15, effective 4/22/15.

**567—22.205(455B) Voluntary operating permit processing procedures.** Rescinded ARC 1913C, IAB 3/18/15, effective 4/22/15.

**567—22.206(455B) Permit content.** Rescinded ARC 1913C, IAB 3/18/15, effective 4/22/15.

**567—22.207(455B) Relation to construction permits.** Rescinded ARC 1913C, IAB 3/18/15, effective 4/22/15.

**567—22.208(455B) Suspension, termination, and revocation of voluntary operating permits.** Rescinded ARC 1913C, IAB 3/18/15, effective 4/22/15.

**567—22.209(455B) Change of ownership for facilities with voluntary operating permits.** Rescinded ARC 1913C, IAB 3/18/15, effective 4/22/15.

**567—22.210 to 22.299** Reserved.

**567—22.300(455B) Operating permit by rule for small sources.** Except as provided in subrule 22.300(11), any source which otherwise would be required to obtain a Title V operating permit may instead register for an operation permit by rule for small sources. Sources which comply with the requirements contained in this rule will be deemed to have an operating permit by rule for small sources. Sources which comply with this rule will be considered to have federally enforceable limits so that their potential emissions are less than the major source thresholds for regulated air pollutants and hazardous air pollutants as defined in rule 567—22.100(455B).

**22.300(1) Definitions for operating permit by rule for small sources.** For the purposes of rule 567—22.300(455B), the definitions shall be the same as the definitions found at rule 567—22.100(455B).

**22.300(2) Registration for operating permit by rule for small sources.**

*a.* Except as provided in subrules 22.300(3) and 22.300(11), any person who owns or operates a stationary source and meets the following criteria may register for an operating permit by rule for small sources:

(1) The potential to emit air contaminants is equal to or in excess of the threshold for a major stationary source of regulated air pollutants or hazardous air pollutants, and

(2) For every 12-month rolling period, the actual emissions of the stationary source are less than or equal to the emission limitations specified in subrule 22.300(6).

b. Eligibility for an operating permit by rule for small sources does not eliminate the source's responsibility to meet any and all applicable federal requirements including, but not limited to, a maximum achievable control technology (MACT) standard.

c. Nothing in this rule shall prevent any stationary source which has had a Title V operating permit from qualifying to comply with this rule in the future in lieu of maintaining an application for a Title V operating permit or upon rescission of a Title V operating permit if the owner or operator demonstrates that the stationary source is in compliance with the emissions limitations in subrule 22.300(6).

d. The department reserves the right to require proof that the expected emissions from the stationary source, in conjunction with all other emissions, will not prevent the attainment or maintenance of the ambient air quality standards specified in 567—Chapter 28.

**22.300(3) Exceptions to eligibility.**

a. Any affected source subject to the provisions of Title IV of the Act or any solid waste incinerator unit required to obtain a Title V operating permit under Section 129(e) of the Act is not eligible for an operating permit by rule for small sources.

b. Sources which meet the registration criteria established in 22.300(2)“a” and meet all applicable requirements of rule 567—22.300(455B), and are subject to a standard or other requirement under 567—subrule 23.1(2) (standards of performance for new stationary sources) or Section 111 of the Act are eligible for an operating permit by rule for small sources. These sources shall be required to obtain a Title V operating permit when the exemptions specified in subrule 22.102(1) or 22.102(2) no longer apply.

c. Sources which meet the registration criteria established in 22.300(2)“a” and meet all applicable requirements of rule 567—22.300(455B), and are subject to a standard or other requirement under 567—subrule 23.1(3) (emissions standards for hazardous air pollutants), 567—subrule 23.1(4) (emissions standards for hazardous air pollutants for source categories) or Section 112 of the Act are eligible for an operating permit by rule for small sources. These sources shall be required to obtain a Title V operating permit when the exemptions specified in subrule 22.102(1) or 22.102(2) no longer apply.

**22.300(4) Stationary source with de minimus emissions.** Stationary sources with de minimus emissions must submit the standard registration form and must meet and fulfill all registration and reporting requirements as found in 22.300(8). Only the record-keeping and reporting provisions listed in 22.300(4)“b” shall apply to a stationary source with de minimus emissions or operations as specified in 22.300(4)“a”:

a. *De minimus emission and usage limits.* For the purpose of this rule a stationary source with de minimus emissions means:

(1) In every 12-month rolling period, the stationary source emits less than or equal to the following quantities of emissions:

1. 5 tons per year of a regulated air pollutant (excluding HAPs), and
2. 2 tons per year of a single HAP, and
3. 5 tons per year of any combination of HAPs.

(2) In every 12-month rolling period, at least 90 percent of the stationary source's emissions are associated with an operation for which the throughput is less than or equal to one of the quantities specified in paragraphs “1” to “9” below:

1. 1,400 gallons of any combination of solvent-containing materials but no more than 550 gallons of any one solvent-containing material, provided that the materials do not contain the following: methyl chloroform (1,1,1-trichloroethane), methylene chloride (dichloromethane), tetrachloroethylene (perchloroethylene), or trichloroethylene;

2. 750 gallons of any combination of solvent-containing materials where the materials contain the following: methyl chloroform (1,1,1-trichloroethane), methylene chloride (dichloromethane), tetrachloroethylene (perchloroethylene), or trichloroethylene, but not more than 300 gallons of any one solvent-containing material;

3. 365 gallons of solvent-containing material used at a paint spray unit(s);
4. 4,400,000 gallons of gasoline dispensed from equipment with Phase I and II vapor recovery systems;
5. 470,000 gallons of gasoline dispensed from equipment without Phase I and II vapor recovery systems;
6. 1,400 gallons of gasoline combusted;
7. 16,600 gallons of diesel fuel combusted;
8. 500,000 gallons of distillate oil combusted; or
9. 71,400,000 cubic feet of natural gas combusted.

*b. Record keeping for de minimis sources.* Upon registration with the department the owner or operator of a stationary source eligible to register for an operating permit by rule for small sources shall comply with all applicable record-keeping requirements of this rule. The record-keeping requirements of this rule shall not replace any record-keeping requirement contained in a construction permit or in a local, state, or federal rule or regulation.

(1) De minimis sources shall always maintain an annual log of each raw material used and its amount. The annual log and all related material safety data sheets (MSDS) for all materials shall be maintained for a period of not less than the most current five years. The annual log will begin on the date the small source operating permit application is submitted, then on an annual basis, based on a calendar year.

(2) Within 30 days of a written request by the state or the U.S. EPA, the owner or operator of a stationary source not maintaining records pursuant to subrule 22.300(7) shall demonstrate that the stationary source's emissions or throughput is not in excess of the applicable quantities set forth in paragraph "a" above.

**22.300(5) Provision for air pollution control equipment.** The owner or operator of a stationary source may take into account the operation of air pollution control equipment on the capacity of the source to emit an air contaminant if the equipment is required by federal, state, or local air pollution control agency rules and regulations or permit terms and conditions that are federally enforceable. The owner or operator of the stationary source shall maintain and operate such air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions.

**22.300(6) Emission limitations.**

*a.* No stationary source subject to this rule shall emit in every 12-month rolling period more than the following quantities of emissions:

- (1) 50 percent of the major source thresholds for regulated air pollutants (excluding hazardous air pollutants), and
- (2) 5 tons per year of a single hazardous air pollutant, and
- (3) 12.5 tons per year of any combination of hazardous air pollutants.

*b.* The owner or operator of a stationary source subject to this rule shall obtain any necessary permits prior to commencing any physical or operational change or activity which will result in actual emissions that exceed the limits specified in paragraph "a" of this subrule.

**22.300(7) Record-keeping requirements for non-de minimis sources.** Upon registration with the department the owner or operator of a stationary source eligible to register for an operating permit by rule for small stationary sources shall comply with all applicable record-keeping requirements in this rule. The record-keeping requirements of this rule shall not replace any record-keeping requirement contained in any operating permit, a construction permit, or in a local, state, or federal rule or regulation.

*a.* A stationary source previously covered by the provisions in 22.300(4) shall comply with the applicable provisions of subrule 22.300(7) (record-keeping requirements) and subrule 22.300(8) (reporting requirements) if the stationary source exceeds the quantities specified in paragraph 22.300(4)"a."

*b.* The owner or operator of a stationary source subject to this rule shall keep and maintain records, as specified in 22.300(7)"c" below, for each permitted emission unit and each piece of emission control equipment sufficient to determine actual emissions. Such information shall be maintained on site for five years, and be made available to local, state, or U.S. EPA staff upon request.

c. Record-keeping requirements for emission units and emission control equipment. Record-keeping requirements for emission units are specified below in 22.300(7)“c”(1) through 22.300(7)“c”(4). Record-keeping requirements for emission control equipment are specified in 22.300(7)“c”(5).

(1) Coating/solvent emission unit. The owner or operator of a stationary source subject to this rule that contains a coating/solvent emission unit not permitted under 22.8(1) (permit by rule for spray booths) or uses a coating, solvent, ink or adhesive shall keep and maintain the following records:

1. A current list of all coatings, solvents, inks and adhesives in use. This list shall include: material safety data sheets (MSDS), manufacturer’s product specifications, and material VOC content reports for each solvent (including solvents used in cleanup and surface preparation), coating, ink, and adhesive used showing at least the product manufacturer, product name and code, VOC and hazardous air pollutant content;

2. A description of any equipment used during and after coating/solvent application, including type, make and model; maximum design process rate or throughput; and control device(s) type and description (if any);

3. A monthly log of the consumption of each solvent (including solvents used in cleanup and surface preparation), coating, ink, and adhesive used; and

4. All purchase orders, invoices, and other documents to support information in the monthly log.

(2) Organic liquid storage unit. The owner or operator of a stationary source subject to this rule that contains an organic liquid storage unit shall keep and maintain the following records:

1. A monthly log identifying the liquid stored and monthly throughput; and

2. Information on the tank design and specifications including control equipment.

(3) Combustion emission unit. The owner or operator of a stationary source subject to this rule that contains a combustion emission unit shall keep and maintain the following records:

1. Information on equipment type, make and model, maximum design process rate or maximum power input/output, minimum operating temperature (for thermal oxidizers) and capacity and all source test information; and

2. A monthly log of fuel type, fuel usage, fuel heating value (for nonfossil fuels; in terms of Btu/lb or Btu/gal), and percent sulfur for fuel oil and coal.

(4) General emission unit. The owner or operator of a stationary source subject to this rule that contains an emission unit not included in subparagraph (1), (2), or (3) above shall keep and maintain the following records:

1. Information on the process and equipment including the following: equipment type, description, make and model; and maximum design process rate or throughput;

2. A monthly log of operating hours and each raw material used and its amount; and

3. Purchase orders, invoices, or other documents to support information in the monthly log.

(5) Emission control equipment. The owner or operator of a stationary source subject to this rule that contains emission control equipment shall keep and maintain the following records:

1. Information on equipment type and description, make and model, and emission units served by the control equipment;

2. Information on equipment design including, where applicable: pollutant(s) controlled; control effectiveness; and maximum design or rated capacity; other design data as appropriate including any available source test information and manufacturer’s design/repair/maintenance manual; and

3. A monthly log of hours of operation including notation of any control equipment breakdowns, upsets, repairs, maintenance and any other deviations from design parameters.

**22.300(8) Registration and reporting requirements.**

a. Duty to apply. Any person who owns or operates a source otherwise required to obtain a Title V operating permit and which would be eligible for an operating permit by rule for small sources must either register for an operating permit by rule for small sources or apply for a Title V operating permit. Any source determined not to be eligible for an operating permit by rule for small sources, and operating without a valid Title V operating permit, shall be subject to enforcement action for operation without a Title V operating permit, except as provided for in the application shield provisions contained in

rule 567—22.104(455B). For each source registering for an operating permit by rule for small sources, the owner or operator or designated representative, where applicable, shall present or mail to the Air Quality Bureau, Iowa Department of Natural Resources, 502 East 9th Street, Des Moines, Iowa 50319, one original and one copy of a timely and complete registration form in accordance with this rule.

(1) Timely registration. Each source registering for an operating permit by rule for small sources shall submit a registration form:

1. By August 1, 1996, if the source became subject to rule 567—22.101(455B) on or before August 1, 1995, unless otherwise required to obtain a Title V permit under rule 567—22.101(455B).

2. Within 12 months of becoming subject to rule 567—22.101(455B) (the requirement to obtain a Title V operating permit) for a new source or a source which would otherwise become subject to the Title V permit requirement after August 1, 1995.

(2) Complete registration form. To be deemed complete the registration form must provide all information required pursuant to 22.300(8) “b.”

(3) Duty to supplement or correct registration. Any registrant who fails to submit any relevant facts or who has submitted incorrect information in an operating permit by rule for small sources registration shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, the registrant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete registration.

(4) Certification of truth, accuracy, and completeness. Any registration form, report, or supplemental information submitted pursuant to these rules shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under these rules shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

*b.* At the time of registration for an operating permit by rule for small sources each owner or operator of a stationary source shall submit to the department a standard registration form and required attachments. To register for an operating permit by rule for small sources, applicants shall complete the registration form and supply all information required by the filing instructions. The information submitted must be sufficient to evaluate the source, its registration, predicted actual emissions from the source; and to determine whether the source is subject to the exceptions listed in subrule 22.300(3). The standard registration form and attachments shall require that the following information be provided:

(1) Identifying information, including company name and address (or plant or source name if different from the company name), owner’s name and responsible official, and telephone number and names of plant site manager or contact;

(2) A description of source processes and products;

(3) The following emissions-related information shall be submitted to the department on the standard registration form:

1. The total actual emissions of each regulated air pollutant. Actual emissions shall be reported for one contiguous 12-month period within the 18 months preceding submission of the registration to the department;

2. Identification and description of each emission unit with the potential to emit a regulated air pollutant;

3. Identification and description of air pollution control equipment;

4. Limitations on source operations affecting emissions or any work practice standards, where applicable, for all regulated pollutants;

5. Fugitive emissions sources shall be included in the registration form in the same manner as stack emissions if the source is one of the source categories defined as a stationary source category in rule 567—22.100(455B).

(4) Requirements for certification. Facilities which claim to meet the requirements set forth in this rule to qualify for an operating permit by rule for small sources must submit to the department, with a complete registration form, a written statement as follows:

“I certify that all equipment at the facility with a potential to emit any regulated pollutant is included in the registration form, and submitted to the department as required in 22.300(8) “b.” I understand that the facility will be deemed to have been granted an operating permit by rule for small sources under the terms of rule 567—22.300(455B) only if all applicable requirements of rule 567—22.300(455B) are met and if the registration is not denied by the director under rule 567—22.300(11). This certification is based on information and belief formed after reasonable inquiry; the statements and information in the document are true, accurate, and complete.” The certification must be signed by one of the following individuals.

For corporations, a principal executive officer of at least the level of vice president, or a responsible official as defined at rule 567—22.100(455B).

For partnerships, a general partner.

For sole proprietorships, the proprietor.

For municipal, state, county, or other public facilities, the principal executive officer or the ranking elected official.

**22.300(9)** *Construction permits issued after registration for an operating permit by rule for small sources.* This rule shall not relieve any stationary source from complying with requirements pertaining to any otherwise applicable construction permit, or to replace a condition or term of any construction permit, or any provision of a construction permitting program. This does not preclude issuance of any construction permit with conditions or terms necessary to ensure compliance with this rule.

*a.* If the issuance of a construction permit acts to make the source no longer eligible for an operating permit by rule for small sources, the source shall, within 12 months of issuance of the construction permit, submit an application for a Title V operating permit.

*b.* If the issuance of a construction permit does not prevent the source from continuing to be eligible to operate under an operating permit by rule for small sources, the source shall, within 30 days of issuance of a construction permit, provide to the department the information as listed in 22.300(8) “b” for the new or modified source.

**22.300(10)** *Violations.*

*a.* Failure to comply with any of the applicable provisions of this rule shall constitute a violation of this rule.

*b.* A stationary source subject to this rule shall be subject to applicable federal requirements for a major source, including rules 567—22.101(455B) to 567—22.116(455B) when the conditions specified in either subparagraph (1) or (2) below, occur:

(1) Commencing on the first day following every 12-month rolling period in which the stationary source exceeds a limit specified in subrule 22.300(6), or

(2) Commencing on the first day following every 12-month rolling period in which the owner or operator cannot demonstrate that the stationary source is in compliance with the limits in subrule 22.300(6).

**22.300(11)** *Suspension, termination, and revocation of an operating permit by rule for small sources.*

*a.* Registrations may be terminated, modified, revoked, or reissued for cause. The following examples shall be considered cause for the suspension, modification, revocation, or reissuance of an operating permit by rule for small sources:

(1) The director has reasonable cause to believe that the operating permit by rule for small sources was obtained by fraud or misrepresentation.

(2) The person registering for the operating permit by rule for small sources failed to disclose a material fact required by the registration form or the rules applicable to the operating permit by rule for small sources, of which the applicant had or should have had knowledge at the time the registration form was submitted.

(3) The terms and conditions of the operating permit by rule for small sources have been or are being violated.

(4) The owner or operator of the source has failed to pay an administrative, civil or criminal penalty for violations of the operating permit by rule for small sources.

b. If the director suspends, terminates or revokes an operating permit by rule for small sources under this rule, the notice of such action shall be served on the applicant by certified mail, return receipt requested. The notice shall include a statement detailing the grounds for the action sought, and the proceeding shall in all other respects comply with the requirements of rule 561—7.16(17A,455A).

**22.300(12) Change of ownership.** The new owner shall notify the department in writing no later than 30 days after the change of ownership of equipment covered by an operating permit by rule for small sources. The notification to the department shall be mailed to Air Quality Bureau, Iowa Department of Natural Resources, 502 East 9th Street, Des Moines, Iowa 50319, and shall include the following information:

a. The date of ownership change; and

b. The name, address and telephone number of the responsible official, the contact person and the owner of the equipment both before and after the change of ownership.

[ARC 8215B, IAB 10/7/09, effective 11/11/09; ARC 1913C, IAB 3/18/15, effective 4/22/15; ARC 4335C, IAB 3/13/19, effective 4/17/19]

These rules are intended to implement Iowa Code sections 455B.133 and 455B.134.

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◊ Two or more ARCs

<sup>1</sup> Effective date of 22.1(455B) [DEQ, 3.1] delayed by the Administrative Rules Review Committee 70 days from June 21, 1978. The Administrative Rules Review Committee at the August 15, 1978 meeting delayed 22.1 [DEQ, 3.1] under provisions of 67GA, SF244, §19. (See HJR 6, 1/22/79).

<sup>2</sup> Effective date of 22.100(455B), definition of "12-month rolling period"; 22.200(455B); 22.201(1)"a," "b,"; 22.201(2)"a"; 22.206(2)"c," delayed 70 days by the Administrative Rules Review Committee at its meeting held October 10, 1995; delay lifted by this Committee December 13, 1995, effective December 14, 1995.

<sup>3</sup> Effective date of 22.300 delayed 70 days by the Administrative Rules Review Committee at its meeting held June 11, 1996; delay lifted by this Committee at its meeting held June 12, 1996, effective June 12, 1996.

<sup>4</sup> Effective date of 22.1(2), unnumbered introductory paragraphs and paragraphs "g" and "i," delayed 70 days by the Administrative Rules Review Committee at its meeting held March 9, 2001.

CHAPTER 23  
EMISSION STANDARDS FOR CONTAMINANTS

[Prior to 7/1/83, DEQ Ch 4]

[Prior to 12/3/86, Water, Air and Waste Management[900]]

**567—23.1(455B) Emission standards.**

**23.1(1) *In general.*** The federal standards of performance for new stationary sources (new source performance standards) shall be applicable as specified in subrule 23.1(2). The federal standards for hazardous air pollutants (national emission standards for hazardous air pollutants) shall be applicable as specified in subrule 23.1(3). The federal standards for hazardous air pollutants for source categories (national emission standards for hazardous air pollutants for source categories) shall be applicable as specified in subrule 23.1(4). The federal emission guidelines (emission guidelines) shall be applicable as specified in subrule 23.1(5). Compliance with emission standards specified elsewhere in this chapter shall be in accordance with 567—Chapter 21.

**23.1(2) *New source performance standards.*** The federal standards of performance for new stationary sources, as defined in 40 Code of Federal Regulations Part 60 as amended or corrected through August 7, 2017, are adopted by reference, except § 60.530 through § 60.539b (Part 60, Subpart AAA), and shall apply to the following affected facilities. The corresponding 40 CFR Part 60 subpart designation is in parentheses. An earlier date for adoption by reference may be included with the subpart designation in parentheses. Reference test methods (Appendix A), performance specifications (Appendix B), determination of emission rate change (Appendix C), quality assurance procedures (Appendix F) and the general provisions (Subpart A) of 40 CFR Part 60 also apply to the affected facilities.

*a. Fossil fuel-fired steam generators.* A fossil fuel-fired steam generating unit of more than 250 million Btu heat input for which construction, reconstruction, or modification is commenced after August 17, 1971. Any facility covered under paragraph “z” is not covered under this paragraph. (Subpart D as amended through January 20, 2011)

*b. Incinerators.* An incinerator of more than 50 tons per day charging rate. (Subpart E)

*c. Portland cement plants.* Any of the following in a Portland cement plant: kiln; clinker cooler; raw mill system; finish mill system; raw mill dryer; raw material storage; clinker storage; finished product storage; conveyor transfer points; bagging and bulk loading and unloading systems. (Subpart F)

*d. Nitric acid plants.* A nitric acid production unit. Unless otherwise exempted, these standards apply to any nitric acid production unit that commences construction or modification after August 17, 1971, and on or before October 14, 2011. (Subpart G)

*e. Sulfuric acid plants.* A sulfuric acid production unit. (Subpart H)

*f. Hot mix asphalt plants.* Each hot mix asphalt facility that commenced construction or modification after June 11, 1973. For the purpose of this paragraph, a hot mix asphalt facility is comprised only of any combination of the following: dryers; systems for screening, handling, storing, and weighing hot aggregate; systems for loading, transferring, and storing mineral filler; systems for mixing hot mix asphalt; and the loading, transfer, and storage systems associated with emission control systems. (Subpart I)

*g. Petroleum refineries.* Rescinded IAB 3/18/15, effective 4/22/15.

*h. Secondary lead smelters.* Rescinded IAB 3/18/15, effective 4/22/15.

*i. Secondary brass and bronze ingot production plants.* Any of the following at a secondary brass and bronze ingot production plant; reverberatory and electric furnaces of 1000/kilograms (2205 pounds) or greater production capacity and blast (cupola) furnaces of 250 kilograms per hour (550 pounds per hour) or greater production capacity. (Subpart M)

*j. Iron and steel plants.* A basic oxygen process furnace. (Subpart N)

*k. Sewage treatment plants.* An incinerator which burns the sludge produced by municipal sewage treatment plants. (Subpart O of 40 CFR 60 and Subpart E of 40 CFR 503.)

- l. Steel plants.* Either of the following at a steel plant: electric arc furnaces and dust-handling equipment, the construction, modification, or reconstruction of which commenced after October 21, 1974, and on or before August 17, 1983. (Subpart AA)
- m. Primary copper smelters.* Rescinded IAB 3/18/15, effective 4/22/15.
- n. Primary zinc smelters.* Rescinded IAB 3/18/15, effective 4/22/15.
- o. Primary lead smelter.* Rescinded IAB 3/18/15, effective 4/22/15.
- p. Primary aluminum reduction plants.* Rescinded IAB 3/18/15, effective 4/22/15.
- q. Wet process phosphoric acid plants in the phosphate fertilizer industry.* A wet process phosphoric acid plant, which includes any combination of the following: reactors, filters, evaporators and hotwells. (Subpart T)
- r. Superphosphoric acid plants in the phosphate fertilizer industry.* A superphosphoric acid plant which includes any combination of the following: evaporators, hotwells, acid sumps, and cooling tanks. (Subpart U)
- s. Diammonium phosphate plants in the phosphate fertilizer industry.* A granular diammonium phosphate plant which includes any combination of the following: reactors, granulators, dryers, coolers, screens and mills. (Subpart V)
- t. Triple super phosphate plants in the phosphate fertilizer industry.* A triple super phosphate plant which includes any combination of the following: mixers, curing belts (dens), reactors, granulators, dryers, cookers, screens, mills and facilities which store run-of-pile triple superphosphate. (Subpart W)
- u. Granular triple superphosphate storage facilities in the phosphate fertilizer industry.* A granular triple superphosphate storage facility which includes any combination of the following: storage or curing piles, conveyors, elevators, screens and mills. (Subpart X)
- v. Coal preparation plants.* Any of the following at a coal preparation plant which processes more than 200 tons per day: thermal dryers; pneumatic coal cleaning equipment (air tables); coal processing and conveying equipment (including breakers and crushers); coal storage systems; and coal transfer and loading systems. (Subpart Y)
- w. Ferroalloy production.* Any of the following: electric submerged arc furnaces which produce silicon metal, ferrosilicon, calcium silicon, silicomanganese zirconium, ferrochrome silicon, silvery iron, high-carbon ferrochrome, charge chrome, standard ferromanganese, silicomanganese, ferromanganese silicon, or calcium carbide; and dust-handling equipment. (Subpart Z)
- x. Kraft pulp mills.* Any of the following in a kraft pulp mill: digester system; brown stock washer system; multiple effect evaporator system; black liquor oxidation system; recovery furnace; smelt dissolving tank; lime kiln; and condensate stripper system. In pulp mills where kraft pulping is combined with neutral sulfite semichemical pulping, the provisions of the standard of performance are applicable when any portion of the material charged to an affected facility is produced by the kraft pulping operation. (Subpart BB)
- y. Lime manufacturing plants.* A rotary lime kiln or a lime hydrator used in the manufacture of lime at other than a kraft pulp mill. (Subpart HH)
- z. Electric utility steam generating units.* An electric utility steam generating unit that is capable of combusting more than 250 million Btus per hour (73 megawatts) heat input of fossil fuel for which construction or modification or reconstruction is commenced after September 18, 1978, or an electric utility combined cycle gas turbine that is capable of combusting more than 250 million Btus per hour (73 megawatts) heat input. "Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW net-electrical output to any utility power distribution system for sale. Also, any steam supplied to a steam distribution system for the purpose of providing steam to a steam electric generator that would produce electrical energy for sale is considered in determining the electrical energy output capacity of the affected facility. (Subpart Da as amended through January 20, 2011)
- aa. Stationary gas turbines.* Any simple cycle gas turbine, regenerative cycle gas turbine or any gas turbine portion of a combined cycle steam/electric generating system that is not self-propelled. It may, however, be mounted on a vehicle for portability. (Subpart GG)

- bb. Petroleum storage vessels.* Unless exempted, any storage vessel for petroleum liquids for which the construction, reconstruction, or modification commenced after June 11, 1973, and prior to May 19, 1978, having a storage capacity greater than 151,412 liters (40,000 gallons). (Subpart K)
- cc. Petroleum storage vessels.* Unless exempted, any storage vessel for petroleum liquids for which the construction, reconstruction, or modification commenced after May 18, 1978, and prior to July 23, 1984, having a storage capacity greater than 151,416 liters (40,000 gallons). (Subpart Ka)
- dd. Glass manufacturing plants.* Any glass melting furnace. (Subpart CC)
- ee. Automobile and light-duty truck surface coating operations at assembly plants.* Any of the following in an automobile or light-duty truck assembly plant: prime coat operations, guide coat operations, and topcoat operations. (Subpart MM)
- ff. Ammonium sulfate manufacture.* Any of the following in the ammonium sulfate industry: ammonium sulfate dryers in the caprolactam by-product, synthetic, and coke oven by-product sectors of the industry. (Subpart PP)
- gg. Surface coating of metal furniture.* Any metal furniture surface coating operation in which organic coatings are applied. (Subpart EE)
- hh. Lead-acid battery manufacturing plants.* Any lead-acid battery manufacturing plant which uses any of the following: grid casting, paste mixing, three-process operation, lead oxide manufacturing, lead reclamation, other lead-emitting operations. (Subpart KK)
- ii. Phosphate rock plants.* Any phosphate rock plant which has a maximum plant production capacity greater than four tons per hour including the following: dryers, calciners, grinders, and ground rock handling and storage facilities, except those facilities producing or preparing phosphate rock solely for consumption in elemental phosphorus production. (Subpart NN)
- jj. Graphic arts industry.* Publication rotogravure printing. Any publication rotogravure printing press except proof presses. (Subpart QQ)
- kk. Industrial surface coating — large appliances.* Any surface coating operation in a large appliance surface coating line. (Subpart SS)
- ll. Metal coil surface coating.* Any of the following at a metal coil surface coating operation: prime coat operation, finish coat operation, and each prime and finish coat operation combined when the finish coat is applied wet-on-wet over the prime coat and both coatings are cured simultaneously. (Subpart TT)
- mm. Asphalt processing and asphalt roofing manufacturing.* Any saturator, mineral handling and storage facility at asphalt roofing plants; and any asphalt storage tank and any blowing still at asphalt processing plants, petroleum refineries, and asphalt roofing plants. (Subpart UU)
- nn. Equipment leaks of volatile organic compounds (VOC) in the synthetic organic chemicals manufacturing industry.* Standards for affected facilities in the synthetic organic chemicals manufacturing industry (SOCMI) that commenced construction, reconstruction, or modification after January 5, 1981, and on or before November 7, 2006, are set forth in Subpart VV. Standards for affected SOCMI facilities that commenced construction, reconstruction or modification after November 7, 2006, are set forth in Subpart VVa. The standards apply to pumps, compressors, pressure relief devices, sampling systems, open-ended valves or lines (OEL), valves, and flanges or other connectors which handle VOC. (Subpart VV and Subpart VVa)
- oo. Beverage can surface coating.* Any beverage can surface coating lines for two-piece steel or aluminum containers in which soft drinks or beer are sold. (Subpart WW)
- pp. Bulk gasoline terminals.* The total of all loading racks at bulk gasoline terminals which deliver liquid product into gasoline tank trucks. (Subpart XX)
- qq. Pressure sensitive tape and label surface coating operations.* Any coating line used in the tape manufacture of pressure sensitive tape and label materials. (Subpart RR)
- rr. Metallic mineral processing plants.* Any ore processing and handling equipment. (Subpart LL)
- ss. Synthetic fiber production facilities.* Any solvent-spun synthetic fiber process that produces more than 500 megagrams of fiber per year. (Subpart HHH)
- tt. Equipment leaks of VOC in petroleum refineries.* A compressor and all equipment (defined in 40 CFR, Part 60.591) within a process unit for which the construction, reconstruction, or modification commenced after January 4, 1983. (Subpart GGG)

*uu. Flexible vinyl and urethane coating and printing.* Each rotogravure printing line used to print or coat flexible vinyl or urethane products. (Subpart FFF)

*vv. Petroleum dry cleaners.* Petroleum dry-cleaning plant with a total manufacturer's rated dryer capacity equal to or greater than 38 kilograms (84 pounds): petroleum solvent dry-cleaning dryers, washers, filters, stills, and settling tanks. (Subpart JJJ)

*ww. Electric arc furnaces and argon-oxygen decarburization vessels constructed after August 17, 1983.* Steel plants that produce carbon, alloy, or specialty steels: electric arc furnaces, argon-oxygen decarburization vessels, and dust-handling systems. (Subpart AAa)

*xx. Wool fiberglass insulation manufacturing plants.* Rotary spin wool fiberglass manufacturing line. (Subpart PPP)

*yy. Iron and steel plants.* Secondary emissions from basic oxygen process steelmaking facilities for which construction, reconstruction, or modification commenced after January 20, 1983. (Subpart Na)

*zz. Equipment leaks of VOC from on-shore natural gas processing plants.* A compressor and all equipment defined in 40 CFR, Part 60.631, unless exempted, for which construction, reconstruction, or modification commenced after January 20, 1984. (Subpart KKK)

*aaa. On-shore natural gas processing: SO<sub>2</sub> emissions.* Unless exempted, each sweetening unit and each sweetening unit followed by a sulfur recovery unit for which construction, reconstruction, or modification commenced after January 20, 1984. (Subpart LLL)

*bbb. Nonmetallic mineral processing plants.* Unless exempted, each crusher, grinding mill, screening operation, bucket elevator, belt conveyor, bagging operation, storage bin, enclosed truck or rail car loading station in fixed or portable nonmetallic mineral processing plants for which construction, reconstruction, or modification commenced after August 31, 1983. (Subpart OOO)

*ccc. Industrial-commercial-institutional steam generating units.* Unless exempted, each steam generating unit for which construction, reconstruction, or modification commenced after June 19, 1984, and which has a heat input capacity of more than 100 million Btu/hour. (Subpart Db as amended through January 20, 2011)

*ddd. Volatile organic liquid storage vessels.* Unless exempted, volatile organic liquid storage vessels for which construction, reconstruction, or modification commenced after July 23, 1984. (Subpart Kb)

*eee. Rubber tire manufacturing plants.* Unless exempted, each undertread cementing operation, each sidewall cementing operation, each tread end cementing operation, each bead cementing operation, each green tire spraying operation, each Michelin-A operation, each Michelin-B operation, and each Michelin-C automatic operation that commences construction or modification after January 20, 1983. (Subpart BBB)

*fff. Industrial surface coating: surface coating of plastic parts for business machines.* Each spray booth in which plastic parts for use in the manufacture of business machines receive prime coats, color coats, texture coats, or touch-up coats for which construction, modification, or reconstruction begins after January 8, 1986. (Subpart TTT)

*ggg. VOC emissions from petroleum refinery wastewater systems.* Each individual drain system, each oil-water separator, and each aggregate facility for which construction, modification or reconstruction is commenced after May 4, 1987. (Subpart QQQ)

*hhh. Magnetic tape coating facilities.* Unless exempted, each coating operation and each piece of coating mix preparation equipment for which construction, modification, or reconstruction is commenced after January 22, 1986. (Subpart SSS)

*iii. Polymeric coating of supporting substrates.* Unless exempted, each coating operation and any on-site coating mix preparation equipment used to prepare coatings for the polymeric coating of supporting substrates for which construction, modification, or reconstruction begins after April 30, 1987. (Subpart VVV)

*jjj. VOC emissions from synthetic organic chemical manufacturing industry air oxidation unit processes.* Unless exempted, any air oxidation reactor, air oxidation reactor and recovery system or combination of two or more reactors and the common recovery system used in the production of any

of the chemicals listed in 40 CFR §60.617 for which construction, modification or reconstruction commenced after October 21, 1983. (Subpart III)

*kkk. VOC emissions from synthetic organic chemical manufacturing industry distillation operations.* Unless exempted, any distillation unit, distillation unit and recovery system or combination of two or more distillation units and the common recovery system used in the production of any of the chemicals listed in 40 CFR §60.667 for which construction, modification or reconstruction commenced after December 30, 1983. (Subpart NNN)

*lll. Small industrial-commercial-institutional steam generating units.* Each steam generating unit for which construction, modification, or reconstruction is commenced after June 9, 1989, and that has a maximum design heat input capacity of 100 million Btu per hour or less, but greater than or equal to 10 million Btu per hour. (Subpart Dc as amended through January 20, 2011)

*mmm. VOC emissions from the polymer manufacturing industry.* Each of the following process sections in the manufacture of polypropylene and polyethylene—raw materials preparation, polymerization reaction, material recovery, product finishing, and product storage; each material recovery section of polystyrene manufacturing using a continuous process; each polymerization reaction section of poly(ethylene terephthalate) manufacturing using a continuous process; each material recovery section of poly(ethylene terephthalate) manufacturing using a continuous process that uses dimethyl terephthalate; each raw material section of poly(ethylene terephthalate) manufacturing using a continuous process that uses terephthalic acid; and each group of fugitive emissions equipment within any process unit in the manufacturing of polypropylene, polyethylene, or polystyrene (including expandable polystyrene). The applicability date for construction, modification or reconstruction for polystyrene and poly(ethylene terephthalate) affected facilities and some polypropylene and polyethylene affected facilities is September 30, 1987. For the other polypropylene and polyethylene affected facilities the applicability date for these regulations is January 10, 1989. (Subpart DDD)

*nnn. Municipal waste combustors.* Unless exempted, a municipal waste combustor with a capacity greater than 225 megagrams per day of municipal solid waste for which construction is commenced after December 20, 1989, and on or before September 20, 1994, and modification or reconstruction is commenced after December 20, 1989, and on or before June 19, 1996. (Subpart Ea)

*ooo. Grain elevators.* A grain terminal elevator or any grain storage elevator except as provided under 40 CFR 60.304(b), August 31, 1993. A grain terminal elevator means any grain elevator which has a permanent storage capacity of more than 2.5 million U.S. bushels except those located at animal food manufacturers, pet food manufacturers, cereal manufacturers, breweries, and livestock feedlots. A grain storage elevator means any grain elevator located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean oil extraction plant which has a permanent grain storage capacity of 1 million bushels. Any construction, modification, or reconstruction after August 3, 1978, is subject to this paragraph. (Subpart DD)

*ppp. Mineral processing plants.* Each calciner and dryer at a mineral processing plant unless excluded for which construction, modification, or reconstruction is commenced after April 23, 1986. (Subpart UUU)

*qqq. VOC emissions from synthetic organic chemical manufacturing industry reactor processes.* Unless exempted, each affected facility that is part of a process unit that produces any of the chemicals listed in 40 CFR §60.707 as a product, coproduct, by-product, or intermediate for which construction, modification, or reconstruction commenced after June 29, 1990. Affected facility is each reactor process not discharging its vent stream into a recovery system, each combination of a reactor process and the recovery system into which its vent stream is discharged, or each combination of two or more reactor processes and the common recovery system into which their vent streams are discharged. (Subpart RRR)

*rrr. Municipal solid waste landfills, as defined by 40 CFR 60.751.* Each municipal solid waste landfill that commenced construction, reconstruction or modification or began accepting waste on or after May 30, 1991, must comply. (Subpart WWW as amended through April 10, 2000)

*sss. Municipal waste combustors.* Unless exempted, a municipal waste combustor with a combustion capacity greater than 250 tons per day of municipal solid waste for which construction,

modification or reconstruction is commenced after September 20, 1994, or for which modification or reconstruction is commenced after June 19, 1996. (Subpart Eb)

*ttt. Hospital/medical/infectious waste incinerators.* Unless exempted, a hospital/medical/infectious waste incinerator for which construction is commenced after June 20, 1996, or for which modification is commenced after March 16, 1998. (Subpart Ec)\*

\*As of November 24, 2010, the adoption by reference of Part 60 Subpart Ec is rescinded.

*uuu. New small municipal waste combustion units.* Unless exempted, this standard applies to a small municipal waste combustion unit that commenced construction after August 30, 1999, or small municipal waste combustion units that commenced reconstruction or modification after June 6, 2001. (Part 60, Subpart AAAA)

*vvv. Commercial and industrial solid waste incineration.* Unless exempted, this standard applies to units for which construction is commenced after November 30, 1999, or for which modification or reconstruction is commenced on or after June 1, 2001. (Part 60, Subpart CCCC, as amended through December 1, 2000)

*www. Other solid waste incineration (OSWI) units.* Unless exempted, this standard applies to other solid waste incineration (OSWI) units for which construction is commenced after December 9, 2004, or for which modification or reconstruction is commenced on or after June 16, 2006. (Part 60, Subpart EEEE)

*xxx.* Reserved.

*yyy. Stationary compression ignition internal combustion engines.* Unless otherwise exempted, these standards apply to each stationary compression ignition internal combustion engine whose construction, modification or reconstruction commenced after July 11, 2005. (Part 60, Subpart IIII)

*zzz. Stationary spark ignition internal combustion engines.* These standards apply to each stationary spark ignition internal combustion engine whose construction, modification or reconstruction commenced after June 12, 2006. (Part 60, Subpart JJJJ)

*aaaa. Stationary combustion turbines.* Unless otherwise exempted, these standards apply to stationary combustion turbines with a heat input at peak load equal to or greater than 10 MMBtu per hour, based on the higher heating value of the fuel, that commence construction, modification, or reconstruction after February 18, 2005. (Part 60, Subpart KKKK)

*bbbb. Nitric acid plants.* Unless otherwise exempted, these standards apply to any nitric acid production unit that commenced construction, reconstruction or modification after October 14, 2011. (Subpart Ga)

*cccc. Sewage sludge incineration units.* Each sewage sludge incineration (SSI) unit for which construction or reconstruction commenced after October 14, 2010, or for which modification commenced after September 21, 2011, must comply. (Subpart LLLL)

**23.1(3) Emission standards for hazardous air pollutants.** The federal standards for emissions of hazardous air pollutants, 40 Code of Federal Regulations Part 61 as amended or corrected through August 30, 2016, and 40 CFR Part 503 as adopted on August 4, 1999, are adopted by reference, except 40 CFR §61.20 to §61.26, §61.90 to §61.97, §61.100 to §61.108, §61.120 to §61.127, §61.190 to §61.193, §61.200 to §61.205, §61.220 to §61.225, and §61.250 to §61.256, and shall apply to the following affected pollutants and facilities and activities listed below. The corresponding 40 CFR Part 61 subpart designation is in parentheses. Reference test methods (Appendix B), compliance status information requirements (Appendix A), quality assurance procedures (Appendix C) and the general provisions (Subpart A) of Part 61 also apply to the affected activities or facilities.

*a. Asbestos.* Any of the following involves asbestos emissions: asbestos mills, surfacing of roadways, manufacturing operations, fabricating, insulating, waste disposal, spraying applications and demolition and renovation operations. (Subpart M). Any person subject to notification requirements under this rule shall submit fees as required in 567—Chapter 30.

*b. Beryllium.* Rescinded IAB 3/18/15, effective 4/22/15.

*c. Beryllium rocket motor firing.* Rescinded IAB 3/18/15, effective 4/22/15.

*d. Mercury.* Any of the following involving mercury emissions: mercury ore processing facilities, mercury cell chlor-alkali plants, sludge incineration plants, sludge drying plants, and a combination of sludge incineration plants and sludge drying plants. (Subpart E)

*e. Vinyl chloride.* Ethylene dichloride purification and the oxychlorination reactor in ethylene dichloride plants. Vinyl chloride formation and purification in vinyl chloride plants. Any of the following involving polyvinyl chloride plants: reactor; stripper; mixing, weighing, and holding containers; monomer recovery system; sources following the stripper(s). Any of the following involving ethylene dichloride, vinyl chloride, and polyvinyl chloride plants: relief valve discharge; fugitive emission sources. (Subpart F)

*f. Equipment leaks of benzene (fugitive emission sources).* Any pumps, compressors, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, flanges and other connectors, product accumulator vessels, and control devices or systems which handle benzene. (Subpart J)

*g. Equipment leaks of volatile hazardous air pollutants (fugitive emission sources).* Any pumps, compressors, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, flanges and other connectors, product accumulator vessels, and control devices or systems which handle volatile hazardous air pollutants. (Subpart V)

*h. Inorganic arsenic emissions from arsenic trioxide and metallic arsenic production facilities.* Rescinded IAB 3/18/15, effective 4/22/15.

*i. Inorganic arsenic emissions from glass manufacturing plants.* Each glass melting furnace (except pot furnaces) that uses commercial arsenic as a raw material. (Subpart N)

*j. Inorganic arsenic emissions from primary copper smelters.* Rescinded IAB 3/18/15, effective 4/22/15.

*k. Benzene emissions from coke by-product recovery plants.* Each of the following sources at furnace and foundry coke by-product recovery plants: tar decanters, tar storage tanks, tar-intercepting sumps, flushing-liquor circulation tanks, light-oil sumps, light-oil condensers, light-oil decanters, wash-oil decanters, wash-oil circulation tanks, naphthalene processing, final coolers, final-cooler cooling towers, and the following equipment that is intended to operate in benzene service: pumps, valves, exhausters, pressure relief devices, sampling connection systems, open-ended valves or lines, flanges or other connectors, and control devices or systems required by 40 CFR §61.135.

The provisions of this subpart also apply to benzene storage tanks, BTX storage tanks, light-oil storage tanks, and excess ammonia-liquor storage tanks at furnace coke by-product recovery plants. (Subpart L)

*l. Benzene emissions from benzene storage vessels.* Unless exempted, each storage vessel that is storing benzene having a specific gravity within the range of specific gravities specified in ASTM D 836-84 for Industrial Grade Benzene, ASTM D 835-85 for Refined Benzene-485, ASTM D 2359-85a for Refined Benzene-535, and ASTM D 4734-87 for Refined Benzene-545. These specifications are incorporated by reference as specified in 40 CFR §61.18. (Subpart Y)

*m. Benzene emissions from benzene transfer operations.* Unless exempted, the total of all loading racks at which benzene is loaded into tank trucks, rail cars, or marine vessels at each benzene production facility and each bulk terminal. (Subpart BB)

*n. Benzene waste operations.* Unless exempted, the provisions of this subrule apply to owners and operators of chemical manufacturing plants, coke by-product recovery plants, petroleum refineries, and facilities at which waste management units are used to treat, store, or dispose of waste generated by any of these listed facilities. (Subpart FF)

**23.1(4) Emission standards for hazardous air pollutants for source categories.** The federal standards for emissions of hazardous air pollutants for source categories, 40 Code of Federal Regulations Part 63 as amended or corrected through August 3, 2018, are adopted by reference, except those provisions which cannot be delegated to the states. The corresponding 40 CFR Part 63 subpart designation is in parentheses. An earlier date for adoption by reference may be included with the subpart designation in parentheses. 40 CFR Part 63, Subpart B, incorporates the requirements of Clean Air Act Sections 112(g) and 112(j) and does not adopt standards for a specific affected facility. Test

methods (Appendix A), sources defined for early reduction provisions (Appendix B), and determination of the fraction biodegraded ( $F_{\text{bio}}$ ) in the biological treatment unit (Appendix C) of Part 63 also apply to the affected activities or facilities. For the purposes of this subrule, “hazardous air pollutant” has the same meaning found in 567—22.100(455B). For the purposes of this subrule, a “major source” means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless a lesser quantity is established, or in the case of radionuclides, where different criteria are employed. For the purposes of this subrule, an “area source” means any stationary source of hazardous air pollutants that is not a “major source” as defined in this subrule. Paragraph 23.1(4) “a,” general provisions (Subpart A) of Part 63, shall apply to owners or operators who are subject to subsequent subparts of 40 CFR Part 63 (except when otherwise specified in a particular subpart or in a relevant standard) as adopted by reference below.

*a. General provisions.* General provisions apply to owners or operators of affected activities or facilities except when otherwise specified in a particular subpart or in a relevant standard. (Subpart A)

*b. Requirements for control technology determinations for major sources in accordance with Clean Air Act Sections 112(g) and 112(j).* (40 CFR Part 63, Subpart B)

(1) Section 112(g) requirements. For the purposes of this subparagraph, the definitions shall be the same as the definitions found in 40 CFR 63.2 and 40 CFR 63.41 as amended through December 27, 1996. The owner or operator of a new or reconstructed major source of hazardous air pollutants must apply maximum achievable control technology (MACT) for new sources to the new or reconstructed major source. If the major source in question has been specifically regulated or exempted from regulation under a standard issued pursuant to Section 112(d), Section 112(h), or Section 112(j) of the Clean Air Act and incorporated in another subpart of 40 CFR Part 63, excluded in 40 CFR 63.40(e) and (f), or the owner or operator of such major source has received all necessary air quality permits for such construction or reconstruction project before June 29, 1998, then the major source in question is not subject to the requirements of this subparagraph. The owner or operator of an affected source shall apply for a construction permit as required in 567—paragraph 22.1(1) “b.” The construction permit application shall contain an application for a case-by-case MACT determination for the major source.

(2) Section 112(j) requirements. The owner or operator of a new or existing major source of hazardous air pollutants which includes one or more stationary sources included in a source category or subcategory for which the U.S. Environmental Protection Agency has failed to promulgate an emission standard within 18 months of the deadline established under CAA 112(d) must submit a MACT application (Parts 1 and 2) in accordance with the provisions of 40 CFR 63.52, as amended through April 5, 2002, by the CAA Section 112(j) deadline. In addition, the owner or operator of a new emission unit may submit an application for a Notice of MACT Approval before construction, as defined in 40 CFR 63.41, in accordance with the provisions of 567—paragraph 22.1(3) “a.”

*c.* Reserved.

*d. Compliance extensions for early reductions of hazardous air pollutants.* Compliance extensions for early reductions of hazardous air pollutants are available to certain owners or operators of an existing source who wish to obtain a compliance extension from a standard issued under Section 112(d) of the Act. (Subpart D)

*e.* Reserved.

*f. Emission standards for organic hazardous air pollutants from the synthetic chemical manufacturing industry.* These standards apply to chemical manufacturing process units that are part of a major source. These standards include applicability provisions, definitions and other general provisions that are applicable to Subparts F, G, and H of 40 CFR 63. (Subpart F)

*g. Emission standards for organic hazardous air pollutants from the synthetic organic chemical manufacturing industry for process vents, storage vessels, transfer operations, and wastewater.* These standards apply to all process vents, storage vessels, transfer racks, and wastewater streams within a source subject to Subpart F of 40 CFR 63. (Subpart G)

*h. Emission standards for organic hazardous air pollutants for equipment leaks.* These standards apply to emissions of designated organic hazardous air pollutants from specified processes that are located at a plant site that is a major source. Affected equipment includes: pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, surge control vessels, bottoms receivers, instrumentation systems and control devices or systems required by this subpart that are intended to operate in organic hazardous air pollutant service 300 hours or more during the calendar year within a source subject to the provisions of a specific subpart in 40 CFR Part 63. In organic hazardous air pollutant or in organic HAP service means that a piece of equipment either contains or contacts a fluid (liquid or gas) that is at least 5 percent by weight of total organic HAPs as determined according to the provisions of 40 CFR Part 63.161. The provisions of 40 CFR Part 63.161 also specify how to determine that a piece of equipment is not in organic HAP service. (Subpart H)

*i. Emission standards for organic hazardous air pollutants for certain processes subject to negotiated regulation for equipment leaks.* These standards apply to emissions of designated organic hazardous air pollutants from specified processes (defined in 40 CFR 63.190) that are located at a plant site that is a major source. Subject equipment includes pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, and instrumentation systems at certain source categories. These standards establish the applicability of Subpart H for sources that are not classified as synthetic organic chemical manufacturing industries. (Subpart I)

*j. Emission standards for hazardous air pollutants for polyvinyl chloride and copolymers production.* Rescinded IAB 3/18/15, effective 4/22/15.

*k. Reserved.*

*l. Emission standards for coke oven batteries.* These standards apply to existing coke oven batteries, including by-product and nonrecovery coke oven batteries and to new coke oven batteries, or as defined in the subpart. (Subpart L)

*m. Perchloroethylene air emission standards for dry cleaning facilities (40 CFR Part 63, Subpart M).* These standards apply to the owner or operator of each dry cleaning facility that uses perchloroethylene (also known as perc). The specific standards applicable to dry cleaning facilities, including the compliance deadlines, are set out in the federal regulations contained in Subpart M. In general, dry cleaning facilities must meet the following requirements, which are set out in greater detail in Subpart M:

(1) New and existing major source dry cleaning facilities are required to control emissions to the level of the maximum achievable control technology (MACT).

(2) New and existing area source dry cleaning facilities are required to control emissions to the level achieved by generally available control technologies (GACT) or management practices.

(3) New area sources that are located in residential buildings and that commence operation after July 13, 2006, are prohibited from using perc.

(4) New area sources located in residential buildings that commenced operation between December 21, 2005, and July 13, 2006, must eliminate all use of perc by July 27, 2009.

(5) Existing area sources located in residential buildings must eliminate all use of perc by December 21, 2020.

(6) New area sources that are not located in residential buildings are prohibited from operating transfer machines.

(7) Existing area sources that are not located in residential buildings are prohibited from operating transfer machines after July 27, 2008.

(8) All sources must comply with the requirements in Subpart M for emissions control, equipment specifications, leak detection and repair, work practice standards, record keeping and reporting.

*n. Emission standards for chromium emissions from hard and decorative chromium electroplating and chromium anodizing tanks.* These standards limit the discharge of chromium compound air emissions from existing and new hard chromium electroplating, decorative chromium electroplating, and chromium anodizing tanks at major and area sources. (Subpart N)

*o. Emission standards for hazardous air pollutants for ethylene oxide commercial sterilization and fumigation operations.* New and existing major source ethylene oxide commercial sterilization and fumigation operations are required to control emissions to the level of the maximum achievable control technology (MACT). New and existing area source ethylene oxide commercial sterilization and fumigation operations are required to control emissions to the level achieved by generally available control technologies (GACT). Certain sources are exempt as described in 40 CFR 63.360. (Subpart O)

*p. Emission standards for primary aluminum reduction plants.* Rescinded IAB 3/18/15, effective 4/22/15.

*q. Emission standards for hazardous air pollutants for industrial process cooling towers.* These standards apply to all new and existing industrial process cooling towers that are operated with chromium-based water treatment chemicals on or after September 8, 1994, and are either major sources or are integral parts of facilities that are major sources. (Subpart Q)

*r. Emission standards for hazardous air pollutants for sources categories: gasoline distribution: (Stage 1).* These standards apply to all existing and new bulk gasoline terminals and pipeline breakout stations that are major sources of hazardous air pollutants or are located at plant sites that are major sources. Bulk gasoline terminals and pipeline breakout stations located within a contiguous area or under common control with a refinery complying with 40 CFR Subpart CC are not subject to 40 CFR Subpart R standards. (Subpart R)

*s. Emission standards for hazardous air pollutants for pulp and paper (noncombustion).* These standards apply to pulping and bleaching process sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills. Affected sources include pulp mills and integrated mills (mills that manufacture pulp and paper/paperboard) that chemically pulp wood fiber (using kraft, sulfite, soda, or semichemical methods); pulp secondary fiber; pulp nonwood fiber; and mechanically pulp wood fiber. (Subpart S)

*t. Emission standards for hazardous air pollutants: halogenated solvent cleaning.* These standards require batch vapor solvent cleaning machines and in-line solvent cleaning machines to meet emission standards reflecting the application of maximum achievable control technology (MACT) for major and area sources; area source batch cold cleaning machines are required to achieve generally available control technology (GACT). The subpart regulates the emissions of the following halogenated hazardous air pollutant solvents: methylene chloride, perchloroethylene, trichloroethylene, 1,1,1-trichloroethane, carbon tetrachloride, and chloroform. (Subpart T)

*u. Emission standards for hazardous air pollutants: Group I polymers and resins.* Applicable to existing and new major sources that emit organic HAP during the manufacture of one or more elastomers including but not limited to producers of butyl rubber, halobutyl rubber, epichlorohydrin elastomers, ethylene propylene rubber, Hypalon™, neoprene, nitrile butadiene rubber, nitrile butadiene latex, polybutadiene rubber/styrene butadiene rubber by solution, polysulfide rubber, styrene butadiene rubber by emulsion, and styrene butadiene latex. MACT is required for major sources. (Subpart U)

*v. Reserved.*

*w. Emission standards for hazardous air pollutants for epoxy resins production and nonnylon polyamides production.* These standards apply to all existing, new and reconstructed manufacturers of basic liquid epoxy resins and manufacturers of wet strength resins that are located at a plant site that is a major source. (Subpart W)

*x. National emission standards for hazardous air pollutants from secondary lead smelting.* Rescinded IAB 3/18/15, effective 4/22/15.

*y. Emission standards for marine tank vessel loading operations.* This standard requires existing and new major sources to control emissions using maximum achievable control technology (MACT) to control hazardous air pollutants (HAP). (Subpart Y)

*z. Reserved.*

*aa. Emission standards for hazardous air pollutants for phosphoric acid manufacturing.* These standards apply to all new and existing major sources of phosphoric acid manufacturing. Affected processes include, but are not limited to, wet process phosphoric acid process lines, superphosphoric

acid process lines, phosphate rock dryers, phosphate rock calciners, and purified phosphoric acid process lines. (Subpart AA)

*ab. Emission standards for hazardous air pollutants for phosphate fertilizers production.* These standards apply to all new and existing major sources of phosphate fertilizer production plants. Affected processes include, but are not limited to, diammonium and monoammonium phosphate process lines, granular triple superphosphate process lines, and granular triple superphosphate storage buildings. (Subpart BB)

*ac. National emission standards for hazardous air pollutants: petroleum refineries.* Rescinded IAB 3/18/15, effective 4/22/15.

*ad. Emission standards for hazardous air pollutants for off-site waste and recovery operations.* This rule applies to major sources of HAP emissions which receive certain wastes, used oil, and used solvents from off-site locations for storage, treatment, recovery, or disposal at the facility. Maximum achievable control technology (MACT) is required to reduce HAP emissions from tanks, surface impoundments, containers, oil-water separators, individual drain systems and other material conveyance systems, process vents, and equipment leaks. Regulated entities include but are not limited to businesses that operate any of the following: hazardous waste treatment, storage, and disposal facilities; Resource Conservation and Recovery Act (RCRA) exempt hazardous wastewater treatment facilities other than publicly owned treatment works; used solvent recovery plants; RCRA exempt hazardous waste recycling operations; used oil re-refineries. The regulations also apply to federal agency facilities that operate any of the waste management or recovery operations. (Subpart DD)

*ae. Emission standards for magnetic tape manufacturing operations.* These standards apply to major sources performing magnetic tape manufacturing operations. (Subpart EE)

*af. Reserved.*

*ag. National emission standards for hazardous air pollutants for source categories: aerospace manufacturing and rework facilities.* These standards apply to major sources involved in the manufacture, repair, or rework of aerospace components and assemblies, including but not limited to airplanes, helicopters, missiles, and rockets for civil, commercial, or military purposes. Hazardous air pollutants regulated under this standard include chromium, cadmium, methylene chloride, toluene, xylene, methyl ethyl ketone, ethylene glycol, and glycol ethers. (Subpart GG)

*ah. Emission standards for hazardous air pollutants for oil and natural gas production.* These standards apply to all new and existing major sources of oil and natural gas production. Affected sources include, but are not limited to, processing of liquid or gaseous hydrocarbons, such as ethane, propane, butane, pentane, natural gas, and condensate extracted from field natural gas. (Subpart HH)

*ai. Emission standards for hazardous air pollutants for shipbuilding and ship repair (surface coating) operations.* Rescinded IAB 3/18/15, effective 4/22/15.

*aj. Emission standards for hazardous air pollutants for hazardous air pollutant (HAP) emissions from wood furniture manufacturing operations.* These standards apply to each facility that is engaged, either in part or in whole, in the manufacture of wood furniture or wood furniture components and that is located at a plant site that is a major source. (Subpart JJ)

*ak. Emission standards for hazardous air pollutants for the printing and publishing industry.* Existing and new major sources are required to control hazardous air pollutants (HAP) using the maximum achievable control technology (MACT). Affected units are publication rotogravure, product and packaging rotogravure, and wide-web flexographic printing. (Subpart KK)

*al. Emission standards for hazardous air pollutants for primary aluminum reduction plants.* Rescinded IAB 3/18/15, effective 4/22/15.

*am. Emission standards for hazardous air pollutants for chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills.* (Part 63, Subpart MM)

*an. Reserved.*

*ao. Emission standards for tanks – level 1.* These provisions apply when another paragraph under this rule references the use of this paragraph for such air emission control. These air emission standards are placed here for administrative convenience and only apply to those owners and operators of facilities subject to the referencing paragraph. The provisions of paragraph 23.1(4)“a,” general

provisions (Subpart A), do not apply to this paragraph except as specified in a referencing paragraph. (Part 63, Subpart OO)

*ap. Emission standards for containers.* These provisions apply when another paragraph under this rule references the use of this paragraph for such air emission control. These air emission standards are placed here for administrative convenience and only apply to those owners and operators of facilities subject to the referencing paragraph. The provisions of paragraph 23.1(4)“a,” general provisions (Subpart A), do not apply to this paragraph except as specified in a referencing paragraph. (Part 63, Subpart PP)

*aq. Emission standards for surface impoundments.* These provisions apply when another paragraph under this rule references the use of this paragraph for such air emission control. These air emission standards are placed here for administrative convenience and only apply to those owners and operators of facilities subject to the referencing paragraph. The provisions of paragraph 23.1(4)“a,” general provisions (Subpart A), do not apply to this paragraph except as specified in a referencing paragraph. (Part 63, Subpart QQ)

*ar. Emission standards for individual drain systems.* These provisions apply when another paragraph under this rule references the use of this paragraph for such air emission control. These air emission standards are placed here for administrative convenience and only apply to those owners and operators of facilities subject to the referencing paragraph. The provisions of paragraph 23.1(4)“a,” general provisions (Subpart A), do not apply to this paragraph except as specified in a referencing paragraph. (Part 63, Subpart RR)

*as. Emission standards for closed vent systems, control devices, recovery devices and routing to a fuel gas system or a process.* These provisions apply when another paragraph under this rule references the use of this paragraph for such air emission control. These air emission standards are placed here for administrative convenience and only apply to those owners and operators of facilities subject to the referencing paragraph. The provisions of paragraph 23.1(4)“a,” general provisions, (Subpart A), do not apply to this paragraph except as specified in a referencing paragraph. (Subpart SS)

*at. Emission standards for equipment leaks—control level 1.* These provisions apply to the control of air emissions from equipment leaks for which another paragraph under this rule references the use of this paragraph for such emission control. These air emission standards for equipment leaks are placed here for administrative convenience and only apply to those owners and operators of facilities subject to the referencing paragraph. The provisions of paragraph 23.1(4)“a,” general provisions, (Subpart A), do not apply to this paragraph except as specified in a referencing paragraph. (Subpart TT)

*au. Emission standards for equipment leaks—control level 2 standards.* These provisions apply to the control of air emissions from equipment leaks for which another paragraph under this rule references the use of this paragraph for such air emission control. These air emission standards for equipment leaks are placed here for administrative convenience and only apply to those owners and operators of facilities subject to the referencing paragraph. The provisions of paragraph 23.1(4)“a,” general provisions, (Subpart A), do not apply to this paragraph except as specified in a referencing paragraph. (Subpart UU)

*av. Emission standards for oil-water separators and organic-water separators.* These provisions apply when another paragraph under this rule references the use of this paragraph for such air emission control. These air emission standards are placed here for administrative convenience and only apply to those owners and operators of facilities subject to the referencing paragraph. The provisions of paragraph 23.1(4)“a,” general provisions (Subpart A), do not apply to this paragraph except as specified in a referencing paragraph. (Part 63, Subpart VV)

*aw. Emission standards for storage vessels (tanks)—control level 2.* These provisions apply to the control of air emissions from storage vessels for which another paragraph under this rule references the use of this paragraph for such air emission control. These air emission standards for storage vessels are placed here for administrative convenience and only apply to those owners and operators of facilities subject to the referencing paragraph. The provisions of paragraph 23.1(4)“a,” general provisions, (Subpart A), do not apply to this paragraph except as specified in a referencing paragraph. (Subpart WW)

*ax. Emission standards for ethylene manufacturing process units: heat exchange systems and waste operations.* This standard applies to hazardous air pollutants (HAPs) from heat exchange systems and waste streams at new and existing ethylene production units. (Part 63, Subpart XX)

*ay. Emission standards for hazardous air pollutants: generic maximum achievable control technology (Generic MACT).* These standards apply to new and existing major sources of acetal resins (AR) production, acrylic and modacrylic fiber (AMF) production, hydrogen fluoride (HF) production, polycarbonate (PC) production, carbon black production, cyanide chemicals manufacturing, ethylene production, and Spandex production. Affected processes include, but are not limited to, producers of homopolymers and copolymers of alternating oxymethylene units, acrylic fiber, modacrylic fiber synthetics composed of acrylonitrile (AN) units, hydrogen fluoride and polycarbonate. (Subpart YY)

*az. to bb.* Reserved.

*bc. Emission standards for hazardous air pollutants for steel pickling—HCL process facilities and hydrochloric acid regeneration plants.* Rescinded IAB 3/18/15, effective 4/22/15.

*bd. Emission standards for hazardous air pollutants for mineral wool production.* These standards apply to all new and existing major sources of mineral wool production. Affected processes include, but are not limited to, cupolas and curing ovens. (Subpart DDD)

*be. Emission standards for hazardous air pollutants from hazardous waste combustors.* These standards apply to all hazardous waste combustors: hazardous waste incinerators, hazardous waste burning cement kilns, hazardous waste burning lightweight aggregate kilns, hazardous waste solid fuel boilers, hazardous waste liquid fuel boilers, and hazardous waste hydrochloric acid production furnaces, except as specified in Subpart EEE. Both area sources and major sources are subject to this subpart as of April 19, 1996, and are subject to the requirement to apply for and obtain a Title V permit. (Part 63, Subpart EEE)

*bf.* Reserved.

*bg. Emission standards for hazardous air pollutants for pharmaceutical manufacturing.* These standards apply to producers of finished dosage forms of drugs, for example, tablets, capsules, and solutions, that contain an active ingredient generally, but not necessarily, in association with inactive ingredients. Pharmaceuticals include components whose intended primary use is to furnish pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease, or to affect the structure or any function of the body of humans or other animals. The regulations do not apply to research and development facilities. (Subpart GGG)

*bh. Emission standards for hazardous air pollutants for natural gas transmission and storage.* These standards apply to all new and existing major sources of natural gas transmission and storage. Natural gas transmission and storage facilities are those that transport or store natural gas prior to its entering the pipeline to a local distribution company. Affected sources include, but are not limited to, mains, valves, meters, boosters, regulators, storage vessels, dehydrators, compressors and delivery systems. (Subpart HHH)

*bi. Emission standards for hazardous air pollutants for flexible polyurethane foam production.* These standards apply to producers of slabstock, molded, and rebond flexible polyurethane foam. The regulations do not apply to processes dedicated exclusively to the fabrication (i.e., gluing or otherwise bonding foam pieces together) of flexible polyurethane foam or to research and development. (Subpart III)

*bj. Emission standards for hazardous air pollutants: Group IV polymers and resins.* Applicable to existing and new major sources that emit organic HAP during the manufacture of the following polymers and resins: acrylonitrile butadiene styrene resin (ABS), styrene acrylonitrile resin (SAN), methyl methacrylate acrylonitrile butadiene styrene resin (MABS), methyl methacrylate butadiene styrene resin (MBS), polystyrene resin, poly (ethylene terephthalate) resin (PET), and nitrile resin. MACT is required for major sources. (Subpart JJJ)

*bk.* Reserved.

*bl. Emission standards for hazardous air pollutants for Portland cement manufacturing operations.* These standards apply to all new and existing major and area sources of Portland cement manufacturing unless exempted. Cement kiln dust (CKD) storage facilities, including CKD piles and

landfills, are excluded from this standard. Affected processes include, but are not limited to, all cement kilns and in-line kiln/raw mills, unless they burn hazardous waste. (Subpart LLL)

*bm. Emission standards for hazardous air pollutants for pesticide active ingredient production.* These standards apply to all new and existing major sources of pesticide active ingredient production that manufacture organic pesticide active ingredients (PAI), including herbicides, insecticides and fungicides. Affected processes include, but are not limited to, processing equipment, connected piping and ducts, associated storage vessels, pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves and connectors. Exempted sources include research and development facilities, storage vessels already subject to another 40 CFR Part 63 NESHAP, production of ethylene, storm water from segregated sewers, water from fire-fighting and deluge systems (including testing of such systems) and various spills. (Subpart MMM)

*bn. Emission standards for hazardous air pollutants for wool fiberglass manufacturing.* These standards apply to all new and existing major sources of wool fiberglass manufacturing. Affected processes include, but are not limited to, all glass-melting furnaces, rotary spin (RS) manufacturing lines that produce bonded building insulation, flame attenuation (FA) manufacturing lines producing bonded pipe insulation and new FA manufacturing lines producing bonded heavy-density products. (Subpart NNN)

*bo. Emission standards for hazardous air pollutants for amino/phenolic resins production.* These standards apply to new or existing facilities that own or operate an amino or phenolic resins production unit. (Part 63, Subpart OOO)

*bp. Emission standards for hazardous air pollutants for polyether polyols production.* These standards apply to all new and existing major sources of polyether polyols. Polyether polyols are compounds formed through polymerization of ethylene oxide, propylene oxide or other cyclic ethers with compounds having one or more reactive hydrogens to form polyethers. Affected processes include, but are not limited to, storage vessels, process vents, heat exchange systems, equipment leaks and wastewater operations. (Subpart PPP)

*bq. Emission standards for hazardous air pollutants for primary copper smelting.* Rescinded IAB 3/18/15, effective 4/22/15.

*br. Emission standards for hazardous air pollutants for secondary aluminum production.* (Part 63, Subpart RRR)

*bs.* Reserved.

*bt. Emission standards for hazardous air pollutants for primary lead smelting.* Rescinded IAB 3/18/15, effective 4/22/15.

*bu. Emission standards for hazardous air pollutants for petroleum refineries: catalytic cracking units, catalytic reforming units, and sulfur recovery units.* Rescinded IAB 2/15/17, effective 3/22/17.

*bv. Emission standards for hazardous air pollutants publicly owned treatment works (POTW).* (Part 63, Subpart VVV)

*bw.* Reserved.

*bx. Emission standards for hazardous air pollutants for ferroalloys production: ferromanganese and silicomanganese.* Rescinded IAB 3/14/18, effective 4/18/18.

*by.* and *bz.* Reserved.

*ca. Emission standards for hazardous air pollutants: municipal solid waste landfills.* This standard applies to existing and new municipal solid waste (MSW) landfills. (Part 63, Subpart AAAA)

*cb.* No change.

*cc. Emission standards for hazardous air pollutants for the manufacturing of nutritional yeast.* (Part 63, Subpart CCCC)

*cd. Emission standards for hazardous air pollutants for plywood and composite wood products (formerly plywood and particle board manufacturing).* These standards apply to new and existing major sources with equipment used to manufacture plywood and composite wood products. This equipment includes dryers, refiners, blenders, formers, presses, board coolers, and other process units associated with the manufacturing process. This also includes coating operations, on-site storage and wastewater

treatment. However, only certain process units (defined in the federal rule) are subject to control or work practice requirements. (Part 63, Subpart DDDD)

*ce. Emission standards for hazardous air pollutants for organic liquids distribution (non-gasoline).* These standards apply to new and existing major source organic liquids distribution (non-gasoline) operations, which are carried out at storage terminals, refineries, crude oil pipeline stations, and various manufacturing facilities. (Part 63, Subpart EEEE)

*cf. Emission standards for hazardous air pollutants for miscellaneous organic chemical manufacturing (MON).* These standards establish emission limits and work practice standards for new and existing major sources with miscellaneous organic chemical manufacturing process units, wastewater treatment and conveyance systems, transfer operations, and associated ancillary equipment. (Part 63, Subpart FFFF)

*cg. Emission standards for hazardous air pollutants for solvent extraction for vegetable oil production.* (Part 63, Subpart GGGG)

*ch. Emission standards for hazardous air pollutants for wet-formed fiberglass mat production.* This standard applies to wet-formed fiberglass mat production plants that are major sources of hazardous air pollutants. These plants may be stand-alone facilities or located with asphalt roofing and processing facilities. (Part 63, Subpart HHHH)

*ci. Emission standards for hazardous air pollutants for surface coating of automobiles and light-duty trucks.* These standards apply to new, reconstructed, or existing affected sources, as defined in the standard, that are located at a facility which applies topcoat to new automobile or new light-duty truck bodies or body parts for new automobiles or new light-duty trucks and that is a major source, is located at a major source, or is part of a major source of emissions of hazardous air pollutants. Additional applicability criteria and exemptions from these standards may apply. (Part 63, Subpart IIII)

*cj. Emission standards for hazardous air pollutants: paper and other web coating.* This standard applies to a facility that is engaged in the coating of paper, plastic film, metallic foil, and other web surfaces located at a major source of hazardous air pollutant (HAP) emissions. (Part 63, Subpart JJJJ)

*ck. Emission standards for hazardous air pollutants for surface coating of metal cans.* These standards apply to a metal can surface coating operation that uses at least 5,700 liters (1,500 gallons (gal)) of coatings per year and is a major source, is located at a major source, or is part of a major source of hazardous air pollutant emissions. Coating operations located at an area source are not subject to this rule. Additional applicability criteria and exemptions from these standards may apply. (Part 63, Subpart KKKK)

*cl. Reserved.*

*cm. Emission standards for hazardous air pollutants for surface coating of miscellaneous metal parts and products.* These standards apply to miscellaneous metal parts and products surface coating facilities that are a major source, are located at a major source, or are part of a major source of hazardous air pollutant emissions. A miscellaneous metal parts and products surface coating facility that is located at an area source is not subject to this standard. Certain sources are exempt as described in the standard. (Part 63, Subpart MMMM)

*cn. Emission standards for hazardous air pollutants: surface coating of large appliances.* This standard applies to a facility that applies coatings to large appliance parts or products, and is a major source, is located at a major source, or is part of a major source of emissions of hazardous air pollutants (HAPs). The large appliances source category includes facilities that apply coatings to large appliance parts or products. Large appliances include “white goods” such as ovens, refrigerators, freezers, dishwashers, laundry equipment, trash compactors, water heaters, comfort furnaces, electric heat pumps and most HVAC equipment intended for any application. (Part 63, Subpart NNNN)

*co. Emission standards for hazardous air pollutants for printing, coating, and dyeing of fabrics and other textiles.* These standards apply to new and existing facilities with fabric or other textile coating, printing, slashing, dyeing, or finishing operations, or group of such operations, that are a major source of hazardous air pollutants or are part of a facility that is a major source of hazardous air pollutants. Coating, printing, slashing, dyeing, or finishing operations located at an area source are not subject to

this standard. Several exclusions from this source category are listed in the standard. (Part 63, Subpart OOOO)

*cp. Emission standards for surface coating of plastic parts and products.* These standards apply to new and existing major sources with equipment used to coat plastic parts and products. The surface coating application process includes drying/curing operations, mixing or thinning operations, and cleaning operations. Coating materials include, but are not limited to, paints, stains, sealers, topcoats, basecoats, primers, inks, and adhesives. (Part 63, Subpart PPPP)

*cq. Emission standards for hazardous air pollutants for surface coating of wood building products.* These standards establish emission limitations, operating limits, and work practice requirements for wood building products surface coating facilities that use at least 1,100 gallons of coatings per year and are a major source, are located at a major source, or are part of a major source of hazardous air pollutant emissions. Wood building products surface coating facilities located at an area source are not subject to this standard. Several exclusions from this source category are listed in the standard. (Part 63, Subpart QQQQ)

*cr. Emission standards for hazardous air pollutants: surface coating of metal furniture.* This standard applies to a metal furniture surface coating facility that is a major source, is located at a major source, or is part of a major source of HAP emissions. A metal furniture surface coating facility is one that applies coatings to metal furniture or components of metal furniture. Metal furniture means furniture or components that are constructed either entirely or partially from metal. (Part 63, Subpart RRRR)

*cs. Emission standards for hazardous air pollutants: surface coating of metal coil.* This standard requires that all new and existing “major” air toxics sources in the metal coil coating industry meet specific emission limits. Metal coil coating is the process of applying a coating (usually protective or decorative) to one or both sides of a continuous strip of sheet metal. Industries using coated metal include: transportation, building products, appliances, can manufacturing, and packaging. Other products using coated metal coil include measuring tapes, ventilation systems for walls and roofs, lighting fixtures, office filing cabinets, cookware, and sign stock material. (Part 63, Subpart SSSS)

*ct. Emission standards for hazardous air pollutants for leather finishing operations.* This standard applies to a new or existing leather finishing operation that is a major source of hazardous air pollutants (HAPs) emissions or that is located at, or is part of, a major source of HAP emissions. In general, a leather finishing operation is a single process or group of processes used to adjust and improve the physical and aesthetic characteristics of the leather surface through multistage application of a coating comprised of dyes, pigments, film-forming materials, and performance modifiers dissolved or suspended in liquid carriers. (Part 63, Subpart TTTT)

*cu. Emission standards for hazardous air pollutants for cellulose products manufacturing.* This standard applies to a new or existing cellulose products manufacturing operation that is located at a major source of HAP emissions. Cellulose products manufacturing includes both the miscellaneous viscose processes source category and the cellulose ethers production source category. (Part 63, Subpart UUUU)

*cv. Emission standards for hazardous air pollutants for boat manufacturing.* (Part 63, Subpart VVVV)

*cw. Emission standards for hazardous air pollutants: reinforced plastic composites production.* This standard applies to a new or an existing reinforced plastic composites production facility that is located at a major source of HAP emissions. (Part 63, Subpart WWWW)

*cx. Emission standards for hazardous air pollutants: rubber tire manufacturing.* This standard applies to a rubber tire manufacturing facility that is located at, or is a part of, a major source of hazardous air pollutant (HAP) emissions. Rubber tire manufacturing includes the production of rubber tires and/or the production of components integral to rubber tires, the production of tire cord, and the application of puncture sealant. (Part 63, Subpart XXXX)

*cy. Emission standards for hazardous air pollutants for stationary combustion turbines.* These standards apply to stationary combustion turbines which are located at a major source of hazardous air pollutant emissions. Several subcategories have been defined within the stationary combustion turbine

source category. Each subcategory has distinct requirements as specified in the standards. These standards do not apply to stationary combustion turbines located at an area source of hazardous air pollutant emissions. (Part 63, Subpart YYYY)

*cz. Emission standards for stationary reciprocating internal combustion engines.* These standards apply to new and existing major sources and to new and existing area sources with stationary reciprocating internal combustion engines (RICE). For purposes of these standards, stationary RICE means any reciprocating internal combustion engine which uses reciprocating motion to convert heat energy into mechanical work and which is not mobile. (Part 63, Subpart ZZZZ)

*da. Emission standards for hazardous air pollutants for lime manufacturing plants.* These standards regulate hazardous air pollutant emissions from new and existing lime manufacturing plants that are major sources, are colocated with major sources, or are part of major sources. Additional applicability criteria and exemptions from these standards may apply. (Part 63, Subpart AAAAA)

*db. Emission standards for hazardous air pollutants: semiconductor manufacturing.* These standards apply to new and existing major sources with semiconductor manufacturing. (Part 63, Subpart BBBB)

*dc. Emission standards for hazardous air pollutants for coke ovens: pushing, quenching, and battery stacks.* This standard applies to a new or existing coke oven battery at a plant that is a major source of HAP emissions. (Part 63, Subpart CCCCC)

*dd. Emission standards for industrial, commercial and institutional boilers and process heaters.* These standards apply to new and existing major sources with industrial, commercial or institutional boilers and process heaters. (Part 63, Subpart DDDDD)\*

\*As of April 15, 2009, the adoption by reference of Part 63, Subpart DDDDD, is rescinded. On July 30, 2007, the United States Court of Appeals for the District of Columbia Circuit issued its mandate vacating 40 CFR Part 63, Subpart DDDDD, in its entirety, and requiring EPA to repromulgate final standards for industrial, commercial or institutional boilers and process heaters at new and existing major sources.

*de. Emission standards for hazardous air pollutants for iron and steel foundaries.* These standards apply to each new or existing iron and steel foundary that is a major source of hazardous air pollutant emissions. A new affected source is an iron and steel foundary for which construction or reconstruction began after December 23, 2002. An existing affected source is an iron and steel foundary for which construction or reconstruction began on or before December 23, 2002. (Part 63, Subpart EEEEE)

*df. Emission standards for hazardous air pollutants for integrated iron and steel manufacturing.* These standards apply to affected sources at an integrated iron and steel manufacturing facility that is, or is part of, a major source of hazardous air pollutant emissions. The affected sources are each new or existing sinter plant, blast furnace, and basic oxygen process furnace (BOPF) shop at an integrated iron and steel manufacturing facility that is, or is part of, a major source of hazardous air pollutant emissions. (Part 63, Subpart FFFFF)

*dg. Emission standards for hazardous air pollutants: site remediation.* These standards apply to new and existing major sources with certain types of site remediation activity on the source's property or on a contiguous property. These standards control hazardous air pollutant (HAP) emissions at major sources where remediation technologies and practices are used at the site to clean up contaminated environmental media (e.g., soil, groundwater, or surface water) or certain stored or disposed materials that pose a reasonable potential threat to contaminate environmental media.

Some site remediations already regulated by rules established under the Comprehensive Environmental Response and Compensation Liability Act (CERCLA) or the Resource Conservation and Recovery Act (RCRA) are not subject to these standards, as specified in Subpart GGGGG. There are also exemptions for short-term remediation and for certain leaking underground storage tanks, as specified in Subpart GGGGG. (Part 63, Subpart GGGGG)

*dh. Emission standards for hazardous air pollutants for miscellaneous coating manufacturing.* These standards establish emission limits and work practice requirements for new and existing miscellaneous coating manufacturing operations, including, but not limited to, process vessels,

storage tanks, wastewater, transfer operations, equipment leaks, and heat exchange systems. (Part 63, Subpart HHHHH)

*di. Emission standards for mercury emissions from mercury cell chlor-alkali plants.* These standards apply to the chlorine production source category. This source category contains the mercury cell chlor-alkali plant subcategory and includes all plants engaged in the manufacture of chlorine and caustic in mercury cells. These standards define two affected sources: mercury cell chlor-alkali production facilities and mercury recovery facilities. (Part 63, Subpart IIII)

*dj. Emission standards for hazardous air pollutants for brick and structural clay products manufacturing.* Rescinded IAB 2/15/17, effective 3/22/17.

*dk. Emission standards for hazardous air pollutants for clay ceramics manufacturing.* Rescinded IAB 2/15/17, effective 3/22/17.

*dl. Emission standards for hazardous air pollutants: asphalt processing and asphalt roofing manufacturing.* This standard applies to an existing or new asphalt processing or asphalt roofing manufacturing facility that is a major source of hazardous air pollutants (HAPs) emissions, or is located at, or is part of a major source of HAP emissions. (Part 63, Subpart LLLLL)

*dm. Emission standards for hazardous air pollutants: flexible polyurethane foam fabrication operations.* This standard applies to a new or existing source at a flexible polyurethane foam fabrication facility. The standard defines two affected sources (units or collections of units to which a given standard or limit applies) corresponding to the two subcategories, loop slitter adhesive use or flame lamination. (Part 63, Subpart MMMMM)

*dn. Emission standards for hazardous air pollutants: hydrochloric acid production.* This standard applies to a new or existing HCl production facility that produces a liquid HCl product at a concentration of 30 weight percent or greater during its normal operations and is located at, or is part of, a major source of HAP. This does not include HCl production facilities that only occasionally produce liquid HCl product at a concentration of 30 weight percent or greater. (Part 63, Subpart NNNNN)

*do.* Reserved.

*dp. Emission standards for hazardous air pollutants: engine test cells/stands.* This standard applies to an engine test cell/stand that is located at a major source of HAP emissions. An engine test cell/stand is any apparatus used for testing uninstalled stationary or uninstalled mobile engines. (Part 63, Subpart PTTTT)

*dq. Emission standards for hazardous air pollutants for friction materials manufacturing facilities.* This standard applies to a new or existing friction materials manufacturing facility that is (or is part of) a major source of hazardous air pollutants (HAPs) emissions. Friction materials manufacturing facilities produce friction materials for use in brake and clutch assemblies. (Part 63, Subpart QQQQQ)

*dr. Emission standards for hazardous air pollutants: taconite iron ore processing.* Rescinded IAB 3/18/15, effective 4/22/15.

*ds. Emission standards for hazardous air pollutants for refractory products manufacturing.* This standard applies to a new or existing refractory products manufacturing facility that is, is located at, or is part of, a major source of hazardous air pollutant (HAP) emissions. (Part 63, Subpart SSSSS)

*dt. Emission standards for hazardous air pollutants: primary magnesium refining.* Rescinded IAB 3/18/15, effective 4/22/15.

*du.* Reserved.

*dv.* Reserved.

*dw. Emission standards for hazardous air pollutants for hospital ethylene oxide sterilizer area sources.* This standard applies to a hospital that is an area source for hazardous air pollutant emissions and that owns or operates a new or existing ethylene oxide sterilization facility. (Part 63, Subpart WTTTT)

*dx.* Reserved.

*dy. Emission standards for hazardous air pollutants for electric arc furnace steelmaking area sources.* This standard applies to new or existing electric arc furnace (EAF) steelmaking facilities that are area sources for hazardous air pollutant emissions. (Part 63, Subpart YYYYY)

*dz. Emission standards for hazardous air pollutants for iron and steel foundry area sources.* This standard applies to new or existing iron and steel foundries that are area sources for hazardous air pollutant emissions. (Part 63, Subpart ZZZZZ)

*ea.* Reserved.

*eb. Emission standards for hazardous air pollutants for gasoline distribution area sources: bulk terminals, bulk plants and pipeline facilities.* This standard applies to new and existing bulk gasoline terminals, pipeline breakout stations, pipeline pumping stations and bulk gasoline plants that are area sources for hazardous air pollutant emissions. (Part 63, Subpart BBBB)

*ec. Emission standards for hazardous air pollutants for area sources: gasoline dispensing facilities.* This standard applies to new and existing gasoline dispensing facilities (GDF) that are area sources for hazardous air pollutant emissions. The affected equipment includes each gasoline cargo tank during delivery of product to GDF and also includes each storage tank. The equipment used for refueling of motor vehicles is not covered under these standards. (Part 63, Subpart CCCCC)

*ed.* Reserved.

*ee.* Reserved.

*ef.* Reserved.

*eg.* Reserved.

*eh. Emission standards for hazardous air pollutants for area sources: paint stripping and miscellaneous surface coating operations.* This standard applies to new or existing area sources of hazardous air pollutant emissions that engage in any of the following activities: (1) paint stripping operations that use methylene chloride (MeCl)-containing paint stripping formulations; (2) spray application of coatings to motor vehicles or mobile equipment; or (3) spray application of coatings to plastic or metal substrate with coatings that contain compounds of chromium (Cr), lead (Pb), manganese (Mn), nickel (Ni) or cadmium (Cd). (Part 63, Subpart HHHHH)

*ei.* Reserved.

*ej. Emission standards for hazardous air pollutants for area sources: industrial, commercial, and institutional boilers.* This standard applies to new and existing industrial, commercial and institutional boilers that are area sources for hazardous air pollutant emissions. (Part 63, Subpart JJJJJ)

*ek.* Reserved.

*el. Emission standards for hazardous air pollutants for acrylic and modacrylic fibers production area sources.* This standard applies to acrylic and modacrylic fibers production plants that are area sources for hazardous air pollutant emissions. (Part 63, Subpart LLLLL)

*em. Emission standards for hazardous air pollutants for carbon black production area sources.* This standard applies to carbon black production plants that are area sources for hazardous air pollutants. (Part 63, Subpart MMMMM)

*en. Emission standards for hazardous air pollutants for chemical manufacturing of chromium compounds area sources.* This standard applies to plants that produce chromium compounds and are area sources for hazardous air pollutants. (Part 63, Subpart NNNNN)

*eo. Emission standards for hazardous air pollutants for flexible polyurethane foam production and fabrication area sources.* This standard applies to plants that produce flexible polyurethane foam or rebond foam, and plants that fabricate polyurethane foam, that are area sources for hazardous air pollutants. This standard applies to both new and existing area sources. An affected source is existing if construction or reconstruction commenced on or before April 4, 2007. An affected source is new if construction or reconstruction commenced after April 4, 2007. (Part 63, Subpart OOOOO)

*ep. Emission standards for hazardous air pollutants for lead acid battery manufacturing area sources.* This standard applies to lead acid battery manufacturing plants that are area sources for hazardous air pollutants. Affected sources include all grid casting facilities, paste mixing facilities, three-process operation facilities, lead oxide manufacturing facilities, lead reclamation facilities, and any other lead-emitting operation that is associated with a lead acid battery manufacturing plant. This standard applies to both new and existing area sources. An affected source is existing if construction or reconstruction commenced on or before April 4, 2007. An affected source is new if construction or reconstruction commenced after April 4, 2007. (Part 63, Subpart PTTTT)

*eq. Emission standards for hazardous air pollutants for wood preserving area sources.* This standard applies to wood preserving operations that are area sources for hazardous air pollutants. This standard applies to both new and existing area sources. An affected source is existing if construction or reconstruction commenced on or before April 4, 2007. An affected source is new if construction or reconstruction commenced after April 4, 2007. (Part 63, Subpart QQQQQQ)

*er. Emission standards for hazardous air pollutants for clay ceramics manufacturing area sources.* This standard applies to any new or existing clay ceramics manufacturing facility with an atomized glaze spray booth or kiln that fires glazed ceramic ware, that processes more than 50 tons per year of wet clay, and that is an area source for hazardous air pollutant emissions. (Part 63, Subpart RRRRRR)

*es. Emission standards for hazardous air pollutants for glass manufacturing area sources.* This standard applies to any new or existing glass manufacturing facility that is an area source for hazardous air pollutant emissions and meets the following criteria: (1) manufactures flat glass, glass containers or pressed and blown glass by melting a mixture of raw materials to produce molten glass and form the molten glass into sheets, containers or other shapes; and (2) uses one or more continuous furnaces to produce glass at a rate of at least 50 tons per year and that contains compounds of one or more “glass manufacturing metal HAP,” as defined in 40 CFR 63.11459, as raw materials in a glass manufacturing batch formulation. (Part 63, Subpart SSSSSS)

*et. Emissions standards for hazardous air pollutants for secondary nonferrous metals processing area sources.* This standard applies to any new or existing secondary nonferrous metals processing facility that is an area source for hazardous air pollutant emissions. This standard applies to all crushing and screening operations at a secondary zinc processing facility and to all furnace melting operations located at any secondary nonferrous metals processing facility. (Part 63, Subpart TTTTTT)

*eu.* Reserved.

*ev. Emission standards for hazardous air pollutants for area sources: chemical manufacturing.* This standard applies to chemical manufacturing at new and existing facilities that are area sources for hazardous air pollutant emissions. (Part 63, Subpart VVVVVV)

*ew. Emission standards for hazardous air pollutants for area sources: plating and polishing.* This standard applies to plating and polishing activities at new and existing facilities that are area sources for hazardous air pollutant emissions. (Part 63, Subpart WWWWWW)

*ex. Emission standards for hazardous air pollutants for area sources: metal fabrication and finishing.* This standard applies to new and existing facilities in which the primary activity or activities at the facility are metal fabrication and finishing and that are area sources for hazardous air pollutant emissions. (Part 63, Subpart XXXXXX)

*ey.* Reserved.

*ez. Emission standards for hazardous air pollutants for area sources: aluminum, copper, and other nonferrous foundries.* This standard applies to aluminum, copper, and other nonferrous foundries at new and existing facilities that are area sources for hazardous air pollutant emissions. (Part 63, Subpart ZZZZZZ)

*fa. and fb.* Reserved.

*fc. Emission standards for hazardous air pollutants for area sources: paint and allied products manufacturing.* This standard applies to paint and allied products manufacturing at new and existing facilities that are area sources for hazardous air pollutant emissions. (Part 63, Subpart CCCCCC)

*fd. Emission standards for hazardous air pollutants for area sources: prepared feeds manufacturing.* This standard applies to prepared feeds manufacturing that produces animal feed products (not including feed for cats or dogs) and uses chromium or manganese compounds at new and existing facilities that are area sources for hazardous air pollutant emissions. (Part 63, Subpart DDDDDDD)

**23.1(5) Emission guidelines.** The emission guidelines and compliance times for existing sources, as defined in 40 Code of Federal Regulations Part 60 as amended through March 21, 2011, shall apply to the following affected facilities. The corresponding 40 CFR Part 60 subpart designation is in parentheses. A different CFR reference and date for adoption by reference may be included with the subpart designation

indicated in the paragraphs of this subrule. The control of the designated pollutants will be in accordance with federal standards established in Sections 111 and 129 of the Act and 40 CFR Part 60, Subpart B (Adoption and Submittal of State Plans for Designated Facilities), and the applicable subpart(s) for the existing source. Reference test methods (Appendix A), performance specifications (Appendix B), determination of emission rate change (Appendix C), quality assurance procedures (Appendix F) and the general provisions (Subpart A) of 40 CFR Part 60 also apply to the affected facilities.

*a. Emission guidelines for municipal solid waste landfills (Subpart Cc).* Emission guidelines and compliance times for the control of certain designated pollutants from designated municipal solid waste landfills shall be in accordance with federal standards established in Subparts Cc (Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills) and WWW (Standards of Performance for Municipal Solid Waste Landfills) of 40 CFR Part 60 as amended through April 10, 2000.

(1) Definitions. For the purpose of 23.1(5)“a,” the definitions have the same meaning given to them in the Act and 40 CFR Part 60, Subparts A (General Provisions), B, and WWW, if not defined in this subparagraph.

“Municipal solid waste landfill” or “MSW landfill” means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. An MSW landfill may also receive other types of RCRA Subtitle D wastes such as commercial solid waste, nonhazardous sludge, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be publicly or privately owned. An MSW landfill may be a new MSW landfill, an existing MSW landfill or a lateral expansion.

(2) Designated facilities.

1. The designated facility to which the emission guidelines apply is each existing MSW landfill for which construction, reconstruction or modification was commenced before May 30, 1991.

2. Physical or operational changes made to an existing MSW landfill solely to comply with an emission guideline are not considered a modification or reconstruction and would not subject an existing MSW landfill to the requirements of 40 CFR Part 60, Subpart WWW (40 CFR 60.750).

3. For MSW landfills subject to rule 567—22.101(455B) only because of applicability to subparagraph 23.1(5)“a”(2), the following apply for obtaining and maintaining a Title V operating permit under 567—22.104(455B):

The owner or operator of an MSW landfill with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters is not required to obtain an operating permit for the landfill.

The owner or operator of an MSW landfill with a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters on or before June 22, 1998, becomes subject to the requirements of 567—subrule 22.105(1) on September 20, 1998. This requires the landfill to submit a Title V permit application to the Air Quality Bureau, Department of Natural Resources, no later than September 20, 1999.

The owner or operator of a closed MSW landfill does not have to maintain an operating permit for the landfill if either of the following conditions are met: the landfill was never subject to the requirement for a control system under subparagraph 23.1(5)“a”(3); or the owner or operator meets the conditions for control system removal specified in 40 CFR § 60.752(b)(2)(v).

(3) Emission guidelines for municipal solid waste landfill emissions.

1. MSW landfill emissions at each MSW landfill meeting the conditions below shall be controlled. A design capacity report must be submitted to the director by November 18, 1997.

The landfill has accepted waste at any time since November 8, 1987, or has additional design capacity available for future waste deposition.

The landfill has a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters. The landfill may calculate design capacity in either megagrams or cubic meters for comparison with the exemption values. Any density conversions shall be documented and submitted with the report. All calculations used to determine the maximum design capacity must be included in the design capacity report.

The landfill has a nonmethane organic compound (NMOC) emission rate of 50 megagrams per year or more. If the MSW landfill's design capacity exceeds the established thresholds in 23.1(5) "a"(3)"1," the NMOC emission rate calculations must be provided with the design capacity report.

2. The planning and installation of a collection and control system shall meet the conditions provided in 40 CFR 60.752(b)(2) at each MSW landfill meeting the conditions in 23.1(5) "a"(3)"1."

3. MSW landfill emissions collected through the use of control devices must meet the following requirements, except as provided in 40 CFR 60.24 after approval by the Director and U.S. Environmental Protection Agency.

An open flare designed and operated in accordance with the parameters established in 40 CFR 60.18; a control system designed and operated to reduce NMOC by 98 weight percent; or an enclosed combustor designed and operated to reduce the outlet NMOC concentration to 20 parts per million as hexane by volume, dry basis at 3 percent oxygen, or less.

(4) Test methods and procedures. The following must be used:

1. The calculation of the landfill NMOC emission rate listed in 40 CFR 60.754, as applicable, to determine whether the landfill meets the condition in 23.1(5) "a"(3)"3";

2. The operational standards in 40 CFR 60.753;

3. The compliance provisions in 40 CFR 60.755; and

4. The monitoring provisions in 40 CFR 60.756.

(5) Reporting and record-keeping requirements. The record-keeping and reporting provisions listed in 40 CFR 60.757 and 60.758, as applicable, except as provided under 40 CFR 60.24 after approval by the Director and U.S. Environmental Protection Agency, shall be used.

(6) Compliance times.

1. Except as provided for under 23.1(5) "a"(6)"2," planning, awarding of contracts, and installation of MSW landfill air emission collection and control equipment capable of meeting the emission guidelines established under 23.1(5) "a"(3) shall be accomplished within 30 months after the date the initial NMOC emission rate report shows NMOC emissions greater than or equal to 50 megagrams per year.

2. For each existing MSW landfill meeting the conditions in 23.1(5) "a"(3)"1" whose NMOC emission rate is less than 50 megagrams per year on August 20, 1997, installation of collection and control systems capable of meeting emission guidelines in 23.1(5) "a"(3) shall be accomplished within 30 months of the date when the condition in 23.1(5) "a"(3)"1" is met (i.e., the date of the first annual nonmethane organic compounds emission rate which equals or exceeds 50 megagrams per year).

*b. Emission guidelines for hospital/medical/infectious waste incinerators (Subpart Ce).* This paragraph contains emission guidelines and compliance times for the control of certain designated pollutants from hospital/medical/infectious waste incinerator(s) (HMIWI) in accordance with Subparts Ce and Ec (Standards of Performance for Hospital/Medical/Infectious Waste Incinerators) of 40 CFR Part 60.\*

\*As of November 24, 2010, the emission guidelines for hospital/medical/infectious waste incinerators (Subpart Ce) are rescinded.

*c. Emission guidelines and compliance schedules for existing commercial and industrial solid waste incineration units that commenced construction on or before November 30, 1999.* Emission guidelines and compliance schedules for the control of designated pollutants from affected commercial and industrial solid waste incinerators that commenced construction on or before November 30, 1999, shall be in accordance with requirements established in Subpart III of 40 CFR Part 62 and 40 CFR §62.3916 as adopted through August 24, 2004.

*d. Emission guidelines for mercury for coal-fired electric utility steam generating units.* Rescinded IAB 10/7/09, effective 11/11/09.

*e. Emission guidelines and compliance times for existing sewage sludge incineration units (40 CFR Part 62, Subpart LLL).* Emission guidelines and compliance times for control of designated pollutants from affected sewage sludge incineration (SSI) units that commenced construction or reconstruction on or before October 14, 2010, shall be in accordance with federal standards established in Subpart LLL of 40 CFR Part 62, as amended through April 29, 2016.

**23.1(6) Calculation of emission limitations based upon stack height.** This rule sets limits for the maximum stack height credit to be used in ambient air quality modeling for the purpose of setting an emission limitation and calculating the air quality impact of a source. The rule does not limit the actual physical stack height for any source.

For the purpose of this subrule, definitions of “stack,” “a stack in existence,” “dispersion technique,” “nearby” and “excessive concentration” as set forth in 40 CFR §§ 51.100(ff) through (hh), (jj) and (kk) as amended through June 14, 1996, are adopted by reference.

*a.* “Good engineering practice (GEP) stack height” means the greater of:

- (1) Sixty-five meters, measured from the ground level elevation at the base of the stack; or
- (2) For stacks in existence on January 12, 1979, and for which the owner and operator had obtained all applicable permits or approvals required under 567—Chapter 22 and 40 CFR § 52.21 as amended through June 13, 2007,

$$H_g = 2.5H$$

provided the owner or operator produces evidence that this equation was actually relied on in establishing an emission limitation;

For all other stacks,

$$H_g = H + 1.5L$$

where:

$H_g$  = good engineering practice stack height, measured from the ground level elevation at the base of the stack,

$H$  = height of nearby structure(s) measured from the ground level elevation at the base of the stack,

$L$  = lesser dimension, height or projected width, of nearby structure(s), provided that the department may require the use of a field study or fluid model to verify GEP stack height for the source; or

(3) The height demonstrated by a fluid model or a field study approved by the department, which ensures that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features. Public notification of the availability of such study and opportunity for public hearing are required prior to approval by the department.

*b.* The degree of emission limitation required for control of any air contaminant under this chapter shall not be affected in any manner by:

- (1) The consideration of that portion of a stack which exceeds GEP stack height; or
- (2) Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or
- (3) Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combined exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase gas plume rise.

This rule is intended to implement Iowa Code section 455B.133.

[ARC 7565B, IAB 2/11/09, effective 3/18/09; ARC 7623B, IAB 3/11/09, effective 4/15/09; ARC 8216B, IAB 10/7/09, effective 11/11/09; ARC 8215B, IAB 10/7/09, effective 11/11/09; ARC 9154B, IAB 10/20/10, effective 11/24/10 (See Delay note at end of chapter) (See Rescission note at end of chapter); ARC 0329C, IAB 9/19/12, effective 10/24/12; ARC 1014C, IAB 9/18/13, effective 10/23/13; ARC 1561C, IAB 8/6/14, effective 9/10/14; ARC 1913C, IAB 3/18/15, effective 4/22/15; ARC 2352C, IAB 1/6/16, effective 12/16/15; ARC 2949C, IAB 2/15/17, effective 3/22/17; ARC 3679C, IAB 3/14/18, effective 4/18/18; ARC 4335C, IAB 3/13/19, effective 4/17/19]

### 567—23.2(455B) Open burning.

**23.2(1) Prohibition.** No person shall allow, cause or permit open burning of combustible materials, except as provided in 23.2(2) and 23.2(3).

**23.2(2) Variances from rules.** Any person wishing to conduct open burning of materials not exempted in 23.2(3) may make application for a variance as specified in 567—subrule 21.2(1). In addition to requiring the information specified under 567—subrule 21.2(1), the director may require any person applying for a variance from the open burning rules to submit adequate documentation to allow the director to assess whether granting the variance will hinder attainment or maintenance of a National Ambient Air Quality Standard (NAAQS).

**23.2(3) Exemptions.** The open burning exemptions specified in this subrule shall not be construed as exemptions from any other applicable environmental regulations. In particular, the exemptions contained in this subrule do not absolve any person from compliance with the rules for solid waste disposal, including ash disposal, and solid waste permitting contained in 567—Chapters 100 through 130 or the rules for storm water runoff and storm water permitting contained in 567—Chapters 60 and 64. The following shall be permitted unless prohibited by local ordinances or regulations.

*a. Disaster rubbish.* The open burning of rubbish, including landscape waste, for the duration of the community disaster period in cases where an officially declared emergency condition exists. Burning of any structures or demolished structures shall be conducted in accordance with 40 CFR Section 61.145 as amended through January 16, 1991, which is the “Standard for Demolition and Renovation” of the asbestos National Emission Standard for Hazardous Air Pollutants.

*b. Trees and tree trimmings.* The open burning of trees and tree trimmings not originated on the premises provided that the burning site is operated by a local governmental entity, the burning site is fenced and access is controlled, burning is conducted on a regularly scheduled basis and is supervised at all times, burning is conducted only when weather conditions are favorable with respect to surrounding property, and the burning site is limited to areas at least one-quarter mile from any inhabited building unless a written waiver in the form of an affidavit is submitted by the owner of the building to the department and to the local governmental entity prior to the first instance of open burning at the site which occurs after November 13, 1996. The written waiver shall become effective only upon recording in the office of the recorder of deeds of the county in which the inhabited building is located. However, when the open burning of trees and tree trimmings causes air pollution as defined in Iowa Code section 455B.131(3), the department may take appropriate action to secure relocation of the burning operation. Rubber tires shall not be used to ignite trees and tree trimmings.

This exemption shall not apply within the area classified as the PM10 (inhalable) particulate Group II area of Mason City. This Group II area is described as follows: the area in Cerro Gordo County, Iowa, in Lincoln Township including Sections 13, 24 and 25; in Lime Creek Township including Sections 18, 19, 20, 21, 27, 28, 29, 30, 31, 32, 33, 34 and 35; in Mason Township the W ½ of Section 1, Sections 2, 3, 4, 5, 8, 9, the N ½ of Section 11, the NW ¼ of Section 12, the N ½ of Section 16, the N ½ of Section 17 and the portions of Sections 10 and 15 north and west of the line from U.S. Highway 18 south on Kentucky Avenue to 9th Street SE; thence west on 9th Street SE to the Minneapolis and St. Louis railroad tracks; thence south on Minneapolis and St. Louis railroad tracks to 19th Street SE; thence west on 19th Street SE to the section line between Sections 15 and 16.

*c. Flare stacks.* The open burning or flaring of waste gases, providing such open burning or flaring is conducted in compliance with 23.3(2) “d” and 23.3(3) “e.”

*d. Landscape waste.* The disposal by open burning of landscape waste originating on the premises. However, the burning of landscape waste produced in clearing, grubbing and construction operations shall be limited to areas located at least one-fourth mile from any building inhabited by other than the landowner or tenant conducting the open burning. Rubber tires shall not be used to ignite landscape waste.

*e. Recreational fires.* Open fires for cooking, heating, recreation and ceremonies, provided they comply with 23.3(2) “d.” Burning rubber tires is prohibited from this activity.

*f. Residential waste.* Backyard burning of residential waste at dwellings of four-family units or less. The adoption of more restrictive ordinances or regulations of a governing body of the political subdivision, relating to control of backyard burning, shall not be precluded by these rules.

*g. Training fires.* For purposes of subrule 23.2(3), a “training fire” is a fire set for the purposes of conducting bona fide training of public or industrial employees in firefighting methods. For purposes of this paragraph, “bona fide training” means training that is conducted according to the National Fire Protection Association 1403 Standard of Live Fire Training Evolutions (2002 Edition) or a comparable training fire standard. A training fire may be conducted, provided that all of the following conditions are met:

- (1) A training fire on a building is conducted with the building structurally intact.
- (2) The training fire does not include the controlled burn of a demolished building.

(3) If the training fire is to be conducted on a building, written notification is provided to the department on DNR Form 542-8010, Notification of an Iowa Training Fire-Demolition or a Controlled Burn of a Demolished Building, and is postmarked or delivered to the director at least ten working days before such action commences.

(4) Notification shall be made in accordance with 40 CFR Section 61.145, "Standard for Demolition and Renovation" of the asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP), as amended through January 16, 1991.

(5) All asbestos-containing materials shall be removed prior to the training fire.

(6) Asphalt roofing may be burned in the training fire only if notification to the director contains testing results indicating that none of the layers of asphalt roofing contain asbestos. During each calendar year, each fire department may conduct no more than two training fires on buildings where asphalt roofing has not been removed, provided that for each of those training fires the asphalt roofing material present has been tested to ensure that it does not contain asbestos. Each fire department's limit on the burning of asphalt roofing shall include both training fires and the controlled burning of a demolished building, as specified in 23.2(3)"j."

(7) Rubber tires shall not be burned during a training fire.

*h. Paper or plastic pesticide containers and seed corn bags.* The disposal by open burning of paper or plastic pesticide containers (except those formerly containing organic forms of beryllium, selenium, mercury, lead, cadmium or arsenic) and seed corn bags resulting from farming activities occurring on the premises. Such open burning shall be limited to areas located at least one-fourth mile from any building inhabited by other than the landowner or tenant conducting the open burning, livestock area, wildlife area, or water source. The amount of paper or plastic pesticide containers and seed corn bags that can be disposed of by open burning shall not exceed one day's accumulation or 50 pounds, whichever is less. However, when the burning of paper or plastic pesticide containers or seed corn bags causes a nuisance, the director may take action to secure relocation of the burning operation. Since the concentration levels of pesticide combustion products near the fire may be hazardous, the person conducting the open burning should take precautions to avoid inhalation of the pesticide combustion products.

*i. Agricultural structures.* The open burning of agricultural structures, provided that the open burning occurs on the premises and, for agricultural structures located within a city or town, at least one-fourth mile from any building inhabited by a person other than the landowner, a tenant, or an employee of the landowner or tenant conducting the open burning unless a written waiver in the form of an affidavit is submitted by the owner of the building to the department prior to the open burning; all chemicals and asphalt roofing are removed; burning is conducted only when weather conditions are favorable with respect to surrounding property; and permission from the local fire chief is secured in advance of the burning. Rubber tires shall not be used to ignite agricultural structures. The asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP), as amended through January 16, 1991, requires the burning of agricultural structures to be conducted in accordance with 40 CFR Section 61.145, "Standard for Demolition and Renovation."

For the purposes of this subrule, "agricultural structures" means barns, machine sheds, storage cribs, animal confinement buildings, and homes located on the premises and used in conjunction with crop production, livestock or poultry raising and feeding operations. "Agricultural structures," for asbestos NESHAP purposes, includes all of the above, with the exception of a single residential structure on the premises having four or fewer dwelling units, which has been used only for residential purposes.

*j. Controlled burning of a demolished building.* A city, as "city" is defined in Iowa Code section 362.2(4), with approval of its council, as "council" is defined in Iowa Code section 362.2(8), may conduct a controlled burn of a demolished building. A city is the only party that may conduct such a burn and is responsible for ensuring that all of the following conditions are met:

(1) *Prohibition.* The controlled burning of a demolished building is prohibited within the city limits of Cedar Rapids, Marion, Hiawatha, Council Bluffs, Carter Lake, Des Moines, West Des Moines, Clive, Windsor Heights, Urbandale, Pleasant Hill, Buffalo, Davenport, Mason City or any other area where area-specific state implementation plans require the control of particulate matter.

(2) *Notification requirements.* For each building proposed to be burned, the city fire department or a city official, on behalf of the city, shall submit to the department a completed notification postmarked at least 10 working days prior to commencing demolition and at least 30 days before the proposed controlled burn commences. Documentation of city council approval shall be submitted with the notification. Information required to be provided shall include: the exact location of the burn site; the approximate distance to the nearest neighboring residence or business; the method used by the city to notify nearby residents of the proposed burn; an explanation of why alternative methods of demolition debris management are not being used; and information required by 40 CFR Section 61.145, "Standard for Demolition and Renovation" of the asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP), as amended through January 16, 1991. Notification shall be provided on DNR Form 542-8010, Notification of an Iowa Training Fire-Demolition or a Controlled Burn of a Demolished Building. For burns conducted outside the city limits, the city shall send to the chairperson of the applicable county board a copy of the completed DNR notification form 542-8010 and documentation of city council approval. Notification to the county board shall be postmarked, faxed or sent by electronic mail at least 30 days before the proposed controlled burn commences.

(3) *Asbestos removal requirements.* All asbestos-containing materials shall be removed before the building to be burned is demolished. The department may require proof that any applicable inspection, notification, removal and demolition occurred, or will occur, in accordance with 40 CFR Section 61.145, "Standard for Demolition and Renovation" of the asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP), as amended through January 16, 1991.

(4) *Requirements for asphalt roofing.* During each calendar year, each city shall conduct no more than two controlled burns of a demolished building in which asphalt roofing has not been removed, provided that for each controlled burn of a demolished building the asphalt roofing material present has been tested to ensure that it does not contain asbestos. Each city's limit on the burning of asphalt roofing shall include both the controlled burning of a demolished building and training fires, as specified in paragraph 23.2(3)"g."

(5) *Building size limit.* For each proposed controlled burn located within the city limits, more than one demolished building may be included in the burn, provided that the sum total of all building material to be burned at a designated site does not exceed 1700 square feet in size. For a controlled burn site located outside the city limits, the sum total of all building material to be burned, per day, may not exceed 1700 square feet in size. For purposes of this subparagraph, "square feet" includes both finished and unfinished basements and excludes unfinished attics, carports, attached garages, and porches that are not protected from weather.

(6) *Time of day requirements.* The controlled burning of a demolished building may be conducted only between the hours of 6 a.m. and 6 p.m. and only when weather conditions are favorable with respect to surrounding property. The city shall adequately schedule and sufficiently control the burn to ensure that burning is completed by 6 p.m.

(7) *Prohibited materials.* Rubber tires, chemicals, furniture, carpeting, household appliances, vinyl products (such as flooring or siding), trade waste, garbage, rubbish, landscape waste, residential waste, and other nonstructural materials shall not be burned.

(8) *Limits on the number and location of burns.* For burns conducted within the city limits, each city may undertake no more than one controlled burn of demolished building material in every 0.6-mile-radius circle during each calendar year. For burn sites established outside the city limits, each city shall undertake no more than one controlled burn of demolished building material per day. A burn site outside the city limits must be located at least 0.6 of a mile from any building inhabited by a person, as "person" is defined in Iowa Code section 362.2(17).

(9) *Requirements for burn access and supervision.* The city shall control access to all demolished building burn sites. Representatives of the city who are city employees or who are hired by the city shall supervise the burning of demolished building material at all times.

(10) *Record-keeping requirements.* The city shall retain at least one copy of all notifications and supplementary information required to be sent to the department under subparagraph (2). Additionally, the city shall maintain a map of the exact location of each burn site, and supporting documentation

showing the date of each demolished building burn and the square feet of building material burned on each date. All maps, notifications and associated records shall be maintained by the city clerk, as “clerk” is defined in Iowa Code section 362.2(7), for a period of at least three years and shall be made available for inspection by the department upon request.

(11) *Variance from this paragraph.* In accordance with 567—subrules 21.2(1) and 23.2(2), a city may apply for a variance from the specific conditions for controlled burning of a demolished building and may request that the director conduct a review of the ambient air impacts of the request. The director shall approve or deny the request in accordance with 567—subrule 21.2(4).

(12) *Compliance with other applicable environmental regulations.* Compliance with the exemption requirements in this paragraph shall not absolve a city of the responsibility to comply with any other applicable environmental regulations. In particular, a city conducting a controlled burn of a demolished building shall comply with all applicable solid waste disposal, including ash disposal, and solid waste permitting rules contained in 567—Chapters 100 through 130, as well as all applicable storm water discharge and storm water permitting rules contained in 567—Chapters 60 and 64.

**23.2(4) Unavailability of exemptions in certain areas.** Notwithstanding 23.2(2) and 23.2(3) “b,” “d,” “f,” and “i,” no person shall allow, cause or permit the open burning of trees or tree trimmings, residential or landscape waste or agricultural structures in the cities of: Cedar Rapids, Marion, Hiawatha, Council Bluffs, Carter Lake, Des Moines, West Des Moines, Clive, Windsor Heights, Urbandale, and Pleasant Hill.

This rule is intended to implement Iowa Code section 455B.133.

#### **567—23.3(455B) Specific contaminants.**

**23.3(1) General.** The emission standards contained in this rule shall apply to each source operation unless a performance standard for the process is specified in subrule 23.1(2), in which case the performance standard shall apply.

**23.3(2) Particulate matter.** No person shall cause or allow the emission of particulate matter from any source in excess of the emission standards specified in this chapter, except as provided in 567—Chapter 24.

##### *a. General emission rate.*

(1) For sources constructed, modified or reconstructed on or after July 21, 1999, the emission of particulate matter from any process shall not exceed an emission standard of 0.1 grain per dry standard cubic foot (dscf) of exhaust gas, except as provided in 567—21.2(455B), 23.1(455B), 23.4(455B), and 567—Chapter 24.

(2) For sources constructed, modified or reconstructed prior to July 21, 1999, the emission of particulate matter from any process shall not exceed the amount determined from Table I, or amount specified in a permit if based on an emission standard of 0.1 grain per standard cubic foot of exhaust gas, or established from standards provided in 23.1(455B) and 23.4(455B).

TABLE I  
ALLOWABLE RATE OF EMISSION BASED ON PROCESS WEIGHT RATE\*

Process Weight Rate		Emission Rate	Process Weight Rate		Emission Rate
Lb/Hr	Tons/Hr	Lb/Hr	Lb/Hr	Tons/Hr	Lb/Hr
100	0.05	0.55	16,000	8.00	16.5
200	0.10	0.88	18,000	9.00	17.9
400	0.20	1.40	20,000	10.00	19.2
600	0.30	1.83	30,000	15.00	25.2
800	0.40	2.22	40,000	20.00	30.5
1,000	0.50	2.58	50,000	25.00	35.4
1,500	0.75	3.38	60,000	30.00	40.0
2,000	1.00	4.10	70,000	35.00	41.3

Process Weight Rate		Emission Rate	Process Weight Rate		Emission Rate
Lb/Hr	Tons/Hr	Lb/Hr	Lb/Hr	Tons/Hr	Lb/Hr
2,500	1.25	4.76	80,000	40.00	42.5
3,000	1.50	5.38	90,000	45.00	43.6
3,500	1.75	5.96	100,000	50.00	44.6
4,000	2.00	6.52	120,000	60.00	46.3
5,000	2.50	7.58	140,000	70.00	47.8
6,000	3.00	8.56	160,000	80.00	49.0
7,000	3.50	9.49	200,000	100.00	51.2
8,000	4.00	10.4	1,000,000	500.00	69.0
9,000	4.50	11.2	2,000,000	1,000.00	77.6
10,000	5.00	12.0	6,000,000	3,000.00	92.7
12,000	6.00	13.6			

\*Interpolation of the data in this table for process weight rates up to 60,000 lb/hr shall be accomplished by the use of the equation

$$E=4.10 P^{0.67},$$

and interpolation and extrapolation of the data for process weight rates in excess of 60,000 lb/hr shall be accomplished by use of the equation

$$E=55.0 P^{0.11}-40,$$

where E = rate of emission in lb/hr, and

P = process weight in tons/hr

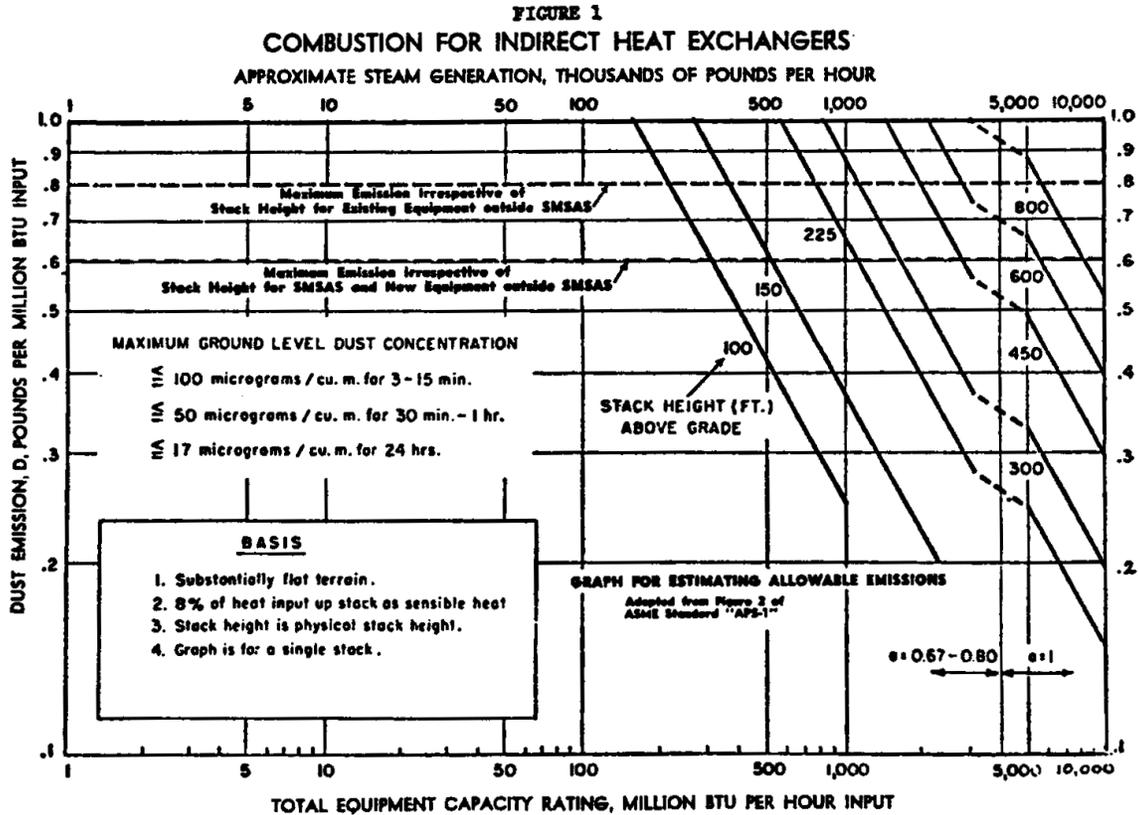
*b. Combustion for indirect heating.* Emissions of particulate matter from the combustion of fuel for indirect heating or for power generation shall be limited by the ASME Standard APS-1, Second Edition, November, 1968, "Recommended Guide for the Control of Dust Emission—Combustion for Indirect Heat Exchangers." For the purpose of this paragraph, the allowable emissions shall be calculated from equation (15) in that standard, with  $Comax^2=50$  micrograms per cubic meter. Allowable emissions from a single stack may be estimated from Figure 1. The maximum ground level dust concentrations designated are above the background level. For plants with 4,000 million Btu/hour input or more, the "a" factor shall be 1.0. In plants with less than 4,000 million Btu/hour input, appropriate "a" factors, less than 1.0, shall be applied. Pertinent correction factors, as specified in the standard, shall be applied for installations with multiple stacks. However, for fuel-burning units in operation on January 13, 1976, the maximum allowable emissions calculated under APS-1 for the facility's equipment configuration on January 13, 1976, shall not be increased even if the changes in the equipment or stack configuration would otherwise allow a recalculation and a higher maximum allowable emission under APS-1.

(1) Outside any standard metropolitan statistical area, the maximum allowable emissions from each stack, irrespective of stack height, shall be 0.8 pounds of particulates per million Btu input.

(2) Inside any standard metropolitan statistical area, the maximum allowable emission from each stack, irrespective of stack height, shall be 0.6 pounds of particulates per million Btu input.

(3) For a new fossil fuel-fired steam generating unit of more than 250 million Btu per hour heat input, 23.1(2) "a" shall apply. For a new unit of between 150 million and 250 million (inclusive) Btu per hour heat input, the maximum allowable emissions from such new unit shall be 0.2 pounds of particulates per million Btu of heat input. For a new unit of less than 150 million Btu per hour heat input, the maximum allowable emissions from such new unit shall be 0.6 pounds of particulates per million Btu of heat input.

(4) Measurements of emissions from a particulate source will be made in accordance with the provisions of 567—Chapter 25.



(5) For fuel-burning sources in operation prior to July 29, 1977, which are not subject to 23.1(2) and which significantly impact a primary or secondary particulate standard nonattainment area, the emission limitations specified in this subparagraph apply. A significant impact shall be equal to or exceeding 5 micrograms of particulate matter per cubic meter of air (24-hour average) or 1 microgram of particulate matter per cubic meter of air (annual average) determined by an EPA approved single source dispersion model using allowable emission rates and five-year worst case meteorological conditions. In the case where two or more boilers discharge into a common stack, the applicable stack emission limitation shall be based upon the heat input of the largest operating boiler. The plantwide allowable emission limitation shall be the weighted average of the allowable emission limitations for each stack or the applicable APS-1 plantwide standard as determined under paragraph 23.3(2) "b," whichever is more stringent.

The maximum allowable emission rate for a single stack with a total heat input capacity less than 250 million Btu per hour shall be 0.60 pound of particulate matter per million Btu heat input; the maximum allowable emission rate for a single stack with a total heat input capacity greater than or equal to 250 million Btu per hour and less than 500 million Btu per hour shall be 0.40 pound of particulate matter per million Btu heat input; the maximum allowable emission rate for a single stack with a total heat input capacity greater than or equal to 500 million Btu per hour shall be 0.30 pound of particulate matter per million Btu heat input; except that the maximum allowable emission rate for the stack serving Unit #1 of Iowa Public Service at Port Neal shall be 0.50 pound of particulate matter per million Btu heat input.

All sources regulated under this subparagraph shall demonstrate compliance by October 1, 1981; however, a source is considered to be in compliance with this subparagraph if by October 1, 1981, it is on a compliance schedule to be completed as expeditiously as possible, but no later than December 31, 1982.

*c. Fugitive dust.*

(1) Attainment and unclassified areas. A person shall take reasonable precautions to prevent particulate matter from becoming airborne in quantities sufficient to cause a nuisance as defined in Iowa Code section 657.1 when the person allows, causes or permits any materials to be handled, transported

or stored or a building, its appurtenances or a construction haul road to be used, constructed, altered, repaired or demolished, with the exception of farming operations or dust generated by ordinary travel on unpaved roads. Ordinary travel includes routine traffic and road maintenance activities such as scarifying, compacting, transporting road maintenance surfacing material, and scraping of the unpaved public road surface. All persons, with the above exceptions, shall take reasonable precautions to prevent the discharge of visible emissions of fugitive dusts beyond the lot line of the property on which the emissions originate. The public highway authority shall be responsible for taking corrective action in those cases where said authority has received complaints of or has actual knowledge of dust conditions which require abatement pursuant to this subrule. Reasonable precautions may include, but not be limited to, the following procedures.

1. Use, where practical, of water or chemicals for control of dusts in the demolition of existing buildings or structures, construction operations, the grading of roads or the clearing of land.
2. Application of suitable materials, such as but not limited to asphalt, oil, water or chemicals on unpaved roads, material stockpiles, race tracks and other surfaces which can give rise to airborne dusts.
3. Installation and use of containment or control equipment, to enclose or otherwise limit the emissions resulting from the handling and transfer of dusty materials, such as but not limited to grain, fertilizer or limestone.
4. Covering, at all times when in motion, open-bodied vehicles transporting materials likely to give rise to airborne dusts.
5. Prompt removal of earth or other material from paved streets or to which earth or other material has been transported by trucking or earth-moving equipment, erosion by water or other means.
6. Reducing the speed of vehicles traveling over on-property surfaces as necessary to minimize the generation of airborne dusts.

(2) *Nonattainment areas.* Subparagraph (1) notwithstanding, no person shall allow, cause or permit any visible emission of fugitive dust in a nonattainment area for particulate matter to go beyond the lot line of the property on which a traditional source is located without taking reasonable precautions to prevent emission. Traditional source means a source category for which a particulate emission standard has been established in 23.1(2), 23.3(2) "a," 23.3(2) "b" or 23.4(455B) and includes a quarry operation, haul road or parking lot associated with a traditional source. This paragraph does not modify the emission standard stated in 23.1(2), 23.3(2) "a," 23.3(2) "b" or 23.4(455B), but rather establishes a separate requirement for fugitive dust from such sources. For guidance on the types of controls which may constitute reasonable precautions, see "Identification of Techniques for the Control of Industrial Fugitive Dust Emissions," [available from the department] adopted by the commission on May 19, 1981.

(3) *Reclassified areas.* Reasonable precautions implemented pursuant to the nonattainment area provisions of subparagraph (2) shall remain in effect if the nonattainment area is redesignated to either attainment or unclassified after March 6, 1980.

*d. Visible emissions.* No person shall allow, cause or permit the emission of visible air contaminants into the atmosphere from any equipment, internal combustion engine, premise fire, open fire or stack, equal to or in excess of 40 percent opacity or that level specified in a construction permit, except as provided below and in 567—Chapter 24.

(1) *Residential heating equipment.* Residential heating equipment serving dwellings of four family units or less is exempt.

(2) *Gasoline-powered vehicles.* No person shall allow, cause or permit the emission of visible air contaminants from gasoline-powered motor vehicles for longer than five consecutive seconds.

(3) *Diesel-powered vehicles.* No person shall allow, cause or permit the emission of visible air contaminants from diesel-powered motor vehicles in excess of 40 percent opacity, for longer than five consecutive seconds.

(4) *Diesel-powered locomotives.* No person shall allow, cause or permit the emission of visible air contaminants from diesel-powered locomotives in excess of 40 percent opacity, except for a maximum period of 40 consecutive seconds during acceleration under load, or for a period of four consecutive minutes when a locomotive is loaded after a period of idling.

(5) *Startup and testing.* Initial start and warmup of a cold engine, the testing of an engine for trouble, diagnosis or repair, or engine research and development activities, is exempt.

(6) *Uncombined water.* The provisions of this paragraph shall apply to any emission which would be in violation of these provisions except for the presence of uncombined water, such as condensed water vapor.

**23.3(3) Sulfur compounds.** The provisions of this subrule shall apply to any installation from which sulfur compounds are emitted into the atmosphere.

*a. Sulfur dioxide from use of solid fuels.*

(1) No person shall allow, cause, or permit the emission of sulfur dioxide into the atmosphere from an existing solid fuel-burning unit, (i.e., a unit which was in operation or for which components had been purchased, or which was under construction prior to September 23, 1970), in an amount greater than 6 pounds, replicated maximum three-hour average, per million Btu of heat input if such unit is located within the following counties: Black Hawk, Clinton, Des Moines, Dubuque, Jackson, Lee, Linn, Lousia, Muscatine and Scott.

(2) No person shall allow, cause, or permit the emission of sulfur dioxide into the atmosphere from an existing solid fuel-burning unit, (i.e., a unit which was in operation or for which components had been purchased, or which was under construction prior to September 23, 1970), in an amount greater than 5 pounds, replicated maximum three-hour average, per million Btu of heat input if such unit is located within the remaining 89 counties of the state not listed in subparagraph 23.3(3) "a"(1).

(3) No person shall allow, cause, or permit the emission of sulfur dioxide into the atmosphere from any new solid fuel-burning unit (i.e., a unit which was not in operation or for which components had not been purchased, or which was not under construction prior to September 23, 1970) which has a capacity of 250 million Btu or less per hour heat input, in an amount greater than 6 pounds, replicated maximum three-hour average, per million Btu of heat input.

(4) Subparagraphs (1) through (3) notwithstanding, a fossil fuel-fired steam generator to which 23.1(2) "a," 23.1(2) "z" or 23.1(2) "ccc" applies shall comply with 23.1(2) "a," 23.1(2) "z" or 23.1(2) "ccc," respectively.

*b. Sulfur dioxide from use of liquid fuels.*

(1) No person shall allow, cause, or permit the combustion of number 1 or number 2 fuel oil exceeding a sulfur content of 0.5 percent by weight.

(2) No person shall allow, cause, or permit the emission of sulfur dioxide into the atmosphere in an amount greater than 2.5 pounds of sulfur dioxide, replicated maximum three-hour average, per million Btu of heat input from a liquid fuel-burning unit.

(3) Notwithstanding this paragraph, a fossil fuel-fired steam generator to which 23.1(2) "a," 23.1(2) "z" or 23.1(2) "ccc" applies shall comply with 23.1(2) "a," 23.1(2) "z" or 23.1(2) "ccc."

*c. Sulfur dioxide from sulfuric acid manufacture.* After January 1, 1975, no person shall allow, cause or permit the emission of sulfur dioxide from an existing sulfuric acid manufacturing plant in excess of 30 pounds of sulfur dioxide, maximum three-hour average, per ton of product calculated as 100 percent sulfuric acid.

*d. Acid mist from sulfuric acid manufacture.* After January 1, 1974, no person shall allow, cause or permit the emission of acid mist calculated as sulfuric acid from an existing sulfuric acid manufacturing plant in excess of 0.5 pounds, maximum three-hour average, per ton of product calculated as 100 percent sulfuric acid.

*e. Other processes capable of emitting sulfur dioxide.* After January 1, 1974, no person shall allow, cause or permit the emission of sulfur dioxide from any process, other than sulfuric acid manufacture, in excess of 500 parts per million, based on volume. This paragraph shall not apply to devices which have been installed for air pollution abatement purposes where it is demonstrated by the owner of the source that the ambient air quality standards are not being exceeded.

This rule is intended to implement Iowa Code section 455B.133.

[ARC 2949C, IAB 2/15/17, effective 3/22/17]

**567—23.4(455B) Specific processes.**

**23.4(1) General.** The provisions of this rule shall not apply to those facilities for which performance standards are specified in 23.1(2). The emission standards specified in this rule shall apply and those specified in 23.3(2) “a” and 23.3(2) “b” shall not apply to each process of the types listed in the following subrules, except as provided below.

EXCEPTION: Whenever the director determines that a process complying with the emission standard prescribed in this section is causing or will cause air pollution in a specific area of the state, the specific emission standard may be suspended and compliance with the provisions of 23.3(455B) may be required in such instance.

**23.4(2) Asphalt batching plants.** No person shall cause, allow or permit the operation of an asphalt batching plant in a manner such that the particulate matter discharged to the atmosphere exceeds 0.15 grain per standard cubic foot of exhaust gas.

**23.4(3) Cement kilns.** Cement kilns shall be equipped with air pollution control devices to reduce the particulate matter in the gas discharged to the atmosphere to no more than 0.3 percent of the particulate matter entering the air pollution control device. Regardless of the degree of efficiency of the air pollution control device, particulate matter discharged from such kilns shall not exceed 0.1 grain per standard cubic foot of exhaust gas.

**23.4(4) Cupolas for metallurgical melting.** The emissions of particulate matter from all new foundry cupolas, and from all existing foundry cupolas with a process weight rate in excess of 20,000 pounds per hour, shall not exceed the amount specified in paragraph 23.3(2) “a,” except as provided in 567—Chapter 24.

The emissions of particulate matter from all existing foundry cupolas with a process weight rate less than or equal to 20,000 pounds per hour shall not exceed the amount determined from Table II of these rules, except as provided in 567—Chapter 24.

TABLE II  
ALLOWABLE EMISSIONS FROM  
EXISTING SMALL FOUNDRY CUPOLAS

Process weight rate (lb/hr)	Allowable emission (lb/hr)
1,000	3.05
2,000	4.70
3,000	6.35
4,000	8.00
5,000	9.58
6,000	11.30
7,000	12.90
8,000	14.30
9,000	15.50
10,000	16.65
12,000	18.70
16,000	21.60
18,000	23.40
20,000	25.10

**23.4(5) Electric furnaces for metallurgical melting.** The emissions of particulate matter to the atmosphere from electric furnaces used for metallurgical melting shall not exceed 0.1 grain per standard cubic foot of exhaust gas.

**23.4(6) Sand handling and surface finishing operations in metal processing.** This subrule shall apply to any new foundry or metal processing operation not properly termed a combustion, melting, baking or pouring operation. For purposes of this subrule, a new process is any process which has not started operation, or the construction of which has not been commenced, or the components of which have not been ordered or contracts for the construction of which have not been let on August 1, 1977. No person shall allow, cause or permit the operation of any equipment designed for sand shakeout, mulling, molding, cleaning, preparation, reclamation or rejuvenation or any equipment for abrasive cleaning, shot blasting, grinding, cutting, sawing or buffing in such a manner that particulate matter discharged from any stack exceeds 0.05 grains per dry standard cubic foot of exhaust gas, regardless of the types and number of operations that discharge from the stack.

**23.4(7) Grain handling and processing plants.** The owner or operator of equipment at a permanent installation for the handling or processing of grain, grain products and grain by-products shall not cause, allow or permit the particulate matter discharged to the atmosphere to exceed 0.1 grain per dry standard cubic foot of exhaust gas, except as follows:

*a.* The particulate matter discharged to the atmosphere from a grain bin vent at a country grain elevator, as “country grain elevator” is defined in 567—subrule 22.10(1), shall not exceed 1.0 grain per dry standard cubic foot of exhaust gas.

*b.* The particulate matter discharged to the atmosphere from a grain bin vent that was constructed, modified or reconstructed before March 31, 2008, at a country grain terminal elevator, as “country grain terminal elevator” is defined in 567—subrule 22.10(1), or at a grain terminal elevator, as “grain terminal elevator” is defined in 567—subrule 22.10(1), shall not exceed 1.0 grain per dry standard cubic foot of exhaust gas.

*c.* The particulate matter discharged to the atmosphere from a grain bin vent that is constructed or reconstructed on or after March 31, 2008, at a country grain terminal elevator, as “country grain terminal elevator” is defined in 567—subrule 22.10(1), or at a grain terminal elevator, as “grain terminal elevator” is defined in 567—subrule 22.10(1), shall not exceed 0.1 grain per dry standard cubic foot of exhaust gas.

**23.4(8) Lime kilns.** No person shall cause, allow or permit the operation of a kiln for the processing of limestone such that the particulate matter in the gas discharged to the atmosphere exceeds 0.1 grain per standard cubic foot of exhaust gas.

**23.4(9) Meat smokehouses.** No person shall cause, allow or permit the operation of a meat smokehouse or a group of meat smokehouses, which consume more than ten pounds of wood, sawdust or other material per hour such that the particulate matter discharged to the atmosphere exceeds 0.2 grain per standard cubic foot of exhaust gas.

**23.4(10) Phosphate processing plants.**

*a.* Phosphoric acid manufacture. No person shall allow, cause or permit the operation of equipment for the manufacture of phosphoric acid that was in existence on October 22, 1974, in a manner that produces more than 0.04 pound of fluoride per ton of phosphorous pentoxide or equivalent input.

*b.* Diammonium phosphate manufacture. No person shall allow, cause or permit the operation of equipment for the manufacture of diammonium phosphate that was in existence on October 22, 1974, in a manner that produces more than 0.15 pound of fluoride per ton of phosphorous pentoxide or equivalent input.

*c.* Nitrophosphate manufacture. No person shall allow, cause or permit the operation of equipment for the manufacture of nitrophosphate in a manner that produces more than 0.06 pound of fluoride per ton of phosphorus pentoxide or equivalent input.

*d.* No person shall allow, cause or permit the operation of equipment for the processing of phosphate ore, rock or other phosphatic material (other than equipment used for the manufacture of phosphoric acid, diammonium phosphate or nitrophosphate) in a manner that the unit emissions of fluoride exceed 0.4 pound of fluoride per ton of phosphorous pentoxide or its equivalent input.

*e.* Notwithstanding “*a*” through “*d*,” no person shall allow, cause or permit the operation of equipment for the processing of phosphorous ore, rock or other phosphatic material including, but not limited to, phosphoric acid, in a manner that emissions of fluorides exceed 100 pounds per day.

*f.* “Fluoride” means elemental fluorine and all fluoride compounds as measured by reference methods specified in Appendix A to 40 CFR Part 60 as amended through March 12, 1996.

*g.* Calculation. The allowable total emission of fluoride shall be calculated by multiplying the unit emission specified above by the expressed design production capacity of the process equipment.

**23.4(11) Portland cement concrete batching plants.** No person shall cause, allow or permit the operation of a Portland cement concrete batching plant such that the particulate matter discharged to the atmosphere exceeds 0.1 grain per standard cubic foot of exhaust gas.

**23.4(12) Incinerators.** A person shall not cause, allow or permit the operation of an incinerator unless provided with appropriate control of emissions of particulate matter and visible air contaminants.

*a. Particulate matter.* A person shall not cause, allow or permit the operation of an incinerator with a rated refuse burning capacity of 1000 or more pounds per hour in a manner such that the particulate matter discharged to the atmosphere exceeds 0.2 grain per standard cubic foot of exhaust gas adjusted to 12 percent carbon dioxide.

A person shall not cause, allow or permit the operation of an incinerator with a rated refuse burning capacity of less than 1000 pounds per hour in a manner such that the particulate matter discharged to the atmosphere exceeds 0.35 grain per standard cubic foot of exhaust gas adjusted to 12 percent carbon dioxide.

*b. Visible emissions.* A person shall not allow, cause or permit the operation of an incinerator in a manner such that it produces visible air contaminants in excess of 40 percent opacity; except that visible air contaminants in excess of 40 percent opacity but less than or equal to 60 percent opacity may be emitted for periods aggregating not more than 3 minutes in any 60-minute period during an operation breakdown or during the cleaning of air pollution control equipment.

**23.4(13) Painting and surface-coating operations.** No person shall allow, cause or permit painting and surface-coating operations in a manner such that particulate matter in the gas discharge exceeds 0.01 grain per standard cubic foot of exhaust gas.

This rule is intended to implement Iowa Code section 455B.133.

#### **567—23.5(455B) Anaerobic lagoons.**

**23.5(1)** Applications for construction permits for animal feeding operations using anaerobic lagoons shall meet the requirements of rules 567—65.9(455B) and 65.15(455B) to 65.17(455B).

**23.5(2)** Criteria for approval of industrial anaerobic lagoons.

*a.* Lagoons designed to treat 100,000 gpd or less.

(1) The sulfate content of the water supply shall not exceed 250 mg/l. However, this paragraph does not apply to an expansion of an industrial anaerobic lagoon facility which was constructed prior to February 22, 1979.

(2) The design loading rate for the total lagoon volume shall not be less than 10 pounds nor more than 20 pounds of biochemical oxygen demand (five day) per thousand cubic feet per day.

*b.* Lagoons designed to treat more than 100,000 gpd.

(1) The sulfate content of the water supply shall not exceed 100 mg/l. However, this paragraph does not apply to an expansion of an industrial anaerobic lagoon facility which was constructed prior to February 22, 1979.

(2) The design loading rate for the total lagoon volume shall not be less than 10 pounds nor more than 20 pounds of biochemical oxygen demand (five day) per thousand cubic feet per day.

This rule is intended to implement Iowa Code section 455B.133.

**567—23.6(455B) Alternative emission limits (the “bubble concept”).** Emission limits for individual emission points included in 23.3(455B) (except 23.3(2)“*d*,” 23.3(2)“*b*”(3), and 23.3(3)“*a*”(3)) and 23.4(455B) (except 23.4(12)“*b*” and 23.4(6)) may be replaced by alternative emission limits. The alternative emission limits must be consistent with 567—22.7(455B) and 567—subrule 25.1(12).

Under this rule, less stringent control limits where costs of emission control are high may be allowed in exchange for more stringent control limits where costs of control are less expensive.

Rules 23.3(455B) to 23.6(455B) are intended to implement Iowa Code section 455B.133.

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<sup>◇</sup> Two or more ARCs

<sup>1</sup> Objection, see filed rule [DEQ, 4.2(4)] published IAC Supp. 1/22/77, 3/9/77.

<sup>2</sup> Effective date of 23.2(4) delayed 70 days by the Administrative Rules Review Committee on 9/14/83.

<sup>3</sup> 11/24/10 effective date of 23.1(4), introductory paragraph, and 23.1(4) “*ev*” and “*fa*” to “*fd*” delayed 70 days by the Administrative Rules Review Committee at its meeting held November 9, 2010.

<sup>4</sup> Amendment to 23.1(4), introductory paragraph, (ARC 9154B, Item 4) rescinded by Executive Order Number 72 on 4/4/11. Amendment removed and prior language restored IAC Supplement 4/20/11.

CHAPTER 25  
MEASUREMENT OF EMISSIONS

[Prior to 7/1/83, DEQ Ch 7]

[Prior to 12/3/86, Water, Air and Waste Management[900]]

**567—25.1(455B) Testing and sampling of new and existing equipment.**

**25.1(1)** *Continuous monitoring of opacity from coal-fired steam generating units.* The owner or operator of any coal-fired or coal-gas-fired steam generating unit with a rated capacity of greater than 250 million Btus per hour heat input shall install, calibrate, maintain, and operate continuous monitoring equipment to monitor opacity. If an exhaust services more than one steam generating unit as defined in the preceding sentence, the owner has the option of installing opacity monitoring equipment on each unit or on the common stack. Such monitoring equipment shall conform to performance specifications specified in 25.1(9) and shall be operational within 18 months of the date these rules become effective. The director may require the owner or operator of any coal-fired or coal-gas-fired steam generating unit to install, calibrate, maintain and operate continuous monitoring equipment to monitor opacity whenever the compliance status, history of operations, ambient air quality in the vicinity surrounding the generator or the type of control equipment utilized would warrant such monitoring.

**25.1(2)** and **25.1(3)** Reserved.

**25.1(4)** *Continuous monitoring of sulfur dioxide from sulfuric acid plants.* The owner or operator of any sulfuric acid plant of greater than 300 tons per day production capacity, the production being expressed as 100 percent acid, shall install, calibrate, maintain and operate continuous monitoring equipment to monitor sulfur dioxide emissions. Said monitoring equipment shall conform to the minimum performance specifications specified in 25.1(9) and shall be operational within 18 months of the date these rules become effective.

**25.1(5)** *Maintenance of records of continuous monitors.* The owner or operator of any facility which is required to install, calibrate, maintain and operate continuous monitoring equipment shall maintain, for a minimum of two years, a file of all information pertinent to each monitoring system present at the facility. Such information must include but is not limited to all emissions data (raw data, adjusted data, and any or all adjusted factors used to convert emissions from units of measurement to units of the applicable standard), performance evaluations, calibrations and zero checks, and records of all malfunctions of monitoring equipment or source and repair procedures performed.

**25.1(6)** *Reporting of continuous monitoring information.* The owner or operator of any facility required to install a continuous monitoring system or systems shall provide quarterly reports to the director, no later than 30 calendar days following the end of the calendar quarter, on forms provided by the director. This provision shall not excuse compliance with more stringent applicable reporting requirements. All periods of recorded emissions in excess of the applicable standards, the results of all calibrations and zero checks and performance evaluations occurring during the reporting period, and any periods of monitoring equipment malfunctions or source upsets and any apparent reasons for these malfunctions and upsets shall be included in the report.

**25.1(7)** *Tests by owner.* The owner of new or existing equipment or the owner's authorized agent shall conduct emission tests to determine compliance with applicable rules in accordance with these requirements.

*a. General.* The owner of new or existing equipment or the owner's authorized agent shall notify the department in writing not less than 30 days before a required test or before a performance evaluation of a continuous emission monitor to determine compliance with applicable requirements of 567—Chapter 23 or a permit condition. Such notice shall include the time, the place, the name of the person who will conduct the tests and other information as required by the department. If the owner or operator does not provide timely notice to the department, the department shall not consider the test results or performance evaluation results to be a valid demonstration of compliance with applicable rules or permit conditions. Upon written request, the department may allow a notification period of less than 30 days. At the department's request, a pretest meeting shall be held not later than 15 days before the owner or operator conducts the compliance demonstration. A testing protocol shall be

submitted to the department no later than 15 days before the owner or operator conducts the compliance demonstration. A representative of the department shall be permitted to witness the tests. Results of the tests shall be submitted in writing to the director in the form of a comprehensive report within six weeks of the completion of the testing.

*b. New equipment.* Unless otherwise specified by the department, all new equipment shall be tested by the owner or the owner's authorized agent to determine compliance with applicable emission limits. Tests conducted to demonstrate compliance with the requirements of the rules or a permit shall be conducted within 60 days of achieving maximum production but no later than 180 days of startup, unless a shorter time frame is specified in the permit.

*c. Existing equipment.* The director may require the owner or the owner's authorized agent to conduct an emission test on any equipment if the director has reason to believe that the equipment does not comply with applicable requirements. Grounds for requiring such a demonstration of compliance include a modification of control or process equipment, age of equipment, or observation of opacities or other parameters outside the range of those indicative of properly maintained and operated equipment. Testing may be required as necessary to determine actual emissions from a source where that source is believed to have a significant impact on the public health or ambient air quality of an area. The director shall provide the owner or agent not less than 30 days to perform the compliance demonstration and shall provide written notice of the requirement.

**25.1(8) Tests by department.** Representatives of the department may conduct separate and additional air contaminant emission tests and continuous monitor performance tests of an installation on behalf of the state and at the expense of the state. Sampling holes, safe scaffolding and pertinent allied facilities, but not instruments or sensing devices, as needed, shall be requested in writing by the director and shall be provided by and at the expense of the owner of the installation at such points as specified in the request. The owner shall provide a suitable power source to the point or points of testing so that sampling instruments can be operated as required. Analytical results shall be furnished to the owner.

**25.1(9) Methods and procedures.** Stack sampling and associated analytical methods used to evaluate compliance with emission limitations of 567—Chapter 23 or a permit condition are as follows:

*a. Performance test (stack test).* A stack test shall be conducted according to EPA reference methods as specified in 40 CFR 51, Appendix M (as amended through August 30, 2016); 40 CFR 60, Appendix A (as amended through August 30, 2016); 40 CFR 61, Appendix B (as amended through August 30, 2016); and 40 CFR 63, Appendix A (as amended through August 30, 2016). The owner of the equipment or the owner's authorized agent may use an alternative methodology if the methodology is approved by the department in writing before testing. Each test shall consist of at least three separate test runs. Unless otherwise specified by the department, compliance shall be assessed on the basis of the arithmetic mean of the emissions measured in the three test runs.

*b. Continuous monitoring systems.* Minimum performance specifications and quality assurance procedures for performance evaluations of continuous monitoring systems are as specified in 40 CFR 60, Appendix B (as amended through August 7, 2017); 40 CFR 60, Appendix F (as amended through August 30, 2016); 40 CFR 75, Appendix A (as amended through August 30, 2016); 40 CFR 75, Appendix B (as amended through August 30, 2016); and 40 CFR 75, Appendix F (as amended through August 30, 2016). The owner of the equipment or the owner's authorized agent may use an alternative methodology for continuous monitoring systems if the methodology is approved by the department in writing before the minimum performance specification and quality assurance procedure is conducted.

*c. Permit and compliance demonstration requirements.* After October 24, 2012, all stack sampling and associated analytical methods used to evaluate compliance with emission limitations of 567—Chapter 23 or required in a permit issued by the department pursuant to 567—Chapter 22 or 33 shall be conducted using the methodology referenced in this rule. If stack sampling was required for a compliance demonstration pursuant to 567—Chapter 23 or for a performance test required in a permit issued by the department pursuant to 567—Chapter 22 or 33 before October 24, 2012, and the demonstration or test was not required to be completed before October 24, 2012, then the methodology referenced in this subrule applies retroactively.

**25.1(10) Exemptions from continuous monitoring requirements.** The owner or operator of any source is exempt if it can be demonstrated that any of the conditions set forth in this subrule are met with the provision that periodic recertification of the existence of these conditions can be requested.

*a.* An affected source is subject to a new source performance standard promulgated in 40 CFR Part 60 as amended through September 28, 2007.

*b.* An affected steam generator had an annual capacity factor for calendar year 1974, as reported to the Federal Power Commission, of less than 30 percent or the projected use of the unit indicates the annual capacity factor will not be increased above 30 percent in the future.

*c.* An affected steam generator is scheduled to be retired from service within five years of the date these rules become effective.

*d.* Rescinded IAB 1/20/93, effective 2/24/93.

*e.* The director may provide a temporary exemption from the monitoring and reporting requirements during any period of monitoring system malfunction, provided that the source owner or operator shows, to the satisfaction of the director, that the malfunction was unavoidable and is being repaired as expeditiously as practical.

**25.1(11) Extensions.** The owner or operator of any source may request an extension of time provided for installation of the required monitor by demonstrating to the director that good faith efforts have been made to obtain and install the monitor in the prescribed time.

**25.1(12) Continuous monitoring of sulfur dioxide from emission points involved in an alternative emission control program.** The owner or operator of any facility applying for an alternative emission control program under 567—subrule 22.7(1) that involves the trade-off of sulfur dioxide emissions shall install, calibrate, maintain and operate continuous sulfur dioxide monitoring equipment consistent with EPA reference methods (40 CFR Part 60, Appendix B, as amended through September 28, 2007). The equipment shall be operational within three months of EPA approval of an alternative emission control program.

[ARC 8215B, IAB 10/7/09, effective 11/11/09; ARC 0330C, IAB 9/19/12, effective 10/24/12; ARC 2949C, IAB 2/15/17, effective 3/22/17; ARC 3679C, IAB 3/14/18, effective 4/18/18; ARC 4335C, IAB 3/13/19, effective 4/17/19]

**567—25.2(455B) Continuous emission monitoring under the acid rain program.** The continuous emission monitoring requirements for affected units under the acid rain program as provided in 40 CFR Part 75, including Appendices A, B, F and K as amended through August 30, 2016, are adopted by reference.

[ARC 2949C, IAB 2/15/17, effective 3/22/17; ARC 3679C, IAB 3/14/18, effective 4/18/18]

**567—25.3(455B) Mercury emissions testing and monitoring.** Any stationary, coal-fired boiler or stationary, coal-fired combustion turbine serving, at any time since the later of November 15, 1990, or the start-up of the unit's combustion chamber, a generator with a nameplate capacity of more than 25 megawatt electrical (MWe) producing electricity for sale is an affected source under the provisions of this rule.

The provisions of this rule expire on April 22, 2015, except for any affected facility that receives an extension to comply with the emission standards for hazardous air pollutants: coal- and oil-fired electric utility steam generating units (EGUs) (40 CFR Part 63, Subpart UUUUU, commonly known as mercury air toxics standards (MATS)). Any facility receiving an extension of the MATS compliance date shall continue to comply with the provisions of this rule until the date the facility is required to comply with MATS or, alternatively, is no longer subject to the MATS compliance requirements. However, facilities complying with the requirements of this rule as specified in subrule 25.3(3), continuous emissions monitoring systems (CEMS), may submit a written request to the department to discontinue concurrent, annual stack tests. The department will evaluate and grant requests on a case-by-case basis, based upon previous stack test results and how recent the last stack test occurred or other extenuating circumstances, such as those that may cause testing conditions to be unrepresentative of normal operations or cause tests to be unsafe to perform. If the department grants a request, the facility will be required to continue operating CEMS and conduct relative accuracy test audits (RATAs), as specified in subrule 25.3(3),

until the facility is required to comply with MATS or, alternatively, is no longer subject to MATS compliance requirements.

**25.3(1) Testing frequency and methods.** The owner or operator of an affected source shall complete one stack test for mercury in each calendar quarter for four consecutive calendar quarters. Testing shall commence no later than the third calendar quarter in 2010 (July 1 – September 30). At such time as four consecutive quarterly stack tests are completed and the test results are approved in writing by the department, the owner or operator of an affected source shall complete one stack test for mercury in each subsequent calendar year. Stack testing to fulfill the requirements of this subrule shall meet the following conditions:

*a.* Stack testing shall be conducted according to U.S. EPA Method 29 or according to ASTM Method D6784-02 (Ontario Hydro Method) and shall quantify both vapor phase and particulate bound mercury. Each stack test shall consist of a minimum of three runs at the normal operating load while combusting coal, and the minimum time per run shall be two hours.

*b.* The owner or operator or the owner's authorized agent shall notify the department in writing not less than 30 days before each stack test. The notice shall include the time, the place, the name of the person who will conduct the test and other information as required by the department. Upon written request, the department may allow a notification period of less than 30 days. At the department's request, a pretest meeting shall be held no later than 15 days before the scheduled test date. A testing protocol shall be submitted to the department no later than 15 days before the scheduled test date. A representative of the department shall be permitted to witness the tests. Within six weeks of the completion of the testing, the results of the tests shall be submitted in writing to the department in the form of a comprehensive test report.

**25.3(2) Low mass emitter (LME).** In lieu of complying with the requirements of 25.3(1), the owner or operator of an affected source may submit a written request to the department to be classified as a low mass emitter (LME) for mercury. To be eligible for LME classification by the department, the owner or operator shall meet the following conditions:

*a.* The owner or operator shall complete at least one stack test prior to July 1, 2010, according to U.S. EPA Method 29 or according to ASTM Method D6784-02 (Ontario Hydro Method) and shall quantify both vapor phase and particulate bound mercury. Each stack test shall consist of a minimum of three runs at the normal operating load while combusting coal, and the minimum time per run shall be two hours.

*b.* The owner or operator or the owner's authorized agent shall notify the department in writing not less than 30 days before each stack test. The notice shall include the time, the place, the name of the person who will conduct the test and other information as required by the department. Upon written request, the department may allow a notification period of less than 30 days. At the department's request, a pretest meeting shall be held no later than 15 days before the scheduled test date. A testing protocol shall be submitted to the department no later than 15 days before the scheduled test date. A representative of the department shall be permitted to witness the tests. Within six weeks of the completion of the testing, the results of the tests shall be submitted in writing to the department in the form of a comprehensive test report.

*c.* Using the highest mercury concentration measured from any of the stack test runs, the owner or operator shall submit documentation to the department sufficient to demonstrate that the potential annual mercury emissions from the affected source are less than or equal to 29 pounds (464 ounces) per year.

*d.* Upon written notification of LME classification by the department, the owner or operator of an affected source shall be exempt from the requirements of 25.3(1).

*e.* If at any time the potential annual mercury emissions from the affected source exceed 29 pounds per year, it shall be the responsibility of the owner or operator of the affected source to notify the department in writing within 30 days.

**25.3(3) Continuous emission monitoring systems (CEMS).** In lieu of complying with the requirements of 25.3(1), the owner or operator of an affected source may submit a request to the department to record mercury emissions data using a continuous emission monitoring system (CEMS).

To be eligible for department approval to use CEMS, the owner or operator shall meet the following conditions:

*a.* The owner or operator shall complete at least one stack test concurrently with operating and recording data from the CEMS prior to September 30, 2010, and thereafter on an annual basis, to demonstrate that the CEMS are providing accurate emissions data, as follows:

(1) The stack test conducted concurrently with the CEMS shall be conducted according to U.S. EPA Method 29 or according to ASTM Method D6784-02 (Ontario Hydro Method) and shall quantify both vapor phase and particulate bound mercury. Each stack test shall consist of a minimum of three runs at the normal operating load while combusting coal, and the minimum time per run shall be two hours.

(2) While conducting the concurrent stack test, the owner and operator shall perform a relative accuracy test audit (RATA) and other CEMS certification procedures according to an approved EPA performance protocol. If an approved EPA performance protocol is not available, the owner or operator may submit an alternative CEMS certification protocol in writing to the department for approval. Department approval must be received before the owner or operator conducts the CEMS certification.

*b.* The owner or operator or the owner's authorized agent shall notify the department in writing not less than 30 days before each stack test conducted concurrently with CEMS. The notice shall include the time, the place, the name of the person who will conduct the test and other information as required by the department. Upon written request, the department may allow a notification period of less than 30 days. At the department's request, a pretest meeting shall be held no later than 15 days before the scheduled test date. Protocols for the stack testing and for the concurrent CEMS operation and data collection shall be submitted to the department no later than 15 days before the scheduled test date. A representative of the department shall be permitted to witness the tests. Results of the tests and CEMS certification shall be submitted in writing to the department in the form of a comprehensive test and CEMS certification report within six weeks of the completion of the testing.

*c.* The owner or operator of an affected source shall comply with the provisions of 25.3(1) until such time as the department approves use of CEMS.

*d.* Upon receiving department approval for CEMS use, the owner or operator of an affected source shall operate and record CEMS data, including calibrating each individual CEMS for zero and span on a daily basis, and shall provide all CEMS data to the department upon written request. CEMS certification shall be completed on an annual basis according to the procedures specified in paragraph 25.3(3) "a."

**25.3(4) EPA-required stack testing for mercury.** If the owner or operator of an affected source is required by EPA to complete stack testing for mercury, the owner or operator may submit a written request to the department that the EPA-required stack test be allowed to fulfill all or part of the testing requirements specified in 25.3(1). The department shall consider each such request on a case-by-case basis.

**25.3(5) Affected sources subject to Section 112(g).** The owner or operator of an affected source subject to the requirements of Clean Air Act Section 112(g) shall comply with the requirements contained in permits issued by the department under 567—Chapters 22 and 33.

[ARC 8216B, IAB 10/7/09, effective 11/11/09; ARC 1913C, IAB 3/18/15, effective 4/22/15]

These rules are intended to implement Iowa Code section 455B.133.

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## **MEDICINE BOARD[653]**

[Prior to 5/4/88, see Health Department[470], Chs 135 and 136, renamed Medical Examiners Board[653] under the “umbrella” of Public Health Department[641] by 1986 Iowa Acts, ch 1245]  
[Prior to 7/4/07, see Medical Examiners Board[653]; renamed by 2007 Iowa Acts, Senate File 74]

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CHAPTER 11  
CONTINUING EDUCATION AND  
TRAINING REQUIREMENTS

[Prior to 5/4/88, see 470—135.101 to 470—135.110 and 135.501 to 135.512]

**653—11.1(272C) Definitions.**

“*ABMS*” means the American Board of Medical Specialties, which is an umbrella organization for at least 24 medical specialty boards in the United States that assists the specialty boards in developing and implementing educational and professional standards to evaluate and certify physician specialists in the United States. The board recognizes specialty board certification by ABMS.

“*Accredited provider*” means an organization approved as a provider of category 1 credit by one of the following board-approved accrediting bodies: Accreditation Council for Continuing Medical Education, Iowa Medical Society, or the Council on Continuing Medical Education of the AOA.

“*Active duty*” means full-time training or active service in the U.S. armed forces, reserves or national guard.

“*Active licensee*” means any person licensed to practice medicine and surgery or osteopathic medicine and surgery in Iowa who has met all conditions of licensure and maintains a current license to practice in Iowa.

“*AMA*” means the American Medical Association, a professional organization of physicians and surgeons.

“*AOA*” means the American Osteopathic Association, which is the representative organization for osteopathic physicians (D.O.s) in the United States. The board approves osteopathic medical education programs with AOA accreditation; the board approves AOA-accredited resident training programs in osteopathic medicine and surgery at hospitals for graduates of accredited osteopathic medical schools. The board recognizes specialty board certification by AOA. The board recognizes continuing medical education accredited by the Council on Continuing Medical Education of AOA.

“*Approved abuse education training program*” means a training program using a curriculum approved by the abuse education review panel of the department of public health or a training program offered by a hospital, a professional organization for physicians, or the department of human services, the department of education, an area education agency, a school district, the Iowa law enforcement academy, an Iowa college or university, or a similar state agency.

“*Approved program or credit*” means any category 1 credit offered by an accredited provider or any other program or credit meeting the standards set forth in these rules.

“*Board*” means the Iowa board of medicine.

“*Carryover*” means hours of category 1 credit earned in excess of the required hours in a license period that may be applied to the continuing education requirement in the subsequent license period; carryover may not exceed 20 hours of category 1 credit per renewal cycle.

“*Category 1 credit*” means any formal education program which is sponsored or jointly sponsored by an organization accredited for continuing medical education by the Accreditation Council for Continuing Medical Education, the Iowa Medical Society, or the Council on Continuing Medical Education of the AOA that is of sufficient scope and depth of coverage of a subject area or theme to form an educational unit and is planned, administered and evaluated in terms of educational objectives that define a level of knowledge or a specific performance skill to be attained by the physician completing the program. Credits designated as formal cognates by the American College of Obstetricians and Gynecologists or as prescribed credits by the American Academy of Family Physicians are accepted as equivalent to category 1 credits.

“*Committee*” means the licensure committee of the board.

“*COMVEX-USA*” means the Comprehensive Osteopathic Medical Variable-Purpose Examination for the United States of America. The National Board of Osteopathic Medical Examiners prepares the examination and determines its passing score. A licensing authority in any jurisdiction administers the examination. COMVEX-USA is the current evaluative instrument offered to osteopathic physicians who need to demonstrate current osteopathic medical knowledge.

“*Continuing education*” means education that is acquired by a licensee in order to maintain, improve, or expand skills and knowledge present at initial licensure or to develop new and relevant skills and knowledge.

“*Hour of continuing education*” means a clock hour spent by a licensee in actual attendance at or completion of an approved category 1 credit.

“*Inactive license*” means any license that is not a current, active license. Inactive license may include licenses formerly known as delinquent, lapsed, or retired. A physician whose license is inactive continues to hold the privilege of licensure in Iowa but may not practice medicine under an Iowa license until the license is reinstated.

“*Licensee*” means any person licensed to practice medicine and surgery or osteopathic medicine and surgery in the state of Iowa.

“*Opioid*” means any FDA-approved product or active pharmaceutical ingredient classified as a controlled substance that produces an agonist effect on opioid receptors and is indicated or used for the treatment of pain.

“*Service charge*” means the amount charged for making a service available on line and is in addition to the actual fee for a service itself. For example, one who renews a license on line will pay the license renewal fee and a service charge.

“*SPEX*” means Special Licensure Examination prepared by the Federation of State Medical Boards and administered by a licensing authority in any jurisdiction. The passing score on SPEX is 75.

“*Training for chronic pain management*” means required training on chronic pain management identified in 653—Chapter 11.

“*Training for end-of-life care*” means required training on end-of-life care identified in 653—Chapter 11.

“*Training for identifying and reporting abuse*” means training on identifying and reporting child abuse or dependent adult abuse required of physicians who regularly provide primary health care to children or adults, respectively. The full requirements on reporting of child abuse and the training requirements are in Iowa Code section 232.69; the full requirements on reporting of dependent adult abuse and the training requirements are in Iowa Code section 235B.16.

[ARC 9601B, IAB 7/13/11, effective 8/17/11; ARC 0217C, IAB 7/25/12, effective 8/29/12; ARC 0871C, IAB 7/24/13, effective 8/28/13; ARC 4338C, IAB 3/13/19, effective 4/17/19]

### **653—11.2(272C) Continuing education credit and alternatives.**

**11.2(1)** Continuing education credit may be obtained by attending category 1 credits as defined in this chapter.

**11.2(2)** The board shall accept the following as equivalent to 50 hours of category 1 credit: participation in an approved resident training program or board certification or recertification by an ABMS or AOA specialty board within the licensing period.

**11.2(3)** The board shall in January of each year recognize the equivalent of up to 10 hours of category 1 credits for physicians who actively served as members or alternate members of the Iowa board of medicine during the previous year; for physicians who actively served as members of the Iowa physician health committee during the previous year; and for physicians who performed peer reviews for the board during the previous year. The physicians receiving recognition of category 1 credit equivalents will be notified by U.S. mail in January by the executive director of the board.

[ARC 0217C, IAB 7/25/12, effective 8/29/12]

**653—11.3(272C) Accreditation of providers.** The board approves the Accreditation Council for Continuing Medical Education, the Iowa Medical Society, and the Council on Continuing Medical Education of the AOA as organizations acceptable to accredit providers of category 1 credits.

[ARC 0217C, IAB 7/25/12, effective 8/29/12]

**653—11.4(272C) Continuing education and training requirements for renewal or reinstatement.** A licensee shall meet the requirements in this rule to qualify for renewal of a permanent license, an

administrative medicine license, or special license or to qualify for reinstatement of a permanent license or an administrative medicine license.

**11.4(1) Continuing education and training requirements.**

*a. Continuing education for permanent license or administrative medicine license renewal.* Except as provided in these rules, a total of 40 hours of category 1 credit or board-approved equivalent shall be required for biennial renewal of a permanent license or an administrative medicine license. This may include up to 20 hours of credit carried over from the previous license period and category 1 credit acquired within the current license period.

(1) To facilitate license renewal according to birth month, a licensee's first license may be issued for less than 24 months. The number of hours of category 1 credit required of a licensee whose license has been issued for less than 24 months shall be reduced on a pro-rata basis.

(2) A licensee desiring to obtain credit for carryover hours shall report the carryover, not to exceed 20 hours of category 1 credit, on the renewal application.

*b. Continuing education for special license renewal.* A total of 20 hours of category 1 credit shall be required for annual renewal of a special license. No carryover hours are allowed.

*c. Training for identifying and reporting child and dependent adult abuse for permanent or special license renewal.* The licensee in Iowa shall complete the training for identifying and reporting child and dependent adult abuse as part of a category 1 credit or an approved training program. The licensee may utilize category 1 credit received for this training during the license period in which the training occurred to meet continuing education requirements in paragraph 11.4(1)"a."

(1) Training to identify child abuse. A licensee who regularly provides primary health care to children in Iowa must complete at least two hours of training in child abuse identification and reporting every five years. "A licensee who regularly provides primary health care to children" means all emergency physicians, family physicians, general practice physicians, pediatricians, and psychiatrists, and any other physician who regularly provides primary health care to children.

(2) Training to identify dependent adult abuse. A licensee who regularly provides primary health care to adults in Iowa must complete at least two hours of training in dependent adult abuse identification and reporting every five years. "A licensee who regularly provides primary health care to adults" means all emergency physicians, family physicians, general practice physicians, internists, obstetricians, gynecologists, and psychiatrists, and any other physician who regularly provides primary health care to adults.

(3) Combined training to identify child and dependent adult abuse. A licensee who regularly provides primary health care to adults and children in Iowa must complete at least two hours of training in the identification and reporting of abuse in dependent adults and children every five years. The training may be completed through separate courses as identified in subparagraphs 11.4(1)"c"(1) and (2) or in one combined two-hour course that includes curricula for identifying and reporting child abuse and dependent adult abuse. "A licensee who regularly provides primary health care to children and adults" means all emergency physicians, family physicians, general practice physicians, internists, and psychiatrists, and any other physician who regularly provides primary health care to children and adults.

*d. Training for chronic pain management for permanent or special license renewal.* The licensee shall complete the training for chronic pain management as part of a category 1 credit. The licensee may utilize category 1 credit received for this training during the license period in which the training occurred to meet continuing education requirements in paragraph 11.4(1)"a."

(1) A licensee who has prescribed opioids to a patient during the previous license period must complete at least two hours of category 1 credit regarding the United States Centers for Disease Control and Prevention (CDC) 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, every five years. A licensee may attest as part of the license renewal process that the licensee is not subject to the requirement to receive continuing medical education credits pursuant to this paragraph, due to the fact that the licensee did not prescribe opioids to a patient during the previous licensure cycle.

(2) A licensee who had a permanent or special license on January 1, 2019, has until January 1, 2024, to complete the chronic pain management training and shall then complete the training once every five years thereafter.

*e. Training for end-of-life care for permanent or special license renewal.* The licensee shall complete the training for end-of-life care as part of a category 1 credit. The licensee may utilize category 1 credit received for this training during the license period in which the training occurred to meet continuing education requirements in paragraph 11.4(1) “a.”

(1) A licensee who regularly provides direct patient care to actively dying patients in Iowa must complete at least two hours of category 1 credit for end-of-life care every five years.

(2) A licensee who had a permanent or special license on January 1, 2019, has until January 1, 2024, to complete the end-of-life care training and shall then complete the training once every five years thereafter.

**11.4(2) Exemptions from renewal requirements.**

*a.* A licensee shall be exempt from the continuing education requirements in subrule 11.4(1) when, upon license renewal, the licensee provides evidence for:

(1) Periods that the licensee served honorably on active duty in the U.S. armed forces, reserves or national guard;

(2) Periods that the licensee practiced in another state or district and did not provide medical care, including telemedicine services, to patients located in Iowa, if the other state or district had continuing education requirements for the profession and the licensee met all requirements of that state or district for practice therein;

(3) Periods that the licensee was a government employee working in the licensee’s specialty and assigned to duty outside the United States; or

(4) Other periods of active practice and absence from the state approved by the board.

*b.* The requirements for training on identifying and reporting abuse, chronic pain management and end-of-life care for license renewal shall be suspended for a licensee who provides evidence for:

(1) Periods described in subparagraph 11.4(2) “a” (1), (2), (3), or (4); or

(2) Periods that the licensee resided outside of Iowa and did not practice in Iowa.

**11.4(3) Extension for completion of or exemption from renewal requirements.** The board may, in individual cases involving physical disability or illness, grant an extension of time for completion of, or an exemption from, the renewal requirements in subrule 11.4(1).

*a.* A licensee requesting an extension or exemption shall complete and submit a request form to the board that sets forth the reasons for the request and has been signed by the licensee and attending physician.

*b.* The board may grant an extension of time to fulfill the requirements in subrule 11.4(1).

*c.* The board may grant an exemption from the educational requirements for any period of time not to exceed one calendar year.

*d.* If the physical disability or illness for which an extension or exemption was granted continues beyond the period of waiver, the licensee must reapply for a continuance of the extension or exemption.

*e.* The board may, as a condition of any extension or exemption granted, require the applicant to make up a portion of the continuing education requirement by methods it prescribes.

**11.4(4) Reinstatement requirement.** An applicant for license reinstatement whose license has been inactive for one year or more shall provide proof of successful completion of 40 hours of category 1 credit completed within 24 months prior to submission of the application for reinstatement or proof of successful completion of SPEX or COMVEX-USA within one year immediately prior to the submission of the application for reinstatement.

**11.4(5) Cost of continuing education and training for renewal or reinstatement.** Each licensee is responsible for all costs of continuing education and training required in 653—Chapter 11.

**11.4(6) Documentation.** A licensee shall maintain documentation of the continuing education and training requirements in 653—Chapter 11, including dates, subjects, duration of programs, and proof of participation, for five years after the date of the continuing education and training.

**11.4(7) Audits.** The board may audit continuing education and training documentation at any time within the five-year period. If the board conducts an audit of continuing education and training, a licensee shall respond to the board and provide all materials requested, within 30 days of a request made by board staff or within the extension of time if one has been granted.

**11.4(8) Grounds for discipline.** A licensee may be subject to disciplinary action for failure to comply with continuing education and training requirements in 653—Chapter 11.

[ARC 9601B, IAB 7/13/11, effective 8/17/11; ARC 0217C, IAB 7/25/12, effective 8/29/12; ARC 0871C, IAB 7/24/13, effective 8/28/13; ARC 2523C, IAB 5/11/16, effective 6/15/16; see Rescission note at end of chapter; ARC 4338C, IAB 3/13/19, effective 4/17/19]

**653—11.5(272C) Failure to fulfill requirements for continuing education and training for identifying and reporting abuse.**

**11.5(1)** Disagreement over whether material submitted fulfills the requirements specified in rule 653—11.4(272C).

*a.* Staff will attempt to work with a licensee or applicant to resolve any discrepancy concerning credit for renewal or reinstatement.

*b.* When resolution is not possible, staff shall refer the matter to the committee.

(1) In the matter of a licensee seeking license renewal, staff shall renew the license if all other matters are in order and inform the licensee that the matter is being referred to the committee.

(2) In the matter of an applicant seeking reinstatement, staff shall reinstate the license if all other matters are in order and inform the applicant that the matter is being referred to the committee.

*c.* The committee shall consider the staff's recommendation for denial of credit for continuing education or training for identifying and reporting abuse, chronic pain management, and end-of-life care.

(1) If the committee approves the credit, it shall authorize the staff to inform the licensee or applicant that the matter is resolved.

(2) If the committee disapproves the credit, it shall refer the matter to the board with a recommendation for resolution.

*d.* The board shall consider the committee's recommendations.

(1) If the board approves the credit, it shall authorize the staff to notify the licensee or applicant for reinstatement if all other matters are in order.

(2) If the board denies the credit, it shall:

1. Close the case;

2. Send the licensee or applicant an informal, nonpublic letter of warning, which may include recommended terms for complying with the requirements for continuing education or training; or

3. File a statement of charges for noncompliance with the board's rules on continuing education or training and for any other violations which may exist.

**11.5(2)** Informal appearance for failure to complete requirements for continuing education or training.

*a.* The licensee or applicant may, within ten days after the date that the notification of the denial was sent by certified mail, request an informal appearance before the board.

*b.* At the informal appearance, the licensee or applicant will have the opportunity to present information, and the board will issue a written decision.

[ARC 9601B, IAB 7/13/11, effective 8/17/11; ARC 0217C, IAB 7/25/12, effective 8/29/12]

**653—11.6(17A,147,148E,272C) Waiver or variance requests.** Waiver or variance requests shall be submitted in conformance with 653—Chapter 3.

These rules are intended to implement Iowa Code chapters 147 and 272C and sections 232.69 and 235B.16.

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<sup>1</sup> Paragraph 11.4(1)“d” rescinded by 2018 Iowa Acts, House File 2377, section 23, effective 7/1/18.

CHAPTER 20  
LICENSURE OF GENETIC COUNSELORS

**653—20.1(148H) Purpose.** The licensure of genetic counselors is established to ensure that practitioners are qualified to provide to Iowans genetic counseling with reasonable skill and safety. The provisions of Iowa Code chapters 147, 148H, and 272C authorize the board of medicine to establish eligibility requirements for licensure, evaluate the credentials of applicants for licensure, issue licenses to qualified applicants, institute continuing education requirements, investigate complaints and reports alleging that licensed genetic counselors have violated statutes and rules governing the practice of genetic counseling, make available participation in the Iowa physician health program, and discipline licensed genetic counselors found guilty of infractions as provided in state law and board rules.  
[ARC 4339C, IAB 3/13/19, effective 4/17/19]

**653—20.2(148H) Scope of chapter.** This chapter shall not be construed to apply to any of the following:

1. A physician or surgeon or an osteopathic physician or surgeon licensed under Iowa Code chapter 148, a registered nurse or an advanced registered nurse practitioner licensed under Iowa Code chapter 152, a physician assistant licensed under Iowa Code chapter 148C, or other persons licensed under Iowa Code chapter 147 when acting within the scope of the person's profession and doing work of a nature consistent with the person's education and training.
2. A person who is certified by the American Board of Medical Genetics and Genomics as a doctor of philosophy and is not a genetic counselor licensed pursuant to Iowa Code chapter 148H.
3. A person employed as a genetic counselor by the federal government or an agency thereof if the person provides genetic counseling services solely under the direction and control of the entity by which the person is employed.
4. A genetic counseling intern.

[ARC 4339C, IAB 3/13/19, effective 4/17/19]

**653—20.3(148H) Definitions.**

*"Active candidate status"* means a person has met the requirements established by the American Board of Genetic Counseling to take the American Board of Genetic Counseling certification examination in general genetics and genetic counseling and has been granted this designation by the American Board of Genetic Counseling.

*"American Board of Genetic Counseling"* or *"ABGC"* means the United States-based commission, or its equivalent or successor organization, that validates entry-level competency in the practice of genetic counseling through professional certification.

*"American Board of Medical Genetics and Genomics"* or *"ABMGG"* means the United States-based commission, or its equivalent or successor organization, that validates entry-level competency in the practice of genetic counseling through professional certification.

*"Board"* means the board of medicine.

*"Committee"* means the licensure committee of the board.

*"Genetic counseling"* means the provision of services by a person who qualifies for a license under Iowa Code chapter 148H.

*"Genetic counseling intern"* means a student enrolled in a genetic counseling program accredited by the accreditation council for genetic counseling or the American Board of Medical Genetics and Genomics.

*"Genetic counselor"* means a person who is licensed under Iowa Code chapter 148H to engage in the practice of genetic counseling.

*"Qualified supervisor"* means any person who is a genetic counselor licensed under Iowa Code chapter 148H, a physician licensed under Iowa Code chapter 148, or an advanced registered nurse practitioner licensed under Iowa Code chapter 152.

*"Supervision"* means supervision by a qualified supervisor who has the overall responsibility of assessing the work of a provisional licensee, provided that an annual supervision contract signed by the

qualified supervisor and the provisional licensee is on file with both parties. “Supervision” does not require the qualified supervisor’s presence during the performance of services.

[ARC 4339C, IAB 3/13/19, effective 4/17/19]

**653—20.4(148H) Scope of practice.** A person licensed pursuant to Iowa Code chapter 148H may do any of the following:

1. Obtain and evaluate individual, family, and medical histories to determine genetic risk for genetic and medical conditions and diseases in a patient, the patient’s offspring, and other family members.
2. Discuss the features, history, means of diagnosis, genetic and environmental factors, and management of risk for genetic and medical conditions and diseases.
3. Identify, order, and coordinate genetic laboratory tests and other diagnostic studies as appropriate for the genetic assessment of a patient.
4. Refer a patient to a specialty or subspecialty department as necessary for the purpose of collaborating on diagnosis and treatment involving multiple body systems and general medical management.
5. Integrate genetic laboratory test results and other diagnostic studies with personal and family medical history to assess and communicate risk factors for genetic and medical conditions and diseases.
6. Explain the clinical implications of genetic laboratory tests and other diagnostic studies and their results.
7. Evaluate the responses of a patient or patient’s family to the condition or risk of recurrence and provide patient-centered genetic counseling and anticipatory guidance.
8. Identify and utilize community resources that provide medical, educational, financial, and psychosocial support and advocacy.
9. Provide written documentation of medical, genetic, and counseling information for families and health care professionals.

[ARC 4339C, IAB 3/13/19, effective 4/17/19]

**653—20.5(148H) Titles used.** A genetic counselor licensed under Iowa Code chapter 148H may use the words “genetic counselor” or “licensed genetic counselor” or the corresponding abbreviation “LGC” after the person’s name. Persons who possess a provisional license shall add the designation “provisional licensed genetic counselor.”

[ARC 4339C, IAB 3/13/19, effective 4/17/19]

**653—20.6(148H) Qualifications for licensure.**

**20.6(1)** Each applicant for licensure under Iowa Code chapter 148H shall:

- a. Submit an application form and supporting documentation as prescribed by the board.
- b. Hold active certification as a genetic counselor by the American Board of Genetic Counseling, as a genetic counselor by the American Board of Medical Genetics and Genomics, or as a medical geneticist by the American Board of Medical Genetics and Genomics, or the successor to any of the aforementioned organizations.

**20.6(2)** A licensee shall maintain active certification as a genetic counselor by the American Board of Genetic Counseling, as a genetic counselor by the American Board of Medical Genetics and Genomics, or as a medical geneticist by the American Board of Medical Genetics and Genomics, or the successor to any of the aforementioned organizations.

[ARC 4339C, IAB 3/13/19, effective 4/17/19]

**653—20.7(148H) Qualifications for provisional licensure.** The board may issue a provisional license to an applicant who meets all of the requirements for licensure except for the certification component and who has been granted active candidate status by the American Board of Genetic Counseling or the American Board of Medical Genetics and Genomics.

**20.7(1)** The applicant shall submit a provisional license application form, proof of active candidate status, and supporting documentation prescribed by the board.

**20.7(2)** A provisional license shall expire and become inactive upon the earliest of the following:

- a. Issuance of a license as a genetic counselor by the board.
- b. Loss of active candidate status.

(1) A person holding a provisional license which is inactive due to loss of active candidate status may submit an application for reactivation of the provisional license upon demonstrating that active candidate status has been reestablished.

- (2) An application for extension of a provisional license shall be signed by a qualified supervisor.
- c. The date printed on the provisional license.

**20.7(3)** A person with a provisional license shall work at all times under the supervision of a qualified supervisor.

[ARC 4339C, IAB 3/13/19, effective 4/17/19]

**653—20.8(147,148H) Application requirements.**

**20.8(1)** *Application for licensure.* To apply for a license to practice genetic counseling, an applicant shall:

- a. Submit the completed application form provided by the board, including required credentials and documents, a completed fingerprint packet and a sworn statement by the applicant attesting to the truth of all information provided by the applicant;

- b. Pay the nonrefundable initial application fee identified in 653—paragraph 8.14(2) “a” and pay the fee identified in 653—paragraph 8.14(2) “f” for the evaluation of the fingerprint packet and the national criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI).

**20.8(2)** *Contents of the application form.* Each applicant shall submit the following information on the application form provided by the board:

- a. The applicant’s full legal name, date and place of birth, home address, mailing address, principal business address, and personal email address regularly used by the applicant or licensee for correspondence with the board;

- b. A photograph of the applicant suitable for positive identification;

- c. A chronology accounting for all time periods from the date the applicant entered a genetic counseling training program or educational institution to the date of the application;

- d. The other jurisdictions in the United States or other nations or territories in which the applicant is authorized to practice genetic counseling, including license, certificate of registration or certification number and date of issuance;

- e. Full disclosure of the applicant’s involvement in civil litigation related to the practice of genetic counseling in any jurisdiction of the United States or other nations or territories. Copies of the legal documents may be requested if needed during the review process;

- f. A statement disclosing and explaining any informal or nonpublic actions, warnings issued, investigations conducted, or disciplinary actions taken, whether by voluntary agreement or formal action, by a medical, genetic counseling or professional regulatory authority, an educational institution, a training or research program, or a health facility in any jurisdiction;

- g. A statement disclosing and explaining any charge of a misdemeanor or felony involving the applicant filed in any jurisdiction, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside;

- h. A letter sent directly from the ABGC or ABMGG to the board verifying the applicant holds active certification in genetic counseling by the ABGC or ABMGG for genetic counselor licensure or proof of active candidate status for provisional licensure;

- i. A statement of the applicant’s physical and mental health, including full disclosure and a written explanation of any dysfunction or impairment which may affect the ability of the applicant to engage in the practice of genetic counseling and provide patients with safe and healthful care; and

- j. A completed fingerprint packet to facilitate a national criminal history background check. The fee for evaluation of the fingerprint packet and the DCI and FBI criminal history background checks will be assessed to the applicant.

**20.8(3) *Application cycle.*** If the applicant does not submit all materials, including a completed fingerprint packet, within 90 days of the board's initial request for further information, the application shall be considered inactive. The board office shall notify the applicant of this change in status.

*a.* To reactivate the application, an applicant shall submit a nonrefundable reactivation of application fee identified in 653—paragraph 8.14(2)“*b*” and shall update application materials if requested by the board. The period for requesting reactivation is limited to 30 days from the date the applicant is notified that the application is inactive, unless the applicant is granted an extension in writing by the committee or the board.

*b.* Once the application reactivation period is expired, an applicant must reapply and submit a new, nonrefundable initial application fee and a new application, including required documents and credentials.

**20.8(4) *Applicant responsibilities.*** An applicant for licensure to practice genetic counseling bears full responsibility for each of the following:

*a.* Paying all fees charged by regulatory authorities, national testing or credentialing organizations, health facilities, and educational institutions providing the information specified in subrule 20.8(2);

*b.* Providing accurate, up-to-date, and truthful information on the application form including, but not limited to, that specified under subrule 20.8(2) related to prior professional experience, education, training, active certification, licensure or registration, and disciplinary history.

**20.8(5) *Licensure application review process.*** A process established by the board shall be utilized to review each application. Priority shall be given to processing a licensure application when a written request is received in the board office from an applicant whose practice will primarily involve provision of services to underserved populations, including but not limited to persons who are minorities or low-income or who live in rural areas.

*a.* An application for initial licensure shall be considered open from the date the application form is received in the board office with the nonrefundable initial application fee.

*b.* After reviewing each application, staff shall notify the applicant about how to resolve any problems identified by the reviewer. An applicant shall provide additional information when requested by staff or the board.

*c.* If the final review indicates that the application is complete and that the application does not raise any questions or concerns regarding the applicant's qualifications for licensure, staff may administratively issue the license. Staff may issue the license without having received a report on the applicant from the FBI.

*d.* If the final review indicates questions or concerns that cannot be remedied by continued communication with the applicant, the executive director, the director of licensure and the director of legal affairs shall determine if the questions or concerns indicate any uncertainty about the applicant's current qualifications for licensure.

(1) If there is no current concern, staff shall administratively issue the license.

(2) If there are questions or concerns, an Iowa-licensed genetic counselor may be consulted.

(3) If any concern exists, staff shall refer the application to the committee.

*e.* Staff shall refer to the committee for review matters which include, but are not limited to, falsification of information on the application, criminal record, malpractice, substance abuse, competency, physical or mental illness, or professional disciplinary history.

*f.* If the committee is able to eliminate questions or concerns without dissension from staff or a committee member, the committee may direct staff to issue the license administratively.

*g.* If the committee is not able to eliminate questions or concerns without dissension from staff or a committee member, the committee shall recommend that the board:

(1) Request an investigation;

(2) Request that the applicant appear for an interview;

(3) If an applicant has not engaged in the field of genetic counseling in the past three years in any jurisdiction of the United States, require an applicant to:

1. Successfully complete board-approved continuing education or remediation;

2. Successfully complete a board-approved employment-based monitoring program developed by the genetic counselor's employer, an Iowa-licensed genetic counselor and the board;
3. Successfully complete any other pathway as agreed upon by the board;
- (4) Issue a license;
- (5) Issue a license under certain terms and conditions or with certain restrictions;
- (6) Request that the applicant withdraw the licensure application; or
- (7) Deny a license.
- h.* The board shall consider applications and recommendations from the committee and shall:
  - (1) Request an investigation;
  - (2) Request that the applicant appear for an interview;
  - (3) If an applicant has not engaged in the field of genetic counseling in the past three years in any jurisdiction of the United States, require an applicant to:
    1. Successfully complete board-approved continuing education or remediation;
    2. Successfully complete a board-approved employment-based monitoring program developed by the genetic counselor's employer, an Iowa-licensed genetic counselor and the board;
    3. Successfully complete any other pathway as agreed upon by the board;
    - (4) Issue a license;
    - (5) Issue a license under certain terms and conditions or with certain restrictions;
    - (6) Request that the applicant withdraw the licensure application; or
    - (7) Deny a license. The board may deny a license for any grounds on which the board may discipline a license.

**20.8(6) *Grounds for denial of licensure.*** The board, on the recommendation of the committee, may deny an application for licensure for any of the following reasons:

- a.* Failure to meet the requirements for licensure specified in this chapter pursuant to Iowa Code section 148H.3.
- b.* Pursuant to Iowa Code section 147.4, upon any of the grounds for which licensure may be revoked or suspended as specified in Iowa Code sections 147.55 and 148H.7 or in rule 653—20.20(147,148H,272C).

**20.8(7) *Preliminary notice of denial.*** Prior to the denial of licensure to an applicant, the board shall issue a preliminary notice of denial that shall be sent to the applicant by regular, first-class mail at the address provided by the applicant. The preliminary notice of denial is a public record and shall cite the factual and legal basis for denying the application, notify the applicant of the appeal process, and specify the date upon which the denial will become final if it is not appealed.

**20.8(8) *Appeal procedure.*** An applicant who has received a preliminary notice of denial may appeal the denial and request a hearing on the issues related to the preliminary notice of denial by serving a request for hearing upon the executive director not more than 30 calendar days following the date when the preliminary notice of denial was mailed. The applicant's current address shall be provided in the request for hearing. The request is deemed filed on the date it is received in the board office. If the request is received with a USPS nonmetered postmark, the board shall consider the postmark date as the date the request is filed. The request shall specify the factual or legal errors and that the applicant desires an evidentiary hearing and may provide additional written information or documents in support of licensure.

**20.8(9) *Hearing.*** If an applicant appeals the preliminary notice of denial and requests a hearing, the hearing shall be a contested case and subsequent proceedings shall be conducted in accordance with rule 653—25.30(17A).

- a.* License denial hearings are contested cases open to the public.
- b.* Either party may request issuance of a protective order in the event privileged or confidential information is submitted into evidence.
- c.* Evidence supporting the denial of the license may be presented by an assistant attorney general.
- d.* While each party shall have the burden of establishing the affirmative of matters asserted, the applicant shall have the ultimate burden of persuasion as to the applicant's qualification for licensure.

*e.* The board, after a hearing on license denial, may issue or deny the license. The board shall state the reasons for its decision and may issue the license, issue the license with restrictions, or deny the license. The final decision is a public record.

*f.* Judicial review of a final order of the board denying licensure, or issuing a license with restrictions, may be sought in accordance with the provisions of Iowa Code section 17A.19, which are applicable to judicial review of any agency's final decision in a contested case.

**20.8(10) Finality.** If an applicant does not appeal a preliminary notice of denial in accordance with subrule 20.8(8), the preliminary notice of denial automatically becomes final. A final denial of an application for licensure is a public record.

**20.8(11) Failure to pursue appeal.** If an applicant appeals a preliminary notice of denial in accordance with subrule 20.8(8) but the applicant fails to pursue that appeal to a final decision within one year from the date of the preliminary notice of denial, the board may dismiss the appeal. The appeal may be dismissed only after the board sends a written notice by first-class mail to the applicant at the applicant's last-known address. The notice shall state that the appeal will be dismissed and the preliminary notice of denial will become final if the applicant does not contact the board to schedule the appeal hearing within 30 days of the date the letter is mailed from the board office. Upon dismissal of an appeal, the preliminary notice of denial becomes final. A final denial of an application for licensure under this rule is a public record.

**20.8(12) Waiver or variance prohibited.** Provisions of this rule are not subject to waiver or variance pursuant to 653—Chapter 3 or any other provision of law.  
[ARC 4339C, IAB 3/13/19, effective 4/17/19]

**653—20.9(147,148H) Display of license and notification required to change the board's data system.**

**20.9(1) Display of license.** Licensed genetic counselors shall display the license issued by the board in a conspicuous place in their primary place of business.

**20.9(2) Change of contact information.** Licensees shall notify the board within one month of a change in home address, address of the place of practice, home or practice telephone number, or personal email address regularly used by the applicant or licensee for correspondence with the board.

**20.9(3) Change of full legal name.** A licensee shall notify the board of any change in the licensee's full legal name within one month of making the name change. Notification requires a notarized copy of a marriage license or a notarized copy of court documents.

**20.9(4) Deceased.** A licensee's file shall be closed and labeled "deceased" when the board receives a copy of the licensee's death certificate or other reliable information of the licensee's death.  
[ARC 4339C, IAB 3/13/19, effective 4/17/19]

**653—20.10(147,148H,272C) Biennial renewal of license required.** Pursuant to Iowa Code section 148H.3, a license expires on October 31 of odd-numbered years and can be renewed for the fee identified in 653—paragraph 8.14(2) "c."

**20.10(1)** The applicant for renewal shall provide:

*a.* A renewal application provided by the board.  
*b.* A letter sent directly from the ABGC or ABMGG to the board verifying that the applicant holds active certification in genetic counseling by the ABGC or ABMGG for genetic counselor licensure or proof of active candidate status for provisional licensure.

*c.* Satisfactory evidence to the board that in the period since the license was issued or last renewed, the applicant has completed 30 hours of National Society of Genetic Counselors or ABMGG continuing education units as approved by the board.

**20.10(2) Expiration date.** Certificates of licensure to practice genetic counseling shall expire on October 31 in odd years.

**20.10(3) Prorated fees.** The first renewal fee for a license shall be prorated on a monthly basis according to the date of issue.

**20.10(4) Renewal requirements and penalties for late renewal.** Each licensee shall be sent a renewal notice at least 60 days prior to the expiration date. The licensee is responsible for renewing the license

prior to its expiration. Failure of the licensee to receive the notice does not relieve the licensee of responsibility for renewing that license.

*a.* When online renewal is used, the licensee must complete the online renewal prior to midnight on December 31 in order to ensure that the license will not become inactive. The license becomes inactive and invalid at 12:01 a.m. on January 1.

*b.* Upon receipt of the completed renewal application, staff shall administratively issue a license that expires on October 31 of odd-numbered years. 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.

*c.* Every renewal shall be displayed in connection with the original certificate of licensure.

*d.* If the licensee fails to submit the renewal application and renewal fee prior to the expiration date on the current license, a penalty fee identified in 653—paragraph 8.14(2) “*d*” shall be assessed for renewal in the grace period, a period up until January 1 when the license becomes inactive if not renewed.

**20.10(5) *Inactive license.*** Failure of a licensee to renew by January 1 will result in invalidation of the license, and the license will become inactive.

*a.* Licensees are prohibited from engaging in the practice of genetic counseling once the license is inactive.

*b.* Having a genetic counselor license in inactive status does not preclude the board from taking disciplinary actions authorized in Iowa Code section 147.55 or 148H.7.

[ARC 4339C, IAB 3/13/19, effective 4/17/19]

#### **653—20.11(147,272C) Reinstatement of an inactive license.**

**20.11(1) *Reinstatement requirements.*** Licensees who allow their licenses to go inactive by failing to renew may apply for reinstatement of a license. Pursuant to Iowa Code section 147.11, applicants for reinstatement shall:

*a.* Submit upon forms provided by the board a completed application for reinstatement of a license to practice genetic counseling. The application shall include the following information:

(1) The applicant’s full legal name, date and place of birth, home address, mailing address, principal business address, and personal email address regularly used by the applicant or licensee for correspondence with the board.

(2) Every jurisdiction in which the applicant is or has been authorized to practice, including license numbers and dates of issuance.

(3) Full disclosure of the applicant’s involvement in civil litigation related to the practice of genetic counseling in any jurisdiction of the United States or other nations or territories. Copies of the legal documents may be requested if needed during the review process.

(4) A statement disclosing and explaining any warnings issued, investigations conducted or disciplinary actions taken, whether by voluntary agreement or formal action, by a medical, genetic counseling or professional regulatory authority; an educational institution; a training or research program; or a health facility in any jurisdiction.

(5) A statement of the applicant’s physical and mental health, including full disclosure and a written explanation of any dysfunction or impairment which may affect the ability of the applicant to engage in practice and provide patients with safe and healthful care.

(6) Verification of an applicant’s hospital and clinical staff privileges and other professional experience for the past five years if requested by the board.

(7) A chronology accounting for all time periods from the date of initial licensure.

(8) A statement disclosing and explaining any charge of a misdemeanor or felony involving the applicant filed in any jurisdiction, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside.

*b.* Submit a completed fingerprint packet to facilitate a national criminal history background check. The fee identified in 653—paragraph 8.14(2) “*f*” for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks will be assessed to the applicant.

c. Pay the reinstatement fee identified in 653—paragraph 8.14(2) “g” plus the fee identified in 653—paragraph 8.14(2) “f” for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks.

d. Provide a certificate which demonstrates that the applicant holds active certification in genetic counseling by ABGC or ABMGG.

e. Meet any new requirements instituted since the license lapsed.

**20.11(2) Reinstatement for an applicant who has been out of practice for three years.** If an applicant has not engaged in the field of genetic counseling in the past three years in any jurisdiction of the United States, the board may require an applicant to:

a. Successfully complete board-approved continuing education or remediation.

b. Successfully complete a board-approved employment-based monitoring program developed by the genetic counselor’s employer, an Iowa-licensed genetic counselor and the board.

c. Successfully complete any other pathway as agreed upon by the board.

[ARC 4339C, IAB 3/13/19, effective 4/17/19]

**653—20.12(272C) Code of ethics.** The NSGC Code of Ethics prepared and approved by the National Society of Genetic Counselors shall be utilized by the board as guiding principles in the practice of genetic counseling in this state.

[ARC 4339C, IAB 3/13/19, effective 4/17/19]

**653—20.13(272C) Nonpayment of state debt.** 653—Chapter 12 shall apply to licensed genetic counselors.

[ARC 4339C, IAB 3/13/19, effective 4/17/19]

**653—20.14(272C) Standards of practice—office practices.** Rule 653—13.7(147,148,272C) shall apply to licensed genetic counselors.

[ARC 4339C, IAB 3/13/19, effective 4/17/19]

**653—20.15(272C) Iowa physician health committee.** 653—Chapter 14 shall apply to licensed genetic counselors.

[ARC 4339C, IAB 3/13/19, effective 4/17/19]

**653—20.16(272C) Child support noncompliance.** 653—Chapter 15 shall apply to licensed genetic counselors.

[ARC 4339C, IAB 3/13/19, effective 4/17/19]

**653—20.17(272C) Student loan default or noncompliance.** 653—Chapter 16 shall apply to licensed genetic counselors.

[ARC 4339C, IAB 3/13/19, effective 4/17/19]

**653—20.18(272C) Military service and veteran reciprocity.** 653—Chapter 18 shall apply to licensed genetic counselors.

[ARC 4339C, IAB 3/13/19, effective 4/17/19]

**653—20.19(272C) Mandatory reporting.** 653—Chapter 22 shall apply to licensed genetic counselors.

[ARC 4339C, IAB 3/13/19, effective 4/17/19]

**653—20.20(147,148H,272C) Grounds for discipline of genetic counselors.** The board has authority to impose discipline for any violation of Iowa Code chapter 147, 148H, or 272C or the rules promulgated thereunder. These grounds for discipline apply to genetic counselors. This rule is not subject to waiver or variance pursuant to 653—Chapter 3 or any other provision of law. The board may impose any of the disciplinary sanctions set forth in 653—subrule 25.25(1), when the board determines that the licensee is guilty of any of the following acts or offenses:

**20.20(1)** Violating any of the grounds for revocation or suspension of a license as listed in Iowa Code section 147.55, 148H.7, or 272C.10.

**20.20(2)** Professional incompetency. Professional incompetency includes, but is not limited to, any of the following:

- a. Willful or repeated gross malpractice;
- b. Willful or gross negligence;
- c. A substantial lack of knowledge or ability to discharge professional obligations within the scope of the genetic counselor's practice;
- d. A substantial deviation by the genetic counselor from the standards of learning or skill ordinarily possessed and applied by other genetic counselors in the state of Iowa acting in the same or similar circumstances;
- e. A failure by a genetic counselor to exercise in a substantial respect that degree of care which is ordinarily exercised by an average genetic counselor in the state of Iowa acting in the same or similar circumstances;
- f. A willful or repeated departure from or failure to conform to the minimal standard of acceptable and prevailing practice of genetic counseling in the state of Iowa.

**20.20(3)** Practice harmful or detrimental to the public. Practice harmful or detrimental to the public includes, but is not limited to, the failure of the genetic counselor to possess and exercise that degree of skill, learning, and care expected of a reasonable, prudent genetic counselor acting in the same or similar circumstances in this state, or when a genetic counselor is unable to practice genetic counseling with reasonable skill and safety as a result of mental or physical impairment, or chemical abuse.

**20.20(4)** Unprofessional conduct. Engaging in unprofessional conduct includes, but is not limited to, the committing by a licensee of an act contrary to honesty, justice, or good morals, whether the act is committed in the scope of the licensee's practice or otherwise, and whether the act is committed in this state or elsewhere; or a violation of the principles of ethics applicable to genetic counselors.

**20.20(5)** Sexual misconduct. Engaging in sexual misconduct includes, but is not limited to, a genetic counselor engaging in conduct set forth in 653—subrule 13.7(4) (sexual conduct) or 13.7(6) (sexual harassment) as interpreted by the board.

**20.20(6)** Substance abuse. Substance abuse includes, but is not limited to, excessive use of alcohol, drugs, narcotics, chemicals, or other substances in a manner which may impair a licensee's ability to practice the profession with reasonable skill and safety.

**20.20(7)** Physical or mental impairment. Physical or mental impairment includes, but is not limited to, any physical, neurological, or mental condition which may impair a genetic counselor's ability to practice the profession with reasonable skill and safety. Being adjudicated mentally incompetent by a court of competent jurisdiction shall automatically suspend a license for the duration of the license unless the board orders otherwise.

**20.20(8)** Felony criminal conviction. Being convicted of a felony in the courts of this state, another state, the United States, or any country, territory, or jurisdiction, as defined in Iowa Code section 148.6(2) "b."

**20.20(9)** Violation of the laws or rules governing the practice of genetic counseling in this state, another state, the United States, or any country, territory, or jurisdiction. Violation of the laws or rules governing the practice of genetic counseling includes, but is not limited to, willful or repeated violation of the provisions of these rules or the provisions of Iowa Code chapter 147, 148H, or 272C or any other state or federal laws governing the practice of genetic counseling.

**20.20(10)** Violation of a lawful order of the board, previously entered by the board in a disciplinary or licensure hearing, or violation of the terms and provisions of a consent agreement or settlement agreement entered into between a licensee and the board.

**20.20(11)** Violation of an initial agreement or health contract entered into with the Iowa physician health program (IPHP).

**20.20(12)** Failure to comply with an evaluation order under Iowa Code section 272C.9(1).

**20.20(13)** Knowingly making misleading, deceptive, untrue, or fraudulent representations in the practice of genetic counseling. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of genetic counseling includes, but is not limited to, an intentional

perversion of the truth, either orally or in writing, by a genetic counselor in the practice of genetic counseling.

**20.20(14)** 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 genetic counseling in this state, and includes false representations of material fact, either 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 attempting to file or filing with the board any false or forged document submitted with an application for license in this state.

**20.20(15)** Fraud in representations as to skill or ability. Fraud in representations as to skill or ability includes, but is not limited to, a licensee's having made misleading, deceptive, or untrue representations as to the genetic counselor's competency to perform professional services for which the licensee is not qualified to perform by education, training, or experience.

**20.20(16)** 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 known to the public information which is false, deceptive, misleading, or promoted through fraud or misrepresentation and includes statements which may consist of, but are not limited to:

- a. Inflated or unjustified claims which lead to expectations of favorable results;
- b. Self-laudatory claims that imply that the licensee is skilled in a field or specialty for which the licensee is not qualified;
- c. Representations that are likely to cause an average person to misunderstand; or
- d. Extravagant claims or claims of extraordinary skill not recognized by the profession of genetic counseling.

**20.20(17)** Obtaining any fee by fraud or misrepresentation.

**20.20(18)** Acceptance of remuneration for referral of a patient to other health professions in violation of the law or National Society of Genetic Counselors Code of Ethics.

**20.20(19)** Knowingly submitting a false report of continuing education or failure to submit the required reports of continuing education.

**20.20(20)** Knowingly aiding, assisting, procuring, or advising a person in the unlawful practice of genetic counseling.

**20.20(21)** Failure to report disciplinary action. Failure to report a license revocation, suspension, or other disciplinary action taken against a licensee by a professional licensing authority of another state, an agency of the United States government, or any country, territory, or other jurisdiction, within 30 days of final action by such licensing authority. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, the report shall be expunged from the records of the board.

**20.20(22)** Failure to report voluntary agreements. Failure to report any voluntary agreement to restrict the practice of genetic counseling entered into with this state, another state, the United States, an agency of the federal government, or any country, territory or other jurisdiction.

**20.20(23)** Failure to notify the board within 30 days after occurrence of any settlement or adverse judgment of a malpractice claim or action.

**20.20(24)** Failure to comply with a valid subpoena issued by the board pursuant to Iowa Code sections 17A.13 and 272C.6.

**20.20(25)** Failure to submit to a board-ordered mental, physical, clinical competency, or substance abuse evaluation or a drug or alcohol screening.

**20.20(26)** Noncompliance with a support order or with a written agreement for payment of support as evidenced by a certificate of noncompliance issued pursuant to Iowa Code chapter 252J. Disciplinary proceedings under this rule shall follow the procedures set forth in Iowa Code chapter 252J and 653—Chapter 15.

**20.20(27)** Student loan default or noncompliance with an agreement for payment of a student loan obligation as evidenced by a certificate of noncompliance issued pursuant to Iowa Code chapter 261 and rule 653—16.2(261).

**20.20(28)** Improper management of medical records. Improper management of medical records includes, but is not limited to, failure to maintain timely, accurate, and complete medical records.

**20.20(29)** Failure to respond to or comply with a board investigation initiated pursuant to Iowa Code section 272C.3 and rule 653—24.2(17A,147,148,272C).

**20.20(30)** Failure to submit an additional completed fingerprint card and applicable fee, within 30 days of a request made by board staff, when a previous fingerprint submission has been determined to be unacceptable.

**20.20(31)** Failure to respond to the board or submit continuing education materials during a board audit, within 30 days of a request made by board staff or within the extension of time if one has been granted.

**20.20(32)** Failure to respond to the board or submit requested mandatory training for identifying and reporting abuse materials during a board audit, within 30 days of a request made by the board staff or within the extension of time if one has been granted.

**20.20(33)** Nonpayment of state debt as evidenced by a certificate of noncompliance issued pursuant to Iowa Code chapter 272D and 653—Chapter 12.

**20.20(34)** Failure to file with the board a written report and a copy of the hospital disciplinary action within 30 days of any hospital disciplinary action or the licensee's voluntary action to avoid a hospital disciplinary action, as required by rule 653—22.5(272C).

[ARC 4339C, IAB 3/13/19, effective 4/17/19]

**653—20.21(272C) Complaints and investigations.** 653—Chapter 24 shall apply to licensed genetic counselors.

[ARC 4339C, IAB 3/13/19, effective 4/17/19]

**653—20.22(272C) Contested case proceedings.** 653—Chapter 25 shall apply to licensed genetic counselors.

[ARC 4339C, IAB 3/13/19, effective 4/17/19]

**653—20.23(272C) Reinstatement after disciplinary action.** 653—Chapter 26 shall apply to licensed genetic counselors.

[ARC 4339C, IAB 3/13/19, effective 4/17/19]

**653—20.24(148H,272C) Surrender of license to the board.**

**20.24(1)** A genetic counselor whose license is suspended or revoked or whose surrender of license with or without prejudice has been accepted by the board shall promptly surrender the original license to the board.

**20.24(2)** A genetic counselor whose ABGC certification has lapsed or whose certification has been revoked by the ABGC shall surrender the genetic counselor's license to the board.

**20.24(3)** A provisional licensee who loses active candidate status with the ABGC must immediately cease the practice of genetic counseling until the provisional licensee obtains an extension of the provisional license or obtains a new provisional license.

[ARC 4339C, IAB 3/13/19, effective 4/17/19]

**653—20.25(147,148H,272C) Waiver or variance prohibited.** Fees in this chapter are not subject to waiver or variance pursuant to 653—Chapter 3 or any other provision of law.

[ARC 4339C, IAB 3/13/19, effective 4/17/19]

These rules are intended to implement Iowa Code chapters 147, 148, 148H, and 272C.

[Filed ARC 4339C (Notice ARC 4095C, IAB 10/24/18), IAB 3/13/19, effective 4/17/19]



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CHAPTER 21  
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[Prior to 7/13/88, see Secretary of State[750], Ch 11]

DIVISION I  
GENERAL ADMINISTRATIVE PROCEDURES

**721—21.1(47) Emergency election procedures.** The state commissioner of elections may exercise emergency powers over any election being held in a district in which either a natural or other disaster or extremely inclement weather has occurred. The state commissioner may also exercise emergency powers during an armed conflict involving United States armed forces, or mobilization of those forces, or if an election contest court finds that there were errors in the conduct of an election making it impossible to determine the result.

**21.1(1) Definitions.**

“*Commissioner*” means the county commissioner of elections.

“*Election contest court*” means any of the courts specified in Iowa Code sections 57.1, 58.4, 61.1, 62.1 and 376.10.

“*Extremely inclement weather*” means a natural occurrence, such as a rainstorm, windstorm, ice storm, blizzard, tornado or other weather conditions, which makes travel extremely dangerous or which threatens the public peace, health and safety of the people or which damages and destroys public and private property.

“*Natural disaster*” means a natural occurrence, such as a fire, flood, blizzard, earthquake, tornado, windstorm, ice storm, or other events, which threatens the public peace, health and safety of the people or which damages and destroys public and private property.

“*Other disaster*” means an occurrence caused by machines or people, such as fire, hazardous substance or nuclear power plant accident or incident, which threatens the public peace, health and safety of the people or which damages and destroys public and private property.

“*State commissioner*” means the state commissioner of elections.

**21.1(2) Notice of natural or other disaster or extremely inclement weather.** The county commissioner of elections, or the commissioner’s designee, may notify the state commissioner of elections that due to a natural or other disaster or extremely inclement weather an election cannot safely be conducted in the time or place for which the election is scheduled to be held. If the commissioner or the commissioner’s designee is unable to transmit notice of the hazardous conditions, the notice may be given by any elected county official. Verification of the commissioner’s agreement with the severity of the conditions and the danger to the election process shall be transmitted to the state commissioner as soon as possible. Notice may be given by telephone or by facsimile machine, but a signed notice shall also be delivered to the state commissioner.

**21.1(3) Declaration of emergency due to natural or other disaster or extremely inclement weather.** After receiving notice of hazardous conditions, the state commissioner of elections, or the state commissioner’s designee, may declare that an emergency exists in the affected precinct or precincts. A copy of the declaration of the emergency shall be provided to the commissioner.

**21.1(4) Emergency modifications to conduct of elections.** When the state commissioner of elections has declared that an emergency exists due to a natural or other disaster or to extremely inclement weather, the county commissioner of elections, or the commissioner’s designee, shall consult with the state commissioner to develop a plan to conduct the election under the emergency conditions. All modifications to the usual method for conducting elections shall be approved in advance by the state commissioner unless prior approval is impossible to obtain.

Modifications may be made to the method for conducting the election including relocation of the polling place, postponement of the hour of opening the polls, postponement of the date of the election if no candidates for federal offices are on the ballot, reduction in the number of precinct election officials in nonpartisan elections, or other reasonable and prudent modifications that will permit the election to be conducted.

**21.1(5) *Relocation of polling place.*** The substitute polling place shall be as close as possible to the usual polling place and shall be within the same precinct if possible. Preference shall be given to buildings which are accessible to the elderly and disabled. Buildings supported by taxation shall be made available without charge by the authorities responsible for their administration. If it is necessary, more than one precinct may be located in the same room.

A notice of the location of the substitute polling place shall be posted on the door of the former polling place not later than one hour before the scheduled time for opening the polls or as soon as possible. If it is unsafe or impossible to post the sign on the door of the former polling place, the notice shall be posted in some other visible place at or near the site of the former polling place. If time permits, notice of the relocation of the polling place shall be published in the same newspaper in which notice of election was published, otherwise notice of relocation may be published in any newspaper of general circulation in the political subdivision which will appear on or before election day. The commissioner shall inform all broadcast media and print news organizations serving the jurisdiction of the modifications.

**21.1(6) *Postponement of election.*** An election, other than an election at which a federal office appears on the ballot, may be postponed until the following Tuesday. If the election involves more than one precinct, the postponement must include all precincts within the political subdivision. If the election is postponed, ballots shall not be reprinted to reflect the modification in the election date. The date of the close of voter preregistration by mail for the election shall not be extended. Precinct election registers prepared for the original election date may be used or reprinted at the commissioner's discretion.

On the day that the postponed election is actually held, all election day procedures must be repeated.

**21.1(7) *Absentee voting in postponed elections.*** Absentee ballots shall be delivered to voters pursuant to Iowa Code section 53.22 until the date the election is actually held. Absentee ballots shall be accepted at the commissioner's office until the hour the polls close on the date the election is held. Absentee ballots which are postmarked or which bear an Intelligent Mail barcode (IMb) traceable to a date of entry into the federal mail system no later than the day before the election is actually held shall be accepted if received no later than the time prescribed by the Iowa Code for the usual conduct of the election. The time shall be calculated from the date on which the election is held, not the date for which the election was originally scheduled. However, if absentee ballots have been tabulated before the election is postponed, the absentee ballots shall be sealed in an envelope by the absentee and special voters precinct board and stored securely until the date the election is actually held. The sealed envelopes shall be opened by the absentee and special voters precinct board on the date the election is actually held, counters on the tabulating equipment (if any) shall be reset to zero, and all absentee ballots tabulated on the original election date shall be retabulated.

**21.1(8) *Absentee and special voters precinct board in postponed elections.*** The absentee and special voters precinct board shall meet to consider provisional ballots at the times specified in Iowa Code sections 50.22 and 52.23, calculated from the date the election is held. No absentee ballots shall be counted until the date the election is held.

**21.1(9) *Canvass of votes in postponed elections.*** The canvass of votes shall also be rescheduled for one week after the originally scheduled canvass date.

**21.1(10) *Postponements made on election day.*** If the emergency is declared while the polls are open and the decision is made to postpone the election, each precinct polling place in the political subdivision shall be notified to close its doors and to halt all voting immediately. People present in the polling place who are waiting to vote shall not be given ballots. People who have received and marked their ballots shall deposit them in the ballot box; unmarked ballots may be returned to the precinct election officials.

The precinct election officials shall seal all ballots which were cast before the declaration of the emergency in secure containers. The containers shall be clearly marked as ballots from the postponed election. If it is safe to do so, the ballot containers, election register, and other election supplies shall be transported to the commissioner's office. The ballots shall be stored in a secure place. If it is unsafe to travel to the commissioner's office, the chairperson of the precinct election board shall see that the ballots and the election register are securely stored until it is safe to return them to the commissioner. If no contest is pending six months after the canvass for the election is completed, the unopened, sealed ballot containers shall be destroyed.

If automatic tabulating equipment is used, the automatic tabulating equipment shall be closed and sealed without printing the results. Before the date the election is held, the automatic tabulating equipment shall be reset to zero. Documents showing the progress of the count, if any, shall be sealed in an envelope and stored. No one shall reveal the progress of the count. After six months, the sealed envelope containing the vote totals shall be destroyed if no contest is pending.

**21.1(11) *Records kept.*** The state commissioner of elections shall maintain records of each emergency declaration. The records of emergency declarations for federal elections shall be kept for 22 months, and records for all other elections shall be kept for six months following the election. The records shall include the following information:

- a. The county in which the emergency occurred.
- b. The date and time the emergency declaration was requested.
- c. The name and title of the person making the request.
- d. Name and date of the election affected.
- e. The jurisdiction for which the election is to be conducted (school, city, county, or other).
- f. The number of precincts in the jurisdiction.
- g. The number of precincts affected by the emergency.
- h. The nature of the emergency, i.e., natural or other disaster, or extremely inclement weather.
- i. The date or dates of the occurrence of the natural or other disaster or extremely inclement weather.
- j. Conditions affecting the conduct of the election.
- k. Whether the polling places may safely be opened on time.
- l. Action taken: such as moving the polling place, change voting system, postpone election until the following Tuesday.
- m. Method to be used to inform the public of changes made in the election procedure.
- n. The signature of the state commissioner or the state commissioner's designee who was responsible for declaring the emergency.

**21.1(12) *Federal elections.***

a. If an emergency occurs that will adversely affect the conduct of an election at which candidates for federal office will appear on the ballot, the election shall not be postponed or delayed. Emergency measures shall be limited to relocation of polling places, modification of the method of voting, reduction of the number of precinct election officials at a precinct and other modifications of prescribed election procedures which will enable the election to be conducted on the date and during the hours required by law.

The primary election held in June of even-numbered years and the general election held in November of even-numbered years shall not be postponed. Special elections called by the governor pursuant to Iowa Code section 69.14 shall not be postponed unless no federal office appears on the ballot.

b. If a federal or state court order extends the time established for closing the polls pursuant to Iowa Code section 49.73, any person who votes after the statutory hour for closing the polls shall vote only by casting a provisional ballot pursuant to Iowa Code section 49.81. Provisional ballots cast after the statutory hour for closing the polls shall be sealed in a separate envelope from provisional ballots cast during the statutory polling hours. The absentee and special voters precinct board shall tabulate and report the results of the two sets of provisional ballots separately.

**21.1(13) *Military emergencies.*** A voter who is entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) and Iowa Code chapter 53, division II, "Absent Voting by Armed Forces," may return an absentee ballot via electronic transmission only if the voter is located in an area designated by the U.S. Department of Defense to be an imminent danger pay area or if the voter is an active member of the army, navy, marine corps, merchant marine, coast guard, air force or Iowa national guard and is located outside the United States or any of its territories. Procedures for the return of absentee ballots by electronic transmission are described in subrule 21.320(4).

**21.1(14) *Election contest emergency.*** If an election contest court finds that there were errors in the conduct of an election which make it impossible to determine the result of the election, the contest court shall notify the state commissioner of elections of its finding. The state commissioner shall order a repeat

election to be held. The repeat election date shall be set by the state commissioner. The repeat election shall be conducted under the state commissioner's supervision.

The repeat election shall be held at the earliest possible time, but it shall not be held earlier than 14 days after the date the election was set aside. Voter registration, publication, equipment testing and other applicable deadlines shall be calculated from the date of the repeat election.

The repeat election shall be conducted under the same procedures required for the election that was set aside, except that all known errors in preparation and procedure shall be corrected. The nominations from the initial election shall be used in the repeat election unless the contest court specifically rejects the initial nomination process in its findings. Precinct election officials for the repeat election may be replaced at the discretion of the auditor.

The following materials prepared for the original election shall be used or reconstructed for the repeat election:

Ballots (showing the date of repeat election). This may be stamped on ballots printed for the original election.

Notice of election (showing the date of repeat election).

This rule is intended to implement Iowa Code section 47.1.

[ARC 8045B, IAB 8/26/09, effective 7/27/09; ARC 9989B, IAB 2/8/12, effective 1/17/12; ARC 2663C, IAB 8/3/16, effective 8/1/16]

**721—21.2(47) Electronic submission of absentee ballot applications and affidavits of candidacy.** Absentee ballot applications and affidavits of candidacy may be submitted electronically using either fax or email.

**21.2(1) *Electronic copies of absentee ballot applications and affidavits of candidacy accepted for filing.*** Assuming that all other legal requirements are met, absentee ballot applications and affidavits of candidacy required by Iowa Code chapters 43, 44, 45, 161A, 260C, 277, 376 and 420 may be submitted electronically by either fax or email if presented to the appropriate filing officer as an exact copy of the original and if the submission is in compliance with subrule 21.2(2).

**21.2(2) *Original absentee ballot applications.*** The original absentee ballot application submitted electronically shall also be mailed or delivered to the commissioner. If mailed, the envelope bearing the original absentee ballot application shall be postmarked not later than the voter registration deadline provided in Iowa Code section 48A.9 for the election for which the ballot is requested. This subrule shall not apply to documents submitted electronically by UOCAVA voters pursuant to rule 721—21.320(53).

*a.* The voter's absentee ballot shall be rejected by the absentee and special voters precinct board if the original absentee ballot application which was filed electronically is not received by the time the polls close on election day.

*b.* The voter's absentee ballot shall be rejected by the absentee and special voters precinct board if the postmark or Intelligent Mail barcode (IMb) on the envelope containing the original absentee ballot application is either illegible or later than the voter registration deadline provided in Iowa Code section 48A.9 for the election for which the ballot is requested.

**21.2(3) *Original affidavits of candidacy.*** The original copy of an affidavit of candidacy submitted electronically shall also be filed with the appropriate commissioner. The envelope bearing the original affidavit (if any) shall be postmarked not later than the last day to file the document.

*a.* The filing shall be void if the original affidavit of candidacy filed electronically is not received within seven days after the filing deadline for the original affidavit of candidacy.

*b.* The filing shall be void if the postmark on the envelope containing the original affidavit of candidacy is later than the filing deadline.

*c.* If an affidavit of candidacy filing is voided because the original affidavit of candidacy submitted by facsimile machine was postmarked too late or arrives too late, the person who filed the document shall be notified immediately in writing.

This rule is intended to implement Iowa Code sections 43.11, 43.19, 43.54, 43.67, 43.78, 44.3, 45.3, 45.4, 46.20, 47.1, 47.2, 53.2, 53.8, 53.17, 53.22, 53.25, 53.40, 53.45, 61.3, 161A.5, 260C.15, 277.4, 376.4, 376.11 and 420.130.

[ARC 8045B, IAB 8/26/09, effective 7/27/09; ARC 9879B, IAB 11/30/11, effective 1/4/12; ARC 1831C, IAB 1/21/15, effective 2/25/15; ARC 2663C, IAB 8/3/16, effective 8/1/16; ARC 3447C, IAB 11/8/17, effective 12/31/17]

**721—21.3(49,48A) Voter identification documents.****21.3(1) Identification documents for persons other than election day registrants.**

a. Unless the person is registering to vote at the polls on election day, precinct election officials shall accept the identification documents listed in Iowa Code section 48A.8 and 2017 Iowa Acts, House File 516, section 27, from any person who is asked or required to present identification pursuant to Iowa Code section 49.77.

b. Current and valid identification. “Current and valid” or “identification,” for persons other than election day registrants, means identification that meets the following criteria:

(1) Iowa driver’s licenses and nonoperator’s identification cards used to establish identity pursuant to 2017 Iowa Acts, House File 516, section 27, shall be accepted up to 90 days after the expiration date listed on the license. It is still acceptable on the ninetieth day. An Iowa nonoperator’s identification card that does not expire shall be considered current and valid.

(2) Veterans and military identification cards that do not contain an expiration date or that do not expire and voter identification cards issued pursuant to 2017 Iowa Acts, House File 516, section 18, shall be considered current and valid.

(3) For registration pursuant to Iowa Code section 48A.8, the proof of residence must be dated, or describe terms of residency current to, within 45 days prior to submission.

(4) All other forms of identification used to establish identity pursuant to 2017 Iowa Acts, House File 516, section 27, shall not be expired. An identification is still valid on the expiration date.

c. A current and valid identification may include a former address, when used for identification purposes only.

**21.3(2) Identification for election day registrants.**

a. A person who applies to register to vote on election day shall provide proof of identity and residence pursuant to Iowa Code section 48A.7A and 2017 Iowa Acts, House File 516, section 27, in the precinct where the person is applying to register and vote.

b. Any registered voter who attests for another person registering to vote at the polls on election day shall meet the requirements in Iowa Code section 48A.7A. The registered voter may be a precinct election official or a pollwatcher, but may not attest for more than one person applying to register at the same election.

c. Current and valid identification. “Current and valid” or “identification,” for the purposes of election day registration, means identification that meets the following criteria:

(1) The expiration date on the identification card has not passed. An identification is still valid on the expiration date. An Iowa nonoperator’s identification card that does not expire shall be considered current and valid.

(2) Veterans and military identification cards that do not contain an expiration date or that do not expire and voter identification cards issued pursuant to 2017 Iowa Acts, House File 516, section 18, shall be considered current and valid.

d. A current and valid identification may include a former address, when used for identification purposes only.

**21.3(3) Proof of residence standards for all voters.** Any person required to present proof of residence pursuant to Iowa Code sections 48A.7A and 48A.8 shall provide documentation that meets the following requirements:

a. The proof of residence document must be listed in Iowa Code section 48A.7A or 48A.8.

b. The document must be current within 45 days of election day, unless otherwise provided by law.

c. A residential lease’s stated term must include election day.

d. Property tax statements are current within 45 days of March 31 or the final payment date, if the final payment date is stated in the document.

**21.3(4) Identification not provided.** After January 1, 2019, a person who is required to provide identification and does not provide it shall vote only by provisional ballot pursuant to Iowa Code section 49.81. However, a person who is registering to vote on election day pursuant to Iowa Code

section 48A.7A may establish identity and residency in the precinct by written oath of a person who is registered to vote in the precinct. A registered voter may only attest for one election day registrant.

**21.3(5) *Attesting to identity by signing oath.*** A person who cannot show proof of identity at the polls may swear to the oath appearing in 2017 Iowa Acts, House File 516, section 27(8). This provision is repealed effective January 1, 2019.

**21.3(6) *Determination of identity and residency.*** Proof of identity and residence of persons offering to vote is presumed valid unless the precinct election official determines the proof offered does not match the voter. In determining whether a person offering to vote is eligible under Iowa Code section 48A.7A and Iowa Code chapter 49, precinct election officials shall consider all of the information presented by the person offering to vote prior to determining that the person is not eligible. The following are factors that shall be considered by precinct election officials in making the determination:

- a. Changes to the voter's physical appearance or signature,
- b. Time elapsed since the proof was generated, subject to the Iowa Code sections that govern the validity and expiration timelines of the proof,
- c. Other documentation allowable under Iowa Code chapter 48A to prove the facts in question.

**21.3(7) *Post-election day proof of identity or residency.*** As of January 1, 2019, a person required to cast a provisional ballot under this rule may submit proof of identity or residence after election day. The proof must be received by the commissioner not later than 12 noon on the Monday following the election, or if the law authorizing the election specifies that the supervisors canvass the votes earlier than the Monday following the election, it must be received by the commissioner before the canvass for that election by the board of supervisors. Defects may be cured through the use of documentation as permitted under Iowa Code section 48A.7A or 2017 Iowa Acts, House File 516, section 27. If such defects are cured, the voter's ballot shall be counted.

This rule is intended to implement Iowa Code sections 48A.7A and 49.77, 2017 Iowa Acts, House File 516, section 27, and the Help America Vote Act.

[ARC 8045B, IAB 8/26/09, effective 7/27/09; ARC 1831C, IAB 1/21/15, effective 2/25/15; ARC 3447C, IAB 11/8/17, effective 12/31/17]

**721—21.4(49) Changes of address at the polls.** An Iowa voter who has moved from one precinct to another in the county where the person is registered to vote may report a change of address at the polls on election day.

**21.4(1)** To qualify to vote in the election being held that day, the voter shall:

- a. Go to the polling place for the precinct where the voter lives on election day.
- b. Complete a registration form showing the person's current address in the precinct.
- c. Present proof of residence and identity as required by subrules 21.3(1) through 21.3(4).

**21.4(2)** The officials shall require a person who is reporting a change of address at the polls to cast a provisional ballot if the person's registration in the county cannot be confirmed. Registration may be confirmed by:

- a. Telephoning the office of the county commissioner of elections, or
- b. Reviewing a printed list of all registered voters who are qualified to vote in the county for the election being held that day, or
- c. Researching the county's voter registration records using a computer.

**21.4(3)** In precincts where the voter's declaration of eligibility is included in the election register pursuant to rule 721—21.5(49) and Iowa Code section 49.77, the commissioner shall provide to each precinct one of the two following methods for recording changes of address:

- a. The voter shall be given both an eligibility declaration and a voter registration form. The eligibility declaration may be printed on the same piece of paper as the voter registration form.
- b. The commissioner shall provide blank lines on the election register for the precinct election officials to record the voter's name, address, and, if provided, telephone number, and, in primary

elections, political party affiliation. The voter shall sign the election register next to the printed information. The voter shall also complete a voter registration form showing the voter's current address.

This rule is intended to implement Iowa Code section 49.77.

[ARC 8045B, IAB 8/26/09, effective 7/27/09; ARC 1831C, IAB 1/21/15, effective 2/25/15; ARC 3447C, IAB 11/8/17, effective 12/31/17]

**721—21.5(49) Eligibility declarations in the election register.** To compensate for the absence of a separate declaration of eligibility form, the commissioner shall provide to each precinct a voter roster with space for each person who appears at the precinct to vote to print the following information: first and last name, address, date of birth, and, at the voter's option, telephone number, and, in primary elections, political party affiliation.

The roster forms shall include the name and date of the election and the name of the precinct, and may be provided on paper that makes carbonless copies. If a multicopy form is used, the commissioner shall retain the original copy of the voter roster with other records of the election.

This rule is intended to implement Iowa Code section 49.77.

[ARC 8045B, IAB 8/26/09, effective 7/27/09; ARC 3447C, IAB 11/8/17, effective 12/31/17]

**721—21.6(43,50) Turnout reports.** Rescinded IAB 6/2/10, effective 7/1/10.

**721—21.7(48A) Election day registration.** In addition to complying with the identification provisions in rule 721—21.3(49,48A), precinct election officials shall comply with the following requirements:

**21.7(1)** Precinct election officials shall inspect the identification documents presented by election day registrants to verify the following:

- a. The photograph shows the person who is registering to vote, and the document has not expired.
- b. The name on the identification document is the same as the name of the applicant.
- c. The address on the proof of residence document is in the precinct where the person is registering to vote and is current within 45 days.

**21.7(2)** Precinct election officials shall verify that each person who attempts to attest to the identity and residence of a person who is registering to vote on election day is a registered voter in the precinct and has not attested for any other voter in the election. The officials shall note in the election register that the person has attested for an election day registrant.

**21.7(3)** Precinct election officials shall permit any person who is in line to vote at the time the polls close to register and vote on election day if the person otherwise meets all of the election day registration requirements.

**21.7(4)** In precincts where an electronic program is not used to check the name of an election day registrant against the statewide list of felons who have had their right to vote revoked, the voter shall be required to cast a provisional ballot. The voter shall be allowed to present evidence of the person's right to vote until 12 noon on the Monday following the election, or if the law authorizing the election specifies that the supervisors canvass the votes earlier than the Monday following the election, the evidence must be received by the commissioner before the canvass for that election by the board of supervisors. Precinct election officials shall provide each election day registrant with a "Notice to Election Day Registrants" prepared by the state commissioner before allowing the voter to register and vote on election day. The "Notice to Election Day Registrants" prepared by the state commissioner will be posted on the state commissioner's website.

This rule is intended to implement Iowa Code section 48A.7A.

[ARC 8045B, IAB 8/26/09, effective 7/27/09; ARC 8777B, IAB 6/2/10, effective 5/7/10; ARC 1831C, IAB 1/21/15, effective 2/25/15; ARC 3447C, IAB 11/8/17, effective 12/31/17]

**721—21.8(48A) Notice to election day registrant.** The commissioner shall send to each person who registers to vote on election day, pursuant to Iowa Code section 48A.7A, an acknowledgment of the registration by nonforwardable mail. If the postal service returns the acknowledgment as undeliverable,

the commissioner shall send a notice to the voter by forwardable mail. The notice shall be substantially in the form titled “Notice to Election Day Registrant” posted on the state commissioner’s website.

This rule is intended to implement Iowa Code sections 48A.7A and 48A.26A.  
[ARC 8045B, IAB 8/26/09, effective 7/27/09]

**721—21.9(49) “Vote here” signs.**

1. Size. The signs shall be no smaller than 16 inches by 24 inches.
2. Exceptions. If a driveway leads away from the entrance to the voting area, or if the driveway is located in such a way that posting a “vote here” sign at the driveway entrance would not help potential voters find the voting area, no “vote here” sign shall be posted at the entrance to that driveway.

This rule is intended to implement Iowa Code section 49.21.

**721—21.10(43) Application for status as a political party.** A political organization which is not currently qualified as a political party may file an application for determination of political party status with the state commissioner of elections. The application may be filed after the completion of the executive council’s canvass of votes for the general election, but not later than one year after the date of the election at which the organization’s candidate for President of the United States or governor received at least 2 percent of the vote.

**21.10(1) Application form.** The application shall be substantially in the form titled “Application for Political Party Status” posted on the state commissioner’s website.

**21.10(2) Response.** If the political organization meets the requirements established in Iowa Code section 43.2, the commissioner shall declare that the organization has qualified as a political party, effective 21 days after the application is approved. If the organization does not meet the requirements, the state commissioner shall immediately notify the applicant in writing of the reason for the rejection of the application.

**21.10(3) Disqualification of political party.** If at the close of nominations for the general election a political party has not nominated a candidate for the office of President of the United States, or for governor, as the case may be, the political party shall be disqualified immediately.

If the candidate of a political party for President of the United States or for governor, as the case may be, does not receive 2 percent of the votes cast for that office at a general election, the political party shall be disqualified. The effective date of the disqualification shall be the date of the completion of the state canvass of votes.

When a political party is disqualified, the state commissioner shall immediately notify the chairperson or central committee of the disqualified political party.

**21.10(4) Notice of qualification and disqualification of political parties.** The state commissioner of elections shall immediately notify the state registrar of voters, the voter registration commission, and the county commissioners of elections when a political party is qualified or disqualified. The notice shall include the name of the political party and the date upon which change in political party status becomes effective.

The state commissioner of elections shall also publish notice of the qualification or disqualification of a political party in a newspaper of general circulation in each congressional district. The publication shall be made within 30 days of the approval of an application for qualification or within 30 days of the effective date of a disqualification.

This rule is intended to implement Iowa Code sections 43.2 and 47.1.  
[ARC 8045B, IAB 8/26/09, effective 7/27/09]

**721—21.11(49) Statement to provisional voter.** Each voter who is required to vote a provisional ballot at the polls on election day shall be given a statement from the precinct election officials which shall be in substantially the following form:

**Statement to Person Casting a Provisional Ballot**  
(To be completed by Precinct Official and given to Voter)



**21.13(1)** When the United States post office is closed on a Monday that is also the deadline for receipt of absentee ballots, the county board of canvassers may hold the canvass on the Tuesday or Wednesday following the election.

**21.13(2)** When the United States post office is closed on a Thursday that is also the deadline for receipt of absentee ballots, the county board of canvassers shall hold the canvass on the Friday after the election, no earlier than 1 p.m.

This rule is intended to implement Iowa Code sections 47.1, 47.4 and 50.24.  
[ARC 0266C, IAB 8/8/12, effective 9/12/12]

**721—21.14(53) Intelligent Mail barcode (IMb) Tracing.** A commissioner may choose to use Intelligent Mail barcode (IMb) Tracing (IMb Tracing) to determine when an absentee ballot has entered into the federal mail system as an alternative to a traditional postmark verification.

**21.14(1) Notice to state commissioner of elections required.**

*a.* Prior to a commissioner's implementation of IMb Tracing for an election, notice must be sent to the state commissioner.

*b.* A commissioner may not implement or discontinue the use of IMb Tracing while an election is open once absentee ballots have been mailed pursuant to Iowa Code section 53.8.

*c.* The state commissioner may issue a waiver to paragraph "b" if a commissioner's ability to use IMb Tracing is impacted by issues beyond the commissioner's control.

**21.14(2) Determining the eligibility of IMb-marked absentee ballots.** An absentee ballot shall be counted once it is determined that the absentee ballot arrived in the federal mail system by the deadline specified in Iowa Code chapter 53. The absentee ballot's entry into the federal mail system may be verified either by a postmark or by information obtained through IMb Tracing. For absentee ballots received after election day, but before the official canvass:

*a.* If the postmark or IMb Tracing information indicates that an absentee ballot was received by the deadline specified in Iowa Code chapter 53, the ballot shall be included for canvass by the absentee and special voters precinct board (board).

*b.* If the postmark is illegible, missing, or dated on or after election day, the commissioner shall attempt to verify the absentee ballot's entry into the federal mail system by using the IMb Tracing information for the ballot. The commissioner shall provide all of the materials to the board.

*c.* If there is a date discrepancy between the postmark and the IMb, the earlier of the two shall determine whether or not the absentee ballot can be counted.

*d.* If neither the postmark nor the IMb indicate that the absentee ballot entered the federal mail system by the deadline specified in Iowa Code chapter 53, the absentee ballot shall not be counted.

*e.* The information provided by the commissioner to the board must contain the numeric value assigned to the IMb barcode and a full report from the United States Postal Service.

*f.* A board member from each political party for partisan elections or two members from the board for nonpartisan elections shall review the IMb Tracing information provided by the commissioner and shall certify the information by initialing the envelope and report.

*g.* If the board concludes that the IMb Tracing information verifies that the absentee ballot entered the federal mail system by the deadline specified in Iowa Code chapter 53, the absentee ballot shall be counted.

**21.14(3) Report to the state commissioner.** A commissioner who makes use of IMb Tracing shall file a report with the state commissioner for each general election no later than the first day of December following each general election. The report shall be on a form prescribed by the state commissioner.

This rule is intended to implement Iowa Code sections 53.17 and 53.22 as amended by 2016 Iowa Acts, House File 2273, sections 11 to 15.  
[ARC 2663C, IAB 8/3/16, effective 8/1/16]

**721—21.15(49) Proof of residence or identification after casting provisional ballot.** If a voter casts a provisional ballot pursuant to Iowa Code section 49.81 or 2017 Iowa Acts, House File 516, section 27, the voter must offer the required proof of residency or identification to vote in the polling place before the polls close on election day, or to the commissioner's office in order for the ballot to be counted.

The proof must be received by the commissioner not later than 12 noon on the Monday following the election, or if the law authorizing the election specifies that the supervisors canvass the votes earlier than the Monday following the election, the proof must be received by the commissioner before the canvass for that election by the board of supervisors.

This rule is intended to implement 2017 Iowa Acts, House File 516, section 27, and Iowa Code section 49.81 as amended by 2017 Iowa Acts, House File 516.

[ARC 3447C, IAB 11/8/17, effective 12/31/17]

**721—21.16 to 21.19** Reserved.

**721—21.20(62) Election contest costs.** In determining the amount of the bond for election contests, the commissioner shall consider the following aspects of the cost of the election contest proceedings:

1. Fees as provided in Iowa Code section 62.22.
2. Fees for judges as provided in Iowa Code section 62.23.
3. The cost of making an official record of the proceedings.

**721—21.21(62) Limitations.** The amount of the bond shall not include costs not directly related to the contest court proceedings. Specifically, the amount of the bond shall not be intended to replace any potential lost income to the county caused by the delay in implementing the decision of the voters at the election being contested.

Rules 721—21.20(62) and 721—21.21(62) are intended to implement Iowa Code sections 62.6, 62.22, 62.23, and 62.24.

**721—21.22(49) Photocopied ballot procedures.** If it is necessary for ballots to be photocopied pursuant to Iowa Code section 49.67, the commissioner shall use the “Request for Additional Ballots” form posted on the state commissioner’s website to record the request and resolution thereof. The commissioner shall complete the form, including the reason additional ballots are needed; who made the request for additional ballots and what time the request was made; the number of additional ballots produced; the manner of production of the additional ballots, including location of production; and the commissioner’s signature.

This rule is intended to implement Iowa Code section 49.67.

[ARC 9989B, IAB 2/8/12, effective 1/17/12]

**721—21.23 and 21.24** Reserved.

**721—21.25(50) Administrative recounts.** When the commissioner suspects that voting equipment used in the election malfunctioned or that programming errors may have affected the outcome of the election, the commissioner may request an administrative recount after the day of the election but not later than three days after the canvass of votes. The request shall be made in writing to the board of supervisors explaining the nature of the problem and listing the precincts to be recounted and which offices and questions shall be included in the administrative recount. The board of supervisors shall respond as soon as possible after receipt of the commissioner’s request.

The recount shall be conducted by members of the absentee and special voters precinct board following the provisions of Iowa Code sections 50.48 and 50.49 and 721—Chapter 26. The commissioner may use different memory cards for the recount and shall retain the information on the memory cards used in the election pursuant to 721—subrule 22.51(13). The commissioner may also use different election definition files if the commissioner believes the original election definition files were flawed. If the commissioner uses different election definition files for the recount, the commissioner shall also retain the election definition files for the election as required by 721—subrule 22.51(14).

This rule is intended to implement Iowa Code section 50.50.

[ARC 8045B, IAB 8/26/09, effective 7/27/09; ARC 1831C, IAB 1/21/15, effective 2/25/15]

**721—21.26 to 21.29** Reserved.

**721—21.30(49) Inclusion of annexed territory in city reprecincting and redistricting plans.** If a city has annexed territory after January 1 of a year ending in zero and before the completion of the redrawing of precinct and ward boundaries during a year ending in one, the city shall include the annexed land in precincts drawn pursuant to Iowa Code sections 49.3 and 49.5.

**21.30(1)** When the city council draws precinct and ward boundaries, if any, the city shall use the population of the annexed territory as certified by the city to the state treasurer pursuant to Iowa Code section 312.3(4).

**21.30(2)** When the board of supervisors, or the temporary county redistricting commission, draws precinct and county supervisor district boundaries, if any, it shall subtract from the population of the adjacent unincorporated area the population of the annexed territory as certified by the city to the state treasurer pursuant to Iowa Code section 312.3(4).

**21.30(3)** The use of population figures for reprecincting or redistricting shall not affect the official population of the city or the county. Only the U.S. Bureau of the Census may adjust the official population figures, by corrections or by conducting special censuses. See Iowa Code section 9F.6.

This rule is intended to implement Iowa Code sections 49.3 and 49.5.

**721—21.31(275) School director district maximum allowable deviation between director districts.** Each director district shall have a population that exceeds the population of any other director district by no more than 10 percent. Director district plans with variations in excess of 10 percent between two or more districts shall be accompanied by justification for the deviation and shall be rejected by the secretary of state unless the deviation is necessary to comply with one of the other standards enumerated in Iowa Code section 275.23A.

This rule is intended to implement Iowa Code section 275.23A.

[ARC 9559B, IAB 6/15/11, effective 5/23/11; ARC 9891B, IAB 11/30/11, effective 1/4/12]

**721—21.32(372) City ward maximum allowable deviation between city wards.** Each city ward shall have a population that exceeds the population of any other city ward by no more than 10 percent. City ward plans with variations in excess of 10 percent between two or more wards shall be accompanied by justification for the deviation and shall be rejected by the secretary of state unless the deviation is necessary to comply with one of the other standards enumerated in Iowa Code section 372.13, subsection 7.

This rule is intended to implement Iowa Code section 372.13.

[ARC 9559B, IAB 6/15/11, effective 5/23/11; ARC 9891B, IAB 11/30/11, effective 1/4/12]

**721—21.33(49) Redistricting special election blackout period.** A special election shall not be held on the three Tuesdays preceding and following January 15 of years ending in the number two.

This rule is intended to implement Iowa Code chapter 49.

[ARC 9893B, IAB 11/30/11, effective 11/9/11]

**721—21.34 to 21.49** Reserved.

**721—21.50(49) Polling place accessibility standards.**

**21.50(1) Inspection required.** Before any building may be designated for use as a polling place, the county commissioner of elections or the commissioner's designee shall inspect the building to determine whether it is accessible to persons with disabilities.

**21.50(2) Frequency of inspection.** Polling places that have been inspected using the Polling Place Accessibility Survey Form prescribed in subrule 21.50(4) shall be reinspected if structural changes are made to the building or if the location of the polling place inside the building is changed.

**21.50(3) Review of accessibility.** Not less than 90 days before each primary election, the commissioner shall determine whether each polling place needs to be reinspected.

**21.50(4) Standards for determining polling place accessibility.** The survey form available on the state commissioner's website titled "Polling Place Accessibility Survey" shall be used to evaluate polling places for accessibility to persons with disabilities.

The term “off-street parking” used in the polling place accessibility survey means parking places in lots separated from the street and includes angle parking along the street if the accessible route from the parking place to the polling place is entirely out of the path of traffic. Parking arrangements that require either the driver or passengers of the vehicle to go into the traveled part of the street are not accessible.

An access aisle at street level that is at least 60 inches wide and the same length as each accessible parking space shall be provided. An accessible public sidewalk curb ramp shall connect the access aisle to the continuous passage to the polling place. At least one parking place shall be van-accessible with a 96-inch access aisle connected to the continuous passage to the polling place by an accessible public sidewalk curb ramp. Two accessible parking spaces may share a common access aisle.

**21.50(5) *Temporary waiver of accessibility requirements.*** Notwithstanding the waiver provisions of 721—Chapter 10, if the county commissioner is unable to provide an accessible polling place for any precinct, the commissioner shall apply for a temporary waiver of accessibility requirements pursuant to this subrule. Applications shall be filed with the secretary of state not later than 60 days before the date of any scheduled election. If a waiver is granted, it shall be valid for two years from the date of approval by the secretary of state.

*a.* Each application shall include the following documents:

(1) Application for Temporary Waiver of Accessibility Requirements.

(2) A copy of the Polling Place Accessibility Survey Form for the polling place to be used.

(3) A copy of the Polling Place Accessibility Survey Form for any other buildings that were surveyed and rejected as possible polling place sites for the precinct.

*b.* If an accessible place becomes available at least 30 days before an election, the commissioner shall change polling places and shall notify the secretary of state. The notice shall include a copy of the Polling Place Accessibility Survey Form for the new polling place.

**21.50(6) *Emergency waivers.*** During the 60 days preceding an election, if a polling place becomes unavailable for use due to fire, flood, or changes made to the building, or for other reasons, the commissioner must apply for an emergency waiver of accessibility requirements in order to move the polling place to an inaccessible building. Emergency waiver applications must be filed with the secretary of state as soon as possible before election day. To apply for an emergency waiver, the commissioner shall send the following documents:

*a.* Application for Temporary Waiver of Accessibility Requirements.

*b.* A copy of the Polling Place Accessibility Survey Form for the polling place selected.

*c.* A copy of the Polling Place Accessibility Survey Form for any other buildings that were surveyed and rejected as possible polling place sites for this precinct (if any).

**21.50(7) *Application form.*** The form posted on the state commissioner’s website titled “Temporary Waiver of Accessibility Requirements” shall be used to apply for a temporary waiver of accessibility requirements.

**21.50(8) *Evaluation of waivers.*** When the secretary of state receives waiver applications, the applications shall be reviewed carefully. A response shall be sent to the commissioner within one week by email or by fax to notify the commissioner when the waiver request was received and whether additional information is needed.

**21.50(9) *Granting waivers.*** If the secretary of state determines from the documents filed with the waiver request that conditions justify the use of a polling place that does not meet accessibility standards, the secretary of state shall grant the waiver of accessibility requirements. If the secretary of state determines from the documents filed with the waiver request that all potential polling places have been surveyed and no accessible place is available, and the available building cannot be made temporarily accessible, the waiver shall be granted.

**21.50(10) *Notice required.*** Each notice of election published pursuant to Iowa Code section 49.53 shall clearly describe which polling places are inaccessible. The notice shall include a description of the services available to persons with disabilities who live in precincts with inaccessible polling places. The notice shall be in substantially the following form:

Any voter who is physically unable to enter a polling place has the right to vote in the voter's vehicle. For further information, please contact the county auditor's office at the telephone number or email address listed below:

Telephone: \_\_\_\_\_ Email address: \_\_\_\_\_.

For TTY access, dial 711 + [auditor's office number].

**21.50(11) Denial of waiver requests.** The secretary of state shall review each waiver request. The secretary of state shall consider the totality of the circumstances as shown by the information on the waiver request, information contained in previous applications for waivers for the same precinct and for other precincts in the county, and other relevant available information. The waiver request may be denied if it appears that the commissioner has not made a good-faith effort to find an accessible polling place. If the waiver request is denied, the secretary of state shall notify the commissioner in writing of the reason for denying the request.

This rule is intended to implement Iowa Code section 49.21.

[ARC 8045B, IAB 8/26/09, effective 7/27/09; ARC 9879B, IAB 11/30/11, effective 1/4/12]

**721—21.51** Reserved.

**721—21.52(48A) Request for new voter identification card.**

**21.52(1)** If a voter's identification card is lost or damaged, the registered voter may request a new card in person at the commissioner's office by showing identification, or by a written, signed request to the commissioner's office. Upon receiving the request, the commissioner shall print and mail a new voter identification card.

**21.52(2)** If the voter appears in person but does not have the correct form of identification, the commissioner shall verify the voter's identity by asking the voter to provide at least two of the following personal facts:

- a. Date of birth;
- b. Last four digits of the voter's social security number (if the number is stored within I-Voters);
- c. Driver's license or nonoperator's identification card number (if the number is stored within I-Voters);
- d. Address;
- e. Middle name;
- f. Voter verification number pursuant to Iowa Code section 53.2(4).

Upon the successful verification of the voter, the commissioner shall issue a new copy of the voter identification card over the counter. If the voter is unable to respond correctly to at least two of the questions in this subrule, the commissioner shall not issue a copy of the voter identification to the voter.

This rule is intended to implement 2017 Iowa Acts, House File 516, section 18.

[ARC 3447C, IAB 11/8/17, effective 12/31/17]

**721—21.53 to 21.74** Reserved.

**721—21.75(49) Voting centers for certain elections.** The commissioner may establish voting centers for the regular city election, city primary election, city runoff election, regular school election, and special elections.

**21.75(1) Definition.**

"Voting center" means a location established by the commissioner for the purpose of providing ballots to all registered voters who are qualified to vote in a particular jurisdiction for a regular city election, city primary election, city runoff election, regular school election, or special election.

**21.75(2) Minimum requirements.**

a. *Establishment.* One or more voting centers may be established in lieu of precinct polling places for the elections at which the use of voting centers is permitted. Regular polling place sites that are accessible to people with disabilities may be used as voting centers for any election at which the use of voting centers is permitted. Other suitable locations may also be used.

*b. Location of voting centers.* If voting centers are established for an election, at least one voting center must be located within the boundaries of the political subdivision for which the election is being conducted. At the commissioner's discretion, additional vote centers may be established as long as the voting center is located within the boundaries of the political subdivision for which the election is being conducted.

*c. Accessibility.* A voting center is subject to the requirements of Iowa Code section 49.21 relating to accessibility to persons who are elderly and persons with disabilities and relating to the posting of signs.

**21.75(3) Hours.** Voting center hours shall be the same as permitted for an election pursuant to Iowa Code section 49.73.

**21.75(4) Publications.** The location of each voting center shall be published in the notice of election by the commissioner in the same manner as the location of polling places is required to be published. The notice of election shall also include a description of the voting center in substantially the following form:

For the \_\_\_\_\_ election to be held on [date], voting centers will be available. Any registered voter of [jurisdiction name] may vote at any of the following places in this election:

[List addresses of voting centers.]

**21.75(5) Posting notices at regular polling places on election day.** If voting centers are established in lieu of regular polling places for an election, the commissioner shall post a notice of voting center locations, not later than the hour at which the polls open on the day of the election, on each door to the usual polling place in the precinct. The notice shall remain posted until the polls have closed.

**21.75(6) I-Voters use prohibited.** The commissioner shall not provide direct access from voting centers to the I-Voters system on election day.

**21.75(7) Determining ballot rotations.** For the purposes of determining ballot rotations pursuant to Iowa Code section 49.31 in an election for which the commissioner has established voting centers, the commissioner may use either precincts established pursuant to Iowa Code sections 49.3 to 49.5 or consolidated precincts established pursuant to Iowa Code section 49.11, subsection 3, paragraph "a." If the commissioner uses consolidated precincts established pursuant to Iowa Code section 49.11, subsection 3, paragraph "a," the commissioner shall use the same consolidated precincts used in the last regularly scheduled election conducted for the political subdivision in which voting centers were not used.

**21.75(8) Operation of voting centers.**

*a. Election registers and voter lists.* Each voting center shall have an election register containing the names, addresses and voter statuses of all registered voters who are eligible to vote in that election. The election register may be a paper list or may be available on computers in an electronic format, rather than as an interactive connection to I-Voters.

*b. Election day registration at voting centers.* A person who needs to register to vote may register and vote at a voting center provided that the person has appropriate identification and is a resident of the jurisdiction served by the voting center.

*c. Voters reporting address changes at voting centers.* Any person who is already registered in the county and updates the person's voter registration address at a voting center shall show identification listed in Iowa Code section 48A.8. Persons unable to provide requested identification shall be offered a provisional ballot pursuant to Iowa Code section 49.81.

*d. Ballots.* Each voting center shall have all ballot styles necessary to provide a ballot to any voter who is eligible to vote in the election for the jurisdiction served by the voting center.

*e. Precinct election officials.* Voting centers shall be administered by a minimum of three precinct election officials selected pursuant to Iowa Code sections 49.12 to 49.16. These officials shall be trained before each election and shall have specific instructions regarding the differences between voting centers and polling places.

*f. Ballot boxes used with optical scan voting equipment at voting centers.* The commissioner may instruct two precinct election officials not of the same political party to open the ballot box periodically throughout election day to ensure the ballots are stacking evenly in the ballot box to prevent a voting

equipment malfunction. The precinct election officials charged with inspecting the ballot box shall ensure the ballot box is locked and secured at all times. As an alternative to this procedure, the commissioner may supply any voting center with additional ballot boxes and the precinct election officials may move the optical scan voting equipment to a new ballot box if necessary. All ballot boxes containing voted ballots shall be locked and secured by the precinct election officials at all times.

**21.75(9) *Postelection review of voter participation.***

*a.* Within 45 days after the election, the commissioner shall review the signed declarations of eligibility or the signed election registers from each voting center, and if any person is found to have voted in more than one voting center in the election, the commissioner shall immediately notify the county attorney.

*b.* The notice to the county attorney shall include a copy of the person's voter registration record and copies of the declarations of eligibility signed by the voter. The notice shall also include a reference to Iowa Code sections 39A.2(2) and 49.11(3) "b."

This rule is intended to implement Iowa Code sections 49.9 and 49.11.

[ARC 8045B, IAB 8/26/09, effective 7/27/09]

**721—21.76(48A) Electronic poll book training for poll workers.** The state commissioner shall create and maintain training materials for poll workers relating to voter identification and the use of electronic poll books. The training materials shall be available from the state commissioner's website.

This rule is intended to implement Iowa Code section 48A.7A as amended by 2017 Iowa Acts, House File 516, section 16.

[ARC 3447C, IAB 11/8/17, effective 12/31/17]

**721—21.77(49) Photographing ballots.** A voter may not use a photographic device to display a voted ballot if doing so interferes with other voters or the orderly operation of the polling location or violates any part of Iowa Code chapter 39A. The display shall only include the voter and the voter's ballot.

"Interferes," for purposes of this rule, means loitering, congregating, interrupting, or hindering a voter from approaching the poll booth for the purpose of voting, or while the voter is inside the enclosed voting space when marking a ballot.

This rule is intended to implement Iowa Code section 49.88 as amended by 2017 Iowa Acts, House File 516, section 38.

[ARC 3447C, IAB 11/8/17, effective 12/31/17]

**721—21.78 to 21.99** Reserved.

**721—21.100(39A,47) Complaints concerning violations of Iowa Code chapters 39 through 53.** Rescinded ARC 0616C, IAB 2/20/13, effective 3/27/13.

**721—21.101(47) State commissioner's review of complaints.** Upon receiving credible information that a commissioner may have violated a provision in Iowa Code chapters 39 through 52, the state commissioner shall require the commissioner to provide more information, or certification that the commissioner complied with the relevant law. The determination of credibility is solely at the discretion of the state commissioner. The state commissioner may require a complaining party to provide more information. The state commissioner may reject anonymous complaints without any additional inquiry. If it appears that the complaint originated from the commissioner's office, the state commissioner shall consult with the attorney general before proceeding.

If the state commissioner determines that a commissioner has not sufficiently responded to the inquiry, the state commissioner may issue a notice of infraction pursuant to Iowa Code chapter 39A, or refer the matter to the appropriate law enforcement agency, or both.

This rule is intended to implement Iowa Code section 47.1 as amended by 2017 Iowa Acts, House File 516, section 41.

[ARC 3447C, IAB 11/8/17, effective 12/31/17]

**721—21.102(49) Commissioner's filings and notifications to state commissioner.**

**21.102(1)** The commissioner shall certify to the state commissioner that all relevant election laws and requirements were followed as required by Iowa law. A form for the certification shall be published to the state commissioner's website, pursuant to 2017 Iowa Acts, House File 516, section 41.

**21.102(2)** The commissioner shall report each suspected incidence of election misconduct to the state commissioner regardless of proximity to any election, pursuant to 2017 Iowa Acts, House File 516, section 41(4). The commissioner shall provide to the state commissioner all updates as they are received by the commissioner from law enforcement.

This rule is intended to implement 2017 Iowa Acts, House File 516, section 41.  
[ARC 3447C, IAB 11/8/17, effective 12/31/17]

**721—21.103 to 21.199** Reserved.

DIVISION II  
BALLOT PREPARATION

**721—21.200(49) Constitutional amendments and public measures.**

**21.200(1)** The order of placement on the ballot for constitutional amendments and statewide public measures to be voted upon at a single election shall be determined by the state commissioner, and a number shall be assigned to each constitutional amendment or statewide public measure by the state commissioner.

*a.* The number assigned by the state commissioner to each constitutional amendment or statewide public measure to appear on the ballot for a single election shall be printed on the ballot immediately preceding and above the words "Shall the following amendment to the Constitution (or public measure) be adopted?" or the words "Shall there be a Convention to revise the Constitution, and propose amendment or amendments to same?"

*b.* The number assigned by the state commissioner shall be printed on the ballot at least 1/8 of an inch high in the designated place.

*c.* Even if only one constitutional amendment or statewide public measure is to appear on a ballot to be voted upon at a single election, an identifying number shall be assigned by the state commissioner and shall be printed on the ballot in the prescribed manner.

**21.200(2)** The order of placement on the ballot for each local public measure to be voted upon at a single election shall be determined by the commissioner, and a letter shall be assigned to each local public measure by the commissioner.

*a.* The letter assigned by the commissioner shall be printed on the ballot at least 1/8 of an inch high in the designated place.

*b.* Even if only one public measure is to appear on a ballot to be voted upon at a single election, an identifying letter shall be assigned by the commissioner and shall be printed on the ballot in the prescribed manner.

**21.200(3)** The words describing proposed constitutional amendments and statewide public measures when they appear on the ballot shall be determined by the state commissioner. The state commissioner shall select the words describing the proposed constitutional amendments and statewide public measures in the following manner:

*a.* Not less than 150 days prior to the election at which a proposed constitutional amendment or statewide public measure is to be voted on by the voters, the state commissioner shall prepare a proposed description to be used on the ballots in administrative rule form and shall file the proposed rules with the administrative rules coordinator for publication in the Iowa Administrative Bulletin.

*b.* The rules shall provide that written comments regarding the proposed description will be accepted by the state commissioner for a period of time not less than 20 days after the date of publication in the Iowa Administrative Bulletin.

*c.* The state commissioner shall review any written comments which have been timely received and make any changes deemed to be warranted in the description to be printed on the ballots.

This rule is intended to implement Iowa Code sections 47.1 and 49.44.  
[ARC 8045B, IAB 8/26/09, effective 7/27/09]

**721—21.201(44) Competing nominations by nonparty political organizations.**

**21.201(1) *Nominations by convention and by petitions.*** If one or more nomination petitions are received from nonparty political organization candidates for an office for which the same organization has also nominated one candidate by convention, the candidate nominated by convention shall be considered the nominee of the organization. The names of the other candidates shall appear on the ballot as candidates “nominated by petition,” and those candidates shall be notified in writing not later than seven days after the close of the filing period.

**21.201(2) *Multiple nomination petitions.*** If nomination petitions are received from more than one candidate from the same nonparty political organization for the same office and the organization has not nominated a candidate for the office by convention, the name of each of these candidates shall be written on a separate piece of paper, all of which shall be as nearly uniform in size and material as possible and placed in a receptacle so that the names cannot be seen. On the next working day following the close of the nomination period, all affected candidates shall be notified of the time and place of the drawing. The candidates shall be invited to attend or to send a representative. In the presence of witnesses, the state commissioner of elections or the county commissioner, as appropriate, or a designee of the state or county commissioner, shall publicly draw one of the names; and that person shall be declared to be the nominee of the nonparty political organization. The names of the other candidates shall appear on the ballot as candidates “nominated by petition.” A copy of the written record of the result of the drawing shall be kept with the nomination petition of each affected candidate, and each candidate shall be sent a copy for the candidate’s records not later than seven days after the close of the filing period.

**21.201(3) *Multiple nomination certificates.*** If more than one nomination certificate is received for the same office from groups with the same nonparty political organization name, the name of each of these candidates shall be written on a separate piece of paper, all of which shall be as nearly uniform in size and material as possible and placed in a receptacle so that the names cannot be seen. On the next working day following the close of the nomination period, all affected candidates shall be notified of the time and place of the drawing. The candidates shall be invited to attend or to send a representative. In the presence of witnesses, the state commissioner of elections or the county commissioner, as appropriate, or a designee of the state or county commissioner, shall publicly draw one of the names; and that person shall be declared to be the nominee of the nonparty political organization. The names of the other candidates, including any candidate who filed nomination petitions, shall appear on the ballot as candidates “nominated by petition.” A copy of the written record of the result of the drawing shall be kept with the nomination certificate of each affected candidate, and each candidate shall be sent a copy for the candidate’s records not later than seven days after the close of the filing period.

This rule is intended to implement Iowa Code section 44.17.

**721—21.202(43,52) Form of primary election ballot.** All primary election ballots shall meet the following formatting requirements:

**21.202(1) *Required information.*** In addition to other requirements listed in the Iowa Code, primary election ballots shall also include the following information:

- a. The name of the election.
- b. The name of the party, which shall be printed at the top of the ballot in at least 24-point type.
- c. The name of the county.
- d. Instructions for how to mark the ballot.

**21.202(2) *Headings and lines.*** Rescinded IAB 9/8/10, effective 8/16/10.

**21.202(3) *Office titles and order of offices.*** Each office printed on the ballot shall be preceded by an office title. The order of offices on the primary election ballot shall be as follows:

a. In gubernatorial election years, the order of office titles on the primary election ballot shall be listed as follows:

- (1) U.S. Senator (if any).
- (2) U.S. Representative, District \_\_\_\_.
- (3) Governor.
- (4) Secretary of State.

- (5) Auditor of State.
- (6) Treasurer of State.
- (7) Secretary of Agriculture.
- (8) Attorney General.
- (9) State Senator, district \_\_\_\_ (if any).
- (10) State Representative, District \_\_\_\_.
- (11) Board of Supervisors (if plan II or plan III, then Board of Supervisors, District \_\_\_\_).
- (12) Treasurer.
- (13) Recorder.
- (14) County Attorney.

b. In presidential election years, the order of office titles on the primary election ballot shall be listed as follows:

- (1) U.S. Senator (if any).
- (2) U.S. Representative, District \_\_\_\_.
- (3) State Senator, District \_\_\_\_ (if any).
- (4) State Representative, District \_\_\_\_.
- (5) Board of Supervisors (if plan II or plan III, then Board of Supervisors, District \_\_\_\_).
- (6) Auditor.
- (7) Sheriff.

c. If an office is printed on the primary election ballot followed by the words “To Fill Vacancy,” that office shall be listed after the other offices under the appropriate heading. If the office followed by the words “To Fill Vacancy” is the board of supervisors, that office shall appear after the other board of supervisors office(s).

**21.202(4) *Vote for number.*** Under each office title, the number of choices a voter may make in the race shall be printed in the following form: “Vote for no more than \_\_\_\_.” The number of choices the voter may make for each race is the number of individuals to be elected to the office at the general election.

**21.202(5) *Write-in vote targets.*** After the candidates’ names for each office (if any), a target shall be placed next to a line for voters to write in a nominee for the office. The number of write-in targets and lines printed under each office shall match the vote for number referenced in subrule 21.202(4). Under each write-in line, the following words shall be printed: “Write-in vote, if any.”

**21.202(6) *Font size.*** Candidates’ names shall be printed in upper and lower case letters, and the font size shall be no less than 10-point type.

**21.202(7) *Two-sided ballots.*** If a primary election ballot must be printed on two sides, the words “Turn the ballot over” shall be printed on both sides of the ballot, at the bottom.

This rule is intended to implement Iowa Code section 43.31.

[ARC 8698B, IAB 4/21/10, effective 6/15/10; ARC 9049B, IAB 9/8/10, effective 8/16/10; ARC 1831C, IAB 1/21/15, effective 2/25/15]

**721—21.203(49,52) Form of general election ballot.** All general election ballots shall meet the following formatting requirements:

**21.203(1) *Required information.*** In addition to other requirements listed in the Iowa Code, general election ballots shall also include the following information:

- a. The name of the election.
- b. The name of the county.
- c. Instructions for how to mark the ballot, including instructions for voting on judicial retentions and constitutional amendments or public measures.
- d. Ballot location of the judges’ names and any constitutional amendment(s).

**21.203(2) *Headings and lines.*** Rescinded IAB 9/8/10, effective 8/16/10.

**21.203(3) *Office titles, order of offices and public measures.*** Each office printed on the ballot shall be preceded by an office title. The order of offices and public measures listed on the general election ballot shall be as follows:

a. In gubernatorial election years, the order of office titles and public measures on the general election ballot shall be listed as follows:

- (1) U.S. Senator (if any).
- (2) U.S. Representative, District \_\_\_\_.
- (3) Governor and Lt. Governor.
- (4) Secretary of State.
- (5) Auditor of State.
- (6) Treasurer of State.
- (7) Secretary of Agriculture.
- (8) Attorney General.
- (9) State Senator, District \_\_\_\_ (if any).
- (10) State Representative, District \_\_\_\_.
- (11) Board of Supervisors (if plan II or plan III, then Board of Supervisors, District \_\_\_\_).
- (12) Treasurer.
- (13) Recorder.
- (14) County Attorney.
- (15) Township Trustee (if any).
- (16) Township Clerk (if any).
- (17) County Public Hospital Trustee (if any).
- (18) Soil and Water Conservation District Commissioner.
- (19) County Agricultural Extension Council Member.
- (20) Other nonpartisan offices (if any).
- (21) Supreme Court Justice (if any).
- (22) Court of Appeals Judge (if any).
- (23) District Court Judge (if any).
- (24) District Court Associate Judge (if any).
- (25) Associate Juvenile Judge (if any).
- (26) Associate Probate Judge (if any).
- (27) Public Measures (if any). Under the public measures heading, measures shall be listed in the

following order:

1. Constitutional Amendment (if any).
2. State Public Measure (if any).
3. County Public Measure (if any).
4. City Public Measure (if any).

b. In presidential election years, the order of office titles on the general election ballot shall be listed as follows:

- (1) President and Vice President.
- (2) U.S. Senator (if any).
- (3) U.S. Representative, District \_\_\_\_.
- (4) State Senator, District \_\_\_\_ (if any).
- (5) State Representative, District \_\_\_\_.
- (6) Board of Supervisors (if plan II or plan III, then Board of Supervisors, district \_\_\_\_).
- (7) Auditor.
- (8) Sheriff.
- (9) Township Trustee (if any).
- (10) Township Clerk (if any).
- (11) County Public Hospital Trustee (if any).
- (12) Soil and Water Conservation District Commissioner.
- (13) County Agricultural Extension Council Member.
- (14) Other nonpartisan offices (if any).
- (15) Supreme Court Justice (if any).
- (16) Court of Appeals Judge (if any).

(17) District Court Judge (if any).  
 (18) District Court Associate Judge (if any).  
 (19) Associate Juvenile Judge (if any).  
 (20) Associate Probate Judge (if any).  
 (21) Public Measures (if any). Under the public measures heading, measures shall be listed in the following order:

1. Constitutional Amendment (if any).
2. State Public Measure (if any).
3. County Public Measure (if any).
4. City Public Measure (if any).

c. If an office is printed on the general election ballot followed by the words “To Fill Vacancy,” that office shall be listed after the other offices under the appropriate heading. If the office followed by the words “To Fill Vacancy” is the board of supervisors, that office shall appear after the other board of supervisors office(s).

**21.203(4) *Vote for number.*** Under each office title, the number of choices a voter may make in the race shall be printed in the following form: “Vote for no more than \_\_\_\_”. The number of choices the voter may make for each race is the number of individuals to be elected to the office at the general election. Under the “President and Vice President” office title, “Vote for no more than one team” shall be printed on the ballot. Under the “Governor and Lt. Governor” office title, “Vote for no more than one team” shall be printed on the ballot.

**21.203(5) *Write-in vote targets.*** After the candidates’ names for each office (if any), a target shall be placed next to a line for voters to write in a nominee for the office. The number of write-in targets and lines printed under each office shall match the vote for number referenced in subrule 21.203(4). Under each write-in line, the following words shall be printed: “Write-in vote, if any”. For the offices of President and Vice President, there shall be one write-in target printed to the left of two write-in lines. Under the write-in lines, the commissioner shall print the following: “Write-in vote for President, if any” and “Write-in vote for Vice President, if any”. For the offices of governor and lieutenant governor, there shall be one write-in target printed to the left of two write-in lines. Under the write-in lines, the commissioner shall print the following: “Write-in vote for Governor, if any” and “Write-in vote for Lt. Governor, if any”.

**21.203(6) *Font size.*** Candidates’ names shall be printed in upper and lower case letters, and the font size shall be no less than 10-point type.

**21.203(7) *Two-sided ballots.*** If a general election ballot must be printed on two sides, the words “Turn the ballot over” shall be printed on both sides of the ballot, at the bottom.

**21.203(8) *Separate judicial ballot.*** The judicial ballot shall be separate from the rest of the ballot and shall be conspicuously distinguished by headings and lines.

This rule is intended to implement Iowa Code section 49.57A.

[ARC 8698B, IAB 4/21/10, effective 6/15/10; ARC 9049B, IAB 9/8/10, effective 8/16/10; ARC 0107C, IAB 4/18/12, effective 3/30/12; ARC 1831C, IAB 1/21/15, effective 2/25/15; ARC 3447C, IAB 11/8/17, effective 12/31/17]

**721—21.204(260C) *Tabulating election results by school district for merged area special elections.*** All results for merged area special elections, including special precinct results, shall be tabulated by school district. To tabulate the special precinct results in this manner, the county commissioner may either program the voting equipment to tabulate the ballots in this manner or manually sort and tabulate the ballots by school district.

This rule is intended to implement Iowa Code chapter 260C.  
 [ARC 9879B, IAB 11/30/11, effective 1/4/12]

**721—21.205 to 21.299** Reserved.

DIVISION III  
ABSENTEE VOTING**721—21.300(53) Satellite absentee voting stations.**

**21.300(1) Establishment of stations.** Satellite absentee voting stations may be established by the county commissioner of elections or by a petition of eligible electors of the jurisdiction conducting the election.

*a. Satellite absentee voting stations established by the county commissioner.* The county commissioner of elections may designate locations in the county for satellite absentee voting stations. Satellite absentee voting stations established by the commissioner shall be accessible to elderly and disabled voters. Satellite absentee voting stations must also be established so as to provide for voting in secret and ballot security.

*b. Satellite absentee voting stations established after receipt of a valid petition.* A petition requesting a satellite absentee voting station shall be substantially in the form titled “Petition Requesting Satellite Absentee Voting Station” available on the state commissioner’s website. If the commissioner receives a petition requesting a satellite absentee voting station on or before the petition deadline set forth in Iowa Code section 53.11, the commissioner shall determine the validity of the petition within 24 hours. A petition requesting a satellite absentee voting station is valid if it contains signatures of not less than 100 eligible electors of the jurisdiction conducting the election. Electors signing the petition must include their signature, house number, street, and date the petition was signed. Signatures on lines not containing all of the required information shall not be counted. The heading on each page of the petition shall include the satellite location requested and the election name or date for which the location is requested. Signatures on petition pages without the required heading shall not be counted.

*c. Mandatory rejection of certain satellite absentee voting stations.* Otherwise valid petitions for satellite absentee voting stations shall be rejected within four days of the commissioner’s receipt of the petition if:

- (1) The site requested is not accessible to elderly and disabled voters,
- (2) The site requested has other physical limitations that make it impossible to meet the requirements for ballot security and secret voting, or
- (3) The owner of the site refuses permission to locate the satellite absentee voting station at the site requested on the petition.

*d. Discretionary rejection of certain satellite absentee voting stations.* Otherwise valid petitions for satellite absentee voting stations may be rejected within four days of the commissioner’s receipt of the petition if:

- (1) A petition is received requesting satellite voting for a city runoff election and a special election is scheduled to be held between the regular city election and a city runoff election.
- (2) The owner of the site demands payment for its use.

*e. Provision of ballots.* Only ballots from the county in which the site is located may be provided at the satellite absentee voting station. Ballots must be provided for the precinct in which the satellite absentee voting station is located; however, it is not necessary to provide ballots from all of the precincts in the political subdivision for which the election is being conducted.

**21.300(2) Notice provided.** Notice shall be published at least seven days before the opening of any satellite absentee voting station. If more than one satellite absentee voting station will be provided, a single publication may be used to notify the public of their availability. If it is not possible to publish the notice at least seven days before the station opens due to the receipt of a petition, the notice shall be published as soon as possible.

A notice shall also be posted at each satellite absentee voting station at least seven days before the opening of the satellite absentee voting station. The notice shall remain posted as long as the satellite absentee voting station is scheduled for service. If it is not possible to post the notice at least seven days before the station opens due to the receipt of a petition, the notice shall be posted as soon as possible.

Both the published and posted notices shall include the following information:

- a.* The name and date of the election for which ballots will be available.

- b. The location(s) of the satellite absentee voting station(s).
- c. The dates and times that the station(s) will be open.
- d. The precincts for which ballots will be available.
- e. An announcement that voter registration forms will be available for new registrations in the county and that changes in the registration records of people who are currently registered within the county may be made at any time.

If the satellite absentee voting station is located in a building with more than one public entrance, brief notices of the location of the satellite absentee voting station shall be posted on building directories, bulletin boards, or doors. These notices shall be posted no later than the time the station opens and shall be removed immediately after the satellite absentee voting station has ceased operation for an election.

**21.300(3) Staff.** Satellite absentee voting station workers may be selected from among the staff members of the commissioner's office, from the election board panel drawn up pursuant to Iowa Code sections 49.15 and 49.16, or a combination of these two sources. Compensation of workers selected from the election board panel shall be at the rate provided in Iowa Code section 49.20.

At least three people shall be assigned to work at each satellite absentee voting station; more workers may be added at the commissioner's discretion. All workers must be registered voters of the county, and for primary and general elections the workers must be registered with a political party; however, workers not affiliated with any party may be assigned to work at a satellite absentee voting station as long as not more than one-third of the workers assigned to a particular satellite absentee voting station are not affiliated with a political party. For all elections, no more than a simple majority of the workers shall be members of the same political party.

People who are prohibited from working at the polls pursuant to Iowa Code section 49.16 may not work at satellite absentee voting stations.

**21.300(4) Oath required.** Before the first day of service at a satellite absentee voting station, each worker shall take an oath substantially in the form titled "Election Official/Clerk Oath" available on the state commissioner's website. The oath must be taken before each election.

**21.300(5) Suggested supplies for each satellite absentee voting station.** A list of supplies suggested for each satellite absentee voting station is available on the state commissioner's website.

**21.300(6) Ballot transport and storage.** At the commissioner's discretion the ballots may be transported between the commissioner's office and the satellite absentee voting station by the workers who will be on duty that day, or by two people of different political parties who have been designated as couriers by the commissioner. It is not necessary for the same people to transport the ballots in both directions.

If the ballots are transported by the satellite absentee voting station workers, two workers who are members of different political parties and the ballots must travel together in the same vehicle.

Ballots may be stored at the satellite absentee voting station during hours when the station is closed only if they are kept in a locked cabinet or container. The cabinet must be located in a room which is kept locked when not in use. Voted absentee ballots must be delivered to the commissioner's office at least once each week.

**21.300(7) Ballot receipts.** Satellite absentee voting station workers shall sign receipts for the ballots taken to the satellite absentee voting site. The receipt shall be substantially in the form titled "Satellite Absentee Voting Station Ballot Record and Receipt" available on the state commissioner's website. A copy of the ballot record and receipt shall be retained in the commissioner's office. The original shall be sent with the ballots to the satellite absentee voting station.

**21.300(8) Arrangement of the satellite absentee voting station.** Protection of the security of the ballots (both voted and unvoted) and the secrecy of each person's vote shall be considered in the arranging of the satellite absentee voting station.

a. *Security.* The satellite absentee voting station shall be arranged so that ballots are protected against removal from the station by unauthorized persons.

b. *Voting area.* Voting booths without curtains shall be placed so that passersby and other voters may not walk directly behind a person using the booth. At least one voting booth must be accessible to

the disabled. The booth must be designed to accommodate a person seated in a chair or wheelchair. A chair must be provided for voters who wish to sit down while voting or waiting in line.

*c. Campaign signs and electioneering.* No signs supporting or opposing any candidate or question on the ballot shall be posted on the premises of or within 300 feet of any outside door of any building affording access to a satellite absentee voting station during the hours when absentee ballots are available at the satellite absentee voting station. No electioneering shall be allowed within the sight or hearing of voters while they are at the satellite absentee voting station.

**21.300(9)** *Operation of the satellite absentee voting station.* At all times the satellite absentee voting station shall have at least two workers present to preserve the security of the ballots, both voted and unvoted.

**21.300(10)** *Voter registration at the satellite absentee voting station.* Each satellite absentee voting station shall provide forms necessary to register voters, including the oaths necessary to process voters registering pursuant to Iowa Code section 48A.7A, and to record changes in voter registration records. Workers shall also be provided with a method of verifying whether people applying for absentee ballots are registered voters.

The commissioner may provide a list of registered voters in the precincts served by the station. The list may be on paper or contained in a computerized data file. As an alternative, the commissioner may provide a computer connection with the commissioner's office.

**21.300(11)** *Procedure for issuing absentee ballot.* The instructions for absentee voting are available on the state commissioner's website and shall be provided to satellite absentee voting station workers unless the commissioner prepares instructions containing substantially the same information as the instructions available on the state commissioner's website.

**21.300(12)** *Closing a station.* The instructions for closing a satellite absentee voting station are available on the state commissioner's website and shall be provided to satellite absentee voting station workers unless the commissioner prepares instructions containing substantially the same information as the instructions available on the state commissioner's website.

**21.300(13)** *Use of I-Voters at satellite absentee voting stations.* Any county commissioner who wants to use the I-Voters statewide voter registration database at a satellite absentee voting station shall:

*a.* Complete an application to use I-Voters at a satellite absentee voting station. A separate application shall be completed for each satellite absentee voting station. The application is available on the state commissioner's website. The application shall be submitted at least seven days before the opening of the satellite absentee voting station. If it is not possible to submit an application at least seven days before the station opens due to the receipt of a petition, the application shall be submitted as soon as possible. The application will be considered by the state commissioner as soon as practicable after it is received. The state commissioner reserves the right to reject an application for any reason or to limit the number of users at any satellite absentee voting station.

*b.* Use a cellular telephone service or a wired Internet connection to connect to the Internet from the satellite absentee voting station. If the county uses a wired Internet connection, the commissioner shall use either a regular or a wireless router between the wired Internet connection and the county's computers. Connection to a facility's wireless network is not permitted.

*c.* Configure any wireless routers to be used between the facility's wired Internet connection and the county's laptop computers as follows:

- (1) A minimum 10-character password must be assigned to the router administration screens.
- (2) WPA (AES) security for wireless connections with a minimum 10-character password must be used.
- (3) Remote management of the router must be prohibited.
- (4) Universal Plug & Play must be turned off.
- (5) Port forwarding on the router must not be disabled.
- (6) Unauthorized connections shall be prohibited, including smartphones, personal digital assistants (PDAs) and laptops.

*d.* Configure any wired routers to be used between the facility's wired Internet connection and the county's laptop computers as follows:

- (1) Remote management of the router must be prohibited.
- (2) Universal Plug & Play must be turned off.
- (3) Port forwarding on the router must not be disabled.
- (4) Unauthorized connections shall be prohibited, including smartphones, PDAs and laptops.
- (5) Administrator passwords for the routers must be changed from the default passwords, and standard county password policies shall be followed.
  - e.* Laptops used at a satellite absentee voting station shall be configured as follows:
    - (1) The hard drives must be encrypted.
    - (2) The operating system must be fully supported by the operating system vendor.
    - (3) The operating system must be fully patched.
    - (4) Antivirus software and anti-spyware must be installed and up to date.
    - (5) A full antivirus and anti-spyware scan must be done during the week before a laptop is used at a satellite absentee voting station and at least once a week thereafter while the laptop is being used at satellite absentee voting stations.
    - (6) The administrator password must be changed from the default password.
    - (7) Guest user accounts must be disabled or renamed.
    - (8) File/print sharing must be turned off, and remote access must be disabled.
    - (9) Bluetooth must be turned off.
    - (10) The Windows firewall must be turned on.
  - f.* Laptops connected to I-Voters at a satellite absentee voting station shall never be left unattended.
  - g.* Laptops connected to I-Voters at a satellite absentee voting station shall not have any USB memory sticks or CDs/DVDs inserted in the computer after the virus scan is conducted pursuant to subrule 21.300(13), paragraph “e.”
  - h.* Laptops connected to I-Voters at a satellite absentee voting station shall not be used to visit any other websites.
  - i.* No software applications, other than I-Voters, shall be used while the I-Voters application is in use at a satellite absentee voting station.

**21.300(14) Provisional voting at satellite absentee voting stations.** If it is necessary for a voter to cast a provisional ballot at a satellite absentee voting station, the voter shall receive the same ballot style as the majority of the voters would receive in the precinct in which the satellite absentee voting station is located.

This rule is intended to implement Iowa Code section 53.11.  
 [ARC 8045B, IAB 8/26/09, effective 7/27/09; ARC 9139B, IAB 10/6/10, effective 9/16/10; ARC 9989B, IAB 2/8/12, effective 1/17/12]

**721—21.301(53) Absentee ballot requests from voters whose registration records are “inactive.”**

**21.301(1) *In person.*** Absentee voters whose registration records are “inactive” and who appear in person to vote, either at the office of the commissioner or at a satellite absentee voting station, shall be assigned a status of “active” after requesting an absentee ballot.

**21.301(2) *By mail.*** When a request for an absentee ballot is received by mail from a voter whose registration record has been made “inactive” pursuant to Iowa Code section 48A.29, the commissioner shall update the voter’s residential address to the address listed on the absentee ballot request if requested by the voter and assign the voter a status of “active.”

**21.301(3) *Absentee ballots received from a voter subsequently assigned “inactive” status.***

*a.* The commissioner shall mail an absentee ballot to a voter if a voter’s status is changed to “inactive” between the time the voter requested an absentee ballot and the time the absentee ballots are ready to mail. The commissioner shall also separately notify the voter of the requirement to provide identification and proof of residence before the ballot can be counted pursuant to paragraph 21.301(3)“c.”

*b.* The commissioner shall set aside the absentee ballot of a voter whose status is changed to “inactive” pursuant to Iowa Code section 48A.26, subsection 6, after the voter has submitted the voter’s absentee ballot.

c. Pursuant to Iowa Code section 53.31, the commissioner shall notify any voter assigned an “inactive” status subsequent to requesting or returning an absentee ballot that the voter’s absentee ballot has been challenged and may be counted only if the voter personally delivers or mails a copy of the voter’s identification and proof of residence as listed in Iowa Code section 48A.8 to the commissioner’s office before the absentee and special voters precinct board convenes to count absentee ballots, or reconvenes to consider challenged absentee ballots pursuant to Iowa Code section 50.22. If the commissioner does not receive a copy of the voter’s identification before the absentee and special voters precinct board reconvenes to consider challenged absentee ballots pursuant to Iowa Code section 50.22, the absentee and special voters precinct board shall reject the absentee ballot.

This rule is intended to implement Iowa Code sections 48A.26, 48A.29, 48A.37 and 53.25.

[ARC 8045B, IAB 8/26/09, effective 7/27/09; ARC 9989B, IAB 2/8/12, effective 1/17/12; ARC 1831C, IAB 1/21/15, effective 2/25/15; ARC 3447C, IAB 11/8/17, effective 12/31/17]

**721—21.302(48A) In-person absentee registration.** After the close of voter registration for an election, a person who appears in person to apply for and vote an absentee ballot may register to vote if the person provides proof of identity and residence in the precinct in which the voter intends to vote using identification that meets the requirements set forth in Iowa Code section 48A.7A. The voter must also complete an oath of person registering on election day. If the voter does not have appropriate identification, the voter may establish identity and residence using the attestation procedure in Iowa Code section 48A.7A, subsection 1, paragraph “c.” Otherwise, the person may cast only a provisional ballot pursuant to Iowa Code section 49.81. Provisional ballot envelopes shall be used.

This rule is intended to implement Iowa Code section 48A.7A.

[ARC 8045B, IAB 8/26/09, effective 7/27/09]

**721—21.303(53) Mailing absentee ballots.** The commissioner shall mail the following materials to each person who has requested an absentee ballot:

1. Ballot. The ballot that corresponds to the voter’s residence, as indicated by the residential address on the absentee ballot application.
2. Public measure text. The full text of any public measures that are summarized on the ballot, but not printed in full.
3. Secrecy envelope. Secrecy envelope, if the ballot cannot be folded to cover all of the voting ovals, as required by Iowa Code section 53.8(1).
4. Affidavit envelope. The affidavit envelope, which shall be marked with the I-Voters-assigned sequence number used to identify the absentee request in the commissioner’s records.
5. Return envelope. The return envelope, which shall be addressed to the commissioner’s office and bear appropriate return postage or a postal permit guaranteeing that the commissioner will pay the return postage and which shall be marked with the I-Voters-assigned sequence number used to identify the absentee request in the commissioner’s records. All domestic and UOCAVA return envelope flaps or backs shall also be printed or stamped with a notice in substantially the following form: “This ballot will only be eligible for counting if it is received by the auditor’s office before the polls close on election day or postmarked before election day and received by the deadline listed in the voting instructions included with this ballot. **Postmarks are not guaranteed!** Mail the ballot early to make sure it is received on time. Track the status of your absentee ballot at [www.sos.iowa.gov](http://www.sos.iowa.gov).”
6. Delivery envelope. The delivery envelope, which shall be addressed to the voter and bear the I-Voters-assigned sequence number used to identify the absentee request in the commissioner’s records. All other materials shall be enclosed in the delivery envelope.
7. Instructions. Absentee voting instructions, which shall be in the form required by rule 721—22.250(52).

8. Receipt. The receipt form required by Iowa Code section 53.3, which may be printed on the instructions required by numbered paragraph “7” above.

This rule is intended to implement Iowa Code sections 53.8 and 53.17.

[ARC 8045B, IAB 8/26/09, effective 7/27/09; ARC 0107C, IAB 4/18/12, effective 3/30/12]

**721—21.304(53) Absentee ballot requests from voters whose registration records are “pending.”** A voter who requests an absentee ballot and is assigned a status of “pending” must provide identification pursuant to Iowa Code section 48A.8.

**21.304(1) *In-person applicants.*** In-person applicants for absentee ballots assigned a status of “pending” must show identification pursuant to Iowa Code section 48A.8 before casting a ballot. If an in-person applicant provides identification as required by Iowa Code section 48A.8 when casting an absentee ballot in person, the commissioner shall assign the voter’s registration record a status of “active” and provide the voter with an absentee ballot. Voters who are unable to provide identification as required by Iowa Code section 48A.8 shall be offered a provisional ballot pursuant to Iowa Code section 49.81.

**21.304(2) *By-mail applicants.*** By-mail applicants for absentee ballots assigned a status of “pending” must either come to the commissioner’s office and show identification pursuant to Iowa Code section 48A.8 or mail a photocopy of identification pursuant to Iowa Code section 48A.8 before the voter’s absentee ballot can be counted by the absentee and special voters precinct board. The commissioner shall mail the voter a notice informing the voter of the requirement to provide one of the identification documents listed in Iowa Code section 48A.8 before the voter’s absentee ballot can be considered for counting by the absentee and special voters precinct board. If a by-mail applicant provides identification as required by Iowa Code section 48A.8, the commissioner shall assign the voter’s registration record a status of “active.”

**21.304(3) *By-mail absentee voters assigned a status of “pending” who do not provide identification prior to election day.*** The ballot of a by-mail absentee voter assigned a status of “pending” who has not shown identification in person at the commissioner’s office or provided a photocopy of identification by mail pursuant to Iowa Code section 48A.8 shall be challenged by a member of the absentee and special voters precinct board on election day pursuant to Iowa Code section 53.31. The absentee and special voters precinct board shall immediately mail notice of the challenge to the voter. The notice shall include the deadline for the voter to provide identification pursuant to Iowa Code section 48A.8. If the voter provides identification pursuant to Iowa Code section 48A.8 prior to the time the absentee and special voters precinct board reconvenes to consider challenged absentee ballots pursuant to Iowa Code section 50.22, the voter’s ballot shall be considered for counting by the absentee and special voters precinct board. If the voter does not provide identification pursuant to Iowa Code section 48A.8 prior to the time the absentee and special voters precinct board reconvenes to consider challenged absentee ballots pursuant to Iowa Code section 50.22, the voter’s absentee ballot shall be rejected by the absentee and special voters precinct board. The voter shall be notified of the reason for rejection pursuant to Iowa Code section 53.25.

This rule is intended to implement Iowa Code sections 48A.8, 53.25 and 53.31.  
[ARC 8045B, IAB 8/26/09, effective 7/27/09; ARC 1831C, IAB 1/21/15, effective 2/25/15]

**721—21.305(53) Confirming commissioner’s receipt of an absentee ballot on election day.** If a voter’s name is on the absentee list prepared pursuant to Iowa Code sections 49.72 and 53.19 and the voter appears at the polling place to vote on election day, the precinct election officials may contact the commissioner’s office to confirm whether the commissioner has received the voter’s absentee ballot. If the precinct election officials are able to confirm either that the commissioner has not received the voter’s absentee ballot or that the voter’s absentee ballot has been received but cannot be counted due to a defective or incomplete affidavit, the precinct election officials shall permit the voter to cast a regular ballot at the polling place.

After confirming that a voter’s absentee ballot has not been received or that a voter’s absentee ballot has been received but cannot be counted due to a defective or incomplete affidavit, the commissioner shall mark the voter’s absentee ballot as “Void” in the statewide voter registration system. The commissioner shall enter “Voted at polls” in the comment box that appears when the ballot is marked as “Void.”

If a voter's absentee ballot is returned to the commissioner's office after being marked as "Void" pursuant to this rule, the absentee ballot shall be rejected by the absentee and special voters precinct board pursuant to Iowa Code section 53.25 because the voter cast a ballot in person at the polling place.

This rule is intended to implement Iowa Code sections 49.72, 49.81 and 53.19.  
[ARC 8779B, IAB 6/2/10, effective 7/1/10; ARC 1831C, IAB 1/21/15, effective 2/25/15]

**721—21.306(53) Incomplete absentee ballot applications.** If the commissioner receives an absentee ballot request lacking any of the information required by 2017 Iowa Acts, House File 516, section 6(4)(a), the commissioner shall obtain the necessary information by the best means available pursuant to 2017 Iowa Acts, House File 516, section 6(4)(a). "Best means available," for the purposes of this rule, means contacting the voter directly by mail, email, or telephone or in person. Commissioners may not use the voter registration system to obtain the information.

**21.306(1)** If the voter does not have current access to the voter identification card, the commissioner shall verify the voter's identity by asking the voter to provide at least two of the following facts about the voter:

- a. Date of birth;
- b. Last four digits of the voter's social security number (if the number is stored within I-Voters);
- c. Driver's license or nonoperator's identification card number (if the number is stored within I-Voters);
- d. Address;
- e. Middle name;
- f. Voter verification number pursuant to Iowa Code section 53.2(4).

**21.306(2)** If an unregistered person offering to vote an absentee ballot pursuant to Iowa Code section 53.10 or 53.11 prior to the pre-registration deadline does not have an Iowa-issued driver's license, a nonoperator's identification card, or a voter identification card, the person may satisfy residence and identity requirements in the manner described by 2017 Iowa Acts, House File 516, section 27. This section shall also apply to a registered voter casting a ballot pursuant to Iowa Code section 53.10 or 53.11 who has not yet received a voter verification number.

**21.306(3)** This provision shall not apply to the absence of a preferred political party ballot for primaries held pursuant to Iowa Code section 53.2(5).

This rule is intended to implement Iowa Code section 53.2 as amended by 2017 Iowa Acts, House File 516, section 6.

[ARC 3447C, IAB 11/8/17, effective 12/31/17]

**721—21.307(49,53) Updating signatures on file.** A registered voter may update the signature on record with the commissioner at any time. A commissioner shall not require a reason from the voter for the change. The state commissioner shall prescribe a form for the signature update. The form must include the voter's name and the voter's verification number. The form shall be published on the state commissioner's website. A written request with the required information shall not require the form. Upon receiving the signature update request, the commissioner shall verify the information on the form. If the required information is valid, the commissioner shall scan the form into I-Voters. This action shall be processed as a ministerial update and shall not be processed as a change to the voter registration record. If the registrant is attempting to vote pursuant to Iowa Code section 53.10 or 53.11, the registrant shall provide proof of identity prior to submitting the update.

This rule is intended to implement 2017 Iowa Acts, House File 516, section 27, and Iowa Code section 53.18 as amended by 2017 Iowa Acts, House File 516, section 31.

[ARC 3447C, IAB 11/8/17, effective 12/31/17]

**721—21.308 to 21.319** Reserved.

**721—21.320(53) Absentee voting by UOCAVA voters.** This rule applies only to absentee voting by persons who are entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens

Absentee Voting Act (UOCAVA) and Iowa Code chapter 53, division II, “Absent Voting by Armed Forces.”

**21.320(1) Definitions.** The following definitions apply to this rule:

“*Armed forces*,” as used in this rule, is defined in Iowa Code section 53.37(3).

“*FPCA*” means the federal postcard absentee ballot application and voter registration form authorized for use in Iowa by Iowa Code section 53.38.

“*UOCAVA voter*” means any person who is entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) and Iowa Code chapter 53, division II, “Absent Voting by Armed Forces.”

**21.320(2) Requests for absentee ballots.** All requests for absentee ballots shall be made in writing. Additional requirements for requesting absentee ballots and for processing the requests are set forth below.

*a. Forms.* UOCAVA voters may use the following official forms to request absentee ballots:

(1) A federal postcard absentee ballot application and voter registration form (FPCA).

(2) A state of Iowa official absentee ballot request form.

(3) For general elections only, a proxy absentee ballot application prescribed by the state commissioner of elections and submitted pursuant to Iowa Code Supplement section 53.40(1)“*b.*”

*b. Form not required.* UOCAVA voters may request absentee ballots in writing without using an official form. The written request shall be honored if it includes all of the following information about the voter:

(1) Name.

(2) Age or date of birth.

(3) Iowa residence, including street address (if any) and city.

(4) Address to which the ballot shall be sent.

(5) Township of residence, if applicable.

(6) County of residence.

(7) Party affiliation, if the request is for a ballot for a primary election.

(8) Signature of voter.

(9) Statement explaining why the voter is eligible to receive ballots under the provisions of Iowa Code chapter 53, division II. For example, “I am a U.S. citizen living in France.”

*c. Methods for transmitting absentee ballot requests.* UOCAVA voters may transmit absentee ballot requests by any of the following methods:

(1) Mail.

(2) Personal delivery by the voter or a person designated by the voter.

(3) Facsimile machine.

(4) Scanned application form or letter transmitted by email. Requests by email that do not include an image of the voter’s written signature as defined by Iowa Code section 39.3, subsection 17, shall not be accepted.

*d. Original request not needed.* If the request is sent by email or by fax, it is not necessary for the UOCAVA voter to send to the commissioner the original copy of the FPCA or other official form or written request for an absentee ballot.

*e. Multiple requests from the same person.* Before the ballot is ready to mail, if the commissioner receives more than one request for an absentee ballot for a particular election (or series of elections) by or on behalf of a UOCAVA voter, the last request received shall be the one honored. However, if one of the requests is for a general election ballot and is made using the proxy absentee ballot application process permitted by Iowa Code Supplement section 53.40(1)“*b.*” the request received from the voter shall be the one honored, not the proxy request.

*f. Subsequent request after ballot has been sent.* Not more than one ballot shall be transmitted by the commissioner to any UOCAVA voter for a particular election unless, after the ballot has been mailed or transmitted electronically pursuant to rule 721—21.320(53), the voter reports a change in the address, email address or fax number to which the ballot should be sent. The commissioner shall void the original absentee ballot request and include a comment in the voter’s registration record, noting

the I-Voters-sequence number of the original ballot and noting that a replacement ballot was sent to an updated address. If the original ballot is returned voted, it shall be counted only if the replacement ballot does not arrive before the deadline for receiving absentee ballots set forth in Iowa Code section 53.17.

*g. Requests for absentee ballots through the end of the calendar year.* Iowa Code section 53.40 permits UOCAVA voters to request the commissioner to send absentee ballots for all elections as permitted by state law. In response to an absentee ballot request in which the UOCAVA voter requests ballots for all elections, the commissioner shall send the applicant a ballot for each election held after the request is received through the end of the calendar year in which the request is received. If the applicant does not request ballots for all elections or does not specify which elections the request is for, the commissioner shall send the applicant a ballot only for federal elections through the end of the calendar year in which the request is received.

(1) When an absentee ballot for a UOCAVA voter is returned as undeliverable by the United States Postal Service or an email server or a fax cannot be transmitted to the number provided by the voter, the commissioner shall do the following:

1. Verify that the commissioner's office sent the absentee ballot to the address, email address or fax number requested by the UOCAVA voter. If the absentee ballot was sent incorrectly, the commissioner shall correct the error and immediately transmit a new absentee ballot.

2. If the absentee ballot was sent to the correct mailing address, email address or fax number, the commissioner shall email the voter if the commissioner has an email address on file to inform the voter that the voter's ballot was returned undeliverable, and the commissioner must be provided with a new FPCA containing a new mailing address if the voter wishes to continue to receive absentee ballots.

3. If the absentee ballot was sent to the correct mailing address, email address or fax number, the commissioner shall also attempt to contact the voter by sending a forwardable notice to both the voter's residential address and the voter's absentee mailing address informing the voter that the voter's ballot was returned undeliverable, and the commissioner must be provided with a new FPCA containing a new mailing address, email address or fax number if the voter wishes to continue to receive absentee ballots.

4. If the absentee ballot was mailed, emailed or sent to the correct address or fax number, the commissioner shall terminate the voter's current FPCA request and shall not send the voter any further ballots unless a new absentee ballot request is received from the voter.

(2) If the voter provides a new FPCA with a new mailing address, email address or fax number before election day, the commissioner shall enter a new absentee request on the voter's registration record and transmit the ballot via the method requested by the voter. The voter may request that the commissioner transmit the ballot electronically pursuant to subrule 21.320(3).

**21.320(3) *Electronic transmission of absentee ballots to UOCAVA voters.***

*a.* Electronic transmission of absentee ballots by facsimile machine or by email is limited to UOCAVA voters who specifically ask for this service. A UOCAVA voter who asks for electronic transmission of an absentee ballot may request this service for all elections for which the person is qualified to vote or for specific elections either individually or for a specific period of time. The commissioner may employ FVAP's secure transmission program to facilitate electronic transmission of absentee ballots to UOCAVA voters.

*b.* Forms. The state commissioner shall provide the following forms and instructions for the electronic transmission of absentee ballots to UOCAVA voters:

(1) Instructions to the county commissioners of elections for providing this service.

(2) Instructions to the voter for marking and returning the ballot.

(3) The envelope affidavit form, which can be printed by the voter on an envelope and used for the voter's declaration of eligibility and voter registration application, if necessary.

(4) The return envelope form, which can be printed by the voter on an envelope and used to return the ballot, postage paid through the FPO/APO postal service.

**21.320(4) *Ballot return by electronic transmission.***

*a.* Electronic transmission of a voted absentee ballot from the voter to the commissioner is permitted only for UOCAVA voters who are located in an area designated as an imminent danger pay area or for active members of the army, navy, marine corps, merchant marine, coast guard, air force or

Iowa national guard who are located outside the United States or any of its territories, as provided in subrule 21.1(13). In addition, the absentee ballot may be returned via electronic transmission only if the voter waives the right to a secret ballot. In addition to signing the affidavit required by Iowa Code section 53.13, the voter shall sign a statement in substantially the following form: “I understand that by returning this ballot by electronic transmission, my voted ballot will not be secret. I hereby waive my right to a secret ballot.”

*b.* When an absentee ballot is received via electronic transmission, the person receiving the transmission shall examine it to determine that all pages have been received and are legible. The person receiving an electronic transmission shall not reveal how the voter voted.

*c.* The absentee ballot shall be sealed in an envelope marked with the voter’s name. The affidavit of the voter and the application for the ballot shall be attached to the envelope. These materials shall be stored with other returned absentee ballots.

*d.* The deadline for returning an absentee ballot pursuant to this subrule is the close of polls on election day, Central Standard Time.

**21.320(5)** *Original signature for voter registration record.* Voters must submit original signatures on voter registration applications unless otherwise provided by this subrule.

*a. UOCAVA voters ineligible to return voted balloting materials electronically.* UOCAVA voters who are not currently registered to vote in a county and are not eligible to return voted ballot materials electronically pursuant to this rule shall submit an original, signed application for voter registration. The application may be the Iowa voter registration application, the National Mail Voter Registration Form, a Federal Post Card Application, a declaration/affirmation accompanying a federal write-in absentee ballot or a signature on a voted UOCAVA absentee ballot affidavit. Ballots transmitted to UOCAVA voters who do not submit an original voter registration application shall not be counted, and the voter who requested the ballot shall be assigned a status of “Incomplete” with a status reason “No Signature” following the election for which the ballot was requested.

*b. UOCAVA voters eligible to return voted balloting materials electronically.* UOCAVA voters who are not currently registered to vote and are eligible to return voted ballot materials electronically pursuant to this rule shall submit a signed, scanned application for voter registration. The application may be the Iowa voter registration application, the National Mail Voter Registration Form, a Federal Post Card Application, a declaration/affirmation accompanying a federal write-in absentee ballot or a signature on a voted UOCAVA absentee ballot affidavit. Ballots transmitted to UOCAVA voters who do not submit signed, scanned voter registration applications shall not be counted, and the voter who requested the ballot shall be assigned a status of “Incomplete” with a status reason “No Signature” following the election for which the ballot was requested.

This rule is intended to implement Iowa Code sections 53.40 and 53.46.

[ARC 8045B, IAB 8/26/09, effective 7/27/09; ARC 8777B, IAB 6/2/10, effective 5/7/10; ARC 9989B, IAB 2/8/12, effective 1/17/12; ARC 0107C, IAB 4/18/12, effective 3/30/12; ARC 1549C, IAB 7/23/14, effective 8/27/14; ARC 1831C, IAB 1/21/15, effective 2/25/15]

**721—21.321 to 21.349** Reserved.

**721—21.350(53) Absentee ballot processing for elections held following July 1, 2007.** Rescinded IAB 9/26/07, effective 9/7/07.

**721—21.351(53) Receiving absentee ballots.** The commissioner shall carefully account for and protect all absentee ballots returned to the office.

**21.351(1)** *Note receipt.* The commissioner shall write or file-stamp on the return carrier envelope the date that the ballot arrived in the commissioner’s office. The commissioner shall also record receipt of the ballot in I-Voters.

**21.351(2)** *Temporary storage.* If necessary, the commissioner shall immediately put the ballot into a secure container, such as a locked ballot box, until the ballots can be moved to the secure storage area.

**21.351(3) Secure area.** The commissioner shall deliver the ballots to a secure area where returned absentee ballots will be reviewed for completeness and defects.

[ARC 8779B, IAB 6/2/10, effective 7/1/10]

**721—21.352(53) Review of returned envelopes marked with affidavits.**

**21.352(1) Personnel.** The commissioner may assign staff members to complete the review of returned envelopes marked with affidavits. Only persons who have been trained for this responsibility shall be authorized to review envelopes marked with affidavits.

**21.352(2) Review of envelopes marked with affidavits.** The envelopes marked with affidavits of all absentee ballots returned to the commissioner's office shall be reviewed, including those returned by the bipartisan team delivering absentee ballots to health care facilities, such as hospitals and nursing homes. If a reviewer finds that any absentee affidavits returned from any health care facility are incomplete or defective, the commissioner shall send the bipartisan delivery team back to assist voters as needed with completing affidavits or to deliver any replacement ballots.

**21.352(3) Instructions.** Each reviewer shall receive instructions in substantially the form prepared by the state commissioner of elections. The instructions shall provide basic security and procedural guidance and include a method for accounting for all returned absentee ballots. The prohibitions shall include:

- a. Leaving unsecured ballots unattended.
- b. Altering any information on any affidavit.
- c. Adding any information to any affidavit, except as specifically required to comply with the requirements of the law.
- d. Sealing any envelope marked with the affidavit that is found open.
- e. Discarding any return carrier envelopes, ballots, or envelopes marked with affidavits that are returned by voters.

[ARC 8045B, IAB 8/26/09, effective 7/27/09; ARC 8779B, IAB 6/2/10, effective 7/1/10; ARC 1549C, IAB 7/23/14, effective 8/27/14]

**721—21.353(53) Opening the return carrier envelopes that are not marked with voters' affidavits.** If the commissioner is using return carrier envelopes that are not marked with voters' affidavits, the commissioner may direct a staff member to open the return carrier envelopes either manually or with an automatic letter opener, if one is available. Only a trained reviewer may remove the contents of the return carrier envelope. The return carrier envelopes opened and emptied pursuant to this rule shall be stored for 22 months for federal elections and 6 months for local elections in a manner that will facilitate retrieval, if necessary.

[ARC 1549C, IAB 7/23/14, effective 8/27/14]

**721—21.354(53) Review process.**

**21.354(1) Examination of envelope marked with affidavit.** The reviewer shall make sure that:

- a. The envelope marked with the affidavit is sealed, apparently with the ballot inside.
- b. The envelope marked with the affidavit has not been opened and resealed.
- c. The affidavit includes the voter's signature.

**21.354(2) No defects or incomplete information.** If the reviewer finds that the affidavit is signed and that there are no defects that would cause the absentee and special voters precinct board to reject the ballot, the reviewer shall put the envelope marked with the affidavit into a group of envelopes to be retained in the secure storage area with other ballots that require no further attention until they are delivered to the absentee and special voters precinct board.

**21.354(3) Defective and incomplete affidavits.** The commissioner shall contact the voter if the reviewer finds any of the following flaws in the affidavit or envelope marked with the affidavit:

- a. The commissioner shall contact the voter immediately if the envelope marked with the affidavit is defective. An envelope marked with the affidavit is defective if:
  - (1) The absentee ballot is not enclosed in the envelope marked with the affidavit.
  - (2) The envelope marked with the affidavit is not sealed.
  - (3) The envelope marked with the affidavit has been opened and resealed.

- (4) The voter submits a change of address in a new precinct after returning a voted absentee ballot.
- b. The commissioner shall contact the voter within 24 hours if the affidavit is not signed.
- c. If an envelope marked with the affidavit has flaws that are included in both paragraphs “a” and “b,” the commissioner shall follow the process in paragraph “a.”

**21.354(4) Defective and incomplete affidavits stored separately.** The commissioner shall store the defective and incomplete envelopes marked with affidavits separately from other returned absentee ballot envelopes marked with affidavits.

a. Incomplete envelopes marked with affidavits requiring voter correction must be available for retrieval when the voter comes to make corrections.

b. Defective envelopes marked with affidavits must be attached to the replacement ballot (if any) for review by the absentee and special voters precinct board.

[ARC 8045B, IAB 8/26/09, effective 7/27/09; ARC 8779B, IAB 6/2/10, effective 7/1/10; ARC 1549C, IAB 7/23/14, effective 8/27/14]

**721—21.355(53) Notice to voter.** When the commissioner finds an incomplete absentee ballot affidavit or finds a defective envelope marked with the affidavit, the commissioner shall notify the voter in writing and, if possible, by telephone and by email. The commissioner shall keep a separate checklist for each voter showing the reasons for which the voter was contacted and the methods used to contact the voter.

**21.355(1) Notice to voter—incomplete ballot affidavit.** Within 24 hours after receipt of an absentee ballot with an incomplete affidavit, the commissioner shall send a notice to the voter at the address where the voter is registered to vote, as well as to the address where the ballot was sent, if it is a different address. The notice shall include:

- a. Explanation that the voter’s absentee ballot affidavit is missing the voter’s signature.
- b. The voter’s options for completing the affidavit as follows:
  - (1) Completing the affidavit at the commissioner’s office by 5 p.m. the day before the election;
  - (2) Requesting a replacement ballot pursuant to Iowa Code section 53.18; or
  - (3) Voting at the polls on election day.
- c. Address of commissioner’s office, business hours and contact information.

**21.355(2) Notice to voter—defective ballot affidavit.** Immediately after determining that an absentee ballot envelope marked with the affidavit is defective, the commissioner shall send a notice to the voter at the address where the voter is registered to vote, as well as to the address where the ballot was sent, if it is a different address. The notice shall include the following information:

- a. Reason for defect.
- b. The voter’s options for correcting the defect as follows:
  - (1) The voter may request a replacement ballot;
  - (2) The voter may vote at the polls on election day; or
  - (3) In the event an absentee ballot becomes defective because a voter reregisters to vote in a new precinct or county after casting an absentee ballot, the voter may correct the defect by reregistering to vote in the precinct in which the absentee ballot was cast, provided the voter can still claim residence for voter registration purposes in the precinct in which the absentee ballot was cast pursuant to Iowa Code sections 48A.5 and 48A.5A. If a voter reregisters after the voter registration deadline listed in Iowa Code section 48A.9 for a particular election, the voter shall be required to follow election day registration procedures as set forth in Iowa Code section 48A.7A, subsection 3.
- c. Process for requesting a replacement ballot.
- d. Address of commissioner’s office, business hours and contact information.

**21.355(3) Telephone contact.** If the voter has provided a telephone number, either on the absentee ballot application or on the voter’s registration record, the commissioner shall also attempt to contact the voter by telephone. The commissioner shall keep a written record of the telephone conversation. The written record shall include the following information:

- a. Name of the person making the call.
- b. Date and time of the call.
- c. Whether the person making the call spoke to the voter.

**21.355(4) *Email contact.*** If the voter has provided an email address, either on the absentee ballot application or on the voter's registration record, the commissioner shall also attempt to contact the voter by email. The email message shall be the same message that was mailed to the voter. A copy of the email message shall be attached to the checklist.

[**ARC 8045B**, IAB 8/26/09, effective 7/27/09; **ARC 8779B**, IAB 6/2/10, effective 7/1/10; **ARC 9989B**, IAB 2/8/12, effective 1/17/12; **ARC 1549C**, IAB 7/23/14, effective 8/27/14]

Rules 721—21.351(53) through 721—21.355(53) are intended to implement Iowa Code sections 53.18 and 53.25 as amended by 2014 Iowa Acts, House File 2366, division II.

**721—21.356 to 21.358** Reserved.

**721—21.359(53) Processing absentee ballots before election day.** The commissioner may only direct the absentee and special voters precinct board to open envelopes marked with affidavits on the Monday before election day under the following circumstances:

For any election, only if the commissioner has provided secrecy envelopes (or folders) pursuant to subrule 21.359(1) and the commissioner determines removing secrecy envelopes from envelopes marked with affidavits is necessary due to the quantity of voted absentee ballots received as set forth in Iowa Code section 53.23, subsection 3, paragraph "a."

For general elections, if the commissioner convenes the absentee and special voters precinct board pursuant to Iowa Code section 53.23, subsection 3, paragraph "c," to begin tabulation of absentee ballots.

**21.359(1)** The secrecy envelope shall completely cover the ballot. The envelope shall have the following message printed on it using at least 24-point type:

**Secrecy Envelope**  
After you vote, put your ballot in here.

**21.359(2)** When the absentee and special voters precinct board convenes to begin processing absentee ballots, the board shall first review voters' affidavits to determine which ballots will be accepted for counting and prepare the notices to those voters whose ballots have been rejected for the reasons set forth in Iowa Code section 53.25. Envelopes marked with affidavits containing ballots that are rejected shall be stored in the manner prescribed by Iowa Code section 53.26. The applications submitted for rejected ballots shall be stored in a secure location for the time period required by Iowa Code section 50.19.

**21.359(3)** Envelopes marked with affidavits containing ballots that have been accepted for counting by the absentee and special voters precinct board shall be stacked with the affidavits facing down. The envelopes shall be opened and the secrecy envelope containing the ballot shall be removed.

**21.359(4)** If a voter has not enclosed the ballot in a secrecy envelope and the ballot has not been folded in a manner that conceals all votes marked on the ballot, the officials shall put the ballot in a secrecy envelope without examining the ballot.

**21.359(5)** The following security procedures shall be followed:

*a.* The process shall be witnessed by observers appointed by the county chairperson of each of the political parties referred to in Iowa Code section 49.13, subsection 2. If, after receiving notice from the commissioner pursuant to Iowa Code section 53.23, subsection 3, paragraph "a," any of the political parties fail to appoint observers, the commissioner may continue with the proceedings.

*b.* No ballots shall be counted or examined before election day except as provided in Iowa Code section 53.23, subsection 3, paragraph "c."

*c.* When secrecy envelopes are removed from envelopes marked with affidavits on the day before an election and not tabulated as permitted by Iowa Code section 53.23, subsection 3, paragraph "c," the number of secrecy envelopes shall be recorded before the ballots are stored and the number shall be

verified before any ballots are removed from the secrecy envelopes on election day. The ballots may be bundled and sealed in groups of a specified number to make counting easier.

This rule is intended to implement Iowa Code section 53.23 as amended by 2014 Iowa Acts, House File 2366, division II.

[ARC 8045B, IAB 8/26/09, effective 7/27/09; ARC 8779B, IAB 6/2/10, effective 7/1/10; ARC 1549C, IAB 7/23/14, effective 8/27/14; ARC 3447C, IAB 11/8/17, effective 12/31/17]

**721—21.360(53) Failure to affix postmark date.** Rescinded IAB 4/20/11, effective 3/31/11.

**721—21.361(53) Rejection of absentee ballot.** The absentee and special voters precinct board shall reject absentee ballots without opening the envelope marked with the affidavit if any of the conditions cited in Iowa Code section 53.25 exist.

**21.361(1)** An absentee ballot shall be rejected if the affidavit lacks the voter's signature.

**21.361(2)** An absentee ballot shall be rejected if the applicant is not a duly registered voter in the precinct in which the ballot is cast. "Precinct" means a precinct established pursuant to Iowa Code sections 49.3 through 49.5 or a consolidated precinct established by the commissioner pursuant to Iowa Code section 49.11, subsection 3, paragraph "a."

**21.361(3)** An absentee ballot shall be rejected if the envelope marked with the affidavit is open.

**21.361(4)** An absentee ballot shall be rejected if the envelope marked with the affidavit has been opened and resealed.

**21.361(5)** An absentee ballot shall be rejected if the envelope marked with the affidavit contains more than one ballot of any kind.

**21.361(6)** An absentee ballot shall be rejected if the voter has voted in person at the polls.

This rule is intended to implement Iowa Code section 49.9 and section 53.25 as amended by 2014 Iowa Acts, House File 2366, division II.

[ARC 8045B, IAB 8/26/09, effective 7/27/09; ARC 1549C, IAB 7/23/14, effective 8/27/14]

**721—21.362 to 21.369** Reserved.

**721—21.370(53) Training for absentee ballot couriers.** Rescinded IAB 8/1/07, effective 7/1/07.

**721—21.371(53) Certificate.** Rescinded IAB 8/1/07, effective 7/1/07.

**721—21.372(53) Frequency of training.** Rescinded IAB 8/1/07, effective 7/1/07.

**721—21.373(53) Registration of absentee ballot couriers.** Rescinded IAB 8/1/07, effective 7/1/07.

**721—21.374(53) County commissioner's duties.** Rescinded IAB 8/1/07, effective 7/1/07.

**721—21.375(53) Absentee ballot courier training.** Rescinded IAB 8/1/07, effective 7/1/07.

**721—21.376(53) Receiving absentee ballots.** Rescinded IAB 8/1/07, effective 7/1/07.

**721—21.377 to 21.399** Reserved.

DIVISION IV  
INSTRUCTIONS FOR SPECIFIC ELECTIONS

**721—21.400(376) Signature requirements for certain cities.** This rule applies to cities which have all of the following characteristics:

1. Nomination procedures under Iowa Code section 376.3 are used. (This includes cities with primary or runoff election provisions. It does not include cities with nominations under Iowa Code chapter 44 or 45.)

2. Some or all council members are voted upon by the electors of wards, rather than by the electors of the entire city.

3. Ward boundaries have been changed since the last regular city election at which the ward seat was on the ballot.

4. The number of wards has not changed.

Calculation of the number of signatures for ward seats shall use the vote totals from the wards as the wards were configured at the time of the last regular city election at which the ward seat was on the ballot.

This rule is intended to implement Iowa Code section 376.4.

**721—21.401(376) Signature requirements in cities with primary or runoff election provisions.** In cities using the provisions of Iowa Code section 376.4 for nomination of candidates and in which more than one council member was elected at-large at the last preceding regular city election, the number of signatures shall be calculated by the following formula:

V = the total number of votes cast for all candidates for council member at-large at the last regular city election;

E = the number of people to be elected at the last regular city election;

$$\frac{V}{E} \times .02 = \text{the number of signatures needed by each candidate in the next regular city election.}$$

This rule is intended to implement Iowa Code section 376.4.

**721—21.402(372) Filing deadline for charter commission appointment petition.** If a special election has been called by a city to present to the voters the question of adopting a different form of city government, receipt by the city council of a petition requesting appointment of a charter commission shall stay the special election if the petition is received no later than 5 p.m. on the Friday preceding the date of the special election.

This rule is intended to implement Iowa Code section 372.3.

**721—21.403(372) Special elections to fill vacancies in elective city offices for cities that may be required to conduct primary elections.**

**21.403(1) Notice to the commissioner.** At least 60 days before the proposed date of the special election, the city council shall give written notice to the commissioner who will be responsible for conducting the special election.

*a.* If the commissioner finds no conflict with other previously scheduled elections, or with other limitations on the dates of special elections, the commissioner shall immediately notify the council that the date has been approved.

*b.* No special city elections to fill vacancies for cities that may be required to conduct primary elections shall be held with the general election, with the primary election, or with the annual school election. To do so would be contrary to the provisions of Iowa Code section 39.2.

**21.403(2) Election calendar.** The election calendar shall be adjusted as follows:

*a.* The deadline for candidates to file nomination papers with the county commissioner shall be not later than 5 p.m. on the fifty-third day before the election.

*b.* A candidate who has filed nomination papers for the special election may withdraw by filing a written notice of withdrawal in the office of the county commissioner not later than 5 p.m. on the fiftieth day before the election.

*c.* A person who would have the right to vote for the office in question may file a written objection to the legal sufficiency of a candidate's nomination papers or to the qualifications of the candidate for this special election with the county commissioner not later than 12 noon on the fiftieth day before the election.

*d.* The hearing on the objection must be held within 24 hours of receipt of the objection.

This rule is intended to implement Iowa Code section 372.13(2).

[ARC 1549C, IAB 7/23/14, effective 8/27/14; ARC 1831C, IAB 1/21/15, effective 2/25/15]

**721—21.404(372) Special elections to fill vacancies in elective city offices for cities without primary election requirements.** This rule applies to cities that have adopted by ordinance one of the following options: nominations under Iowa Code chapter 44 or chapter 45, or a runoff election requirement if no candidate in the special election receives a majority of the votes cast.

**21.404(1) Notice to the commissioner.** At least 32 days before the proposed date of the special election, the city council shall give written notice to the commissioner who will be responsible for conducting the special election. If the commissioner finds no conflict with other previously scheduled elections, or with other limitations on the dates of special elections, the commissioner shall immediately notify the council that the date has been approved.

**21.404(2) Special elections to fill vacancies held in conjunction with the general election.** If the proposed date of the special election coincides with the date of the general election, the council shall give notice of the proposed date of the special city election not later than 76 days before the date of the general election. Candidates shall file nomination papers with the county commissioner not later than 5 p.m. on the sixty-ninth day before the general election. Objection and withdrawal deadlines shall be 64 days before the general election. Hearings on objections shall be held as soon as possible in order to facilitate printing of the general election ballot.

**21.404(3) Election calendar.** If the special election date is not the same as the date of the general election, the election calendar shall be adjusted as follows:

*a.* The deadline for candidates to file nomination papers with the county commissioner shall be not later than 5 p.m. on the twenty-fifth day before the election.

*b.* A candidate who has filed nomination papers for the special election may withdraw by filing a written notice of withdrawal in the office of the county commissioner not later than 5 p.m. on the twenty-second day before the election.

*c.* A person who would have the right to vote for the office in question may file a written objection to the legal sufficiency of a candidate's nomination papers or to the qualifications of the candidate for this special election with the county commissioner not later than 12 noon on the twenty-second day before the election.

*d.* The hearing on the objection must be held within 24 hours of receipt of the objection.

This rule is intended to implement Iowa Code section 372.13(2).

[ARC 1549C, IAB 7/23/14, effective 8/27/14; ARC 1831C, IAB 1/21/15, effective 2/25/15]

**721—21.405(69) Special elections to fill a vacancy in the office of representative in Congress.** This rule establishes the special election calendar in the event a vacancy occurs in the office of representative in Congress that must be filled by special election pursuant to Iowa Code section 69.14.

**21.405(1) Notice of election.** The governor shall provide not less than 76 days' notice of a special election to fill a vacancy in the office of representative in Congress.

**21.405(2) Political party convention deadline.** A political party candidate to be voted on at a special election to fill a vacancy in the office of representative in Congress shall be nominated by a convention duly called by the district central committee not less than 62 days prior to the date set for the special election.

**21.405(3) Candidate filing deadline.** Nominations made pursuant to Iowa Code chapter 43, 44 or 45 shall be filed in the office of the state commissioner not later than 5 p.m. on the sixty-second day prior to the date set for the special election.

**21.405(4) Candidate certification deadline.** Names of candidates nominated for the special election shall be certified at the earliest practicable time to the appropriate commissioners of election as required by Iowa Code section 43.88.

**21.405(5) Candidate objection deadline.** Written objections to the legal sufficiency of a nomination petition filed pursuant to Iowa Code chapter 45 or a certificate of nomination filed pursuant to Iowa Code chapter 43 or 44 shall be in writing and shall be filed with the state commissioner no later than 5 p.m. on the sixtieth day prior to the election.

**21.405(6) Candidate withdrawal deadline.** A person who has filed nomination papers with the state commissioner as a candidate for a special election to fill a vacancy in the office of representative in

Congress may withdraw by filing a written notice of withdrawal with the state commissioner no later than 5 p.m. on the sixtieth day prior to the election.

[ARC 0109C, IAB 5/2/12, effective 4/6/12]

**721—21.406 to 21.499** Reserved.

**721—21.500(277) Signature requirements for school director candidates.** The number of signatures required to be filed by candidates for the office of director in the regular school election shall be calculated from the number of registered voters in the district on May 1 of the year in which the election will be held. If May 1 falls on a day when the commissioner's office is closed for business, the commissioner shall use the number of registered voters in the district on the next day that the commissioner's office is open for business to determine the number of required signatures. Candidates who are seeking election in districts with election plans as specified in Iowa Code section 275.12(2) "b" and "c," where the candidate must reside in a specific director district, but is voted upon by all of the electors of the school district, shall be required to file a number of signatures calculated from the number of registered voters in the whole school district. Candidates who will be voted upon only by the electors of a director district shall be required to file a number of signatures calculated from the number of registered voters in the director district in which the candidate resides and seeks to represent.

If a special election is to be held to fill a vacancy on the school board, the number of registered voters on the date the commissioner receives notice of the special election shall be used to calculate the number of signatures required for the special election.

This rule is intended to implement Iowa Code sections 277.4 and 279.7.  
[ARC 9466B, IAB 4/20/11, effective 3/31/11]

**721—21.501 to 21.599** Reserved.

**721—21.600(43) Primary election signatures—plan three supervisor candidates.** Rescinded IAB 11/30/11, effective 1/4/12.

**721—21.601(43) Plan III supervisor district candidate signatures after a change in the number of supervisors or method of election.** After the number of supervisors has been increased or decreased pursuant to Iowa Code section 331.203 or 331.204 or the method of electing supervisors has been changed from plan I or plan II to plan III since the last general election, the signatures for candidates at the next primary and general elections shall be calculated as follows:

**21.601(1) Primary election.** Divide the total number of party votes cast in the county at the previous general election for the office of president or for governor, as applicable, by the number of supervisor districts and multiply the quotient by .02. If the result of the calculation is less than 100, the result shall be the minimum number of signatures required. If the result of the calculation is greater than or equal to 100, the minimum requirement shall be 100 signatures.

**21.601(2) Nominations by petition.** If the effective date of the change in the number of districts or method of election was later than the date specified in Iowa Code section 45.1(6), divide the total number of registered voters in the county on the date specified in Iowa Code section 45.1(6) by the number of supervisor districts and multiply the quotient by .01. If the result of the calculation is less than 150, the result shall be the minimum number of signatures required. If the result of the calculation is greater than or equal to 150, the minimum requirement shall be 150 signatures.

This rule is intended to implement Iowa Code chapters 43 and 45.  
[ARC 9989B, IAB 2/8/12, effective 1/17/12]

**721—21.602(43) Primary election—nominations by write-in votes for certain offices.** Rescinded ARC 4348C, IAB 3/13/19, effective 4/17/19.

**721—21.603 to 21.799** Reserved.

**721—21.800(423B) Local sales and services tax elections.**

**21.800(1)** Petitions requesting imposition, rate change, use change, or repeal of local sales and services taxes shall be filed with the county board of supervisors.

*a.* Each person signing the petition shall include the person's address (including street number, if any) and the date that the person signed the petition.

*b.* Within 30 days after receipt of the petition, the supervisors shall provide written notice to the county commissioner of elections directing that an election be held to present to the voters of the entire county the question of imposition, rate change, use change, or repeal of a local sales and services tax. In the notice the supervisors shall include the date of the election.

*c.* The election shall be held on the first possible special election date for counties set forth in Iowa Code section 39.2, subsection 4, paragraph "a," but no sooner than 84 days after the date upon which notice is given to the commissioner.

**21.800(2)** As an alternative to the method of initiating a local option tax election described in subrule 21.800(1), governing bodies of cities and the county may initiate a local option tax election by filing motions with the county auditor pursuant to Iowa Code section 423B.1, subsection 4, paragraph "b," requesting submission of a local option tax imposition, rate change, use change, or repeal to the qualified electors. Within 30 days of receiving a sufficient number of motions, the county commissioner shall notify affected jurisdictions of the local option tax election date. The election shall be held on the first possible special election date for counties set forth in Iowa Code section 39.2, subsection 4, paragraph "a," but no sooner than 84 days after the date upon which the commissioner received the motion triggering the election.

**21.800(3)** Notice of local sales and services tax election.

*a.* Not less than 60 days before the date that a local sales and services tax election will be held, the county commissioner of elections shall publish notice of the ballot proposition. The notice does not need to include sample ballots, but shall include all of the information that will appear on the ballot for each city and for the voters in the unincorporated areas of the county.

*b.* The city councils and the supervisors shall provide to the county commissioner the following information to be included in the notice and on the ballots for imposition elections:

(1) The rate of the tax.

(2) The date the tax will be imposed (which shall be the next implementation date provided in Iowa Code section 423B.6 following the date of the election and at least 90 days after the date of the election, except that an election to impose a local option tax on a date immediately following the scheduled repeal date of an existing similar tax may be held at any time that otherwise complies with the requirements of Iowa Code chapter 423B). The imposition date shall be uniform in all areas of the county voting on the tax at the same election.

(3) The approximate amount of local option tax revenues that will be used for property tax relief in the jurisdiction.

(4) A statement of the specific purposes other than property tax relief for which revenues will be expended in the jurisdiction.

*c.* The information to be included in the notice shall be provided to the commissioner by the city councils of each city in the county not later than 67 days before the date of the election. If a jurisdiction fails to provide the information in subparagraphs 21.800(3)"b"(1), 21.800(3)"b"(3), and 21.800(3)"b"(4) above, the following information shall be substituted in the notice and on the ballot:

(1) One percent (1%) for the rate of the tax.

(2) Zero percent (0%) for property tax relief.

(3) The specific purpose for which the revenues will otherwise be expended is: Any lawful purpose of the city (or county).

*d.* The notice of election provided for in Iowa Code section 49.53 shall also be published at the time and in the manner specified in that section.

This rule is intended to implement Iowa Code section 423B.1.

[ARC 8045B, IAB 8/26/09, effective 7/27/09; ARC 1831C, IAB 1/21/15, effective 2/25/15]



(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? YES   
NO

Summary: To authorize imposition of a local sales and services tax in the cities of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, (list additional cities, if applicable) at the rate of \_\_\_\_\_ percent ( \_\_\_\_\_ %) to be effective on \_\_\_\_\_ (month and day), \_\_\_\_\_ (year).

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45. Counties using special paper ballots which are read by computerized tabulating equipment may summarize the question on the ballot and post the complete text as provided in Iowa Code section 52.25.)

A local sales and services tax shall be imposed in the cities of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, (list additional cities, if applicable) at the rate of \_\_\_\_\_ percent ( \_\_\_\_\_ %) to be effective on \_\_\_\_\_ (month and day), \_\_\_\_\_ (year).

Revenues from the sales and services tax are to be allocated as follows:

FOR THE CITY OF \_\_\_\_\_:  
\_\_\_\_\_ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

(List specific purpose or purposes)

FOR THE CITY OF \_\_\_\_\_:  
\_\_\_\_\_ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

(List specific purpose or purposes)

FOR THE CITY OF \_\_\_\_\_:  
\_\_\_\_\_ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

(List specific purpose or purposes)

c. Imposition question with an automatic repeal date for voters in a single city or the unincorporated area of the county:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? YES   
NO

Summary: To authorize imposition of a local sales and services tax in the [city of \_\_\_\_\_] [unincorporated area of the county of \_\_\_\_\_], at the rate of \_\_\_\_\_ percent ( \_\_\_\_\_ %) to be effective from \_\_\_\_\_ (month and day), \_\_\_\_\_ (year), until \_\_\_\_\_ (month and day), \_\_\_\_\_ (year).

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45. Counties using special paper ballots which are read by computerized tabulating equipment may summarize the question on the ballot and post the complete text as provided in Iowa Code section 52.25.)

A local sales and services tax shall be imposed in the [city of \_\_\_\_\_] [unincorporated area of the county of \_\_\_\_\_] at the rate of \_\_\_\_\_ percent (\_\_\_\_%) to be effective from \_\_\_\_\_ (month and day), \_\_\_\_\_ (year), until \_\_\_\_\_ (month and day), \_\_\_\_\_ (year).

Revenues from the sales and services tax shall be allocated as follows:

(Choose one or more of the following:)

[\_\_\_\_\_ for property tax relief (insert percentage or dollar amount)]

[\_\_\_\_\_ for property tax relief (insert percentage or dollar amount) in the unincorporated area of the county of \_\_\_\_\_]

[\_\_\_\_\_ for property tax relief (insert percentage or dollar amount) in the county of \_\_\_\_\_]

The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

(List specific purpose or purposes)

d. Imposition question with an automatic repeal date for voters in contiguous cities:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? YES  NO

Summary: To authorize imposition of a local sales and services tax in the cities of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, (list additional cities, if applicable) at the rate of \_\_\_\_\_ percent (\_\_\_\_%) to be effective from \_\_\_\_\_ (month and day), \_\_\_\_\_ (year), until \_\_\_\_\_ (month and day), \_\_\_\_\_ (year).

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45. Counties using special paper ballots which are read by computerized tabulating equipment may summarize the question on the ballot and post the complete text as provided in Iowa Code section 52.25.)

A local sales and services tax shall be imposed in the cities of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, (list additional cities, if applicable) at the rate of \_\_\_\_\_ percent (\_\_\_\_%) to be effective from \_\_\_\_\_ (month and day), \_\_\_\_\_ (year), until \_\_\_\_\_ (month and day), \_\_\_\_\_ (year).

Revenues from the sales and services tax are to be allocated as follows:

FOR THE CITY OF \_\_\_\_\_:

\_\_\_\_\_ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

(List specific purpose or purposes)

FOR THE CITY OF \_\_\_\_\_:

\_\_\_\_\_ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

(List specific purpose or purposes)

FOR THE CITY OF \_\_\_\_\_:
\_\_\_\_\_ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

(List specific purpose or purposes)

e. Repeal question for voters in a single city or the unincorporated area of the county:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? YES [ ] NO [ ]

Summary: To authorize repeal of the \_\_\_ percent ( \_\_\_%) local sales and services tax in the [city of \_\_\_\_\_] [unincorporated area of the county of \_\_\_\_\_] effective \_\_\_\_\_ (month and day), \_\_\_\_ (year).

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45. Counties using special paper ballots which are read by computerized tabulating equipment may summarize the question on the ballot and post the complete text as provided in Iowa Code section 52.25.)

The \_\_\_ percent ( \_\_\_%) local sales and services tax shall be repealed in the [city of \_\_\_\_\_] [unincorporated area of the county of \_\_\_\_\_] effective \_\_\_\_\_ (month and day), \_\_\_\_ (year).

Revenues from the sales and services tax have been allocated as follows:

(Choose one or more of the following:)

[\_\_\_\_\_ for property tax relief (insert percentage or dollar amount)]

[\_\_\_\_\_ for property tax relief (insert percentage or dollar amount) in the unincorporated area of the county of \_\_\_\_\_]

[\_\_\_\_\_ for property tax relief (insert percentage or dollar amount) in the county of \_\_\_\_\_]

The specific purpose (or purposes) for which the revenues were otherwise expended was (were):

(List specific purpose or purposes)

f. Repeal question for voters in contiguous cities:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? YES [ ] NO [ ]

Summary: To authorize repeal of the \_\_\_ percent ( \_\_\_%) local sales and services tax in the cities of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, (list additional cities, if applicable) effective \_\_\_\_\_ (month and day), \_\_\_\_ (year).

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45. Counties using special paper ballots which are read by computerized tabulating equipment may summarize the question on the ballot and post the complete text as provided in Iowa Code section 52.25.)

The \_\_\_\_ percent ( \_\_\_\_%) local sales and services tax shall be repealed in the cities of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, (list additional cities, if applicable) effective \_\_\_\_\_ (month and day), \_\_\_\_\_ (year).

Revenues from the sales and services tax have been allocated as follows:

FOR THE CITY OF \_\_\_\_\_:

\_\_\_\_\_ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues were otherwise expended was (were):

(List specific purpose or purposes)

FOR THE CITY OF \_\_\_\_\_:

\_\_\_\_\_ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues were otherwise expended was (were):

(List specific purpose or purposes)

FOR THE CITY OF \_\_\_\_\_:

\_\_\_\_\_ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues were otherwise expended was (were):

(List specific purpose or purposes)

g. Rate change question for voters in a single city or the unincorporated area of the county:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? YES  NO

Summary: To authorize an increase (or decrease) in the rate of the local sales and services tax to \_\_\_\_ percent ( \_\_\_\_%) in the [city of \_\_\_\_\_] [unincorporated area of the county of \_\_\_\_\_] effective \_\_\_\_\_ (month and day), \_\_\_\_\_ (year).

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45. Counties using special paper ballots which are read by computerized tabulating equipment may summarize the question on the ballot and post the complete text as provided in Iowa Code section 52.25.)

The rate of the local sales and services tax shall be increased (or decreased) to \_\_\_\_ percent ( \_\_\_\_%) in the [city of \_\_\_\_\_] [unincorporated area of the county of \_\_\_\_\_] effective \_\_\_\_\_ (month and day), \_\_\_\_\_ (year).

The current rate is \_\_\_\_ percent ( \_\_\_\_%).

Revenues from the sales and services tax are allocated as follows:

(Choose one or more of the following:)

[\_\_\_\_\_ for property tax relief (insert percentage or dollar amount)]

[ \_\_\_\_\_ for property tax relief (insert percentage or dollar amount) in the unincorporated area of the county of \_\_\_\_\_ ]

[ \_\_\_\_\_ for property tax relief (insert percentage or dollar amount) in the county of \_\_\_\_\_ ]

The specific purpose (or purposes) for which the revenues are otherwise expended is (are):

(List specific purpose or purposes)

*h.* Rate change question for voters in contiguous cities:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? YES   
NO

Summary: To authorize an increase (or decrease) in the rate of the local sales and services tax to \_\_\_\_\_ percent ( \_\_\_\_\_ %) in the cities of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, (list additional cities, if applicable) effective \_\_\_\_\_ (month and day), \_\_\_\_\_ (year).

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45. Counties using special paper ballots which are read by computerized tabulating equipment may summarize the question on the ballot and post the complete text as provided in Iowa Code section 52.25.)

The rate of the local sales and services tax shall be increased (or decreased) to \_\_\_\_\_ percent ( \_\_\_\_\_ %) in the cities of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, (list additional cities, if applicable) effective \_\_\_\_\_ (month and day), \_\_\_\_\_ (year).

Revenues from the sales and services tax are allocated as follows:

FOR THE CITY OF \_\_\_\_\_:  
\_\_\_\_\_ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues are otherwise expended is (are):

(List specific purpose or purposes)

FOR THE CITY OF \_\_\_\_\_:  
\_\_\_\_\_ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues are otherwise expended is (are):

(List specific purpose or purposes)

FOR THE CITY OF \_\_\_\_\_:  
\_\_\_\_\_ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues are otherwise expended is (are):

(List specific purpose or purposes)

*i.* Use change question for voters in a single city or the unincorporated area of the county:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? YES   
NO

Summary: To authorize a change in the use of the \_\_\_\_\_ percent (\_\_\_\_\_% ) local sales and services tax in the [city of \_\_\_\_\_] [unincorporated area of the county of \_\_\_\_\_] effective \_\_\_\_\_ (month and day), \_\_\_\_\_ (year).

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45. Counties using special paper ballots which are read by computerized tabulating equipment may summarize the question on the ballot and post the complete text as provided in Iowa Code section 52.25.)

The use of the \_\_\_\_\_ percent (\_\_\_\_\_% ) local sales and services tax shall be changed in the [city of \_\_\_\_\_] [unincorporated area of the county of \_\_\_\_\_] effective \_\_\_\_\_ (month and day), \_\_\_\_\_ (year).

PROPOSED USES OF THE TAX:

If the change is approved, revenues from the sales and services tax shall be allocated as follows:

(Choose one or more of the following:)

[\_\_\_\_\_ for property tax relief (insert percentage or dollar amount)]

[\_\_\_\_\_ for property tax relief (insert percentage or dollar amount) in the unincorporated area of the county of \_\_\_\_\_]

[\_\_\_\_\_ for property tax relief (insert percentage or dollar amount) in the county of \_\_\_\_\_]

The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

(List specific purpose or purposes)

CURRENT USES OF THE TAX:

Revenues from the sales and services tax are currently allocated as follows:

(Choose one or more of the following:)

[\_\_\_\_\_ for property tax relief (insert percentage or dollar amount)]

[\_\_\_\_\_ for property tax relief (insert percentage or dollar amount) in the unincorporated area of the county of \_\_\_\_\_]

[\_\_\_\_\_ for property tax relief (insert percentage or dollar amount) in the county of \_\_\_\_\_]

The specific purpose (or purposes) for which the revenues are otherwise expended is (are):

(List specific purpose or purposes)

j. Use change question for voters in contiguous cities:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? YES   
NO

Summary: To authorize a change in the use of the \_\_\_\_ percent ( \_\_\_\_%) local sales and services tax in the cities of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, (list additional cities, if applicable) effective \_\_\_\_\_ (month and day), \_\_\_\_ (year).

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45. Counties using special paper ballots which are read by computerized tabulating equipment may summarize the question on the ballot and post the complete text as provided in Iowa Code section 52.25.)

The use of the \_\_\_\_ percent ( \_\_\_\_%) local sales and services tax shall be changed in the cities of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, (list additional cities, if applicable) effective \_\_\_\_\_ (month and day), \_\_\_\_ (year).

PROPOSED USES OF THE TAX:

If the change is approved, revenues from the sales and services tax are to be allocated as follows:

FOR THE CITY OF \_\_\_\_\_:

\_\_\_\_\_ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

(List specific purpose or purposes)

FOR THE CITY OF \_\_\_\_\_:

\_\_\_\_\_ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

(List specific purpose or purposes)

FOR THE CITY OF \_\_\_\_\_:

\_\_\_\_\_ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

(List specific purpose or purposes)

CURRENT USES OF THE TAX:

FOR THE CITY OF \_\_\_\_\_:

\_\_\_\_\_ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues are otherwise expended is (are):

(List specific purpose or purposes)

FOR THE CITY OF \_\_\_\_\_:

\_\_\_\_\_ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues are otherwise expended is (are):

(List specific purpose or purposes)

FOR THE CITY OF \_\_\_\_\_:

\_\_\_\_\_ for property tax relief (insert percentage or dollar amount)  
The specific purpose (or purposes) for which the revenues are otherwise expended  
is (are):

(List specific purpose or purposes)

k. Imposition question with differing automatic repeal dates for voters in contiguous cities:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? YES   
NO

Summary: To authorize imposition of a local sales and services tax in the cities of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, (list additional cities, if applicable) at the rate of \_\_\_\_\_ percent ( \_\_\_\_\_ %) to be effective from \_\_\_\_\_ (month/day/year) until automatic repeal date specified.

A local sales and services tax shall be imposed in the following cities at the rate of \_\_\_\_\_ percent ( \_\_\_\_\_ %) to be effective from \_\_\_\_\_ (month/day/year) until the date specified below and the revenues from the sales and services tax are to be allocated as follows:

FOR THE CITY OF \_\_\_\_\_:

The tax shall be repealed on \_\_\_\_\_ (month/day/year).

\_\_\_\_\_ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

FOR THE CITY OF \_\_\_\_\_:

The tax shall be repealed on \_\_\_\_\_ (month/day/year).

\_\_\_\_\_ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

FOR THE CITY OF \_\_\_\_\_:

The tax shall be repealed on \_\_\_\_\_ (month/day/year).

\_\_\_\_\_ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

**21.801(2)** For a local vehicle tax:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? YES   
NO

Summary: To authorize the county of (insert name of county) to impose a local vehicle tax at the rate of \_\_\_\_\_ dollars (\$\_\_\_\_\_) per vehicle and to exempt the following classes from the tax:

\_\_\_\_\_  
The revenues are to be expended as set forth in the text of the public measure.

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45. Counties using optical scan ballots which are read by automatic tabulating equipment may summarize the question on the ballot and post the complete text as provided in Iowa Code section 52.25.)

The county of \_\_\_\_\_, Iowa shall be authorized to impose a local vehicle tax at the rate of \_\_\_\_\_ dollars (\$\_\_\_\_\_) per vehicle and to exempt the following classes of vehicles from the tax:

\_\_\_\_\_ (insert percentage or dollar amount) of the revenues is/are to be used for property tax relief.

The balance of the revenues is to be expended for:

(List purposes for which remaining revenues will be used)

[ARC 8045B, IAB 8/26/09, effective 7/27/09; ARC 1831C, IAB 1/21/15, effective 2/25/15]

**721—21.802(423B) Local vehicle tax elections.**

**21.802(1)** Petitions requesting imposition of local vehicle taxes shall be filed with the county board of supervisors.

a. Each person signing the petition shall add the person’s address (including street number, if any) and the date that the person signed the petition.

b. Within 30 days after receipt of the petition, the supervisors shall provide written notice to the county commissioner of elections directing that an election be held to present to the voters of the entire county the question of imposition of a local vehicle tax. In the notice the supervisors shall include the date of the election.

c. The election shall be held on the first possible special election date for counties set forth in Iowa Code section 39.2, subsection 4, paragraph “c,” but no sooner than 84 days after the date upon which notice is given to the commissioner.

**21.802(2)** Notice of local vehicle tax election. Not less than 60 days before the date that a local vehicle tax election will be held, the county commissioner of elections shall publish notice of the ballot proposition. The notice does not need to include a sample ballot, but shall include all of the information that will appear on the ballot. The notice of election provided for in Iowa Code section 49.53 shall also be published at the time and in the manner specified in that section.

[ARC 8045B, IAB 8/26/09, effective 7/27/09; ARC 1831C, IAB 1/21/15, effective 2/25/15]

**721—21.803(423F) Revenue purpose statement ballots.** When a school district wishes to adopt, amend or extend the revenue purpose statement specifying the uses of the funds received from the secure an advanced vision for education fund, which is also referred to as the “penny sales and services tax for schools,” the following ballot formats shall be used.

**21.803(1)** *Ballot to propose a revenue purpose statement.* The ballot for an election to propose a revenue purpose statement specifying the use of funds received from the secure an advanced vision for education fund shall be in substantially the following form:

(Insert letter to be assigned by the commissioner.)

Shall the following public measure be adopted?

YES

NO

Summary: To adopt a revenue purpose statement specifying the use of money from the penny sales and services tax for schools received by \_\_\_\_\_ School District.

In the \_\_\_\_\_ School District, the following revenue purpose statement, which specifies the use of the penny sales and services tax for schools (sales and services tax funds from the secure an advanced vision for education fund for school infrastructure) shall be adopted:

(Insert here the revenue purpose statement that was adopted by the school board and that states the intended uses of the funds by the school district. The use or uses must be among the approved uses of the tax that are authorized by Iowa Code chapter 423F.)

**21.803(2)** *Ballot to amend a revenue purpose statement.* The ballot for an election to decide a change in the revenue purpose statement specifying the use of funds received from the secure an advanced vision for education fund shall be in substantially the following form:

(Insert letter to be assigned by the commissioner.)

Shall the following public measure be adopted?

- YES
- NO

Summary: To authorize a change in the use of money from the penny sales and services tax for schools received by \_\_\_\_\_ School District.

In the \_\_\_\_\_ School District, the revenue purpose statement, which specifies the use of the penny sales and services tax for schools (sales and services tax funds from the secure an advanced vision for education fund for school infrastructure) shall be changed.

Proposed uses. If the change is approved, the revenue purpose statement shall read as follows:

(Insert here the revenue purpose statement that was adopted by the school board and that states the intended uses of the funds by the school district. The use or uses must be among the approved uses of the tax that are authorized by Iowa Code chapter 423F.)

Current uses. If the change is not approved, the funds shall continue to be used as follows:

(Insert here the current revenue purpose statement or list the current voter-approved uses of the funds by the school district, if the school infrastructure local option tax was adopted before the revenue purpose statement was required.)

**21.803(3)** *Ballot to extend a revenue purpose statement.* The ballot for an election to extend a revenue purpose statement specifying the use of funds received from the secure an advanced vision for education fund shall be in substantially the following form:

(Insert letter to be assigned by the commissioner.)

Shall the following public measure be adopted?

- YES
- NO

Summary: To authorize \_\_\_\_\_ School District to continue to spend money from the penny sales and services tax for schools for the previously approved uses until (specify date or insert amended date).

\_\_\_\_\_ School District is authorized to extend the current revenue purpose statement which specifies use of the penny sales and services tax for schools (sales and services tax funds from the secure an advanced vision for education fund for school infrastructure) received from (date) until (specify date or insert amended date). If an extension is not approved, the current revenue purpose statement will expire on (date). If an extension is approved, the revenue purpose statement will read as follows:

(Insert here the revenue purpose statement, including the new expiration date. If there is not a predicted expiration date, the ballot language must state that the revenue purpose statement will remain in effect until it is changed.)

This rule is intended to implement Iowa Code section 423F.3.  
[ARC 1831C, IAB 1/21/15, effective 2/25/15]

**721—21.804(423B) Local option sales and services tax elections in qualified counties.** This rule applies to local option sales and services tax elections held in qualified counties on March 5, 2019, and shall not apply to any local option sales and services tax election held in qualified counties after March 5, 2019. For local option sales and services tax elections held in qualified counties after March 5, 2019, rule 721—21.800(423B) shall control.

**21.804(1)** For purposes of this rule, “qualified county” means a county with a population in excess of 400,000, a county with a population of at least 130,000 but not more than 131,000, or a county with a population of at least 60,000 but not more than 70,000, according to the 2010 federal decennial census.

**21.804(2)** Petitions requesting imposition, rate change, use change, or repeal of local sales and services taxes shall be filed with the county board of supervisors.

*a.* Each person signing the petition shall include the person’s address (including street number, if any) and the date that the person signed the petition.

*b.* Within 30 days after receipt of the petition, the county board of supervisors shall provide written notice to the county commissioner of elections directing that an election be held to present to the voters of the entire county the question of imposition, rate change, use change, or repeal of a local option sales and services tax. In the notice the supervisors shall include the date of the election.

*c.* The local option sales and services tax election shall be held on the first possible special election date for counties set forth in Iowa Code section 39.2(4) “a” but no sooner than 84 days after the date upon which notice is given to the county commissioner of elections.

**21.804(3)** As an alternative to the method of initiating a local option tax election described in subrule 21.804(2), governing bodies of cities and the county may initiate a local option tax election by filing motions with the county commissioner of elections pursuant to Iowa Code section 423B.1(4) “b” as amended by 2018 Iowa Acts, Senate File 2417, section 232, requesting submission of a local option tax imposition, rate change, use change, or repeal to the qualified electors. Within 30 days of receiving a sufficient number of motions, the county commissioner of elections shall notify affected jurisdictions of the local option tax election date. The election shall be held on the first possible special election date for counties set forth in Iowa Code section 39.2(4) “a” but no sooner than 84 days after the date upon which the commissioner received the motion triggering the election.

**21.804(4)** As an alternative to the methods of initiating a local option sales and services tax election described in subrules 21.804(2) and 21.804(3), the governing body of a city located in a county that is a qualified county, or the governing body of a qualified county for the unincorporated area of the qualified county, may initiate a local option sales and services tax election by filing a motion with the county commissioner of elections pursuant to Iowa Code section 423B.1(4) “b” as amended by 2018 Iowa Acts, Senate File 2417, section 232, requesting submission of a local option sales and services tax imposition, rate change, use change, or repeal to the qualified electors. Within 30 days of receiving a motion, the county commissioner shall notify affected jurisdictions of the local option sales and services tax election date. The election shall be held on the first possible special election date for counties set forth in Iowa Code section 39.2(4) “a” but no sooner than 62 days after the date upon which the commissioner received the motion triggering the election. This subrule applies to motions received by the county commissioner of elections on or after January 1, 2019.

**21.804(5)** Notice of local option sales and services tax election.

*a.* Not less than 60 days before the date that a local option sales and services tax election will be held, the county commissioner of elections shall publish notice of the ballot proposition. The notice does not need to include sample ballots but shall include all of the information that will appear on the ballot for each city and for the voters in the unincorporated areas of the county.

*b.* The city councils and the county supervisors, as applicable, shall provide to the county commissioner the following information to be included in the notice and on the ballots for imposition elections:

(1) The rate of the tax.

(2) The date the tax will be imposed, which shall be the next implementation date provided in Iowa Code section 423B.6 following the date of the election and at least 90 days after the date of the election, except that an election to impose a local option sales and services tax on a date immediately following the scheduled repeal date of an existing similar tax may be held at any time that otherwise complies with the requirements of Iowa Code chapter 423B. The imposition date shall be uniform in all areas of the county voting on the tax at the same election.

(3) The approximate amount of local option sales and services tax revenues that will be used for property tax relief in the jurisdiction.

(4) A statement of the specific purposes other than property tax relief for which revenues will be expended in the jurisdiction.

*c.* If either of the methods of initiating a local option sales and services tax election described in subrules 21.804(2) and 21.804(3) is utilized, the information to be included in the notice shall be provided to the commissioner by the city councils of each city in the county not later than 67 days before the date of the election. If the method of initiating a local option sales and services tax election described in subrule 21.804(4) is utilized, then the information to be included in the notice shall be provided to the county commissioner of elections by the governing body of the city or the county for the unincorporated area of the county, as applicable, not later than 62 days before the date of the election. If a jurisdiction fails to provide the information in subparagraphs 21.804(5) “*b*”(1), 21.804(5) “*b*”(3), and 21.804(5) “*b*”(4), the following information shall be substituted in the notice and on the ballot:

(1) One percent (1%) for the rate of the tax.

(2) Fifty percent (50%) for property tax relief.

(3) The specific purpose for which the revenues will otherwise be expended is: Any lawful purpose of the city (or county).

*d.* The notice of election provided for in Iowa Code section 49.53 shall also be published at the time and in the manner specified in that section.

This rule is intended to implement Iowa Code section 423B.1.  
[ARC 4146C, IAB 11/21/18, effective 12/26/18]

**721—21.805 to 21.809** Reserved.

**721—21.810(34A) Referendum on enhanced 911 emergency telephone communication system funding.**

**21.810(1) Form of ballot.** The ballot for the E911 referendum shall be in substantially the following form:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED?

YES

NO

Enhanced 911 emergency telephone service shall be funded, in whole or in part, by a monthly surcharge of (an amount to be determined by the local joint E911 service board of up to one dollar) on each telephone access line collected as part of each telephone subscriber’s monthly phone bill if provided within (description of the proposed service area).

A map may be used to show the proposed E911 service area. If a map is used the public measure shall read as follows:

“Enhanced 911 emergency telephone service shall be funded, in whole or in part, by a monthly surcharge of (an amount to be determined by the local joint E911 service board of up to one dollar) on



supervisors and shall be substantially in the form posted on the state commissioner’s website titled “Petition Requesting Special Election.”

a. Within 10 days after receipt of a valid petition, the supervisors shall provide written notice to the county commissioner of elections directing the commissioner to submit to the qualified electors of the county a proposition to approve or disapprove the conduct of gambling games on an excursion gambling boat or at a gambling structure in the county. The election shall be held on the next possible special election date pursuant to Iowa Code section 39.2, subsection 4, paragraph “a,” but no fewer than 46 days from the date notice is given to the county commissioner.

b. If a regularly scheduled or special election is to be held in the county on the date selected by the supervisors, notice shall be given to the commissioner no later than the last day upon which nomination papers may be filed for that election. If the excursion gambling boat or the gambling structure election is to be held with a local option tax election, the supervisors shall provide the commissioner at least 60 days’ written notice. Otherwise, the supervisors shall give at least 46 days’ written notice.

**21.820(2)** Form of ballot for election called by petition. Ballots shall be in substantially the following form:

(Insert letter to be assigned by the commissioner)

Shall the following public measure be adopted?

YES

NO

Gambling games on an excursion gambling boat or at a gambling structure in \_\_\_\_\_ County are approved.

**21.820(3)** Form of ballot for elections to continue gambling games on an excursion gambling boat or at a gambling structure:

(Insert letter to be assigned by the commissioner)

Shall the following public measure be adopted?

YES

NO

Summary: Gambling games on an excursion gambling boat or at a gambling structure in \_\_\_\_\_ County are approved.

Gambling games, with no wager or loss limits, on an excursion gambling boat or at a gambling structure in \_\_\_\_\_ County are approved. If approved by a majority of the voters, operation of gambling games with no wager or loss limits may continue until the question is voted upon again at the general election held in 2010. If disapproved by a majority of the voters, the operation of gambling games on an excursion gambling boat or at a gambling structure will end within 60 days of this election. (Iowa Code section 99F.7(10) “c”)

**21.820(4)** Ballot form to permit gambling games at existing pari-mutuel racetracks:

(Insert letter to be assigned by the commissioner)

Shall the following public measure be adopted?

YES

NO

The operation of gambling games at (name of pari-mutuel racetrack) in \_\_\_\_\_ County is approved.

**21.820(5)** Abstract of votes. A copy of the abstract of votes of the election shall be sent to the state racing and gaming commission.

**21.820(6)** Ballot form for general election for continuing operation of gambling games at pari-mutuel racetracks:

(Insert letter to be assigned by the commissioner)

Shall the following public measure be adopted?

- YES
- NO

Summary: The continued operation of gambling games at (name of pari-mutuel racetrack) in \_\_\_\_\_ County is approved.

The continued operation of gambling games at (name of pari-mutuel racetrack) in \_\_\_\_\_ County is approved. If approved by a majority of the voters, operation of gambling games may continue at (name of pari-mutuel racetrack) in \_\_\_\_\_ County until the question is voted on again at the general election in eight years. If disapproved by a majority of the voters, gambling games at (name of pari-mutuel racetrack) in \_\_\_\_\_ County will end.

**21.820(7)** Ballot form for general election for continuing gambling games on an excursion gambling boat or at a gambling structure:

(Insert letter to be assigned by the commissioner)

Shall the following public measure be adopted?

- YES
- NO

Summary: The continued operation of gambling games on an excursion gambling boat or at a gambling structure in \_\_\_\_\_ County is approved.

The continued operation of gambling games on an excursion gambling boat or at a gambling structure in \_\_\_\_\_ County is approved. If approved by a majority of the voters, operation of gambling games may continue on an excursion gambling boat or at a gambling structure in \_\_\_\_\_ County until the question is voted on again at the general election in eight years. If disapproved by a majority of voters, gambling games on an excursion gambling boat or at a gambling structure in \_\_\_\_\_ County will end nine years from the date of the original issue of the license to the current licensee.

This rule is intended to implement Iowa Code section 99F.7 and Iowa Code Supplement section 99F.4D.

[ARC 8045B, IAB 8/26/09, effective 7/27/09; ARC 8779B, IAB 6/2/10, effective 7/1/10]

**721—21.821 to 21.829** Reserved.

**721—21.830(357E) Benefited recreational lake district elections.** Elections for benefited recreational lake districts shall be conducted according to the following procedures.

**21.830(1) Conduct of election.** It is not mandatory for the county commissioner of elections to conduct elections for a benefited recreational lake district. However, if both a public measure and a candidate election will be held on the same day in a benefited recreational lake district, the same person shall be responsible for conducting both elections. All elections must be held on a Tuesday.

**21.830(2) Ballots.** Ballots for benefited recreational lake district trustee elections shall be printed on opaque white paper, 8 by 11 inches in size. The ballots for the initial election for the office of trustee shall be in substantially the following form:

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**OFFICIAL BALLOT**  
**BENEFITED RECREATIONAL LAKE DISTRICT**

**Election date**

(facsimile signature of person responsible for printing ballots)

**FOR TRUSTEE:**

**To vote:** Neatly print the names of at least three people you would like to see elected to the office of Trustee of the Benefited Recreational Lake District. You may vote for as many people as you wish, but you must vote for at least three.

(At the bottom of the ballot a space shall be included for the endorsement of the precinct election official, like this:)

Precinct official's endorsement: \_\_\_\_\_

**21.830(3) *Canvass of votes.*** On the Monday following the election, the board of supervisors shall canvass the votes cast at the election. At the initial election the supervisors shall choose three trustees from among the five persons who received the most votes. The results of benefited recreational lake district elections shall be certified to the district board of trustees.

This rule is intended to implement Iowa Code section 357E.8.

[Filed emergency 4/22/76—published 5/17/76, effective 4/22/76]

[Filed emergency 6/2/76—published 6/28/76, effective 8/2/76]

[Filed 10/7/81, Notice 9/2/81—published 10/28/81, effective 12/2/81]

[Filed emergency 11/15/84—published 12/5/84, effective 11/15/84]

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[Filed 5/17/85, Notice 4/10/85—published 6/5/85, effective 7/10/85]

[Filed emergency 7/2/85—published 7/31/85, effective 7/2/85]

[Filed emergency 7/26/85—published 8/14/85, effective 7/26/85]

[Filed emergency 8/14/85—published 9/11/85, effective 8/14/85]

[Filed 9/6/85, Notice 7/31/85—published 9/25/85, effective 10/30/85]

[Filed 10/30/85, Notice 9/25/85—published 11/20/85, effective 12/25/85]

[Filed emergency 12/18/86—published 1/14/87, effective 12/18/86]

[Filed emergency 4/20/87—published 5/20/87, effective 4/20/87]<sup>o</sup>

[Filed 6/23/88, Notice 5/18/88—published 7/13/88, effective 8/17/88]

[Filed 9/2/88, Notice 7/27/88—published 9/21/88, effective 10/26/88]

[Filed 3/1/89, Notice 1/25/89—published 3/22/89, effective 4/26/89]

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[Filed emergency 6/22/89, after Notice of 5/31/89—published 7/12/89, effective 7/1/89]

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[Filed 11/9/89, Notice 10/4/89—published 11/29/89, effective 1/3/90]

[Filed 12/7/89, Notice 11/1/89—published 12/27/89, effective 1/31/90]

[Filed 3/26/92, Notice 2/5/92—published 4/15/92, effective 5/20/92]

[Filed 11/19/92, Notice 9/30/92—published 12/9/92, effective 1/13/93]<sup>o</sup>

[Filed 1/14/93, Notice 12/9/92—published 2/3/93, effective 3/10/93]

[Filed 6/4/93, Notice 4/28/93—published 6/23/93, effective 7/28/93]

[Filed emergency 6/28/93—published 7/21/93, effective 7/1/93]

[Filed 9/8/93, Notice 7/21/93—published 9/29/93, effective 11/3/93]

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

[Filed emergency 4/4/94—published 4/27/94, effective 4/4/94]

[Filed 7/1/94, Notice 5/25/94—published 7/20/94, effective 8/24/94]

[Filed 6/30/95, Notice 5/24/95—published 7/19/95, effective 8/23/95]

[Filed 2/8/96, Notice 1/3/96—published 2/28/96, effective 4/3/96]

- [Filed 5/31/96, Notice 4/10/96—published 6/19/96, effective 7/24/96]
- [Filed 6/13/96, Notice 5/8/96—published 7/3/96, effective 8/7/96]
- [Filed emergency 7/25/96 after Notice 6/19/96—published 8/14/96, effective 7/25/96]
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- [Filed emergency 7/30/97—published 8/27/97, effective 7/30/97]
- [Filed 8/22/97, Notice 7/16/97—published 9/10/97, effective 10/15/97]
- [Filed 12/12/97, Notice 11/5/97—published 12/31/97, effective 2/4/98]
- [Filed emergency 5/1/98—published 5/20/98, effective 5/1/98]<sup>◇</sup>
- [Filed emergency 8/7/98—published 8/26/98, effective 8/7/98]
- [Filed emergency 8/11/99—published 9/8/99, effective 8/11/99]
- [Filed 10/29/99, Notice 9/22/99—published 11/17/99, effective 12/22/99]
- [Filed emergency 12/22/99—published 1/12/00, effective 12/22/99]
- [Filed 2/3/00, Notice 12/29/99—published 2/23/00, effective 4/1/00]
- [Filed 5/26/00, Notice 4/19/00—published 6/14/00, effective 7/19/00]
- [Filed 9/14/00, Notice 8/9/00—published 10/4/00, effective 11/8/00]
- [Filed emergency 10/10/00 after Notice 8/9/00—published 11/1/00, effective 11/7/00]
- [Filed emergency 7/20/01 after Notice 6/13/01—published 8/8/01, effective 7/20/01]
- [Filed 2/1/02, Notice 8/8/01—published 2/20/02, effective 3/27/02]
- [Filed emergency 3/15/02—published 4/3/02, effective 3/15/02]
- [Filed emergency 7/19/02—published 8/7/02, effective 7/19/02]
- [Filed 2/13/03, Notice 12/25/02—published 3/5/03, effective 4/9/03]
- [Filed emergency 3/28/03—published 4/16/03, effective 3/28/03]
- [Filed 2/26/04, Notice 1/7/04—published 3/17/04, effective 4/21/04]<sup>◇</sup>
- [Filed 2/26/04, Notice 1/21/04—published 3/17/04, effective 4/21/04]
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## **TRANSPORTATION DEPARTMENT[761]**

Rules transferred from agency number [820] to [761] to conform with the reorganization numbering scheme in general IAC Supp. 6/3/87.

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CHAPTER 20  
PROCUREMENT OF EQUIPMENT, MATERIALS, SUPPLIES AND SERVICES

[Prior to 6/3/87, Transportation Department[820]—(01,B)Ch2]

**761—20.1(307) Scope and applicability.**

**20.1(1) Scope.** This chapter pertains only to the procurement of equipment, materials, supplies and services by the Iowa department of transportation with funds from the department's operating budget or from the materials and equipment revolving fund established in Iowa Code section 307.47 or other program funds authorized for department use.

**20.1(2) Applicability.** Rules 761—20.4(307) through 761—20.6(307) apply to professional and technical services procured using the general purchasing process where contracts are awarded competitively and cost is a factor. Rule 761—20.10(307) applies to professional and technical services contracts that are awarded based on qualifications when the cost is negotiated after the vendor is selected.

[ARC 4341C, IAB 3/13/19, effective 4/17/19]

**761—20.2(307) Definitions.** As used in this chapter, unless the context otherwise requires:

*"Bidder"* means a respondent to a solicitation as a bidder, offeror or contractor.

*"Competition"* means the efforts of three or more parties acting independently to secure a contract with the department to provide equipment, materials, supplies or services to the department by offering or being in a position to offer the most favorable terms. "Favorable terms" includes, but is not limited to: price, speed of execution, anticipated quality of the product to be provided judged according to the expertise and experience of the provider, or ability to produce a desired result or to provide a desired commodity.

*"Department"* means the Iowa department of transportation.

*"Firm"* means any bona fide contracting entity, including individuals and educational institutions. Except for educational institutions, the term shall not include governmental agencies or political subdivisions.

*"Methods of procurement"* means formal advertising, limited solicitation, or negotiation as follows:

1. *"Formal advertising"* means procurement by competition and awards involving the following basic steps:

- Preparing a solicitation that describes the requirements of the department clearly, accurately and completely but avoids unnecessarily restrictive specifications or requirements which might unduly limit the number of responses.
- Distributing the solicitation to prospective bidders and advertising in appropriate media in sufficient time to enable prospective bidders to prepare and submit responses before the time set for public opening of responses.
- Receiving responses submitted by prospective contractors.
- Awarding the contract, after responses are publicly opened, to that responsible bidder whose response conforms to the solicitation and is the most advantageous to the department, price and other factors considered.

2. *"Limited solicitation"* means procurement by obtaining a sufficient number of quotations, bids or proposals from qualified sources:

- As is deemed necessary to ensure that the procurement is fair to the department, price and other factors considered, including the administrative costs of the procurement.
- As is consistent with the nature and requirements of the particular procurement.
- So that the procurement is competitive to the maximum practicable extent.

3. *"Negotiation"* means any method of procurement other than formal advertising or limited solicitation to seek the best and final offer which is most advantageous to the department.

*"Professional and technical services"* means services that are unique, technical, or infrequent functions performed by independent contractors whose occupation is the rendering of such services. Contracts may go to partnerships, firms, or corporations as procured through formal advertising, solicitation or negotiation methods outlined in rules 761—20.3(307) through 761—20.6(307)

and architectural, landscape architectural, surveying, general engineering consultant, construction inspection, or engineering services and other related professional and technical services as outlined in rule 761—20.10(307).

“*Response*” means the submittal of written documents by a prospective bidder, offeror or contractor as a response to any type of solicitation issued by the department for a quotation, bid or proposal.

“*Solicitation*” means the request by the department for a quotation, bid or proposal. This includes but is not limited to the complete assembly of related documents (whether attached or incorporated by reference) furnished to prospective bidders for the purpose of responding to a solicitation.  
[ARC 4341C, IAB 3/13/19, effective 4/17/19]

**761—20.3(307) Procurement policy.** It is the policy of the department to procure equipment, materials, supplies and services in the most efficient and economical manner possible. It is also the policy of the department that procurement shall be competitive to the maximum practicable extent.

**20.3(1) Formal advertising.** The formal advertising method of procurement shall be used whenever this method is feasible and practicable under the existing conditions and circumstances and the estimated, aggregate amount of the purchase equals or exceeds \$50,000.

**20.3(2) Limited solicitation.** The limited solicitation method of procurement may be used if formal advertising is not feasible or practicable, or the estimated, aggregate amount of purchase is less than \$50,000.

**20.3(3) Negotiation.** The negotiation method of procurement may be used if formal advertising or limited solicitation is not feasible or practicable, or in any of the following instances:

- a. Procurement by negotiation is determined to be necessary and in the public interest during a period of man-made or natural disaster or emergency.
- b. The estimated, aggregate amount of the purchase is less than \$5,000.
- c. The procurement is for architectural, landscape architectural, engineering, or related professional and technical services.
- d. The procurement is for other professional and technical services.
- e. When cost is only one of many factors considered to determine the award.
- f. The procurement is for services to be rendered by an educational institution.
- g. It is impracticable to secure competition through formal advertising or limited solicitation, such as when:

- (1) Equipment, materials, supplies or services can be obtained from only one source.
- (2) Competition is precluded because of the existence of patent rights, copyrights, secret processes, control of basic raw materials, or similar circumstances.
- (3) Solicitations have been made available to prospective bidders and no responses to the solicitation have been received.

(4) Solicitations have been made available and the submitted responses do not cover the quantity requirements of the solicitation. In this case, negotiation is permitted for the remaining quantity requirements.

(5) The procurement is for electrical power or energy, natural or manufactured gas, water or other utility services, or the procurement is for construction of a part of a utility system or railroad and it would not be practicable to allow a contractor other than the utility or railroad company to perform the work.

(6) The procurement is for professional and technical services in connection with the assembly, installation or servicing (or the instruction of personnel therein) of equipment of a highly technical or specialized nature.

(7) The procurement involves maintenance, repair, alteration or inspection, and the exact nature or amount of work to be done is not known.

(8) The procurement is for commercial transportation.

(9) It is impossible to draft adequate specifications or any other adequately detailed description of the item or services to be procured.

(10) The procurement is for a part or component being procured as a replacement in support of equipment specially designed by the manufacturer, and the data available is not adequate to ensure that

the part or component supplied by another manufacturer will perform the same function as the part or component it is to replace.

(11) The procurement involves construction where a contractor or group of contractors is already at work on the site, and either it would not be practicable to allow another contractor or an additional contractor to work on the same site or the amount of work involved is too small to interest other contractors to mobilize and demobilize.

*h.* The procurement is for experimental, developmental or research work or for the manufacture or furnishing of property for experimentation, development, research or testing.

*i.* It is determined that the responses received are not reasonable or have not been independently arrived at.

*j.* Procurement by negotiation is otherwise authorized by law including, but not limited to, Iowa Code section 73.19.

*k.* The manufacturer is willing to sell directly to the state at distributor cost.  
[ARC 4341C, IAB 3/13/19, effective 4/17/19]

### **761—20.4(307) Formal advertising procedures and requirements.**

**20.4(1) Bidders list.** The department's purchasing section shall maintain current bidders lists by commodity classification.

*a.* These lists are developed using available sources such as technical publications, telephone books, trade journals, commercial vendor registers, advertising literature, Internet resources and targeted small businesses certified by the Iowa economic development authority. Solicitations will be posted as required on the Iowa economic development authority's targeted small business website no later than 48 hours prior to the issuance of the solicitation.

*b.* Any firm legally doing business in Iowa may be placed on an appropriate bidders list or lists by submitting a written request to: DOT Director of Purchasing, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

*c.* Subject to concurrence of legal counsel, a bidder's name may be removed from a bidders list or lists for any of the following reasons:

- (1) When the bidder has failed to respond to three consecutive requests for proposals.
- (2) When the bidder has failed to meet the performance requirements of a previous procurement.
- (3) When the bidder has attempted to improperly influence the decision of any state employee involved in the procurement process.
- (4) When there are reasonable grounds to believe that there is a collusive effort by bidders to restrain competition by any means.
- (5) Where there is a determination by the civil rights commission that the bidder conducts discriminatory employment practices.

*d.* A bidder may appeal removal from a bidders list or lists by submitting the appeal in writing to the department at the address given in paragraph 20.4(1) "b."

**20.4(2) Solicitation documents.** The department shall prepare the solicitation documents complete with requirements, specifications and instructions, as applicable, to be sent (or publicly posted) for the purpose of procuring goods or services.

*a.* In special situations (e.g., the procurement of new model equipment), the solicitation may be marked "preliminary" and sent to prospective bidders requesting their review of the solicitation to determine their ability to respond and meet the requirements of the procurement request. The "preliminary" solicitation process involves the following steps:

- (1) A conference may be held to discuss the "preliminary" solicitation requirements with prospective bidders when the item in question is a new acquisition for the department.
- (2) Written requests for variations, deviations or approved equal substitutions to the solicitation shall be accepted, evaluated and answered by the department.
- (3) The solicitation requirements may be revised to incorporate approved changes.
- (4) A final solicitation shall be sent to prospective bidders that participated in the preliminary process.

b. The method to be used by the department in evaluating responses received shall be disclosed in the solicitation.

c. The solicitation shall be sent to a sufficient number of prospective bidders so as to promote adequate competition commensurate with the dollar value of the procurement.

(1) Generally, the solicitation shall be sent to all bidders listed on the appropriate bidders list for the item to be procured.

(2) However, where the number of names on a bidders list is considered excessive in relation to a specific procurement, the list may be reduced for that procurement by any method consistent with paragraph 20.4(2)“c.”

(3) The fact that less than an entire bidders list is used shall not in itself preclude the furnishing of the solicitation to others upon request, or the consideration of responses received from bidders who were not originally included in the bidders list.

d. The department shall publicize the procurement by advertising in appropriate media, providing the date and time set for public opening of submitted responses, a general description of the item to be procured, and the name and address of the person to contact to obtain a copy of the solicitation.

**20.4(3) Response instructions.** Each bidder shall prepare the response to the solicitation in the manner prescribed and furnish all information and samples requested in the solicitation. The following shall be adhered to by all bidders when preparing and submitting responses:

a. *Response preparation.* Responses shall be signed and prepared in ink or typewritten in the solicitation documents provided. Telephonic, email or facsimile responses shall not be considered. When available, bidders may respond electronically to a secure authorized system as instructed in the solicitation.

b. *Information to be provided by bidder.* In the space provided, the bidder shall denote brand name, manufacturer’s name, model number and any other required information to assist in identifying each item the bidder proposes to supply.

c. *New merchandise.* Unless otherwise specified, all items offered shall be new, of the latest model or manufacture, and shall be at least equal in quality to that specified.

d. *Response price.* Where requested, the unit and total price for each separate item, and the total price for all items, shall be provided in the bidder’s response. Alternate prices for approved substitutions may be submitted by attaching a response marked as an alternate to the original response. In case of error, the unit price shall prevail. If unit price is not requested in the solicitation, the total price per item shall prevail.

e. *Discounts.* Bidders shall quote net discount price. No other discounts shall be considered in making the award.

f. *Time of acceptance.* The bidder shall hold the offered prices open for action by the department at least 30 days past the time set for public opening of submitted responses.

g. *Escalator clauses.* Unless specifically provided for in the solicitation, a response containing an escalator clause shall not be considered.

h. *Federal and state taxes.* Except for specific items that will be noted in the solicitation, the department is exempt from payment of federal and state taxes. These taxes shall not be included in the bidder’s response. Exemption certificates shall be furnished to bidders upon request.

i. *Delivery dates.* In the space provided, the bidder shall show the earliest date on which delivery can be made. When the solicitation shows the acceptable delivery date for an item, the proposed delivery date may be used as a factor in determining the successful bidder.

j. *Ties and reservations.* No ties or reservations by the bidder are permitted. Any tie or reservation stipulated by the bidder shall be sufficient grounds to reject the submitted response.

k. *Changes and additions.* No changes in or additions to the solicitation shall be permitted unless a written request for a change or an addition is submitted to the department’s purchasing section in sufficient time to allow an appropriate analysis and response to all bidders, and the change or addition is approved by the purchasing section. The purchasing section shall notify all bidders of approved changes or additions by means of addenda.

Any unauthorized change in or addition to the solicitation shall be sufficient grounds to reject the submitted response.

*l. Response submission.* All responses shall be submitted in sufficient time to reach the department's purchasing section prior to the time set for public opening of submitted responses. Any response received after the time set for public opening of submitted responses shall be returned to the bidder unopened. Responses received shall be dated and time-stamped by the purchasing section showing the date and hour received. By submitting a response, the bidder:

(1) Agrees that the contents of the response will become part of the contract if the bidder receives the award.

(2) Shall be assumed to have become familiar with the contents and requirements of the solicitation.

*m. Proposal guaranty.* A proposal guaranty may be required as security that the bidder will execute the contract if awarded. If required, each response shall be supported by a proposal guaranty in the form and amount prescribed in the solicitation. Responses not so supported shall not be read.

*n. Withdrawal of responses prior to opening.* Responses may be withdrawn prior to the time set forth in the solicitation. Prior to opening, a bidder who withdraws the response to a solicitation may submit a new response if desired.

*o. Modification or withdrawal of responses after opening.* After opening, no response may be modified. A response may be withdrawn after opening only if:

(1) The bidder submits, at least three days prior to award, a sworn statement asserting that the response contains a substantial inadvertent error and that the bidder would suffer a serious financial loss if required to perform under the response, and

(2) The purchasing director approves the withdrawal. The purchasing director may base the decision to approve or deny the withdrawal on any factors the purchasing director deems relevant, including but not limited to the best interests of the agency, possible prejudice to other bidders or the bidding process, and the extent of financial hardship on the bidder if withdrawal is not allowed.

**20.4(4) Public opening of responses.** Responses shall be opened publicly and read aloud at the time stipulated in the solicitation.

**20.4(5) Consideration of responses.** The department reserves the right to accept or reject any or all responses. Individual responses may be rejected for any of the following reasons:

*a.* Noncompliance with the requirements of this rule or of the solicitation.

*b.* Financial insolvency of the bidder.

*c.* Evidence of unfair bidding practices.

*d.* For any other reason stated in this rule.

**20.4(6) Recommendation of award.**

*a. Time frame.* Unless otherwise specified by the department in the solicitation, an award shall be made within 30 days after the date and time set for public opening of submitted responses if it is in the best interest of the state. If an award is not made within the applicable time frame, the procurement shall be canceled unless an extension of time is mutually agreed to by the department and the apparent successful bidder.

*b. Tied responses.* Responses which are equal in all respects and are tied in price shall be resolved among the tied bidders by giving first preference to an Iowa bidder and second preference to the bidder who satisfactorily performed a contract the previous year for the same item at the same location. If the tie involves bidders with equal standing, the award shall be determined by lot among these bidders. A tied bidder or the bidder's representative may witness the determination by lot.

*c. Tabulation of responses.* A tabulation of responses with an award recommendation shall be sent to all interested parties including bidders at least ten days prior to award.

*d. Protests.* Any protest of the recommended award shall be submitted in writing to: Director of Purchasing, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010. A written protest must be received by the director of purchasing within seven days after the recommended award has been posted. The protest shall be considered by the authority making the award. This is not a contested case as defined in Iowa Code section 17A.2.

*e. Return of proposal guaranty.* Unsuccessful bidders' proposal guaranties shall be promptly returned by the department after award is made. The proposed guaranty of the successful bidder shall be returned in accordance with subrule 20.4(7).

**20.4(7) Contract execution and performance.**

*a. Execution.* The successful bidder shall enter into (execute) a formal contract with the department within 14 days after award.

*b. Performance bond and certificate of insurance.* A performance bond or certificate of liability and property damage insurance, or both, may be required for those contracts involving services or specially constructed equipment. If required, the performance bond and certificate of insurance shall be filed with the department within 14 days after award.

*c. Return of awarded bidder's proposal guaranty.* The proposal guaranty of the successful bidder shall be returned following execution of the contract. However, if the successful bidder fails to execute the contract and file an acceptable performance bond and certificate of insurance (if they are required) within 14 days after award, or fails to comply with Iowa Code chapter 490, the award may be annulled and the proposal guaranty forfeited.

*d. Assignment of contract.* The contractor may not assign the contract to another party without written authorization from the department's purchasing section.

*e. Strikes, lockouts or acts of God.* If the contractor's business or source of supply has been disrupted by a strike, lockout or act of God, the contractor shall promptly advise the department's purchasing section. The department may elect to cancel the contract without penalty to either the contractor or to the department.

*f. Payment.* Unless otherwise stated in the contract, payment terms shall be net following the department's receipt and acceptance of the item(s) procured and receipt of an original invoice.

*g. Liquidated damages.* The contract terms may provide for liquidated damages to be assessed if the contractor fails to complete the contract within the contract period or for any other reason as specified in the contract.

**20.4(8) Additional requirements.**

*a.* The department's standard specifications for highway and bridge construction, as available on the department's website at [www.iowadot.gov](http://www.iowadot.gov), where applicable and not in conflict with this rule or with the requirements of a particular procurement, shall apply to formal advertising procurement activities.

*b.* If there are federal funds involved in a particular procurement, and the federal procurement regulations conflict with this rule, then the federal procurement regulations shall apply.

*c.* Procurement of motor vehicles shall be in accordance with Iowa Code section 8A.311(20).  
[ARC 4341C, IAB 3/13/19, effective 4/17/19]

**761—20.5(307) Limited solicitation procedures and requirements.**

**20.5(1) Bidders lists.** The department shall use its current bidders lists (see subrule 20.4(1)) to the extent feasible and practicable. However, the solicitation will also be offered to any qualified bidder that has requested an opportunity to participate.

**20.5(2) Form of solicitation.** The solicitation shall be as detailed and complete as practicable for the time and resources available.

**20.5(3) Form of response.** Responses shall be submitted in writing or electronically when practicable. Written responses will prevail over oral responses in case of discrepancies, disputes or errors. Following is the order of preference:

1. Original, signed submitted response.
2. Electronically submitted response (facsimile, email, Internet).
3. Oral response (e.g., telephonic).

**20.5(4) Award.** The award shall be offered to that responsible bidder whose response meets the requirements of the solicitation and is the most advantageous to the department. An Iowa bidder will be given preference over an out-of-state bidder when responses are equal in all respects and are tied in price.

[ARC 4341C, IAB 3/13/19, effective 4/17/19]

**761—20.6(307) Professional and technical services.** This rule applies to professional and technical services procured through the purchasing section using formal advertising, solicitation or negotiation methods outlined in rules 761—20.3(307) to 761—20.6(307). Professional and technical services procured based on qualifications are covered by rule 761—20.10(307).

**20.6(1) Request for proposal (RFP).** A solicitation prepared by the department shall include at least the minimum requirements for the type of goods or services sought. The solicitation is sent to prospective offerors and is publicly posted on the department's website.

**20.6(2) Evaluation committee.** A committee is established for the purpose of reviewing and evaluating proposed responses based on a set of criteria as outlined in the RFP. "Evaluation criteria" will define categories with assigned weighted values to be used as a scoring measure to determine the best overall solution for the department based on technical expertise and price, including but not limited to:

- a. Overall content of written submitted proposal information.
- b. Business knowledge.
- c. Work experience in required skills sets.
- d. Presentation or demonstration.
- e. Cost.

**20.6(3) Award.** The award shall be offered to a firm whose properly submitted compliant response best meets the requirements of the solicitation and receives the highest overall score of the weighted criteria.

[ARC 4341C, IAB 3/13/19, effective 4/17/19]

**761—20.7(307) Sole source or emergency selection.** Sole source or emergency selection applies to all services, including professional and technical services. The department shall fully document and include in the contract file the justification for use of sole source or emergency selection and the basis on which a particular firm is selected.

**20.7(1) Sole source selection.** The department may select a single firm which meets the requirements of the required work categories to perform the work with which to negotiate when one of the following conditions exists:

a. Only a single firm is determined qualified or eligible to perform the contemplated services or is eminently more likely to most satisfactorily complete the work than another firm.

b. The services involve work that is of such a specialized character or nature, or related to a specific geographical location, that only a single firm, by virtue of experience, expertise, proximity to or familiarity with the project or ownership of intellectual property rights, could most satisfactorily complete the work.

**20.7(2) Emergency selection.** The department may select a single firm which meets the requirements of the required work categories to perform the work when there is an emergency that will not permit the time necessary to use normal selection procedures. An emergency includes, but is not limited to, one of the following:

- a. A condition that threatens the public health, welfare or safety.
- b. A need to protect the health, welfare or safety of persons occupying or visiting a public improvement or property located adjacent to the public improvement.
- c. A situation in which the department must act to preserve critical services or programs.

[ARC 4341C, IAB 3/13/19, effective 4/17/19]

**761—20.8(307) Conflicts with federal requirements.** If any provision of this chapter would cause a denial of federal funds or services or would otherwise be inconsistent with federal law, federal law shall be adhered to, but only to the extent necessary to prevent denial of the federal funds or services or to eliminate the inconsistency with federal law.

[ARC 4341C, IAB 3/13/19, effective 4/17/19]

**761—20.9** Reserved.

**761—20.10(307) Negotiation—architectural, landscape architectural, engineering and related professional and technical services.** This rule prescribes procedures for the procurement of architectural, landscape architectural, surveying, general engineering consultant, construction inspection, engineering and related professional and technical services by negotiation where selection is based on qualifications in compliance with 23 CFR Part 172. Contract costs are negotiated after a qualification-based selection.

**20.10(1) Registration of firms providing professional and technical services.**

*a.* A firm wishing to provide professional and technical services to the department as a consultant may register to receive information through the GovDelivery portal available at the department's website at [www.iowadot.gov](http://www.iowadot.gov). The firm is responsible for keeping the firm's information updated. For information, persons may contact the consultant coordinator at the Office of Project Management, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010, or by telephone at (515)239-1803.

*b.* The department shall maintain a list of work categories, descriptions and requirements for each work category online.

**20.10(2) and 20.10(3) Reserved.**

**20.10(4) Request for professional and technical services.** Prior to selecting a firm with which to initiate negotiations under this rule, the department shall document the need for outside services, a description of the needed services, the time frame within which the work must be performed, and the method of selection to be used. One of the following methods shall be used to select a firm with which to initiate negotiations:

*a.* Complete process. See subrule 20.10(5).

*b.* Small contract process. See subrule 20.10(6).

*c.* Sole source or emergency selection. See rule 761—20.7(307).

**20.10(5) Complete process.** The complete process method will use the following process and will be used unless another selection method is justified.

*a. Request for proposal (RFP).* The department shall prepare an RFP which will include the scope of the work, duration of the contract, list of applicable work categories, evaluation criteria (excluding cost), any established disadvantaged business enterprise or targeted small business goal for the proposed work, type of contract anticipated, submission details including the point of contact for the RFP for any questions, the time by which the RFP should be received by the department and anticipated date of selection. The RFP will not require any cost information to be submitted by the proposing firms.

*b. Website.*

(1) The RFP will be posted on the Iowa department of administrative services' website no later than 48 hours prior to the issuance of the RFP.

(2) The RFP will be posted on the department's website. The notification of the RFP being posted will be sent to all users who have signed up to receive the notification via GovDelivery. The notification will include the link to the website where the RFP is posted. See subrule 20.10(1).

(3) The department will post any questions received on the RFP and answers thereto on the website indicated in the GovDelivery notification.

*c. Selection committee.* The department shall appoint a selection committee to become familiar with the RFP, review the firms that have responded to the RFP to determine if they meet the requirements of the work to be performed, and evaluate the firms that meet the qualifications per the evaluation criteria. The selection committee will, if necessary, interview the firms, score the firms, document the committee's decision and provide the scoring to the consultant steering committee.

*d. Evaluation criteria.* The selection committee is responsible for establishing criteria for evaluating each firm submitting a proposal, assigning weighted values to the criteria, and rating each firm on each criterion. Evaluation criteria are tailored to the needed services. Typical evaluation criteria are listed below. The list is intended as a guideline only; it is not exhaustive, nor is each criterion mandatory.

(1) Staffing expertise consistent with special project needs.

(2) Past experience with similar types of work.

(3) Current workload and commitment of key personnel.

(4) Specific qualifications of key staff who will be forming the firm's project team.

(5) Resources the firm has available and proposes to use on the project, including the firm's use of equipment and automated technology and the firm's compatibility with equipment and technology used by the department.

(6) Identification of proposed subconsultants and the work the subconsultants will perform.

*e. Consultant steering committee.* A consultant steering committee is responsible for reviewing the firms as scored by the selection committee, determining the order of preference for negotiations, and documenting its decision. The number of firms selected shall include at least two alternate firms. The committee shall document its reasoning when the number of selected firms is less than the minimum requirement. The consultant steering committee shall consider not only the selection committee's scoring but other factors such as:

(1) A firm's ability to complete required tasks in the time allotted, taking into account other work currently under contract.

(2) The volume of work a firm has with the department, both existing and potential.

(3) The department's goal of having a breadth of experienced firms capable of providing quality services to the department.

(4) Other items unique to the particular contract.

*f. Completion of selection process.* After selection committee and consultant steering committee activities are complete, the department shall determine whether negotiations may begin. If negotiations are approved, the department shall proceed to negotiate with the firm that is first in order of preference.

*g. Notification to firms.* The department shall post the results of the selection on the website identified in the GovDelivery notification. For firms not included on the ranked list of firms, the department shall also provide a matrix showing the high, low and average scores for each item evaluated and that firm's score for each item.

**20.10(6) Small contract process.** The small contract process may be used to identify a single firm with which to negotiate when the estimated work under the contract can normally be completed within a 12-month period and the estimated cost of the contract will not exceed \$150,000.

*a. Selection committee.* The department shall appoint a selection committee to identify at least three firms that meet the requirements of the work categories involved in performing the work; document the names of the firms considered, if necessary; interview the firms; select a firm with which to initiate negotiations; and document the committee's decision.

*b. Completion of selection process.* After selection committee activities are complete, the department shall determine whether negotiations may begin. If negotiations are approved, the department shall proceed to negotiate with the selected firm.

**20.10(7) Selection dispute resolution.** Any dispute of the recommended selection shall be submitted in writing to the consultant coordinator. A written notice of the dispute with supporting evidence must be received by the consultant coordinator within 15 calendar days from the date the selection is posted on the department's website. This is not a contested case as defined in Iowa Code section 17A.2. The department will inform the selected firm(s) of the dispute and inform the firm(s) that the department reserves the right to proceed with negotiations with the selected firm(s) pending resolution of the dispute or claim.

**20.10(8) Negotiation of contract.** The purpose of negotiations is to develop a contract that is mutually satisfactory to the department and the selected firm.

*a.* The firm must submit a detailed cost proposal, including a detailed cost proposal for each proposed subcontract. The department shall prepare an independent estimate of the cost of the proposed services, including a detailed estimate of the firm's staff hours needed to complete the contract. Significant differences shall be evaluated and resolved to the satisfaction of both parties. If it is impractical to make an independent estimate, the department shall evaluate the acceptability of the firm's cost proposal on the basis of the reasonableness of the individual elements of the price proposed.

*b.* The department may perform a preaudit. A preaudit typically includes:

(1) An analysis of the firm's cost proposal and financial records for the method of accounting in place to ensure that the firm has the ability to adequately segregate and accumulate reasonable and allowable costs to be charged against the contract.

(2) An analysis of the firm's proposed direct costing rates and indirect overhead factors to ensure the firm's propriety and allowability.

c. For contracts with federal funding, the department shall verify federal suspension and debarment actions and eligibility status of firms prior to entering into an agreement or contract.

**20.10(9) *Unsuccessful negotiations.*** If a mutually satisfactory contract cannot be negotiated, the department shall formally terminate the negotiations and notify the firm in writing. Termination of negotiations is without prejudice and at the department's discretion. The substance of terminated negotiations is confidential.

The department shall then initiate negotiations with the firm given next preference, and this procedure may be continued until a mutually satisfactory contract has been negotiated. If a satisfactory contract cannot be negotiated with any of the selected firms, the department shall either:

a. Direct the selection committee to select one or more firms with which to continue negotiations, or

b. Redefine the scope of the project or work and start over. See subrule 20.10(4). Once negotiations are terminated, negotiations cannot be reopened with the same firm.

**20.10(10) *Evaluation of performance.***

a. The department shall evaluate all firms under this rule annually based on the contracts that were active during the fiscal year. Both the firm's performance and quality of the final product shall be evaluated. The evaluation shall consider:

(1) The quality and adequacy of work performed.

(2) The ability to meet established schedules and budgets.

(3) General administration of the contract, including substantiation of cost billings, payments to subconsultants, and documentation of claims.

(4) Cooperation shown by the firm in responding to requests for information and in revising procedures and products according to directions.

(5) Coordination exhibited by the firm in communicating with the department, subconsultants, agencies and others to accomplish tasks and resolve problems.

(6) Ingenuity displayed in solving unique and unusual design problems encountered during performance of contract objectives.

(7) The ability to obtain an acceptable end product with appropriate department staff guidance.

b. The firm shall be given an opportunity to review, comment on and sign the evaluation.

[ARC 4341C, IAB 3/13/19, effective 4/17/19]

These rules are intended to implement Iowa Code sections 8A.302(1), 8A.311(20), 73.15 to 73.21, 307.12 and 307.21.

[Filed 7/1/75]

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[Filed 1/16/03, Notice 11/27/02—published 2/5/03, effective 3/12/03]

[Filed ARC 4341C (Notice ARC 4236C, IAB 1/16/19), IAB 3/13/19, effective 4/17/19]

CHAPTER 25  
COMPETITION WITH PRIVATE ENTERPRISE

**761—25.1(23A) Interpretation.** This chapter shall not be interpreted to mean that the department must provide a good or service or will provide a good or service without qualification, restriction, or charge.

**761—25.2(23A) Exemptions.** Activities related to the items listed in this rule are exempted from the provisions of Iowa Code section 23A.2, subsection 1.

**25.2(1)** Transportation-related printing, publications and electronically generated materials including, but not limited to: forms; brochures; booklets; manuals; directories; periodicals; county, city and state transportation maps; video and audio materials; computer tapes and discs; microfilm and other instructional and informative materials.

**25.2(2)** Copies of records or other services provided to meet the requirements of Iowa Code chapter 22.

**25.2(3)** Transportation-related studies, planning and research.

**25.2(4)** Disposal of surplus, obsolete or junked materials and supplies and equipment.

**25.2(5)** Matters of intergovernmental cooperation. Cooperating with other government bodies does not involve providing goods or services to the public except in the broadest sense. The term “government bodies” includes regional transit systems. Activities which involve intergovernmental cooperation include, but are not limited to, the following:

*a.* Use or consumption of departmental facilities, equipment, materials or supplies by other government bodies, including loans, rentals and sales of equipment, materials and supplies.

*b.* Services provided to or performed for other government bodies. These services include:

(1) Vehicle maintenance and repair services provided to other state agencies.

(2) Purchasing services provided to other government bodies.

(3) Purchases made by other government bodies through state contracts.

(4) Disposal of surplus, obsolete or junked materials and supplies and equipment belonging to other state agencies, counties or cities.

(5) Other services performed for government bodies. These services cover a wide range of activities and are performed primarily for county and city highway departments, agencies having park or institutional roads, county treasurers, public transit systems, publicly owned airports, law enforcement agencies, regional planning agencies, and transportation-related boards.

**25.2(6)** Acquisition and disposal of land and improvements acquired for highways or facilities use.

**25.2(7)** Lease of right-of-way.

**25.2(8)** Design, construction, reconstruction, inspection and maintenance of highways including, but not limited to, signs erected in the right-of-way and acknowledgment signs used in the adopt-a-highway, rest area sponsorship and highway helper sponsorship programs.

**25.2(9)** Rescinded IAB 3/13/19, effective 4/17/19.

**25.2(10)** Use or consumption of specialized departmental equipment, materials, supplies or services to complete a contract with the department if the goods or services are not readily available on the open market and the department can provide the goods or services at a competitive price.

**25.2(11)** Use of departmental facilities to complete a contract with the department.

**25.2(12)** Activities related to emergencies including, but not limited to, providing assistance to the public.

**25.2(13)** Goods or services for use or consumption by the department.

**25.2(14)** Use of departmental facilities or services by persons providing services to or representing departmental employees including, but not limited to, the following services or persons: food, credit union and employee organizations.

**25.2(15)** Use of departmental conference rooms or grounds by civic groups and nonprofit organizations.

**25.2(16)** Personal protective items purchased by departmental employees through state contracts.

**25.2(17)** Goods or services promoting transportation or transportation safety.

**25.2(18)** Any other activity permitted or required by law.

[ARC 0187C, IAB 7/11/12, effective 8/15/12; see Delay note at end of chapter; ARC 4341C, IAB 3/13/19, effective 4/17/19]

These rules are intended to implement Iowa Code sections 23A.1 and 23A.2.

[Filed 2/23/89, Notice 1/11/89—published 3/22/89, effective 4/26/89]

[Filed ARC 0187C (Notice ARC 0113C, IAB 5/2/12), IAB 7/11/12, effective 8/15/12]<sup>1</sup>

[Filed ARC 4341C (Notice ARC 4236C, IAB 1/16/19), IAB 3/13/19, effective 4/17/19]

<sup>1</sup> August 15, 2012, effective date of 25.2(8) [ARC 0187C] delayed 70 days by the Administrative Rules Review Committee at its meeting held August 14, 2012. At its meeting held September 11, 2012, the Committee delayed the effective date until adjournment of the 2013 Session of the General Assembly.

CHAPTER 180  
PUBLIC IMPROVEMENT QUOTATION PROCESS FOR GOVERNMENTAL ENTITIES FOR  
VERTICAL INFRASTRUCTURE

**761—180.1(314) Purpose.** The purpose of these rules is to prescribe the manner by which governmental entities shall administer competitive quotations for public improvement contracts for vertical infrastructure, in accordance with Iowa Code section 26.14.

[ARC 3448C, IAB 11/8/17, effective 12/13/17]

**761—180.2(314) Contact information.** Questions regarding this chapter may be directed to the Office of Support Services, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1299.

[ARC 3448C, IAB 11/8/17, effective 12/13/17]

**761—180.3(26,314) Definitions.**

“*Estimated total cost of a public improvement*” means as defined in Iowa Code section 26.2.

“*Governmental entity*” means as defined in Iowa Code section 26.2.

“*Public improvement*” means as defined in Iowa Code section 26.2.

“*Repair or maintenance work*” means as defined in Iowa Code section 26.2.

“*Responsible quotation*” means a quotation submitted by a contractor who is capable of performing the work. To be considered responsible, the contractor must possess the necessary financial and technical capability to perform the work, as well as the ability to complete the work as demonstrated by past performance or other appropriate considerations.

“*Responsive quotation*” means a quotation in which the contractor agrees to do everything required by the governmental entity’s solicitation of quotations and by the plans and specifications and other related documents, without any conditions, qualifications or exclusions.

“*Vertical infrastructure*” means buildings, all appurtenant structures, utilities, incidental street improvements including sidewalks, site development features, recreational trails, and parking facilities. Vertical infrastructure does not include any work constructed in conjunction with or ancillary to highway, street, bridge or culvert projects, including but not limited to utilities and sidewalks.

[ARC 3448C, IAB 11/8/17, effective 12/13/17]

**761—180.4(314) Types of projects.**

**180.4(1) Public improvement.** A public improvement involves new construction, reconstruction, or an improvement that results in betterment to a facility by improving either the original design of the facility or the function of the facility.

**180.4(2) Repair or maintenance work.** Repair or maintenance work involves work that is needed to keep or restore a facility so that it may continue to operate according to its original function or design. Repair or maintenance work may be performed by employees of a governmental entity regardless of the estimated total cost of the repair or maintenance work. If a governmental entity is unable to perform the work using its own employees, the governmental entity must follow the appropriate public improvement process set out in Iowa Code section 26.3 or 26.14, based on the estimated total cost of the work.

**761—180.5(314) Solicitation of quotations.**

**180.5(1)** A governmental entity shall solicit competitive quotations for a public improvement when the estimated total cost of the public improvement exceeds the competitive quotation threshold established in Iowa Code section 26.14, as adjusted pursuant to Iowa Code section 314.1B, but is less than the competitive bid threshold established in Iowa Code section 26.3, as adjusted pursuant to Iowa Code section 314.1B. The adjusted thresholds are published on the department’s website at [www.iowadot.gov](http://www.iowadot.gov).

**180.5(2)** The governmental entity shall make a good-faith effort to obtain quotations for the work from at least two contractors regularly engaged in such work prior to letting a contract. Quotations shall be obtained by means of either an oral or a written solicitation directed to not less than two contractors.

**180.5(3)** Each solicitation shall include a description of the work to be performed, and plans and specifications for the work prepared by an architect or engineer if required by Iowa Code chapter 542B or 544A. (See 193B—Chapter 5 or rule 193C—1.5(542B) for additional guidelines.) In its solicitation, the governmental entity shall advise each contractor that it has an opportunity to inspect the work site. Each contractor requesting to inspect the work site shall be provided an equal and adequate opportunity to do so.

**180.5(4)** Additional information deemed pertinent by the governmental entity, or requested by a contractor, may be provided by the governmental entity if the same information is provided to all contractors from which quotations are solicited. If the information is provided in written form to a contractor, it shall be provided in the same form to all contractors from which quotations are solicited.

**180.5(5)** In its solicitation, the governmental entity shall:

- a. Specify the required form and content of quotations. (See rule 761—180.7(314).)
- b. Require that quotations be filed by a particular time, at a particular location and with a particular office or representative of the governmental entity.
- c. Establish the acceptable method(s) for delivery of quotations. The governmental entity may specify any or all of the following methods of delivery: mail, facsimile, electronic mail, or delivery in-hand.

**180.5(6)** As required by Iowa Code section 573.2, the governmental entity shall in its solicitation inform quoting contractors of the obligation of the contractor awarded the contract to provide a performance and payment bond to secure the performance and timely completion of the work and to secure the payment of subcontractors and suppliers.

**180.5(7)** In its solicitation, the governmental entity may require each quoting contractor to:

- a. Provide along with its quotation a quotation bond, or other quotation security or evidence of its responsibility, to assure that it will enter into a contract to perform the work and that it will provide the required performance and payment bond.
- b. Commit to the execution of a contract for the work in a form required by the governmental entity.
- c. Commit to commencement and completion dates for the work as directed by the governmental entity.
- d. File evidence of insurance, as specified by the governmental entity, with its quotation, or commit to filing such evidence of insurance upon award of the contract to perform the work.

**180.5(8)** In its solicitation, the governmental entity may provide that it will issue special sales tax exemption certificates to contractors and subcontractors, pursuant to Iowa Code section 423.3, subsection 80.

[ARC 3448C, IAB 11/8/17, effective 12/13/17]

**761—180.6(314) Submission of competitive quotation by governmental entity.** The governmental entity may itself file a competitive quotation to perform the work. The governmental entity's quotation shall be filed in the same manner as it requires quotations to be filed by contractors except as provided in subrule 180.7(3).

**761—180.7(314) Form and content of competitive quotations.**

**180.7(1)** A competitive quotation filed by a contractor or by the governmental entity shall be in writing and shall include the total price for labor, equipment, materials and supplies required to perform the work. A contractor shall not be required to include in its quotation or in individual quotation items a breakdown of costs for labor, materials, equipment and supplies. Competitive quotations filed by contractors shall include all other information, documentation or commitments required by the governmental entity in its solicitation of quotations.

**180.7(2)** If the governmental entity in its solicitation indicates its intention to file a competing quotation, contractors shall also separately identify in their quotations the premium cost for the required performance and payment bond and an estimate of the sales and fuel taxes they will incur in performing the work. However, if in its solicitation the governmental entity provides for the issuance of sales tax

exemption certificates to the contractor and subcontractors performing the work, quoting contractors shall not include or separately identify estimated sales tax in their quotations.

**180.7(3)** A quotation submitted by a governmental entity need not include the information, documents or commitments required of quoting contractors in subrule 180.5(7). A governmental entity is not required to submit a performance and payment bond.

**180.7(4)** The governmental entity may require that quotations from contractors be submitted on a form prescribed by the governmental entity, provided the form complies with the requirements of these rules.

#### **761—180.8(314) Evaluation of competitive quotations.**

**180.8(1)** If a quoting contractor does not file a quotation in the form required by the governmental entity, or does not provide all information or documentation or make all commitments required by the governmental entity, or does not sign the quotation if required by the governmental entity, the quotation shall be determined to be nonresponsive and shall be rejected by the governmental entity.

**180.8(2)** If the governmental entity submits a quotation to perform the work, paragraphs “a” to “c” of this subrule are applicable. If the governmental entity does not submit a quotation, these paragraphs do not apply.

*a.* Because the governmental entity is not required to pay sales tax or fuel tax or to submit a performance and payment bond in connection with work performed by governmental employees using governmental equipment, each contractor’s total quotation shall be adjusted to deduct the amounts identified in the quotation for estimated sales and fuel taxes and the bond premium. The amount of each contractor’s adjusted quotation shall then be compared to the amount of the quotation submitted by the governmental entity for the purpose of determining if the governmental entity’s quotation is the lowest responsive, responsible quotation.

*b.* If in its solicitation the governmental entity provides for the issuance of sales tax exemption certificates to the contractor and subcontractors performing the work, quoting contractors shall not include or separately identify estimated sales tax in their quotations, and the governmental entity shall not deduct estimated sales tax from the contractors’ quotations for the purpose of determining if the governmental entity’s quotation is the lowest responsive, responsible quotation.

*c.* The governmental entity may require the contractor to which the work is awarded to provide documentation of the premium cost incurred by it for the performance and payment bond and of all sales and fuel taxes paid by it and its subcontractors in connection with the work. The governmental entity may decline to pay the amounts identified by the contractor in its quotation for the bond premium and estimated sales and fuel taxes if these amounts are not properly documented as having been paid.

#### **761—180.9(314) Award of contract and subsequent procedures.**

**180.9(1)** Except as provided in subrule 180.9(3), the governmental entity shall award the contract for the work to the contractor submitting the lowest responsive, responsible quotation, subject to Iowa Code section 26.9, or the governmental entity may reject all of the quotations. A contract shall be considered awarded when the governmental entity unconditionally accepts and approves the lowest responsive, responsible quotation. The governing body of the governmental entity shall record the approved quotation in its meeting minutes.

**180.9(2)** The governing body of a governmental entity may delegate the authority to award and execute contracts, or to award contracts and authorize the work to proceed, to an officer or employee of the governmental entity, provided that an award approved outside a meeting of the governing body shall be reported in the meeting minutes of the next regular meeting of the governing body.

**180.9(3)** If no quotations are received from contractors to perform the work or if the governmental entity’s estimated cost to do the work with its employees, as reflected in its quotation, is less than the lowest responsive, responsible quotation received from a contractor, the governmental entity may authorize its employees to perform the work.

**180.9(4)** Upon the submission of the required performance and payment bond by the contractor to which the contract has been awarded and upon approval of the bond by the governmental entity, the

governmental entity shall execute a contract to perform the work or shall authorize the contractor to proceed with the work.

**180.9(5)** Upon execution of the contract by the contractor and the governmental entity or upon authorization to proceed by the governmental entity and acknowledgment thereof by the contractor, the governmental entity shall release the quotation bonds or other quotation security submitted with the quotations received.

**180.9(6)** If the governmental entity is a city and the cost of the work will exceed the amount provided for in Iowa Code section 380.4, the governing body is required to pass a resolution approving the expenditure.

**761—180.10(314) Retained funds.** In addition to requiring the contractor to submit a performance and payment bond, the governmental entity shall also retain funds from each payment to the contractor for the benefit of subcontractors and suppliers, and apply or release such funds, as required by Iowa Code chapter 573.

[ARC 4342C, IAB 3/13/19, effective 4/17/19]

These rules are intended to implement Iowa Code sections 26.2, 26.14, 314.1A, 314.1B, 573.2, and 573.28.

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## VEHICLES

## CHAPTER 400

## VEHICLE REGISTRATION AND CERTIFICATE OF TITLE

[Prior to 6/3/87, Transportation Department[820]—(07,D)Ch 11]

**761—400.1(321) Definitions.** The definitions in Iowa Code section 321.1 are hereby made part of this chapter. In addition, the following words and phrases, when used in Iowa Code chapter 321 or this chapter, shall have the meanings respectively ascribed to them, except when the context otherwise requires.

*“Certificate of title”* means a document issued by the appropriate official which contains a statement of the owner’s title, the name and address of the owner, a description of the vehicle, a statement of all security interests and additional information required under the laws or rules of the jurisdiction in which the document was issued, and which is recognized as a matter of law as a document evidencing ownership of the vehicle described. The terms “title certificate,” “title only,” and “title” shall be synonymous with the term “Certificate of title.”

*“Dealer’s or manufacturer’s stock or inventory”* means a vehicle owned by a dealer which is being held for sale or trade and for which the dealer has a duly assigned ownership document as required by Iowa Code section 321.45.

*“Electronic”* means as defined in Iowa Code section 554D.103.

*“Electronic record”* means as defined in Iowa Code section 554D.103.

*“Electronic signature”* means as defined in Iowa Code section 554D.103.

*“End user”* means a person or entity that directly uses the services of an electronic registration and titling (ERT) service provider to submit an electronic application for certificate of title or registration of a vehicle.

*“ERT service provider”* means a person or entity authorized by the department under subrule 400.3(16) to submit electronic applications for certificate of title or registration of a vehicle on behalf of an end user to a county treasurer.

*“Farm trailer”* means a trailer used exclusively by a farmer in the conduct of the farmer’s agricultural operation. The term shall not include a “semitrailer.”

*“Final-stage manufacturer”* means as defined in Iowa Code section 322.2.

*“Half-year fee”* means the first semiannual installment of an annual registration fee. The term “half-year registration” shall be synonymous with the term “half-year fee.”

*“Hearse”* means a motor vehicle used exclusively to transport a deceased person.

*“Lien”* means an interest in a vehicle which secures payment or performance of an obligation. The term “security interest” shall be synonymous with the term “lien.”

*“Manufacturer’s certificate of origin”* means a certification signed by the manufacturer, distributor or importer that the vehicle described has been transferred to the person or dealer named and that the transfer is the first transfer of the vehicle in ordinary trade and commerce.

1. The terms “manufacturer’s statement,” “importer’s statement or certificate,” “MSO” and “MCO” shall be synonymous with the term “manufacturer’s certificate of origin.”

2. In addition to the requirements of Iowa Code subsection 321.45(1), the certificate shall contain a description of the vehicle which includes the make, model, style and vehicle identification number. The description of a motorized bicycle shall also specify the maximum speed.

3. For 1992 and subsequent model year vehicles, the form used for manufacturers’ certificates of origin shall be the universal form adopted in 1990 by the American Association of Motor Vehicle Administrators (AAMVA). This requirement does not apply to trailer-type vehicles. A copy of this universal form may be obtained from the office of vehicle and motor carrier services at the address in subrule 400.6(1).

*“Model year,”* except where otherwise specified, means the year of original manufacture or the year certified by the manufacturer. For purposes of titling and registration, the model year shall advance one year each January 1.

“*Registered*” means that the appropriate registration fee has been paid for a vehicle and a registration card evidencing payment has been issued to the owner.

“*Registration card*” means a document issued to the owner of a vehicle by the appropriate agency whose duty it is to register vehicles, which contains the name and address of the owner and a description of the vehicle, and which is issued to the owner when the vehicle has been registered. The terms “registration certificate,” “registration receipt” and “registration renewal receipt” are synonymous with the term “registration card.”

“*Security interest*” means an interest in a vehicle which secures payment or performance of an obligation. The term “lien” shall be synonymous with the term “security interest.”

“*Social security number*” means a social security number issued by the United States government.

This rule is intended to implement Iowa Code sections 321.1, 321.8, 321.20, 321.23, 321.24, 321.40, 321.45, 321.50, 321.117, 321.123, 321.134, 321.157 and 322.2.

[ARC 9048B, IAB 9/8/10, effective 10/13/10; ARC 3449C, IAB 11/8/17, effective 12/13/17; ARC 3999C, IAB 9/12/18, effective 10/17/18; ARC 4343C, IAB 3/13/19, effective 4/17/19]

### **761—400.2(321) Vehicle registration and certificate of title—general provisions.**

**400.2(1) *Vehicles subject to registration.*** A vehicle subject to registration under the laws of Iowa shall be required to be registered at the time the vehicle is first operated or moved upon a highway in this state.

**400.2(2) *Vehicles exempt from titling or registration.*** A certificate of title shall not be issued for a vehicle which is exempt from the titling or registration provisions of Iowa Code chapter 321, unless issuance of a certificate of title is specifically authorized in chapter 321.

**400.2(3) *Issuance of a certificate of title upon payment of registration fees.*** Except as otherwise provided in Iowa Code chapter 321 or this chapter of rules, the current year registration fee and any delinquent registration fees and penalties, if any, shall be paid prior to issuance of a certificate of title.

**400.2(4) *Trailers with an empty weight of 2000 pounds or less.*** Certificates of title shall not be issued for trailers with an empty weight of 2000 pounds or less. However, these trailers shall be subject to the registration fees provided in Iowa Code section 321.123.

**400.2(5) *Vehicles owned by the government.*** A certificate of title shall be issued for a vehicle owned by the government when the vehicle is first registered. However, vehicles owned by the government shall be exempted from registration and titling fees. Also, a certificate of title shall not be issued for a government-owned vehicle if a certificate of title would not be issued if the vehicle were owned by someone other than the government.

**400.2(6) *Vehicles leased by the government.*** Vehicles leased by the government for a period of 60 days or more are exempted from payment of registration fees. A copy of the lease agreement, certificate of lease, or other evidence that the vehicle is being leased by the government shall be required in order to obtain this exemption. However, the lessor is not exempted from the requirements for obtaining a certificate of title as set out in Iowa Code chapter 321 and these rules, including payment of the appropriate certificate of title fee.

**400.2(7) *Special mobile equipment.*** Rescinded IAB 3/7/90, effective 4/11/90.

**400.2(8) *Private school buses, fire trucks, authorized emergency vehicles, and transit buses.*** In accordance with Iowa Code sections 321.18, 321.19 and 321.22, private school buses, fire trucks not owned or operated for a pecuniary profit, certain authorized emergency vehicles owned and operated by nonprofit organizations, and urban and regional transit system buses are exempt from the payment of registration fees. However, these vehicles are not exempt from the requirements for obtaining a certificate of title as set out in Iowa Code chapter 321, including payment of the appropriate certificate of title fee.

This rule is intended to implement Iowa Code sections 321.18 to 321.22, 321.24 and 321.123.

### **761—400.3(321) Application for certificate of title or registration for a vehicle.**

**400.3(1) *Application form.*** To apply for a certificate of title or registration for a vehicle, the owner of the vehicle shall complete an application form prescribed by the department, which may be electronic.

Application shall be made in accordance with Iowa Code chapter 321, these rules, and other applicable provisions of law.

**400.3(2) Full legal name.** Full legal names shall be given on the application. Civilian or military titles and nicknames shall not be used.

**400.3(3) Information about owner, lessee and primary user.**

*a.* Iowa Code sections 321.20 and 321.109 list the information that must be disclosed by the owner, lessee and primary user on the application.

*b.* A firm, association, corporation, or trust that is not required to have a federal employer identification number shall disclose the social security number, Iowa driver's license number or Iowa nonoperator's identification card number of an authorized representative of the firm, association, corporation, or trust. The authorized representative of a trust is the trustee unless otherwise specified in the trust agreement or the certification of trust as defined in Iowa Code section 633A.4604.

**400.3(4) Plate number and validation number.** If the owner has registration plates that have been assigned to the owner and affixed to the vehicle, the owner shall list the plate number on the application form. The validation number from the validation sticker shall also be listed.

**400.3(5) Birth or registration month.** If the vehicle is owned by one individual, the individual's month of birth shall be listed on the application form and shall determine the registration year. If the vehicle is owned by two or three individuals, the month of birth of one of the individuals shall be listed and shall determine the registration year. If the vehicle is owned by a partnership, corporation, association, or governmental subdivision, the birth or registration month shall be left blank on the application; the county treasurer shall determine the month of registration.

**400.3(6) Model year.** The application shall include the model year of the vehicle.

**400.3(7) Purchase information.** The application shall include the date of purchase or acquisition and, if the vehicle was not purchased from a dealer, the purchase price.

**400.3(8) Vehicle color.** The application shall include the vehicle color.

**400.3(9) Foreign registered vehicle.** If the vehicle is registered in a foreign jurisdiction, the application shall include the date the vehicle was brought into Iowa.

**400.3(10) Signature of applicant.** The owner shall sign the application form in ink, unless submitted electronically.

**400.3(11) Dealer certification.**

*a.* If the vehicle is a new vehicle which has been sold to the owner by a dealer, as defined in Iowa Code section 321.1, the dealer shall certify the following on the application form: sale price of the vehicle, the amounts allowed for property traded in, nontaxable charges and rebates, the tax price of the vehicle, the date that a "Registration Applied For" card was issued, and the registration fee collected.

*b.* The certification shall include the dealer's number and name and shall be signed by the dealer or an authorized representative of the dealer. The signature may be electronic when the application form is submitted electronically in a manner approved by the department.

**400.3(12) Weigh ticket.** If application is being made to lower the tonnage on any motor truck, bus or truck tractor, the county treasurer may require a copy of a stamped weigh ticket issued by any public scale.

**400.3(13) Credits.** See rule 761—400.60(321) for:

Credit for unexpired registration fee.

Credit for transfer to spouse, parent or child.

Credit from/to apportioned registration.

Assignment of credit and registration plates from lessor to lessee.

**400.3(14) Leased vehicle.** As required by Iowa Code section 423.26, the lessor shall list the lease price of the vehicle on the application form.

**400.3(15) Affidavit of correction.** As provided in Iowa Code section 321.23A, the county treasurer or the department may accept an affidavit of correction on a form prescribed by the department.

*a.* The affidavit may be used only to correct those errors, erasures or alterations listed on the affidavit.

*b.* The affidavit must contain the signatures of all parties to the original error, erasure or alteration.

- c. Only an original, notarized affidavit shall be accepted.
- d. The affidavit must be surrendered with the document that contains the error, erasure or alteration to be corrected.
- e. The affidavit may be accepted to correct errors, erasures or alterations on either an Iowa title or a foreign title.

**400.3(16) *Electronic applications.***

a. Applications for certificate of title or registration of a vehicle may be submitted electronically via web-based services offered and maintained by ERT service providers authorized by the department. To be authorized to serve as an ERT service provider, the ERT service provider must establish to the satisfaction of the department that the ERT service provider has the technical, financial, legal, and administrative capacity to meet the department's requirements for submission of electronic applications and must execute an agreement, in a form and content determined by the department, that authorizes and permits the ERT service provider to interact with the department's vehicle title and registration system via an application program interface established by the department and to submit electronic applications on behalf of end users that choose to use the ERT service provider's services to submit an application electronically. Agreements executed by ERT service providers under this paragraph shall include provisions that address security, financial responsibility, privacy, termination, and any other matters deemed appropriate by the department.

b. An agreement executed by an ERT service provider is a condition of authorization and permission only. An ERT service provider authorized by the department is not a contractor, vendor, employee, or agent for the department, the state of Iowa, or any county treasurer accepting electronic applications, and shall not be entitled to compensation from the department, the state of Iowa, or any county treasurer for any service, transaction, or other act rendered as an ERT service provider. The ERT service provider remains solely liable and responsible for the ERT service provider's services and activities as an ERT service provider and shall defend, indemnify and hold harmless the department, any county treasurer, the state of Iowa, and its, or their agents, officers, heirs, assigns, and employees of and from any and all damages, claims, penalties, debts owed, or any other form of liability arising from or related to the ERT service provider's service, performance, errors, acts, or omissions. An ERT service provider that chooses to provide service under the department's permission and authorization does so at the ERT service provider's sole risk and has no claim or right against the department, any county treasurer, or the state of Iowa for fees, costs, profits, loss of profits, interruption of business, or any other form of compensation, remuneration, liability, or damages arising from or related to the ERT service provider's activity as an ERT service provider or inability to serve as an ERT service provider.

c. An ERT service provider authorized by the department may establish web-based services to allow end users to submit applications via an electronic interface established and maintained by the ERT service provider and to submit the applications on behalf of the end user to county treasurers via the department's vehicle title and registration system and application program interface established by the department. In doing so, the ERT service provider is acting as a contractor or vendor for the end user and not the department, any county treasurer, or the state of Iowa, and remains solely responsible to the end user for any failure to perform or breach of performance or agreement. When the end user is a motor vehicle dealer licensed by the department under Iowa Code chapter 322 or 322C, "end user" includes the motor vehicle dealer and any person with an interest in the vehicle that is the subject of the application. The ERT service provider may charge the end user a fee for services rendered as an ERT service provider.

d. In addition to the documentary fee authorized under Iowa Code section 322.19A, an end user that is a motor vehicle dealer licensed by the department under Iowa Code chapter 322 or 322C may pass and charge to a customer the fees or costs incurred by the motor vehicle dealer to submit the customer's application through an ERT service provider's services as a third-party cost or fee under Iowa Code section 322.19A(1), provided that the motor vehicle dealer discloses the charge to the customer before submitting the application. The documentary fee charged by the motor vehicle dealer shall not exceed the amount authorized by Iowa Code section 322.19A(3). Neither the ERT service provider nor the motor vehicle dealer shall charge a customer for creation or delivery of a "registration applied for" card.

*e.* An ERT service provider authorized by the department has no authority to approve or deny applications. Acceptance of an application by an ERT service provider is not approval of the application. An application is not considered to be formally submitted until it is electronically transmitted by the ERT service provider to the county treasurer via the department's vehicle title and registration system and the application program interface established by the department. The county treasurer remains responsible for approving or denying the application and may reject the application for any reason permitted or required by state or federal law or regulation.

*f.* An authorized ERT service provider is responsible for the ERT service provider's payment solution and for all payment transaction security and compliance with all applicable standards associated with the payment solution or solutions offered by the ERT service provider. The ERT service provider shall transfer title and registration fees collected by the ERT service provider directly to an account designated by the county treasurer responsible for the transaction via automated clearing house (ACH) transfer and the fees shall be available to the county treasurer no later than three business days following the submission of a transaction for which the fees were paid. Funds received by the ERT service provider shall be held until transfer to the county treasurer's account in a bank insured by the Federal Deposit Insurance Corporation. The ERT service provider shall be responsible for reconciling insufficient funds from an end user.

*g.* Fees submitted electronically are not deemed to be received until deposited into the county treasurer's account via completion of the ACH transfer. The end user remains responsible for fees submitted via an ERT service provider and the end user's responsibility for payment of any required fees is not waived or excused by the ERT service provider's failure to complete the transfer. As a condition of authorization and permission to serve as an ERT service provider and before the ERT service provider may offer services, the ERT service provider shall furnish a surety bond executed by the ERT service provider as principal and executed by a corporate surety company, licensed and qualified to do business within the state of Iowa. The bond shall run to the state of Iowa, be in the amount of \$150,000 and be conditioned upon the faithful compliance by the ERT service provider of all obligations imposed upon the ERT service provider by any applicable state or federal law or regulation, including the terms of this chapter, the authorizing agreement executed by the ERT service provider under this chapter, and any terms or conditions existing between the ERT service provider and any end user using the ERT service provider's services. The ERT service provider shall indemnify any end user that uses the ERT service provider's services of and from any loss or damage occasioned by the failure of the ERT service provider to so comply, including but not limited to the complete and timely submission to the county treasurer of the title and registration fees required for a given transaction. The bond shall be filed with the department before the ERT service provider may begin or offer services as an ERT service provider. The aggregate liability of the surety shall not exceed the amount of the bond.

*h.* The ERT service provider shall provide accounting reports of all fees received and transferred to each respective county treasurer, in a manner determined by the department.

*i.* The ERT service provider shall submit to audits by the department and the state auditor, which shall be at least yearly but may be more frequently if determined necessary by the department or the state auditor.

*j.* An application submitted electronically must meet all legal requirements for the transaction in question, and no requirement shall be excused or waived as a result of submitting the transaction electronically. However, wherever a signature is required, the signature may be an electronic signature, as determined by the department and according to methods approved by the department. Wherever an electronic solution approved by the department requires the submission of scanned documents, the scanned documents shall be of a quality and resolution determined by the department, which shall at a minimum meet any applicable state or federal standard or requirement, and shall completely capture and represent the original document. The department and any county treasurer processing an application retain the right under Iowa Code section 321.13 to determine the genuineness, regularity, and legality of the application and any scanned document submitted as part of the application and may withhold approval of the application and require presentation of the original document whenever the scanned document is of insufficient quality, content, or appearance to determine the same. An end user that submits a scan of an

original document as part of an electronic application shall retain the original document for a period of six months. An end user shall make all such original documents available for inspection by the department at the department's request. An end user that is a business entity shall retain the documents at the end user's principal place of business in Iowa. Anything in this paragraph notwithstanding, lessors required to retain a damage disclosure statement under Iowa Code section 321.69(4), and authorized vehicle recyclers licensed under Iowa Code chapter 321H and motor vehicle dealers licensed under Iowa Code chapter 322 required to retain damage disclosure statements under Iowa Code section 321.69(6) shall retain the original document for a period of five years from the date of the statement, as required therein.

*k.* An end user that is a motor vehicle dealer licensed by the department under Iowa Code chapter 322 or 322C and that electronically submits an application on behalf of the person to whom the dealer is transferring the vehicle shall disclose to the person that the application will be submitted electronically and shall obtain the person's written authorization to submit the application on the person's behalf. The written authorization shall be retained at the motor vehicle dealer's principal place of business for a period of six months from the date of application and shall be available for inspection by the department at the department's request. The motor vehicle dealer shall also review with and disclose to the person all details of the application, before submitting the application, and shall provide a complete, true, and accurate copy of the application to the person immediately after submitting the application. The written authorization shall be submitted electronically as a scanned document with the electronic application.

*l.* An authorized ERT service provider shall retain all data, information, records, and electronic records associated with an electronic application or transaction submitted or transacted through the ERT service provider for a period of at least six months, or longer as required by applicable state or federal law or regulation, and shall make all such data, information, and records available to the department at the department's request. This includes but is not limited to the identity of the end user that initiated the electronic application or transaction. Identity information for end users shall be maintained at the entity and individual level, meaning that the ERT service provider must implement and maintain secure profile management that is capable of authenticating and verifying the identity of any entity that initiated the application or transaction and the individual officer, employee, or agent within the entity that was authorized by the entity to initiate the application or transaction.

*m.* The ERT service provider shall hold and protect all personal information as required by Iowa Code section 321.11 and the federal Driver's Privacy Protection Act, 18 U.S.C. § 2721 et seq. (the DPPA), shall only use or release such personal information for purposes necessary to perform services as an ERT service provider, and shall release such personal information for no other purposes or use except as required to comply with legal or administrative matters as permitted under the DPPA. The ERT service provider shall immediately advise the department of any suspected or actual unauthorized release of personal information or highly restricted personal information and shall notify the entity and individual whose personal information or highly restricted personal information was released in an unauthorized manner.

This rule is intended to implement Iowa Code sections 321.1, 321.8, 321.20, 321.23 to 321.26, 321.31, 321.34, 321.46, 321.105A, 321.109, 321.122, 322.19A and 423.26.

[ARC 9048B, IAB 9/8/10, effective 10/13/10; ARC 3449C, IAB 11/8/17, effective 12/13/17; ARC 3999C, IAB 9/12/18, effective 10/17/18]

**761—400.4(321) Supporting documents required.** This rule describes the basic supporting documents to be submitted by an applicant for a certificate of title or registration.

**400.4(1) New vehicle.** If application is made for a new vehicle, a manufacturer's certificate of origin, properly assigned to the applicant, shall be submitted. A manufacturer's certificate of origin shall not be accepted if the assignment to the applicant is made by any person other than the manufacturer, importer or distributor, a licensed motor vehicle dealer franchised to sell that line-make of vehicle, or a final-stage manufacturer motor vehicle dealer licensed under rule 761—425.11(322).

*a.* The first person, including a dealer not franchised to sell that line-make of vehicle, who is assigned the manufacturer's certificate of origin shall obtain a certificate of title and register the vehicle.

b. An uncanceled security interest noted on the reverse side of a manufacturer's certificate of origin (MCO) shall be noted as a separate security interest on the certificate of title, in addition to any security interest acknowledged by the applicant, unless the applicant indicates in the security interest area on the title application that the security interest is the same as the one noted on the reverse side of the MCO.

c. If a 1980 or subsequent model year vehicle is manufactured by a person other than the original manufacturer, both the original manufacturer's certificate of origin and the final-stage manufacturer's certificate of origin shall be submitted if the vehicle's original line-make is changed by the final-stage manufacturer. All assignments or reassignments of ownership of the vehicle shall be made on the final-stage manufacturer's certificate of origin. The face of the original manufacturer's certificate of origin shall be stamped in bold type with the statement: "Final-stage manufacturer's MCO has been issued on this vehicle." The original manufacturer's vehicle identification number shall be listed on the final-stage manufacturer's certificate of origin.

d. If a final-stage manufacturer is a motor vehicle dealer licensed under rule 761—425.11(322), the final-stage manufacturer may reassign the original manufacturer's certificate of origin to the retail buyer.

**400.4(2)** *Used vehicle registered or titled in this state.* The last issued certificate of title, properly assigned to the applicant, shall be submitted, unless the applicant is an insurer applying for a salvage certificate of title under Iowa Code section 321.52(4). An uncanceled security interest noted on the face of the certificate of title shall be noted on the face of the certificate of title issued to the applicant, in addition to any security interest acknowledged by the applicant. If the vehicle is not subject to titling provisions, the last issued registration receipt or bill of sale, properly assigned to the applicant, shall be submitted.

**400.4(3)** *Used vehicle from a foreign jurisdiction.* If the vehicle was subject to the issuance of a certificate of title in the foreign jurisdiction, the certificate of title issued by the foreign jurisdiction to the applicant or properly assigned to the applicant shall be submitted, unless the applicant is an insurer applying for a salvage certificate of title under Iowa Code section 321.52(4).

a. A security interest, noted on the face of the foreign certificate of title, which has not been canceled, shall be noted on the face of the certificate of title issued to the applicant, in addition to any security interest acknowledged by the applicant.

b. A certificate of title issued in a foreign jurisdiction may be assigned to a motor vehicle dealer in another jurisdiction, and the dealer may reassign the certificate of title to the applicant. An assignment or reassignment form issued by a foreign jurisdiction may be used with a foreign title to complete an assignment or reassignment of ownership from a foreign motor vehicle dealer to the applicant, provided the ownership chain is complete.

c. An Iowa licensed motor vehicle dealer who acquires a vehicle registered in another state or country may reassign the foreign certificate of title to the applicant, as provided in Iowa Code subsection 321.48(2) and rule 761—400.27(321,322).

d. A person who registers a foreign vehicle under Iowa Code subsection 321.23(3) shall be issued a nontransferable-nonnegotiable registration. To transfer ownership of the vehicle, the owner must first obtain an Iowa certificate of title except as follows: If ownership is transferred to an Iowa licensed motor vehicle dealer as provided in Iowa Code subsection 321.23(3), the foreign certificate of title may be assigned to the dealer; the owner is not required to obtain an Iowa title. The dealer may then reassign the foreign title, as provided in Iowa Code subsection 321.48(2) and rule 761—400.27(321,322).

e. If the vehicle was not subject to the issuance of a certificate of title in the foreign jurisdiction, the registration document issued by the foreign jurisdiction to the applicant or properly assigned to the applicant shall be submitted.

(1) If the foreign registration document is not issued in the applicant's name and does not contain an assignment of ownership form, a bill of sale conveying ownership from the owner as listed on the foreign registration document to the applicant shall be submitted with the foreign registration document.

(2) Upon receipt of the foreign registration document, the county treasurer shall issue a nontransferable—nonnegotiable registration unless the foreign registration document has been approved by the department.

(3) Acceptance of the foreign registration document shall be determined by the department on an individual basis, if the county treasurer of the county where the certificate of title is to be issued cannot determine whether the document is acceptable.

*f.* If a trailer weighing 2000 lbs. or less is exempt from the issuance of a certificate of title and registration in the foreign jurisdiction, a bill of sale conveying ownership to the applicant, if acquired by a resident from a nonresident, or an affidavit of ownership signed by the applicant, if the applicant is establishing residence in this state, shall be submitted.

*g.* If a motor vehicle is exempt from the issuance of a certificate of title and registration in the foreign jurisdiction, the bonding procedures as provided in Iowa Code section 321.24 shall be followed.

**400.4(4)** *Used vehicle acquired by a resident of this state from a government agency.* If the vehicle was acquired from an agency of the federal government, the applicant shall surrender the government bill of sale, General Services Administration Form 97, or Internal Revenue Service Form 2435, properly assigned to the applicant. If the vehicle was acquired from the state of Iowa or a subdivision of government, the applicant shall surrender the Iowa certificate of title issued in the name of the agency, properly assigned to the applicant.

**400.4(5)** *Manufactured or mobile home.* If the vehicle described on the application is a manufactured or mobile home with an Iowa title, the applicant shall submit a tax clearance form to show that no taxes are owing, unless the title has been issued to a manufactured or mobile home retailer licensed under Iowa Code chapter 103A. The form may be obtained by any owner of record of the manufactured or mobile home from the county treasurer.

**400.4(6)** *Vehicle acquired by a resident of this state by operation of law.* If the vehicle was acquired by the applicant by operation of law as specified in Iowa Code section 321.47, the last issued certificate of title shall be submitted by the applicant, or when that is not possible, presentation of satisfactory proof of the applicant's ownership and right of possession to the vehicle shall be submitted by the applicant. Proof of ownership may consist of a foreclosure sale affidavit, artisan's or storage lien affidavit, affidavit of death intestate, abandoned vehicle sales receipt, peace officers bill of sale or court order. See also subrules 400.14(4) and 400.14(5).

**400.4(7)** *Foreign ownership document issued in a language other than English.* A foreign ownership document issued in a language other than English may be required to be reproduced in writing in English and certified to be a correct translation by a person qualified to translate that particular language. The English translation and certification shall be submitted with the foreign ownership document.

**400.4(8)** *Titles from foreign jurisdictions.*

*a.* Except as provided in paragraph "b" of this subrule, a certificate of title issued by a foreign jurisdiction shall not be accepted if the title contains an alteration or erasure.

*b.* An affidavit of correction form issued by a foreign jurisdiction that corrects the certificate of title issued by the foreign jurisdiction shall be accepted only for the reason listed on the affidavit of correction form. However, acceptance of an affidavit of correction form that corrects an odometer statement or a designation shall be determined by the department on an individual basis.

**400.4(9)** *Applications in the name of trusts.* An application in the name of a trust shall be accompanied by a copy of all documents creating or otherwise affecting the trust or the certification of trust as defined in Iowa Code section 633A.4604. The application shall be signed by each trustee unless otherwise specified in the trust agreement or the certification of trust. The signature shall be followed by the words "as trustee."

**400.4(10)** *Supporting document retained by county treasurer.* All supporting documents, except those submitted pursuant to subrule 400.3(16), shall be retained by the county treasurer.

This rule is intended to implement Iowa Code sections 321.20, 321.23, 321.24, 321.30, 321.31, 321.45 to 321.50, 321.67 and 322.3.

[ARC 9048B, IAB 9/8/10, effective 10/13/10; ARC 3449C, IAB 11/8/17, effective 12/13/17; ARC 3999C, IAB 9/12/18, effective 10/17/18; ARC 4343C, IAB 3/13/19, effective 4/17/19]

**761—400.5(321) Where to apply for registration or certificate of title.**

**400.5(1)** Except as otherwise provided, application for the registration of a vehicle or a certificate of title for a vehicle, or transfers thereof, shall be made to the county treasurer as described in Iowa Code chapter 321. When none of the primary users of a non-resident-owned vehicle are located in Iowa, the vehicle may be registered by the county treasurer of any county.

**400.5(2)** Application shall be made to the department's office of vehicle and motor carrier services for the following:

*a.* Titling and registration of vehicles owned by the government. This requirement does not apply to manufactured or mobile homes subject to a public bidder sale as explained in Iowa Code subsection 321.46(2).

*b.* Registration of vehicles leased by the government for a period of 60 days or more.

*c.* Registration of urban and regional transit system buses.

*d.* Registration of fire trucks not owned and operated for a pecuniary profit.

*e.* Registration of certain authorized emergency vehicles owned and operated by nonprofit organizations.

*f.* Registration of private school buses.

*g.* Registration of vehicles under the provisions of Iowa Code subsection 321.23(4), relating to restricted-use vehicles.

**400.5(3)** Application for a certificate of title for a vehicle subject to apportioned registration under Iowa Code chapter 326 may be made to either the county treasurer or to the department's office of vehicle and motor carrier services.

**400.5(4)** Application for apportioned registration shall be made to the department's office of vehicle and motor carrier services. See 761—Chapter 500.

This rule is intended to implement Iowa Code sections 321.18 to 321.23, 321.46(2), and 321.170. [ARC 3999C, IAB 9/12/18, effective 10/17/18]

**761—400.6(17A) Addresses, information and forms.** Assistance under this chapter is available as follows:

**400.6(1)** Information and forms for vehicle registration, certificate of title, or other procedures covered under Iowa Code sections 321.18 to 321.173 may be obtained from the county treasurer or by mail from the Office of Vehicle and Motor Carrier Services, Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278; in person at Iowa Department of Transportation, 6310 SE Convenience Blvd., Ankeny, Iowa 50021; by telephone at (515)237-3264; or on the department's website at [www.iowadot.gov](http://www.iowadot.gov).

**400.6(2)** Information for investigations under this chapter may be obtained from the Bureau of Investigation and Identity Protection, Iowa Department of Transportation, 6310 SE Convenience Blvd., Ankeny, Iowa 50021; by telephone at (515)237-3050; or on the department's website at [www.iowadot.gov](http://www.iowadot.gov).

This rule is intended to implement Iowa Code section 17A.3. [ARC 9048B, IAB 9/8/10, effective 10/13/10; ARC 3999C, IAB 9/12/18, effective 10/17/18]

**761—400.7(321) Information appearing on title or registration.** In addition to the requirements of Iowa Code sections 321.24, 321.52, 321.69, 321.71 and 322G.12, a certificate of title or registration receipt or both shall contain the following information when applicable:

**400.7(1)** Registration expiration date.

**400.7(2)** Registration month, as explained in rule 761—400.3(321).

**400.7(3)** Name and address of last titled owner.

**400.7(4)** Description of the vehicle, including the following items. These items may be represented on the title and registration by code letters or numbers.

*a.* Vehicle identification number.

*b.* Type, such as automobile, trailer, truck, etc.

*c.* Style.

*d.* Make, model, and model year.

*e.* Number of engine cylinders.

- f.* Color.
- g.* Weight and registered gross weight.
- h.* The square footage of floor space of a manufactured or mobile home or travel trailer, as determined by measuring the exterior.
- i.* The odometer mileage and whether the mileage is “actual,” “not actual,” or “exceeds mechanical limits.”

**400.7(5)** Previous Iowa title number or the name of the foreign jurisdiction if the previous title is a foreign title.

**400.7(6)** Plate number and previous registration number.

**400.7(7)** List price or value.

**400.7(8)** Penalties and title, registration and security interest receipt numbers.

**400.7(9)** The following phrase stamped on the reassignment portion of a manufactured or mobile home title: “Dealer reassignment not authorized on this certificate of title.”

**400.7(10)** The designation required by 761—Chapter 405. A vehicle may have no more than one designation. The referenced rules explain which designation takes precedence when more than one designation could apply.

**400.7(11)** Full legal name of owner.

*a.* When the name of an owner changes from that which is printed on the title or registration issued to the owner, the owner shall submit to the county treasurer one of the following documents:

(1) Court order for a name change. The court order must contain the full name, date of birth, and court seal.

(2) Divorce decree.

(3) Marriage certificate.

*b.* This subrule does not apply to owners that are firms, associations, corporations, or trusts.

*c.* When the name of an owner changes from that which is printed on the registration card, the owner shall apply for a replacement registration card.

This rule is intended to implement Iowa Code sections 321.24, 321.31, 321.40, 321.45, 321.52, 321.69, 321.71, 321.124 and 322G.12.

[ARC 0136C, IAB 5/30/12, effective 7/4/12; ARC 3999C, IAB 9/12/18, effective 10/17/18]

#### **761—400.8(321) Release form for cancellation of security interest.**

**400.8(1)** A secured party may use a form prescribed by the department to note the cancellation of a security interest.

**400.8(2)** The secured party may also note the cancellation in a statement written on the secured party’s letterhead if the statement is notarized and contains the following information: county that issued the title; title number; security interest number; vehicle identification number; vehicle owner’s name; secured party’s name, street address, city, state and ZIP code; date the security interest was canceled; and signature of an authorized representative of the secured party.

**400.8(3)** The secured party shall forward the original cancellation form or statement to the department or to the county treasurer of the county where the title was issued. Facsimiles and photocopies are not acceptable.

**400.8(4)** The secured party shall note the cancellation on the face of the title, attach a copy of the release form to the title as evidence of cancellation, and forward the title to the next secured party or, if there is no other secured party, to the person designated by the owner or, if there is no person designated, to the owner.

This rule is intended to implement Iowa Code section 321.50.

[ARC 4343C, IAB 3/13/19, effective 4/17/19]

**761—400.9(321) Security interest notation, 30-day limit.** Rescinded IAB 11/23/05, effective 12/28/05.

**761—400.10(321) Assignment of security interest.** A security interest noted on a certificate of title may be assigned to another secured party without losing the seniority of the security interest by complying with the procedure in Iowa Code section 321.50 or with the following procedure:

**400.10(1) Notice of assignment.** The secured party listed on the title certificate shall make the following notation in the cancellation portion of the certificate of title where security interest is noted “Assigned to (name of assignee).” The date, name of secured party and signature of the person noting the assignment shall be completed in the cancellation portion pertaining to the security interest.

**400.10(2) Application for notation of security interest.** The assignee shall complete an application for notation of a security interest on the form provided by the department. The application form shall be signed by the assignee in the space where the signature of the owner is ordinarily required. The signature of the owner shall not be required on an assignment of a security interest.

**400.10(3) Submission of documents to county treasurer.** The certificate of title, application for notation of security interest and appropriate notation fee shall be submitted to the county treasurer of the county where the certificate of title was issued or will be issued.

*a.* If there are additional security interests noted on the certificate of title, the seniority of the assignee’s security interest may be preserved by issuance of a certificate of title in lieu of the original, on which the assignee’s security interest shall be noted in the same seniority as the assignor’s.

*b.* A receipt for notation of security interest form shall be processed and the new receipt number shall be listed in the appropriate space provided. The original notation date shall also be listed and the words “by assignment” shall be listed following the name of the assignee.

This rule is intended to implement Iowa Code section 321.50.

**761—400.11(321) Sheriff’s levy, restitution lien, and forfeiture lien noted as security interests.**

**400.11(1)** A sheriff’s levy may be noted as a security interest on a certificate of title if the sheriff so desires. To apply for a notation of a security interest, the sheriff or the sheriff’s deputy shall complete an application form prescribed by the department. The sheriff or sheriff’s deputy shall sign the application in the space where the signature of the owner is ordinarily required. The signature of the owner is not required. The appropriate notation fee shall be submitted with the application form to the county treasurer of the county where the certificate of title was issued. If the certificate of title is not surrendered with the application, the county treasurer shall notify the holder of the certificate of title in the manner prescribed in Iowa Code section 321.50.

**400.11(2)** A restitution or forfeiture lien may be noted as a security interest on a certificate of title if the county attorney so desires. To apply for a notation of a security interest, the county attorney or designee shall complete an application form prescribed by the department. The county attorney or designee shall sign the application in the space where the signature of the owner is ordinarily required. The signature of the owner is not required. A lien notation fee is not required. If the certificate of title is not surrendered with the application, the county treasurer shall notify the holder of the certificate of title in the manner prescribed in Iowa Code section 321.50.

This rule is intended to implement Iowa Code section 321.50 and chapter 809A.  
[ARC 9048B, IAB 9/8/10, effective 10/13/10]

**761—400.12(321) Replacement certificate of title.**

**400.12(1)** When a certificate of title is lost, destroyed or altered, the owner or lienholder shall apply for a replacement certificate of title. If a security interest noted on the certificate of title was released by the secured party on a separate form, but the secured party has not delivered the original certificate of title to the appropriate party, the owner may apply for a replacement certificate of title as provided in Iowa Code section 321.42.

**400.12(2)** Application for a replacement certificate of title shall be made on a form prescribed by the department. All owners of the vehicle as listed on the certificate of title shall sign the application form. If an owner is deceased, the signatures and documents specified in subrules 400.14(4) and 400.14(5) shall be required in lieu of the deceased owner’s signature. A person entitled to vehicle ownership under the

laws of descent and distribution shall sign the required forms and shall insert the words “heir at law” following the signature.

This rule is intended to implement Iowa Code section 321.42.

**761—400.13(321) Bond required before title issued.** An applicant for a certificate of title who cannot provide the supporting documents required in rule 761—400.4(321) shall be required to file a bond as a condition to obtaining a title and registration plates.

**400.13(1) Procedures.** This subrule describes the procedures to be followed to obtain a “bonded” certificate of title. The procedures described are in addition to the regular procedures for titling and registering a vehicle.

*a.* The applicant shall submit a bond application to the office of vehicle and motor carrier services on a form prescribed by the department. The application shall be accompanied by evidence of ownership of the vehicle.

*b.* The department shall search the state files to determine if there is an owner of record for the vehicle and if the vehicle has been reported stolen or embezzled.

(1) If a record is found, the applicant shall complete a request for release of personal information form explaining that the applicant is the current owner and is requesting a duplicate title. The department shall mail the release by first-class mail to the owner of record, at the owner’s last-known address.

(2) If the department receives no response from the owner of record within ten days after the date of mailing or the owner of record does not want the owner’s personal information released, the department will continue processing the bond application.

*c.* If the department determines that the applicant has complied with this rule, that there is sufficient evidence to indicate that the applicant is the rightful owner, and that there is no known unsatisfied security interest, the department shall determine the current value of the vehicle and notify the applicant to deposit cash or file a surety bond with the department in an amount equal to one and one-half times the current value of the vehicle.

*d.* After the cash deposit or surety bond has been deposited, a motor vehicle investigator of the department may examine the vehicle to verify the information submitted on the application is correct. The owner of the vehicle may drive or tow the vehicle to and from the examination location after completing an affidavit to drive on a form provided by the department. The form shall state that the vehicle is reasonably safe for operation, and the form must be signed by the owner. After verifying the information, the investigator shall authorize the county treasurer to issue a title for and register the vehicle. Should the vehicle not meet the equipment requirements of Iowa Code chapter 321, the investigator shall authorize the county treasurer to issue a title and registration but instruct the county treasurer to immediately suspend the registration until such time as the vehicle meets these equipment requirements. If applicable, the investigator shall also affix an assigned vehicle identification number to the vehicle.

*e.* The applicant shall then make application for a certificate of title and registration.

**400.13(2) Disapproval.** If the department determines that the applicant has not complied with this rule, that there is sufficient evidence to indicate that the applicant may not be the rightful owner, or that there is an unsatisfied security interest, then the department shall not authorize issuance of a certificate of title or registration receipt and shall notify the applicant in writing of the reason(s).

**400.13(3) Junked vehicle.** A certificate of title shall not be reinstated for a vehicle that has been issued a junking certificate unless the junking certificate was issued in error, as explained in rule 761—400.23(321), or the vehicle qualifies as an antique vehicle under Iowa Code subsection 321.115(1).

This rule is intended to implement Iowa Code sections 321.24 and 321.52.

[ARC 9048B, IAB 9/8/10, effective 10/13/10; ARC 0136C, IAB 5/30/12, effective 7/4/12; ARC 3999C, IAB 9/12/18, effective 10/17/18]

**761—400.14(321) Transfer of ownership.** The following procedures shall apply for all titling and registration purposes:

**400.14(1) Transfer of vehicle owned by two or three persons.**

*a.* If the names of the owners of a vehicle on the certificate of title or on the manufacturer's certificate of origin are joined by the word "or," as in "John Doe, Jane Doe or Mary Doe," then the signature of any of these owners is sufficient to transfer title or to junk the vehicle.

*b.* If ownership of a vehicle is stated as a name or names followed by the words "Doing Business As" or the initials "DBA" and another name, only the name of an owner followed by the signature of an authorized representative of an owner is required to transfer title or to junk the vehicle.

EXAMPLE: Ownership is stated as "John Smith and Mary Smith DBA Smith Repair." Jane Doe is an authorized representative of John Smith and Mary Smith. To transfer ownership, Jane Doe may sign as "John Smith and Mary Smith DBA Smith Repair, by Jane Doe," "John Smith and Mary Smith by Jane Doe," or Smith Repair by Jane Doe."

*c.* In all other cases the signature of each named owner is required.

**400.14(2)** *Assignment of title to two or three persons.* If a certificate of title or a manufacturer's certificate of origin is assigned to two or three persons with their names joined by the word "or," as in "John Doe, Jane Doe or Mary Doe," then a certificate of title may be issued to any one of these persons, or to any two or all three of these persons with their names joined by the word "or." However, a certificate of title shall only be issued to persons who have signed the application for title.

**400.14(3)** *Organizational ownership.*

*a.* When a vehicle is owned by a partnership, corporation, association, governmental unit, or private organization, the signature of its authorized representative is required.

*b.* When a vehicle is owned by a trust, the signature of each trustee is required, unless otherwise specified in the trust agreement or the certification of trust as defined in Iowa Code section 633A.4604. The signature shall be followed by the words "as trustee." In addition, the title shall be accompanied by a copy of all documents creating or otherwise affecting the trust or the certification of trust.

**400.14(4)** *Death with a will.* When ownership is transferred according to a decedent's will, a certified copy of the court order or the letter of appointment appointing the person assigning the title as executor of the will shall be required.

**400.14(5)** *Death without a will.* When ownership is transferred from a decedent without a will and there is no administration of the estate, an affidavit of death intestate form signed by the clerk of court shall be required. When ownership is transferred from a decedent without a will but there is an administration of the estate, a copy of the court order or the letter of appointment appointing the person assigning the title as administrator shall be required.

**400.14(6)** *Power of attorney.* An attorney in fact may act for the owner(s) if the appointment is shown on a power of attorney form. Power of attorney forms are available from the department but other forms may be accepted if they contain all necessary information. The power of attorney form or a certified true copy shall be kept by the county treasurer and attached to the document to which it applies.

This rule is intended to implement Iowa Code sections 321.20, 321.24, 321.45, 321.47, 321.49, and 321.67.

[ARC 9048B, IAB 9/8/10, effective 10/13/10]

#### **761—400.15(321) Cancellation of a certificate of title.**

**400.15(1)** The department shall cancel a certificate of title when authorized by any provision of law or when it has reasonable grounds to believe that the title has not been surrendered to the county treasurer as provided in Iowa Code section 321.52 or when the vehicle has been stolen or embezzled from the rightful owner or seized under the provisions of Iowa Code section 321.84, and the person holding the certificate of title, purportedly issued for the vehicle, has no immediate right to possession of the vehicle.

**400.15(2)** The decision to issue a new certificate of title or to allow the previous title to be reinstated through a replacement title application process or to take any other action regarding ownership of the vehicle for which the current title has been canceled shall be determined after an investigation and recommendation by a motor vehicle investigator of the department.

This rule is intended to implement Iowa Code section 321.101.

**761—400.16(321) Application for certificate of title or original registration for a specially constructed, reconstructed, street rod or replica motor vehicle.****400.16(1) Definitions applicable to this rule.**

a. “Ownership document for the vehicle” means the certificate of title, the manufacturer’s certificate of origin, the junking certificate, or other evidence of ownership acceptable to the department.

b. “Ownership documents for essential parts” means bills of sale for all essential parts used to construct or reconstruct the vehicle. Each bill of sale shall contain a description of the part, the manufacturer’s identification number of the part, if any, and the name, address, and telephone number of the seller.

**400.16(2) Procedures.** This subrule describes the procedures for obtaining department approval to title and register a specially constructed, reconstructed, street rod or replica motor vehicle. The procedures described are in addition to the regular procedures for titling and registering a vehicle.

a. The applicant shall apply to the county treasurer for a certificate of title and registration. The county treasurer, upon receiving an application that indicates the vehicle is a specially constructed, reconstructed, street rod or replica motor vehicle, shall forward the application to a motor vehicle investigator of the department.

b. The investigator shall contact the applicant and schedule a time and place for an examination of the vehicle and the ownership documents. The owner of the vehicle may drive or tow the vehicle to and from the examination location by completing an affidavit to drive on a form provided by the department. The form shall state that the vehicle is reasonably safe for operation and must be signed by the owner. The applicant, when appearing with the vehicle for the examination, shall submit to the investigator the ownership document for the vehicle, the ownership documents for essential parts, and a weigh ticket indicating the weight of the vehicle. However, a weigh ticket is not required for motorcycles, autocycles, trucks, truck tractors, road tractors or trailer-type vehicles.

c. If the investigator determines that the vehicle complies with 761—Chapter 450, that the integral parts and components have been identified as to ownership, and that the application has been completed properly:

(1) The investigator shall approve the application, affix to the vehicle an assigned vehicle identification number, and return the application and ownership documents to the applicant. The investigator shall authorize the county treasurer to issue a title and registration for the vehicle.

(2) If the vehicle is a passenger-type motor vehicle, the department shall determine its weight and value. The vehicle weight shall be fixed at the next even 100 pounds above the actual weight of the vehicle fully equipped, as provided in Iowa Code section 321.162. The weight and value shall constitute the basis for determining the annual registration fee under Iowa Code section 321.109, except as provided in Iowa Code section 321.113.

(3) The applicant shall then submit the ownership document for the vehicle to the county treasurer and continue with the regular title and registration process.

**400.16(3) Disapproval.** If the department determines that the vehicle does not comply with 761—Chapter 450, that the integral parts or components have not been identified as to ownership, or that the application has not been completed properly, then the department shall not approve the vehicle for titling and registration.

**400.16(4) Model year.** The model year of a specially constructed or reconstructed motor vehicle is the year the vehicle is approved by the department as a specially constructed or reconstructed motor vehicle.

This rule is intended to implement Iowa Code sections 321.20, 321.23, 321.24, 321.52, 321.109 and 321.162.

[ARC 9048B, IAB 9/8/10, effective 10/13/10; ARC 0136C, IAB 5/30/12, effective 7/4/12; ARC 2985C, IAB 3/15/17, effective 4/19/17; ARC 3999C, IAB 9/12/18, effective 10/17/18]

**761—400.17(321) Remanufactured vehicle.** Rescinded IAB 11/23/05, effective 12/28/05.

**761—400.18(321)** Rescinded IAB 3/26/97, effective 4/30/97.

**761—400.19(321) Temporary use of vehicle without plates or registration card.**

**400.19(1)** *Temporary use of vehicle without plates.* A person who acquires a vehicle which is currently registered or in a dealer's inventory at the time of sale and who does not possess registration plates which may be assigned to and displayed on the vehicle may operate or permit the operation of the vehicle not to exceed 30 days from the date of purchase or transfer without registration plates displayed thereon, if ownership evidence is carried in the vehicle.

**400.19(2)** *Temporary use of vehicle without registration card.* A person who acquires a vehicle which is currently registered or in a dealer's inventory at the time of sale and who has possession of plates which may be attached to the vehicle acquired may operate or permit the operation of the vehicle not to exceed 45 days from the date of purchase or transfer without a registration card, if ownership evidence is carried in the vehicle.

**400.19(3)** *Ownership evidence.* Ownership evidence under this rule shall consist of the certificate of title or registration receipt, or a photocopy thereof, properly assigned to the person who has acquired the vehicle, or a bill of sale conveying ownership of the vehicle to the person who has acquired the vehicle. The ownership evidence shall be shown to any peace officer upon request.

This rule is intended to implement Iowa Code sections 321.25, 321.33 and 321.46.

**761—400.20(321) Registration of motor vehicle weighing 55,000 pounds or more.** When applying for registration or renewal of registration for a motor vehicle weighing 55,000 pounds or more, the owner shall present to the department or to the county treasurer proof of compliance with the federal heavy vehicle use tax required by 26 U.S.C. Section 4481 and 26 CFR Part 41.

**400.20(1)** If the motor vehicle is used exclusively in the transportation of harvested forest products, the owner may present a written statement certifying that usage and the usage will be recorded.

**400.20(2)** If the motor vehicle is used primarily for farming purposes, the owner may present a written statement certifying that usage and the usage will be recorded.

This rule is intended to implement Iowa Code sections 307.30 and 321.20.

**761—400.21(321) Registration of vehicles on a restricted basis.** The department may register a vehicle which does not meet the equipment requirements of Iowa Code chapter 321, due to the particular use for which it is designed or intended. Registration may be accomplished upon payment of the appropriate fees and after inspection and certification by the department that the vehicle is not in an unsafe condition.

**400.21(1)** Operation of the vehicle may be restricted to a roadway to which a specific lawful speed limit applies, as specified in Iowa Code section 321.285, if the maximum speed of the vehicle is such that the operation of the vehicle would impede or block the normal and reasonable movement of traffic.

**400.21(2)** The department may also restrict the operation of the vehicle to daylight hours if operation of the vehicle during hours other than daylight would create a hazard.

**400.21(3)** A certificate of restriction shall be issued in conjunction with registration of the vehicle, listing the restrictions that apply to the operation of the vehicle.

*a.* Registration laws applicable to motor vehicles in general shall also apply to vehicles registered under a restricted registration.

*b.* The department may approve exceptions to those equipment requirements of Iowa Code chapter 321 which cannot be met due to the particular use for which the vehicle is designed or intended.

**400.21(4)** The department shall not register an all-terrain vehicle. The department shall not register a vehicle built on or after January 1, 1968, unless it was manufactured primarily for use on public streets, roads and highways except a vehicle operated exclusively by a person with a disability, which may be registered if the department, in its discretion, determines that the vehicle is not in an unsafe condition. This subrule does not apply to a specially constructed, reconstructed, street rod or replica motor vehicle as defined in Iowa Code section 321.1.

This rule is intended to implement Iowa Code sections 321.1 and 321.234A and subsections 321.23(4), 321.30(2), and 321.101(1).

[ARC 9048B, IAB 9/8/10, effective 10/13/10]

**761—400.22(321) Transfers of ownership by operation of law.** When ownership of a vehicle is transferred by operation of law under Iowa Code section 321.47, the following, in addition to rule 761—400.4(321), shall apply:

**400.22(1)** The new certificate of title and registration shall be issued, upon receipt of the proper documentation, by the county treasurer of the county where the transferee resides.

**400.22(2)** If the vehicle is not currently registered in this state, the registration fee and penalties due shall be computed in accordance with the following:

*a.* If the vehicle is ordered confiscated or forfeited by a court under a judgment or forfeiture, the fee shall be computed on the remaining unexpired months in the registration year from the date of the court order.

*b.* If the vehicle is sold on a peace officer's bill of sale as an unclaimed, stolen, embezzled or abandoned vehicle, or as a vehicle seized under Iowa Code section 321.84, the fee shall be computed on the remaining unexpired months in the registration year from the date of the sale.

*c.* If the vehicle is sold or transferred under a judgment or order entered by a court in a civil action or proceeding, or is transferred under any provision of Iowa Code section 321.47 which is not covered in this subrule, the fee shall include any delinquent fees which have accrued during previous registration periods and accrued penalties. Penalties shall continue to accrue until paid.

*d.* If the vehicle was last titled or registered in a foreign state, the fee shall be based on the month the vehicle becomes subject to registration in this state, except as provided in paragraphs 400.22(2) "a" and "b" above.

This rule is intended to implement Iowa Code sections 321.47, 321.105, 321.106, 321.134, and 321.135.

**761—400.23(321) Junked vehicle.**

**400.23(1) *Junking certificate.*** The owner of a vehicle that is to be junked or dismantled shall obtain a junking certificate in accordance with Iowa Code subsection 321.52(3).

**400.23(2) *Retitling a junked vehicle.*** The department may authorize issuance of a new certificate of title to the vehicle owner named on the junking certificate only if the department determines that the junking certificate was issued in error.

*a.* The reasons a junking certificate was issued in error include but are not limited to the following:

(1) The owner inadvertently surrendered the wrong certificate of title. The owner shall submit to the department a photocopy of the ownership document for each vehicle and a signed statement explaining the circumstances that resulted in the error.

(2) A junking certificate was obtained in error and the vehicle continues to be registered. The owner shall submit to the department a photocopy of the current registration and a signed statement explaining the circumstances that resulted in the error.

(3) The owner intended to apply for a salvage title under Iowa Code subsection 321.52(4) but inadvertently submitted an application for a junking certificate. The owner shall submit to the department a bill of sale or other documentation from the previous owner stating that the vehicle was rebuildable when purchased and a signed statement explaining the owner's original intention to obtain a salvage title. The department shall inspect the vehicle to verify the rebuildable condition.

*b.* If the department determines that the junking certificate was issued in error, the department shall authorize the proper county treasurer to issue a certificate of title for the vehicle after payment by the owner of appropriate fees and taxes, including the return of any credit or refund for registration fees paid to the owner because of the error.

*c.* If the department determines that the junking certificate was not issued in error and denies the application for reinstatement of the certificate of title for the vehicle, the owner may apply for a certificate of title under the bonding procedure in rule 761—400.13(321) if the vehicle qualifies as an antique vehicle under Iowa Code subsection 321.115(1).

This rule is intended to implement Iowa Code subsection 321.52(3).

**761—400.24(321) New vehicle registration fee.** The registration fee shall be computed on the month of purchase of a new vehicle, except that the registration fee on a new vehicle acquired outside of this state shall be based on the month that the vehicle was brought into Iowa.

This rule is intended to implement Iowa Code sections 321.105 and 321.135.

**761—400.25(321) Fees established by the department.** If the department cannot obtain the retail list price and weight for a particular motor vehicle model registered under Iowa Code subsection 321.109(1), the department shall determine a list price and weight.

This rule is intended to implement Iowa Code sections 321.109, 321.157 and 321.159.

**761—400.26(321) Anatomical gift.** Voluntary contributions collected by the county treasurer or the department to the anatomical gift public awareness and transplantation fund shall be in whole dollar amounts. The county treasurer and the department shall remit contributions collected to the department of public health quarterly.

This rule is intended to implement Iowa Code section 321.44A.

**761—400.27(321,322) Vehicles held for resale or trade by dealers.** A motor vehicle dealer, as defined in Iowa Code section 321.1, is authorized to hold a motor vehicle for resale or trade under the following conditions.

**400.27(1) Assignment to dealer.** The certificate of title or manufacturer's certificate of origin for the vehicle shall be assigned to the dealer by the seller. The seller shall complete the assignment portion of the form, including the date of sale or trade and the name and address of the dealer, and shall sign the form. The date of the sale or trade shown in the assignment portion of the form shall be the date the dealer acquired the vehicle.

**400.27(2) New certificate of title and registration not required.**

*a.* A motor vehicle currently registered in Iowa may be held by a dealer without obtaining a new certificate of title or a new registration if the dealer holds for that vehicle a certificate of title or a manufacturer's certificate of origin properly assigned to the dealer.

*b.* A motor vehicle may also be held by a dealer without obtaining a new certificate of title or a new registration if the dealer has a title from a state that permits its titles to be reassigned by Iowa dealers and if a vacant reassignment space is available on the title.

**400.27(3) New certificate of title required.** A dealer shall obtain a new certificate of title, but is not required to pay registration fees for a vehicle if:

*a.* The vehicle has been registered in a foreign state or country that does not permit its titles to be reassigned by Iowa dealers.

*b.* The vehicle was assigned to the dealer using an affidavit of foreclosure form prescribed by the department or issued by a foreign jurisdiction.

*c.* The reassignment area of the certificate of title has been used.

*d.* Reserved.

*e.* The vehicle registration fee was delinquent in Iowa at the time the vehicle was acquired by the dealer. The delinquent fees and penalty shall be paid by the dealer from the first day the registration was due to the month the application for title is submitted.

*f.* In accordance with 761—Chapter 405, the dealer is required to obtain a salvage certificate of title.

**400.27(4) New certificate of title and registration fee required.** A dealer shall obtain both a new certificate of title and pay a registration fee for a vehicle if:

*a.* The vehicle has a foreign certificate of title but has never been registered and the dealer is not licensed under Iowa Code chapter 322 to sell that line-make of vehicle. The registration fee due shall be prorated for the remaining unexpired months of the dealer's registration year.

*b.* The vehicle was placed in storage by the previous owner. The registration fee due shall be a full registration year fee.

*c.* The vehicle has been registered in a foreign state or country that does not permit its titles to be reassigned by Iowa dealers or all reassignment spaces on the title are full and the application for a new certificate of title is submitted more than 30 days after the date the vehicle entered Iowa. The registration fee due shall be prorated for the remaining unexpired months of the dealer's registration year.

*d.* The vehicle was in the dealer's inventory and the dealer's license was revoked as provided in Iowa Code chapter 322 or 322C or surrendered in lieu of revocation. The dealer shall obtain title and registration within 30 days from the date of revocation or surrender of the license. The registration fee due shall be prorated for the remaining unexpired months of the registration year.

**400.27(5) *Registration fee required.*** A vehicle owned by a dealer and used as a work or service vehicle, or offered for lease, rent or hire, shall become subject to a registration fee in the month that the vehicle is first used for that purpose. The registration fee shall be due annually unless the vehicle is transferred to the dealer's inventory. To transfer the vehicle, the dealer shall surrender the registration plates that were issued for the vehicle.

**400.27(6) *Violations.***

*a.* Failure to comply with this rule is a violation of Iowa Code subsection 321.104(2).

*b.* Failure to obtain a certificate of title when required shall result in a title penalty of \$10, as specified in Iowa Code subsection 321.49(1).

This rule is intended to implement Iowa Code sections 321.45, 321.46, 321.48, 321.49, 321.67, 321.70, 321.104 and chapter 322.

[ARC 9048B, IAB 9/8/10, effective 10/13/10]

**761—400.28(321) *Special trucks.*** The owner of a truck tractor registered as a special truck shall certify to the owner's county treasurer annually at the time of renewal that the truck tractor is not operated more than 15,000 miles annually.

This rule is intended to implement Iowa Code sections 321.1(75) and 321.121.

[ARC 3999C, IAB 9/12/18, effective 10/17/18]

**761—400.29(321) *Vehicles previously registered under Iowa Code chapter 326.*** Rescinded IAB 11/23/05, effective 12/28/05.

**761—400.30(321) *Registration of vehicles registered in another state or country.***

**400.30(1)** The registration fee for a vehicle from another state or country shall be due in the month that the vehicle becomes subject to registration in Iowa.

**400.30(2)** A vehicle registered in another state or country shall become subject to registration in Iowa and payment of the Iowa registration fee in:

*a.* The month of sale or transfer to an Iowa resident, or

*b.* The month that a nonresident owner establishes Iowa residency or accepts employment in Iowa of 90 days duration or longer. The county treasurer or the department may require from the applicant a written statement giving the date that the applicant established residency in Iowa.

**400.30(3)** Rescinded IAB 2/6/02, effective 3/13/02.

This rule is intended to implement Iowa Code sections 321.18, 321.20, 321.53 to 321.55, 321.101 and 321.135.

**761—400.31** Rescinded, effective 12/1/83.

**761—400.32(321) *Vehicles owned by nonresident members of the armed services.***

**400.32(1)** A vehicle owner who is a nonresident and a member of the armed services shall not be required to register the vehicle in Iowa if it is properly registered in the person's state of residence.

**400.32(2)** A vehicle owner who is a nonresident and a member of the armed services may register the vehicle in Iowa under the following conditions:

*a.* The vehicle is owned entirely by nonresidents.

b. The fee for a passenger-type vehicle registered under Iowa Code section 321.109 shall be based only on the weight of the vehicle; the part of the fee based on value shall be excluded. The fees for all other vehicles shall be determined as specified in Iowa Code chapter 321.

c. The application for vehicle registration shall include a certification by the person's commanding officer of the person's state of residence and assignment to Iowa.

**400.32(3)** If ownership of a passenger-type vehicle is transferred to another person, the vehicle shall be subject to registration in Iowa.

This rule is intended to implement Iowa Code sections 321.53 to 321.55 and 321.109.

**761—400.33(321) Disabled veterans exemption from payment of registration fees.** Rescinded IAB 11/23/05, effective 12/28/05.

**761—400.34(321) Multipurpose vehicle registration fee.** Rescinded IAB 11/7/07, effective 12/12/07.

**761—400.35(321) Registration of vehicles equipped for persons with disabilities.** The registration fee shall be reduced for an automobile, multipurpose vehicle, or motor truck with an unladen weight of 10,000 pounds or less with permanent equipment for assisting a person with a disability or for an automobile, multipurpose vehicle, or motor truck with an unladen weight of 10,000 pounds or less used by a person who uses a wheelchair as the person's only means of mobility. To qualify for the reduction, the owner of the vehicle must provide a written self-certification at the first registration and at each renewal:

**400.35(1)** That the automobile, multipurpose vehicle, or motor truck with an unladen weight of 10,000 pounds or less has permanently installed equipment manufactured for and necessary to assist a person with a disability, as defined in Iowa Code section 321L.1, to enter or exit the vehicle, or

**400.35(2)** That the owner or a member of the owner's household uses a wheelchair as the person's only means of mobility.

This rule is intended to implement Iowa Code sections 321.109, 321.124 and 321L.1.

[ARC 9048B, IAB 9/8/10, effective 10/13/10]

**761—400.36(321) Land and water-type travel trailers registration fee.** The registration fee for trailer-type vehicles designed to be used as a travel trailer and for use upon water shall be registered as a travel trailer. The exterior measurements used to determine the registration fee shall not include any pen deck area or area occupied by a trailer hitch.

This rule is intended to implement Iowa Code sections 321.1 and 321.123.

**761—400.37(321) Motorcycle or autocycle primarily designed or converted to transport property.** A motorcycle or autocycle primarily designed or converted to transport less than 1000 pounds of property shall be registered as a motorcycle or autocycle. A motorcycle or autocycle primarily designed or converted to transport 1000 pounds of property or more shall be registered as a motor truck.

This rule is intended to implement Iowa Code sections 321.1 and 321.117.

[ARC 2985C, IAB 3/15/17, effective 4/19/17]

**761—400.38(321)** Rescinded IAB 3/26/97, effective 4/30/97.

**761—400.39(321) Conversion of motor vehicles.**

**400.39(1)** An automobile converted to a truck with a carrying capacity of 1000 pounds or more shall be registered as a reconstructed motor vehicle.

**400.39(2)** A vehicle manufactured as a truck tractor or motor truck shall not be registered as a motor home unless the vehicle has been substantially altered to change its type and mode of operation so that it is a reconstructed vehicle as defined in Iowa Code section 321.1.

This rule is intended to implement Iowa Code sections 321.23, 321.111 and 321.124.

[ARC 9048B, IAB 9/8/10, effective 10/13/10; ARC 0136C, IAB 5/30/12, effective 7/4/12; ARC 3999C, IAB 9/12/18, effective 10/17/18]

**761—400.40(321) Manufactured or mobile home converted to or from real property.**

**400.40(1) Conversion to real property.** When a manufactured or mobile home is converted to real property under Iowa Code section 435.26, the assessor shall collect its vehicle certificate of title. The assessor shall note the conversion on the face of the certificate of title above the assessor's signature, date the notation and deliver the title to the county treasurer. The county treasurer shall note the conversion on the vehicle record and then cancel and retain the certificate of title.

**400.40(2) Reconversion from real property.**

*a.* When a manufactured or mobile home is reconverted from real property by adding a vehicular frame, the owner may apply to the county treasurer for a certificate of title.

*b.* The owner shall submit a record of existing liens obtained from a local abstractor. The record shall identify the owner of the property, list all liens and encumbrances against the property, and shall be signed by the abstractor.

*c.* The owner shall also submit written consent to the reconversion from any person holding a mortgage on the real property (mortgagee). An existing mortgage shall be noted as a security interest on the certificate of title.

*d.* The county treasurer shall submit written notice of the reconversion to the county assessor's office.

This rule is intended to implement Iowa Code sections 321.1, 435.1, 435.26, 435.26A and 435.27.  
[ARC 3999C, IAB 9/12/18, effective 10/17/18]

**761—400.41(321) Special registration plates.** Rescinded IAB 3/1/95, effective 4/5/95.

**761—400.42(321) Church bus registration fee.** The church bus registration fee shall not apply if the bus is used in a manner other than provided by law or if ownership of the bus is transferred to a person who is not entitled to register the vehicle as a church bus.

**400.42(1)** When the church bus registration fee does not apply, the bus shall be registered under the provisions of Iowa Code section 321.122.

**400.42(2)** When Iowa Code section 321.122 applies and the bus is currently registered as a church bus, the registration fee shall be prorated for the remaining unexpired months of the registration year.

This rule is intended to implement Iowa Code sections 321.119 and 321.122.

**761—400.43(321) Storage of vehicles.**

**400.43(1)** The owner of a vehicle upon which the registration fee is not delinquent may surrender all registration plates for the vehicle to the county treasurer where the vehicle is registered and shall have the right to register the vehicle later upon payment of the annual registration fee due at the time of removal of the vehicle from storage. Payment of a registration fee shall not be required when the vehicle is removed from storage within the current registration year provided that registration fees have not been refunded. Plates that have been surrendered shall be destroyed. When a vehicle is removed from storage, the fee is \$5 for a set of replacement plates.

**400.43(2)** The owner of a motor vehicle which is placed in storage when the owner enters the military service of the United States shall comply with Iowa Code section 321.126, and subrule 400.43(1) does not apply.

This rule is intended to implement Iowa Code sections 321.126 and 321.134.  
[ARC 9048B, IAB 9/8/10, effective 10/13/10; ARC 3999C, IAB 9/12/18, effective 10/17/18]

**761—400.44(321) Penalty on registration fees.**

**400.44(1) Monthly basis.** The penalty on the delinquent payment of a registration fee shall be computed on a monthly basis, rounded to the nearest whole dollar.

**400.44(2) Vehicle purchased.** The penalty on the registration fee shall accrue from the first day of the month following the date of purchase, unless the application for a certificate of title is submitted within 30 days after the date of purchase.

**400.44(3) Vehicle moved into Iowa.** The penalty on the registration fee shall accrue on the first day of the month following 30 days from the date a vehicle is moved into Iowa.

**400.44(4)** *When delinquency extends beyond the current year.* When the penalty on a delinquent registration fee extends beyond the current year, the penalty shall continue to accrue until paid. Penalty shall only accrue on the fee applicable at the time the delinquency accrued and shall not be applicable to subsequent registration fees which have not been paid.

**400.44(5)** *Statement of nonuse.* If the owner of a vehicle, on which the registration fees have not been paid for more than three complete registration years, certifies to the county treasurer of the owner's residence that the vehicle has not been moved or operated upon the highway since the year it was last registered, the county treasurer may register the vehicle upon payment of the current year's registration fee.

**400.44(6)** *Waiver of penalties for military members.* Registration penalties shall be waived as provided in Iowa Code section 321.134, subsection 5, if the owner provides a copy of an official government document verifying that the applicant is in the military service of the United States and has been relocated as a result of being placed on active duty on or after September 11, 2001.

This rule is intended to implement Iowa Code sections 321.39, 321.46, 321.47, 321.49, 321.134 and 321.135.

**761—400.45(321) Suspension, revocation or denial of registration.**

**400.45(1)** The department shall suspend or revoke registration and plates under Iowa Code section 321.101 when a written request is received from a peace officer or the county treasurer's office that issued the registration and plates.

*a.* A request from a peace officer shall be submitted on a form prescribed by the department.

*b.* A request from a county treasurer's office shall be signed by the county treasurer or designee.

**400.45(2)** When the registration of a vehicle has been revoked as provided in Iowa Code sections 321.101 and 321.101A, the registration fee and penalty shall accrue as if the plates had never been issued, unless waiver of registration fees and penalties is specifically provided for in Iowa Code chapter 321.

**400.45(3)** In accordance with Iowa Code sections 252J.8 and 261.126, the department shall suspend or deny the issuance or renewal of registration and plates upon receipt of a certificate of noncompliance from the child support recovery unit or the college student aid commission.

*a.* The suspension or denial shall become effective 30 days after notice to the vehicle owner and continue until the department receives a withdrawal of the certificate of noncompliance from the child support recovery unit or the college student aid commission.

*b.* If a person who is the named individual on a certificate of noncompliance subsequently purchases a vehicle, the vehicle shall be titled and registered, but the registration shall be immediately suspended.

This rule is intended to implement Iowa Code sections 252J.1, 252J.8, 252J.9, 261.126, 321.101, 321.101A and 321.127.

[ARC 3999C, IAB 9/12/18, effective 10/17/18]

**761—400.46(321) Termination of suspension of registration.** Upon termination of the suspension of registration of a vehicle, the county treasurer shall issue new plates for the vehicle. If the new plates replace a current series of plates, there shall be a replacement fee as provided in Iowa Code section 321.42. If the vehicle is not currently registered at the time the suspension is lifted, the registration fee and penalties due shall be determined as follows:

**400.46(1)** If the registration fee was delinquent at the time that the suspension became effective, the penalty shall continue to accrue on the registration fee until the suspension became lifted and the registration fee is paid. In addition, if the suspension was for failure to pay an additional registration fee, the additional registration fee shall be paid before the suspension is lifted.

**400.46(2)** If the registration fee was not delinquent when the suspension became effective and the suspension is lifted after the beginning of another registration year, the annual registration fee for that year shall be due in the month the suspension is lifted. The penalty shall accrue on the registration fee the first day of the month following the month that the suspension was lifted. The annual registration

fee on a recovered stolen vehicle for which the registration has been suspended shall be prorated for the remaining unexpired months of the registration year.

**400.46(3)** If the registration fee was not delinquent at the time that the suspension became effective and the suspension is lifted during the same registration period, no additional registration fees shall be due unless the suspension was for failure to pay an additional registration fee, in which event the additional registration fee shall be paid before the suspension is lifted.

This rule is intended to implement Iowa Code sections 321.42, 321.105 and 321.134.

**761—400.47(321) Raw farm products.** A vehicle may be operated with a gross weight of 25 percent in excess of the gross weight for which it is registered when transporting a load of raw farm products or soil fertilizers under Iowa Code section 321.466. In addition, the following products shall be considered raw farm products. This list shall not be deemed conclusive and shall not exclude other commodities which might be considered raw farm products:

Animals which are dead	Hides
Berries, fresh	Honey, comb or extracted
Blood	Melons
Corn, ear corn including hybrids	Milk, raw
Corn, shelled	Nursery stock
Corn, cobs	Potatoes
Cream, separated	Peat
Eggs, fresh or frozen in shell	Poultry, live
Flax	Saw logs
Flaxseed	Sod
Fodder	Soybeans
Fruit, fresh	Straw, baled or loose
Grain, threshed or unthreshed	Vegetables, fresh
Hair	Wood, cord or stove wood
Hay, baled or loose	Wool

This rule is intended to implement Iowa Code sections 321.466(4) and 321.466(5).  
[ARC 3999C, IAB 9/12/18, effective 10/17/18]

**761—400.48(321) Special mobile equipment.** Rescinded IAB 3/7/90, effective 4/11/90.

**761—400.49(321) Special mobile equipment transported on a registered vehicle.** Rescinded IAB 3/7/90, effective 4/11/90.

**761—400.50(321,326) Refund of registration fees.**

**400.50(1) Vehicles registered by county treasurer.**

*a.* The department shall refund fees for vehicles registered by the county treasurer pursuant to Iowa Code section 321.126.

*b.* A claim for refund shall be made on a form prescribed by the department. Except as provided in Iowa Code section 321.126, the claim may be submitted to the county treasurer's office in any county.

*c.* Registration plates shall be submitted with the claim if the vehicle is placed in storage or registered for apportioned registration, if the owner of the vehicle moves out of state, or if the plates have not been assigned to a replacement vehicle. If one or both plates have been lost or stolen, the claimant shall certify this fact in writing.

*d.* For a vehicle that was junked, the date on the junking certificate shall determine the date the vehicle was junked.

*e.* If the claim for refund is for excess credit or no replacement vehicle:

(1) The county treasurer shall enter into the state motor vehicle computer system the information required to process the refund. The information shall be entered within three days of receipt of the claim for refund.

(2) The claim for refund shall be approved or denied by the office of vehicle and motor carrier services.

*f.* All other claims for refund shall be forwarded to the office of vehicle and motor carrier services for processing.

**400.50(2) *Vehicles registered by department.*** Forms and instructions for claiming a refund on apportioned registration fees under Iowa Code section 326.15 may be obtained from the office of vehicle and motor carrier services at the address in subrule 400.6(1). The claim for refund shall be filed at the same address.

This rule is intended to implement Iowa Code sections 25.1, 321.126 to 321.128 and 326.15.  
[ARC 3999C, IAB 9/12/18, effective 10/17/18]

**761—400.51(321) Assigned identification numbers.** The department is authorized to issue to the owner an assigned vehicle identification number for a vehicle, an assigned component part number for a component part, and an assigned product identification number for a fence-line feeder, grain cart, or tank wagon. An identification number shall be assigned only if the department is satisfied as to the true identity and ownership of the vehicle, component part, fence-line feeder, grain cart or tank wagon. When an assigned vehicle identification number has been issued for a vehicle, the vehicle shall be registered and titled under that number. An assigned component part number or an assigned product identification number shall be used only for identification purposes.

**400.51(1) *Issuance of an identification number.*** The department shall issue an assigned vehicle identification number, assigned component part number or assigned product identification number, as applicable, only if:

- a.* The original number has been destroyed, removed or obliterated.
- b.* The vehicle has had a cab, body, or frame change and the replacement cab, body, or frame is within the manufacturer's interchangeability parts specifications catalog and is compatible with the make, model, and year of the vehicle. If the replacement cab, body, or frame change is not within the manufacturer's interchangeability parts specifications catalog or is not compatible with the make, year, and model of the vehicle, the vehicle shall be considered reconstructed and subject to rule 761—400.16(321).
- c.* The vehicle is a specially constructed, reconstructed, street rod or replica motor vehicle. See rule 761—400.16(321) for the requirements and procedures applicable to specially constructed, reconstructed, street rod or replica motor vehicles.

**400.51(2) *Procedures.***

*a. Request.* Whenever an assigned identification number is required under subrule 400.51(1) and the request does not apply to a specially constructed, reconstructed, street rod or replica motor vehicle, the owner of the vehicle, component part, fence-line feeder, grain cart or tank wagon, or the person holding lawful custody, shall contact the department's bureau of investigation and identity protection at the address in subrule 400.6(2) and request the assignment of a number.

*b. Examination.* A motor vehicle investigator shall contact the owner and schedule a time and place for examination of the vehicle, component part, fence-line feeder, grain cart or tank wagon and ownership documents. The owner of the vehicle may drive or tow the vehicle to and from the examination location by completing the affidavit to drive section on the certification of compliance form. The affidavit shall state that the vehicle is reasonably safe for operation and must be signed by the owner.

If the vehicle has had a cab, body, or frame change, the owner shall have, for evidence of ownership for the replacement cab, body, or frame, a bill of sale with a description of the part, complete with the manufacturer's identification number, if any, and the name, address, and telephone number of the seller. The bill of sale, the vehicle, and the cab, body, or frame that has been replaced shall be made available for examination at the time and place scheduled.

*c. Assigned vehicle identification number.*

(1) The investigator upon approval of the request shall affix to the vehicle an assigned vehicle identification number and authorize the county treasurer to issue a title and registration for the vehicle.

(2) The owner shall submit the certificate of title and the registration receipt issued for the vehicle to the county treasurer. If the certificate of title is in the possession of a secured party, the county treasurer shall notify the secured party to return the certificate of title to the county treasurer for the purpose of issuing a corrected title. Upon receipt of the notification, the secured party shall submit the certificate of title within ten days. The county treasurer, upon receipt of the certificate of title and the registration receipt, shall issue a corrected title and registration receipt listing as the vehicle identification number the assigned vehicle identification number.

*d. Assigned component part number.* The investigator upon approval of the request shall affix to the component part an assigned component part number and give to the owner a component part form. The owner shall retain the form as a record of issuance and attachment. The form shall be made available on demand by any peace officer for examination.

*e. Assigned product identification number.* The investigator upon approval of the request shall affix an assigned product identification number to the fence-line feeder, grain cart or tank wagon and give to the owner an assigned product identification number form. The owner shall retain the form as a record of issuance and attachment. The form shall be made available on demand by any peace officer for examination.

**400.51(3) Fees.** A certificate of title fee and a fee for a notation of a security interest, if applicable, shall be collected by the county treasurer upon issuance of a corrected certificate of title. A corrected certificate of title shall not be required for a name change.

This rule is intended to implement Iowa Code sections 321.1, 321.43 and 321.92.

[ARC 9048B, IAB 9/8/10, effective 10/13/10; ARC 0136C, IAB 5/30/12, effective 7/4/12; ARC 3999C, IAB 9/12/18, effective 10/17/18]

#### **761—400.52(321) Odometer statement.**

**400.52(1)** Pursuant to Iowa Code section 321.71 and 49 U.S.C. Section 32705, an odometer disclosure statement shall be submitted with an application for certificate of title for a motor vehicle. The statement shall provide a current odometer reading and reflect whether the mileage is “actual,” “not actual” or “exceeds mechanical limits.”

**400.52(2)** If the transferor failed to provide an odometer disclosure statement or if the transferee lost the statement, and the transferee has attempted in good faith to contact the transferor to obtain a statement, the transferee may file a sworn statement of these facts on a form prescribed by the department. The sworn statement shall be accepted by the county treasurer or the department in lieu of the required odometer disclosure statement. The subsequent title issued from the sworn statement will record “not actual” mileage.

**400.52(3)** A model year formula for odometer statements shall be the current year minus ten. The resulting number represents the first model year for which a motor vehicle is exempt from the odometer statement requirements incident to a transfer.

This rule is intended to implement Iowa Code section 321.71.

#### **761—400.53(321) Stickers.**

**400.53(1) Placement of validation sticker.** The validation sticker shall be affixed to the lower left corner of the rear registration plate. EXCEPTIONS: For motorcycle, autocycle and small trailer plates, the validation sticker shall be affixed to the upper left corner of the plate. For natural resources plates, the sticker may be affixed to the lower right corner of the rear plate.

**400.53(2) Special fuel user identification sticker.** If the vehicle uses a special fuel as defined in Iowa Code section 452A.2, a special fuel user identification sticker shall be issued. This sticker shall be displayed on the cover of the fuel inlet of the motor vehicle or on the outside panel of the motor vehicle within 3 inches of the fuel inlet so as to be in view when fuel is delivered into the motor vehicle.

**400.53(3) Persons with disabilities parking sticker.** A persons with disabilities special registration plate parking sticker shall be affixed to the lower right corner of the rear registration plate.

**400.53(4) *Special truck sticker.*** An owner of a special truck, registered pursuant to Iowa Code section 321.121, who has been issued either regular registration plates or special registration plates other than special truck registration plates must obtain from the county treasurer a sticker which distinguishes the vehicle as a special truck. The sticker shall be affixed to the lower right corner of the rear registration plate. **EXCEPTION:** If the vehicle displays front and rear plates, two stickers shall be issued with one sticker affixed to the lower right corner of the front plate and rear plate. For natural resources plates, the stickers must be affixed to the lower left corner of the front and rear plates.

This rule is intended to implement Iowa Code sections 321.34, 321.40, 321.41, 321.121 and 321.166. [ARC 9833B, IAB 11/2/11, effective 12/7/11; ARC 2985C, IAB 3/15/17, effective 4/19/17; ARC 3999C, IAB 9/12/18, effective 10/17/18]

**761—400.54(321) Registration card issued for trailer-type vehicles.** The registration card issued for trailer-type vehicles shall be carried in the vehicle which is described on the card or the registration card may be carried in the driver's compartment of the towing vehicle. If the registration card is carried in the vehicle which is described on such card, the registration card shall be enclosed in a registration card holder and the holder shall be attached to the vehicle so that the registration card may be viewed by any peace officer upon request.

This rule is intended to implement Iowa Code section 321.32.

**761—400.55(321) Damage disclosure statement.**

**400.55(1)** If the transferor failed to provide a damage disclosure statement or if the transferee lost the statement, and the transferee has attempted in good faith to contact the transferor to obtain a statement, the transferee may file a sworn statement of these facts. The transferee shall also complete section 2 of a separate damage disclosure statement and sign on the buyer's line. The sworn statement and damage disclosure statement completed by the transferee shall be accepted by the county treasurer or the department in lieu of the damage disclosure statement required from the transferor.

**400.55(2)** A model year formula for damage disclosure statements shall be the current year minus eight. The resulting number represents the first model year for which a motor vehicle is exempt from the damage disclosure statement requirements incident to a transfer.

This rule is intended to implement Iowa Code section 321.69.

**761—400.56(321) Hearings.** The department shall send notice by certified mail to a person whose certificate of title, vehicle registration, license, or permit is to be revoked, suspended, canceled, or denied. The notice shall be mailed to the person's mailing address as shown on departmental records and shall become effective 20 days from the date mailed. A person who is aggrieved by a decision of the department and who is entitled to a hearing may contest the decision in accordance with 761—Chapter 13. The request shall be submitted in writing to the director of the office of vehicle and motor carrier services at the address in subrule 400.6(1). The request for a contested case shall be deemed timely submitted if it is delivered or postmarked on or before the effective date specified in the notice of revocation, suspension, cancellation, or denial.

This rule is intended to implement Iowa Code sections 17A.10 to 17A.19, 321.101 and 321.102. [ARC 9048B, IAB 9/8/10, effective 10/13/10; ARC 3999C, IAB 9/12/18, effective 10/17/18]

**761—400.57(321) Non-resident-owned vehicles.** Rescinded IAB 2/6/02, effective 3/13/02.

**761—400.58(321) Motorized bicycles.** The following rules shall apply to motorized bicycles.

**400.58(1) *Maximum speed.*** If the department has reasonable cause to believe that a particular vehicle or model is capable of speeds exceeding 39 miles per hour, the department may conduct independent tests to determine the maximum speed of the vehicle or model. If the department determines that the maximum speed of the particular vehicle or model exceeds 39 miles per hour, the vehicle or model shall not be registered as a motorized bicycle.

**400.58(2) Identification of a vehicle as a motorized bicycle.** Registration plates issued for motorcycles shall also be issued for motorized bicycles.

This rule is intended to implement Iowa Code sections 321.1 and 321.166.  
[ARC 2887C, IAB 1/4/17, effective 2/8/17]

**761—400.59(321) Registration documents lost or damaged in transit through the United States postal service.** To obtain without cost the reissuance of registration documents that were sent by the county treasurer to the owner through the United States postal service and which were lost or damaged in transit, the owner of the vehicle shall file application for reissuance within 60 days of the date the documents were issued by the county treasurer.

This rule is intended to implement Iowa Code section 321.42.

**761—400.60(321) Credit of registration fees.**

**400.60(1) Credit for unexpired registration fee.** The applicant may claim credit, as specified in Iowa Code subsection 321.46(3), toward the registration fee for one newly acquired replacement vehicle.

a. The credit may be claimed only when the owner of the newly acquired vehicle is applying for a certificate of title and registration (or just registration if the vehicle is not subject to titling provisions) for the newly acquired vehicle.

b. For a junked vehicle, the date on the junking certificate shall determine the date the vehicle was junked.

c. Excess credit shall not be applied toward the registration fee for a second vehicle.

d. Credit shall be allowed for one or two vehicles which have been sold, traded or junked toward one replacement vehicle. Credit shall be based on the remaining unexpired months of the registration year(s) of the vehicle(s) sold, traded or junked.

**400.60(2) Credit for transfer to spouse, parent or child.** Credit shall be allowed toward a new registration for a vehicle being transferred to the applicant from the applicant's spouse, parent or child, or from a former spouse pursuant to a dissolution of marriage decree, if application for the certificate of title and registration (or just registration if the vehicle is not subject to titling provisions) is made within 30 days after the date of transfer. If the owner is deceased, credit may be transferred under rule 761—400.14(321) of this chapter.

**400.60(3) Credit from/to apportioned registration.**

a. Pursuant to Iowa Code section 321.46A, an owner may claim credit toward the registration fees due when changing a vehicle's registration from apportioned registration under Iowa Code chapter 326 to registration under Iowa Code chapter 321. The owner shall surrender proof of apportioned registration to the county treasurer. Credit shall be allowed for the unexpired complete calendar months remaining in the registration year from the date the application is filed with the county treasurer.

b. Pursuant to Iowa Code sections 321.126 and 321.127, the owner or lessee of a motor vehicle may claim credit for the apportioned registration fees due when changing the vehicle's registration from registration by the county treasurer to apportioned registration. Application for apportioned registration shall be submitted to the department's office of vehicle and motor carrier services; see 761—Chapter 500.

**400.60(4) Assignment of credit and registration plates from lessor to lessee.** When a lessee purchases the leased vehicle and within 30 days requests the assignment of the vehicle's fee credit and registration plates, the lessor shall assign the registration fee credit and registration plates for the purchased vehicle to the lessee.

This rule is intended to implement Iowa Code sections 321.46, 321.46A, 321.48, 321.126 and 321.127.

[ARC 3999C, IAB 9/12/18, effective 10/17/18]

**761—400.61(321) Reassignment of registration plates.**

**400.61(1)** Registration plates may be reassigned if one of the owners listed on the registration receipt before the transfer is also a listed owner following the transfer.

**400.61(2)** Registration plates may be reassigned when credit is allowed toward a new registration for a vehicle being transferred to the owner's spouse, parent, or child, or to a former spouse pursuant to a dissolution of marriage decree. If the owner is deceased, plates may be transferred under rule 761—400.14(321).

**400.61(3)** Registration plates shall not be reassigned between a natural person or persons and a corporation, association, copartnership, company, or firm.

**400.61(4)** Registration plates may be reassigned and credit allowed if two or more corporations, associations, partnerships, or firms merge into one corporation, association, partnership or firm.

**400.61(5)** Registration plates may be assigned and credit allowed if an owner listed on the certificate of title and registration transfers ownership of the vehicle to a trust created by that owner.

This rule is intended to implement Iowa Code sections 321.34 and 321.46.

**761—400.62(321) Storage of registration plates, certificate of title forms and registration forms.** Registration plates, certificate of title forms and registration forms which are consigned to county treasurers by the department shall be stored in a secure location. The location may be within the office of the county treasurer which is accessible only to authorized persons or in a storage area located outside the general office area assigned to the county treasurer. Any storage area located outside the general office area assigned to the county treasurer shall be of the construction that it is accessible only to authorized persons, as designated by the county treasurer or department.

This rule is intended to implement Iowa Code sections 321.5, 321.8, and 321.167.

**761—400.63(321) Disposal of surrendered registration plates.** The county treasurer shall either destroy plates that have been surrendered to the county treasurer or return the surrendered plates to Iowa state industries for recycling.

This rule is intended to implement Iowa Code sections 321.5 and 321.171.

**761—400.64(321) County treasurer's report of motor vehicle collections and funds.** The county treasurer shall file the report provided for in Iowa Code section 321.153 in a manner prescribed by the department.

This rule is intended to implement Iowa Code section 321.153.

**761—400.65 to 400.69** Reserved.

**761—400.70(321) Removal of registration and plates by peace officer under financial liability coverage law.** This rule applies to instances when a peace officer issues a citation and removes the registration receipt and registration plates of a motor vehicle registered in this state when the driver of the motor vehicle is unable to provide proof of financial liability coverage. This rule applies regardless of whether the vehicle was also impounded.

**400.70(1)** The peace officer shall forward the registration receipt and evidence of the violation to the county treasurer of the county in which the motor vehicle is registered. Evidence of the violation is one of the following:

*a.* A copy of the citation. The citation must either reference Iowa Code subparagraph 321.20B(4)“a”(3) or 321.20B(4)“a”(4), as applicable, or reference Iowa Code section 321.20B and indicate whether or not the vehicle was impounded.

*b.* A written statement from the peace officer listing the plate number of the registration plate removed from the vehicle and the vehicle owner's name. The statement must either reference Iowa Code subparagraph 321.20B(4)“a”(3) or 321.20B(4)“a”(4), as applicable, or reference Iowa Code section 321.20B and indicate whether or not the vehicle was impounded. The statement must be signed by the peace officer or an employee of the law enforcement agency.

**400.70(2)** The peace officer may either destroy removed plates or deliver the removed plates to the county treasurer for destruction.

This rule is intended to implement Iowa Code section 321.20B.

**761—400.71(321) Lemon law designation.** Rescinded IAB 11/7/07, effective 12/12/07.

[761—Chapter 400 appeared as Ch 11, Department of Public Safety, 1973 IDR]

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<sup>◇</sup> Two or more ARCs



CHAPTER 401  
SPECIAL REGISTRATION PLATES

**761—401.1(321) Definition.** “Special registration plates” means those registration plates issued under Iowa Code sections 321.34 and 321.105 other than regular or sample plates. Special registration plates shall be issued in accordance with Iowa Code sections 321.34 and 321.105, this chapter of rules, and other applicable provisions of law.

**761—401.2(321) Application, issuance and renewal.**

**401.2(1) Original application.**

*a.* Except for collegiate plates, application for letter-number designated special registration plates that do not have eligibility requirements shall be made directly to the county treasurer’s office; no application form is required for these plates.

*b.* Collegiate plates, personalized plates, and special registration plates that have eligibility requirements must be requested using an application form prescribed by the department. Unless otherwise specified, completed application forms for these plates shall be submitted to the department at the following address: Office of Vehicle and Motor Carrier Services, Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278. Application forms may be obtained from the office of vehicle and motor carrier services or from any county treasurer’s office. Application forms are also available on the department’s website at [www.iowadot.gov](http://www.iowadot.gov).

*c.* The issuance fee, if any, shall be submitted with the application.

**401.2(2) Issuance.**

*a.* Special registration plates shall be issued only to a person who is an owner or lessee of the vehicle and is entitled to the special registration plates.

*b.* Special registration plates shall not be issued unless the vehicle is currently registered and the registration plates previously issued are surrendered to the county treasurer. Special registration plates are void if they are not assigned to a vehicle within 90 days after the date the department orders them. A new application and a new issuance fee are required if the plates are reordered after the 90-day period.

*c.* and *d.* Rescinded IAB 11/7/07, effective 12/12/07.

**401.2(3) Renewal.** Special registration plates are renewed at the office of the county treasurer of the county of residence of the applicant. The renewal fee, if any, is termed a “validation” fee. The validation fee shall be paid when the regular annual registration fee is due and is in addition to the regular annual registration fee. If renewal is delinquent for more than one month:

*a.* A new application and a new issuance fee are required.

*b.* The department may issue the combination of characters on personalized plates to another applicant.

**401.2(4) Fees.** The issuance and validation fees for the various types of special registration plates that are available are set out in Iowa Code section 321.34.

[ARC 9048B, IAB 9/8/10, effective 10/13/10; ARC 3935C, IAB 8/1/18, effective 9/5/18]

**761—401.3** Reserved.

**761—401.4(321) Gift certificates.** Gift certificates for collegiate plates, personalized plates, and special registration plates that have eligibility requirements may be purchased using the prescribed plate application form. Gift certificates for special registration plates that counties have in their inventories may be purchased from county treasurers’ offices.

**761—401.5(321) Amateur radio call letter plates.** Application for amateur radio call letter plates shall be made to the county treasurer on a form prescribed by the department. The number of the amateur radio license issued by the Federal Communications Commission shall be listed on the application.

**761—401.6(321) Personalized plates.**

**401.6(1) Application.** Application for personalized plates shall be submitted to the department on a form prescribed by the department.

**401.6(2) Characters.** The personalized plates shall consist of no fewer than two nor more than seven characters except that personalized plates for motorcycles, autocycles and small trailers shall consist of no fewer than two nor more than six characters.

a. The characters “A” to “Z” and “1” to “9” may be used. Zeros shall not be used.

b. The personalized plates shall not duplicate combinations of characters reserved or issued for any other vehicle plate series under Iowa Code chapter 321.

c. No combination of characters denoting a governmental agency shall be issued.

d. The department shall not issue any combination of characters it determines is:

- (1) Sexual in connotation;
- (2) A term of vulgarity, contempt, prejudice, hostility, insult, or racial or ethnic degradation;
- (3) Recognized as a swear word;
- (4) A reference to an illegal substance;
- (5) A reference to a criminal act;
- (6) Offensive; or
- (7) A foreign word falling into any of these categories.

**401.6(3) Renewal.** Rescinded IAB 11/23/05, effective 12/28/05.

**401.6(4) Reassignment.** Rescinded IAB 11/23/05, effective 12/28/05.

**401.6(5) Gift certificate.** Rescinded IAB 11/23/05, effective 12/28/05.

[ARC 2985C, IAB 3/15/17, effective 4/19/17]

#### **761—401.7(321) Collegiate plates.**

**401.7(1) Application.** Application for collegiate plates shall be submitted to the department on a form prescribed by the department. The applicant may request letter-number designated collegiate plates or personalized collegiate plates. Collegiate plates for motorcycles, autocycles and small trailers are not available.

**401.7(2) Characters.** Personalized collegiate plates shall be issued in accordance with subrule 401.6(2) except that personalized collegiate plates are not available for motorcycles, autocycles and small trailers.

**401.7(3) Renewal.** Rescinded IAB 11/23/05, effective 12/28/05.

**401.7(4) Reassignment.** Rescinded IAB 11/23/05, effective 12/28/05.

**401.7(5) Gift certificate.** Rescinded IAB 11/23/05, effective 12/28/05.

[ARC 2985C, IAB 3/15/17, effective 4/19/17]

#### **761—401.8(321) Medal of Honor plates.**

**401.8(1) Application.** Application for Medal of Honor plates shall be submitted to the department on a form prescribed by the department. The applicant shall attach a copy of the official government document verifying receipt of the medal of honor.

**401.8(2) Medal of Honor plates are limited to five characters.** Personalized plates are not available.

#### **761—401.9(321) Firefighter plates.**

**401.9(1) Initial application for firefighter plates.** Application for firefighter plates shall be submitted to the department in a manner prescribed by the department. Both the fire chief and another fire officer of the paid or volunteer fire department shall sign the application, certifying that the applicant is a current or retired member of the fire department. If the fire chief and fire officer deny an application, the department may conduct an investigation and make a determination to approve or deny the application.

**401.9(2) Renewal of firefighter plates for a current member.** A new application is required in order to renew firefighter plates issued to a current member. The application shall be submitted to the county treasurer’s office.

**401.9(3) Renewal of firefighter plates for a retired member.**

a. A new application is not required in order to renew firefighter plates issued to a retired member if the initial application for firefighter plates is made after January 1, 2005.

b. For firefighter plates issued to a retired member prior to January 1, 2005, a new application is required in order to renew firefighter plates until the plates have been renewed once after January 1, 2005. The application shall be submitted to the county treasurer's office.

**401.9(4) Plates.** Firefighter plates are limited to five characters. Personalized plates are not available. When a new series of firefighter plates is issued to replace a current series or the plate has been lost, stolen, or damaged, an applicant may obtain replacement plates containing the applicant's previous plate number upon payment of the statutory fee.

**401.9(5) Definitions.** The following definitions apply to this rule:

"*Current*" means a member who has at least one year of service and is in good standing, as determined by the fire chief.

"*Fire officer*" means a member of the same fire department as the applicant and who is second in command to the fire chief.

"*Retired*" or "*officially retired*" means a former member who has a minimum of ten years' total service in good standing, as determined by the fire chief.

[ARC 0778C, IAB 6/12/13, effective 7/17/13; ARC 4344C, IAB 3/13/19, effective 4/17/19]

### **761—401.10(321) Emergency medical services plates.**

**401.10(1)** Application for emergency medical services (EMS) plates shall be submitted to the department on a form prescribed by the department. The applicant and the applicant's service director shall sign the application form certifying that the applicant is a current member of a paid or volunteer emergency medical services agency. For purposes of this subrule, "service director" means a service director as defined in Iowa department of public health rule 641—132.1(147A).

**401.10(2)** A vehicle owner whose membership in a paid or volunteer emergency medical services agency is terminated shall within 30 days after termination surrender the EMS plates to the county treasurer in exchange for regular registration plates.

**401.10(3)** EMS plates are limited to five characters. Personalized plates are not available. When a new series of EMS plates is issued to replace a current series or the plate has been lost, stolen, or damaged, an applicant may obtain replacement plates containing the applicant's previous plate number upon payment of the statutory fee.

[ARC 0136C, IAB 5/30/12, effective 7/4/12; ARC 0778C, IAB 6/12/13, effective 7/17/13; ARC 3935C, IAB 8/1/18, effective 9/5/18]

**761—401.11(321) Natural resources plates.** Letter-number designated natural resources plates are limited to five characters. Personalized natural resources plates shall consist of no less than two nor more than five characters and shall be issued in accordance with subrule 401.6(2), paragraphs "a" to "d."

**761—401.12(321) Natural resources plates—personalized.** Rescinded IAB 11/23/05, effective 12/28/05.

### **761—401.13(321) Disabled veteran plates.**

**401.13(1)** Disabled veteran plates are issued in accordance with Iowa Code sections 321.34, 321.105 and 321.166.

**401.13(2)** To apply for disabled veteran plates for a motor vehicle, the disabled veteran shall submit to the county treasurer a certification from the U.S. Department of Veterans Affairs that the United States government has provided or has assisted in providing the motor vehicle to the disabled veteran. The certification is required when the motor vehicle is first registered. Another certification may be required for the first registration of a newly acquired vehicle or when the veteran moves to another county.

**401.13(3)** The disabled veteran plates shall be surrendered to the county treasurer in exchange for regular registration plates within 30 days after the death of the disabled veteran. The motor vehicle to which the plates are assigned shall become subject to the payment of regular registration fees on the first day of the month following the death of the disabled veteran. The registration fees shall be prorated for the remaining unexpired months of the registration year.

**761—401.14** Reserved.

**761—401.15(17A,321) Nonprofit organization decal.** The following shall apply to all applications for an organization decal under Iowa Code section 321.34(13).

**401.15(1)** Application to request a new decal shall be submitted to the department on Form 411346. The application shall be subject to the requirements in Iowa Code section 321.34(13) and shall include all of the information and documentation required by Iowa Code section 321.34(13) “c.” An organization applying for approval of a decal shall meet the criteria set forth in Iowa Code section 321.34(13) “b”(1). A group of organizations applying for approval of a decal must have a common purpose as required by Iowa Code section 321.34(13) “b”(2), and each organization within the group must meet the criteria set forth in Iowa Code section 321.34(13) “b”(1).

**401.15(2)** The proposed decal shall be designed to be placed in the space reserved for the placement of an organization decal and shall be limited to dimensions of 2.875” in width and 3” in height. As required by Iowa Code section 321.34(13) “d,” the proposed decal design shall not:

- a. Promote a specific religion, faith or anti-religious sentiment.
- b. Have any sexual connotation.
- c. Be vulgar, prejudiced, hostile, insulting, or racially or ethnically degrading.

**401.15(3)** The office of vehicle and motor carrier services may consult with other organizations, law enforcement authorities, and the general public concerning the decal design.

**401.15(4)** Within 60 days after receiving the application, the office of vehicle and motor carrier services shall advise the organization of the department’s approval or denial of the application. The department reserves the right to approve or disapprove any decal design.

**401.15(5)** If the decal is approved and at a later date it is determined that a false application was submitted, or a violation of Iowa Code section 321.34(13) or this chapter occurred, the department shall revoke the decal and the organization shall no longer issue the decal.

**401.15(6)** If the department denies or revokes the decal design, the department shall send notice of the denial or revocation by certified mail to the organization at the address listed on the application. The revocation or denial shall become effective 20 days from the date of mailing. The organization may contest the decision of the department in accordance with 761—Chapter 13. The request shall be deemed timely if it is delivered or postmarked on or before the effective date specified in the notice.

[ARC 9048B, IAB 9/8/10, effective 10/13/10; ARC 3935C, IAB 8/1/18, effective 9/5/18]

**761—401.16(17A,321) Special plates with space reserved for a nonprofit organization decal.**

**401.16(1)** Application for special plates with space reserved for an organization decal shall be subject to the requirements in Iowa Code section 321.34(13).

**401.16(2)** A person shall obtain the decal to display on the special registration plate from an organization approved by the department. A person shall not display a decal on a vehicle registration plate other than a decal approved by the department. An approved decal shall only be affixed to and displayed in the space reserved for placement of the organization decal on the registration plate.

**401.16(3)** Personalized special plates with space reserved for an organization decal shall be limited to no more than five initials, letters, or combinations of numerals and letters.

[ARC 3935C, IAB 8/1/18, effective 9/5/18]

**761—401.17(321) State agency-sponsored processed emblem plates.** Rescinded ARC 3935C, IAB 8/1/18, effective 9/5/18.

**761—401.18(321) Combat infantryman badge, combat action badge, combat action ribbon, air force combat action medal, combat medical badge, fallen peace officers and civil war sesquicentennial plates.** Following is the application and approval process for special plate requests under Iowa Code section 321.34(20C).

**401.18(1) Design.**

a. The plates shall be a standard background plate with a distinguishing processed emblem specific to each plate type.

*b.* The distinguishing processed emblem shall be limited to 2.875" × 3" on the registration plate.

*c.* A distinguishing processed emblem owned or subject to legal rights of another person will not be used unless the department receives certification from the person that allows use of the emblem. The certification must include a statement holding the department harmless for using the emblem on a registration plate.

*d.* The office of vehicle and motor carrier services may consult with other organizations, law enforcement authorities, and the general public concerning distinguishing processed emblems.

**401.18(2) Production.** None of the special registration plates subject to this rule will be manufactured or issued until 250 paid applications are submitted to the department. This minimum order requirement applies to each of the special registration plates subject to this rule. Each application must be accompanied by a statutory start-up fee.

**401.18(3) Discontinuance.** If 250 paid applications for any special registration plate subject to this rule are not submitted within one year after the date the department makes the plate available for application, the department shall report that fact to the legislature at the next regular session of the general assembly and request authority to discontinue the special registration plate.

**401.18(4) Application process.**

*a.* Applications for either letter-number designated or personalized combat infantryman badge, combat action badge, combat action ribbon, air force combat action medal, or combat medical badge special registration plates shall be submitted to the department on a form prescribed by the department. The applicant shall attach to the application a copy of an official government document verifying award of the combat infantryman badge, combat action badge, combat action ribbon, air force combat action medal or combat medical badge to the applicant.

*b.* Applications for letter-number designated civil war sesquicentennial or fallen peace officers special registration plates shall be submitted to the county treasurer.

*c.* Applications for personalized civil war sesquicentennial or fallen peace officers special registration plates shall be submitted to the department on a form prescribed by the department.

**401.18(5) Characters.** Plates are limited to five characters. Personalized plates shall consist of no less than two nor more than five characters and shall be issued in accordance with subrule 401.6(2), paragraphs "a" to "d."

**401.18(6) Right of approval.** The department reserves the right to approve or disapprove any application.

[ARC 9833B, IAB 11/2/11, effective 12/7/11; ARC 3935C, IAB 8/1/18, effective 9/5/18]

**761—401.19(321) Legion of Merit plates.** Application for special plates with a Legion of Merit processed emblem shall be submitted to the department on a form prescribed by the department. The applicant shall attach a copy of the official government document verifying receipt of the Legion of Merit. Personalized plates with a Legion of Merit processed emblem are not available. Pursuant to Iowa Code section 321.34, an applicant is eligible for one set of Legion of Merit plates at a reduced annual registration fee of \$15 for one vehicle owned. However, an applicant may obtain additional Legion of Merit plates upon payment of the regular annual registration fee.

[ARC 9048B, IAB 9/8/10, effective 10/13/10]

**761—401.20(321) Persons with disabilities plates.**

**401.20(1) Application.** Application for special plates with a persons with disabilities processed emblem shall be submitted to the county treasurer on a form prescribed by the department.

*a.* The application shall comply with the requirements of 761—subrule 411.3(2) and shall certify that the owner or the owner's child is a person with a disability, as defined in Iowa Code section 321L.1, and that the disability is permanent.

*b.* If the person with a disability is a child, the parent or guardian shall complete the proof of residency certification on the application or complete and submit a separate proof of residency Form 411120, certifying that the child resides with the owner.

*c.* In lieu of submitting the statement of disability required in 761—subrule 411.3(2), an individual who is eligible for disabled veteran plates but has not been issued them may submit certification from

the U.S. Department of Veterans Affairs that the United States government has provided or assisted in providing a motor vehicle to the individual.

**401.20(2) Definition.**

“Child” includes, but is not limited to, stepchild, foster child, or legally adopted child who is younger than 18 years of age, or a dependent person 18 years of age or older who is unable to maintain the person’s self.

**401.20(3) Renewal.** The owner shall, at renewal time, submit a persons with disabilities parking permit application pursuant to rule 761—411.3(321L) that includes all required documentation and shows the owner or the owner’s child remains permanently disabled and has a continuing need for the plates.

[ARC 0136C, IAB 5/30/12, effective 7/4/12; ARC 3450C, IAB 11/8/17, effective 12/13/17]

**761—401.21(321) Ex-prisoner of war plates.**

**401.21(1)** Application for special plates with an ex-prisoner of war processed emblem shall be submitted to the department on a form prescribed by the department. The applicant shall attach a copy of an official government document verifying that the applicant was a prisoner of war. If the document is not available, a person who has knowledge that the applicant was a prisoner of war shall sign a statement to that effect on the application form.

**401.21(2)** The surviving spouse of a person who was issued ex-prisoner of war plates may continue to use or apply for the plates. If the surviving spouse remarries, the surviving spouse shall surrender the plates to the county treasurer in exchange for regular registration plates within 30 days after the date on the marriage certificate. Ex-prisoner of war plates may not be reissued once this event occurs.

**401.21(3)** Personalized plates with an ex-prisoner of war processed emblem are not available.

**761—401.22(321) National guard plates.** Application for special plates with a national guard processed emblem shall be submitted to the department on a form prescribed by the department. The unit commander of the applicant shall sign the application form confirming that the applicant is a member of the Iowa national guard.

**761—401.23(321) Pearl Harbor plates.** Application for special plates with a Pearl Harbor processed emblem shall be submitted to the department on a form prescribed by the department. The applicant shall attach a copy of an official government document verifying that the applicant was stationed at Pearl Harbor, Hawaii, as a member of the armed forces on December 7, 1941.

**761—401.24(321) Purple Heart, Silver Star and Bronze Star plates.** Application for special plates with a Purple Heart, Silver Star, or Bronze Star processed emblem shall be submitted to the department on a form prescribed by the department. To verify receipt of the medal, the applicant shall attach a copy of one of the following:

1. The official military order confirming the medal.
2. The report of discharge or federal Form DD214.
3. Other documentation approved by the Iowa office of the adjutant general.

**761—401.25(321) U.S. armed forces retired plates.** Application for special plates with a United States armed forces retired processed emblem shall be submitted to the department on a form prescribed by the department. A person is considered to be retired if the person is recognized by the United States armed forces as retired from the United States armed forces. To verify retirement from the United States armed forces, the applicant shall attach a copy of one of the following:

1. The official military order confirming retirement from the armed forces.
2. The report of discharge or federal Form DD214.
3. Other documentation approved by the Iowa office of the adjutant general.

**761—401.26** Reserved.

**761—401.27(321) Iowa heritage plates.** Rescinded IAB 11/23/05, effective 12/28/05.

**761—401.28(321) Education plates.** Rescinded IAB 11/23/05, effective 12/28/05.

**761—401.29(321) Love our kids plates.** Rescinded IAB 11/23/05, effective 12/28/05.

**761—401.30(321) Motorcycle rider education plates.** Rescinded IAB 11/23/05, effective 12/28/05.

**761—401.31(321) Veteran plates.** Application for special plates with a veteran processed emblem shall be submitted to the commission of veterans affairs on a form prescribed by the department of transportation. The commission of veterans affairs shall determine whether the applicant is a veteran and, if so, certify this fact on the application form.

**761—401.32(321) Surrender of plates.** Special registration plates issued to a person who is no longer eligible for the plates shall be surrendered to the county treasurer in exchange for regular registration plates within 30 days after the date of the event that made the person ineligible. If the vehicle was exempt from the payment of regular registration fees due to the type of special registration plates issued, the vehicle shall become subject to the payment of regular registration fees on the first day of the month following the date of the event that made the person ineligible. The regular registration fees shall be prorated for the remaining unexpired months of the registration year.

**761—401.33(321) Validation fees.** Validation fees shall not be prorated. The annual validation fee is due when there is a change in registration month.

**761—401.34(321) Reassignment of plates.**

**401.34(1)** A vehicle owner or lessee who has special registration plates assigned to a currently registered vehicle may request that the plates be reassigned to another currently registered vehicle owned or leased by that person or owned or leased by another person. However, special registration plates that have eligibility requirements may not be reassigned to a vehicle owned or leased by another person.

**401.34(2)** To reassign plates to a vehicle owned or leased by another person, a written request for reassignment signed by both the assignor and assignee shall be submitted to the county treasurer of the assignee's county of residence. The special registration plates shall be issued to the assignee by the county treasurer of the assignee's county of residence in exchange for the registration plates previously issued.

**401.34(3)** When ownership of a vehicle is transferred to another person, the owner shall, within 30 days after the transfer, either surrender the special registration plates to the county treasurer or request reassignment of the plates, as explained in subrules 401.34(1) and 401.34(2).

**401.34(4)** When the lease for a vehicle is terminated, the lessee shall, within 30 days after the termination, either surrender the special registration plates to the county treasurer or request reassignment of the plates, as explained in subrules 401.34(1) and 401.34(2).

**761—401.35(321) Revocation of special registration plates—appeal.**

**401.35(1)** Special registration plates shall be revoked if they have been issued in conflict with the statutes or rules governing the plates' issuance. Revoked plates shall be surrendered to the department within 30 days of the date of revocation.

**401.35(2)** The department shall send the notice of revocation to a person's mailing address by certified mail, and the revocation shall become effective 20 days from the date of mailing. The person may contest the decision of the department in accordance with 761—Chapter 13. The request shall be deemed timely if it is delivered or postmarked on or before the effective date specified in the notice.

[ARC 3935C, IAB 8/1/18, effective 9/5/18]

**761—401.36(321) Refund of fees.** No refund of fees for special registration plates shall be allowed unless the special plates were issued in conflict with the statutes or rules governing their issuance.

These rules are intended to implement Iowa Code sections 35A.11, 321.34, 321.105, 321.166 and 321L.1 and chapter 17A.

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[Filed ARC 2985C (Notice ARC 2908C, IAB 1/18/17), IAB 3/15/17, effective 4/19/17]

[Filed ARC 3450C (Notice ARC 3304C, IAB 9/13/17), IAB 11/8/17, effective 12/13/17]

[Filed ARC 3935C (Notice ARC 3820C, IAB 6/6/18), IAB 8/1/18, effective 9/5/18]

[Filed ARC 4344C (Notice ARC 4232C, IAB 1/16/19), IAB 3/13/19, effective 4/17/19]

CHAPTER 425  
MOTOR VEHICLE AND TRAVEL TRAILER DEALERS,  
MANUFACTURERS, DISTRIBUTORS AND WHOLESALERS  
[Prior to 7/17/96, see 761—Chapters 420 and 422]

**761—425.1(322) Introduction.**

**425.1(1)** This chapter applies to the licensing of motor vehicle and travel trailer dealers, manufacturers, distributors and wholesalers. Also included in this chapter are the criteria for the issuance and use of dealer plates.

**425.1(2)** The office of vehicle and motor carrier services administers this chapter. The mailing address is: Office of Vehicle and Motor Carrier Services, Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278.

*a.* Applications required by the chapter shall be submitted to the office of vehicle and motor carrier services.

*b.* Information about dealer plates and the licensing of motor vehicles and travel trailer dealers, manufacturers, distributors and wholesalers is available from the office of vehicle and motor carrier services or on the department's website at [www.iowadot.gov](http://www.iowadot.gov).

[ARC 9048B, IAB 9/8/10, effective 10/13/10; ARC 3687C, IAB 3/14/18, effective 4/18/18]

**761—425.2** Reserved.

**761—425.3(322) Definitions.** The following definitions, in addition to those found in Iowa Code sections 322.2 and 322C.2, apply to this chapter of rules:

*“Certificate of title”* means a document issued by the appropriate official which contains a statement of the owner's title, the name and address of the owner, a description of the vehicle, a statement of all security interests, and additional information required under the laws or rules of the jurisdiction in which the document was issued, and which is recognized as a matter of law as a document evidencing ownership of the vehicle described. The terms “title certificate,” “title only” and “title” shall be synonymous with the term “certificate of title.”

*“Consumer use”* means use of a motor vehicle or travel trailer for business or pleasure, not for sale at retail, by a person who has obtained a certificate of title and has registered the vehicle under Iowa Code chapter 321.

*“Dealer,”* unless otherwise specified, means a person who is licensed to engage in this state in the business of selling motor vehicles or travel trailers at retail under Iowa Code chapter 322 or 322C.

*“Engage in this state in the business”* or similar wording means doing any of the following acts for the purpose of selling motor vehicles or travel trailers at retail: to acquire, sell, exchange, hold, offer, display, broker, accept on consignment or conduct a retail auction, advertise as being engaged in any of those acts, or to act as an agent for the purpose of doing any of those acts. A person selling at retail more than six motor vehicles or six travel trailers during a 12-month period may be presumed to be engaged in the business. See rule 761—425.20(322) for provisions regarding fleet sales and retail auction sales.

*“Manufacturer's certificate of origin”* means a certification signed by the manufacturer, distributor or importer that the vehicle described has been transferred to the person or dealer named, and that the transfer is the first transfer of the vehicle in ordinary trade and commerce. The terms “manufacturer's statement,” “importer's statement or certificate,” “MSO” and “MCO” shall be synonymous with the term “manufacturer's certificate of origin.” See rule 761—400.1(321) for more information.

*“Principal place of business”* means a building actually occupied where the public and the department may contact the owner or operator during regular business hours. In lieu of a building, a travel trailer dealer may use a manufactured or mobile home as an office if taxes are current or a travel trailer as an office if registration fees are current. The principal place of business must be located in this state.

*“Registered dealer”* means a dealer licensed under Iowa Code chapter 322 or 322C who possesses a current dealer certificate under Iowa Code section 321.59.

“*Regular business hours*” means to be consistently open to the public on a weekly basis at hours reported to the office of vehicle services. Except as provided in Iowa Code section 322.36, regular business hours for a motor vehicle or travel trailer dealer shall include a minimum of 32 posted hours between 7 a.m. and 9 p.m., Monday through Friday.

“*Salesperson*” means a person employed by a motor vehicle or travel trailer dealer for the purpose of buying or selling vehicles.

“*Vehicle*,” unless otherwise specified, means a motor vehicle or travel trailer.

“*Wholesaler*” means a person who sells new vehicles to dealers and not at retail.

This rule is intended to implement Iowa Code chapters 322 and 322C.

[ARC 9048B, IAB 9/8/10, effective 10/13/10; ARC 0136C, IAB 5/30/12, effective 7/4/12; ARC 0778C, IAB 6/12/13, effective 7/17/13; ARC 3687C, IAB 3/14/18, effective 4/18/18]

**761—425.4 to 425.9** Reserved.

**761—425.10(322) Application for dealer’s license.**

**425.10(1) Application form.** To apply for a license as a motor vehicle or travel trailer dealer, the applicant shall complete an application on a form prescribed by the department.

**425.10(2) Surety bond.**

a. The applicant shall obtain a surety bond in the following amounts and file the original with the office of vehicle and motor carrier services:

(1) For a motor vehicle dealer’s license, \$75,000.

(2) For a travel trailer dealer’s license, \$25,000. However, an applicant for a travel trailer dealer’s license is not required to file a bond if the person is licensed as a motor vehicle dealer under the same name and at the same principal place of business.

b. The surety bond shall provide for notice to the office of vehicle and motor carrier services at least 30 days before cancellation.

c. The office of vehicle and motor carrier services shall notify the bonding company of any conviction of the dealer for a violation of laws related to the operations of the dealership.

d. If the bond is canceled, the office of vehicle and motor carrier services shall notify the dealer by first-class mail that the dealer’s license shall be revoked on the same date that the bond is canceled unless the bond is reinstated or a new bond is filed.

e. If an applicant whose dealer’s license was revoked pursuant to paragraph “d” establishes that the applicant obtained a reinstated or new bond meeting the requirements of subrule 425.10(2) that was effective on or before the date of cancellation, but due to mistake or inadvertence failed to file the original bond with the office of vehicle and motor carrier services, the applicant may file the original of the reinstated or new bond. Upon filing, the department will rescind the revocation of the dealer’s license.

**425.10(3) Franchise.**

a. An applicant who intends to sell new motor vehicles or travel trailers shall submit to the office of vehicle and motor carrier services a copy of a signed franchise agreement with the manufacturer or distributor of each make the applicant intends to sell.

b. If a signed franchise agreement is not available at the time of application, the department may accept written evidence of a franchise which includes all of the following:

(1) The name and address of the applicant and the manufacturer or distributor.

(2) The make of motor vehicle or travel trailer that the applicant is authorized to sell.

(3) The applicant’s area of responsibility as stipulated in the franchise and certified on a form prescribed by the department.

(4) The signature of the manufacturer or distributor.

c. Nothing in this subrule shall be construed to require a franchise agreement from a final-stage manufacturer applying for a motor vehicle dealer license under rule 761—425.11(322).

**425.10(4) Corporate applicants.** If the applicant is a corporation, the applicant shall certify on the application that the corporation complies with all applicable state requirements for incorporation.

**425.10(5) *Principal place of business.*** The applicant shall maintain a principal place of business, which must be staffed during regular business hours. See rules 761—425.12(322) and 761—425.14(322) for further requirements.

**425.10(6) *Zoning.*** The applicant shall provide to the office of vehicle and motor carrier services written evidence, issued by the office responsible for the enforcement of zoning ordinances in the city or county where the applicant's business is located, which states that the applicant's principal place of business and any extensions comply with all applicable zoning provisions or are a legal nonconforming use.

**425.10(7) *Separate licenses required.***

*a.* A separate license is required for each city or township in which an applicant for a motor vehicle dealer's license maintains a place of business.

*b.* A separate license is required for each county in which an applicant for a travel trailer dealer's license maintains a place of business.

**425.10(8) *Financial liability.*** The applicant for a motor vehicle dealer's license shall certify on the application that the applicant has the required financial liability coverage in the limits as set forth in Iowa Code subsection 322.4(1). It is the applicant's responsibility to ensure the required financial liability coverage is continuous with no lapse in coverage as long as the applicant maintains a valid dealer's license.

**425.10(9) *Ownership information.***

*a.* If the owner of the business is an individual, the application shall include the legal name, bona fide address, and telephone number of the individual. If the owner is a partnership, the application shall include the legal name, bona fide address, and telephone number of two partners. If the owner is a corporation, the application shall include the legal name, bona fide address, and telephone number of two corporate officers. In all cases, the telephone number must be a number where the individual, partner, or corporate officer can be reached during normal business hours.

*b.* The application shall include the federal employer identification number of the business. However, if the business is owned by an individual who is not required to have a federal employer identification number, the application shall include the individual's social security number, Iowa nonoperator's identification number or Iowa driver's license number.

**425.10(10) Reserved.**

**425.10(11) *Verification of compliance.*** The department shall verify the applicant's compliance with all statutory and regulatory dealer licensing requirements.

This rule is intended to implement Iowa Code sections 322.1 to 322.15 and 322C.1 to 322C.6.  
[ARC 9048B, IAB 9/8/10, effective 10/13/10; ARC 3687C, IAB 3/14/18, effective 4/18/18; ARC 4343C, IAB 3/13/19, effective 4/17/19]

#### **761—425.11(322) Motor vehicle dealer licensing for final-stage manufacturers.**

**425.11(1) *Eligibility.*** A final-stage manufacturer may be licensed as a motor vehicle dealer if the final-stage manufacturer:

*a.* Meets the definition of "final-stage manufacturer" in Iowa Code section 322.2.

*b.* Meets the requirements of a final-stage manufacturer in 49 CFR Section 567.5.

*c.* Is licensed as a manufacturer under Iowa Code chapter 322 and this chapter.

**425.11(2) *Application.*** A final-stage manufacturer shall apply for a motor vehicle dealer license in the manner described in rule 761—425.10(322) and shall certify that the final-stage manufacturer meets the eligibility requirements under subrule 425.11(1).

This rule is intended to implement Iowa Code sections 322.2 and 322.3.  
[ARC 4343C, IAB 3/13/19, effective 4/17/19]

#### **761—425.12(322) Motor vehicle dealer's principal place of business.**

**425.12(1) *Verification of compliance.*** Before a motor vehicle dealer's license is issued, a representative of the department may physically inspect an applicant's principal place of business to verify compliance with this rule.

**425.12(2) Telephone service and office area.** A motor vehicle dealer's principal place of business shall include telephone service and an adequate office area, separate from other facilities, for keeping business records, manufacturers' certificates of origin, certificates of title or other evidence of ownership for all motor vehicles offered for sale. Telephone service must be a land line and not cellular phone service. Evidence of ownership may include a copy of an original document if the original document is held by a lienholder.

**425.12(3) Facility for displaying motor vehicles.** A motor vehicle dealer's principal place of business shall include a suitable space reserved for display purposes where motor vehicles may be viewed by prospective buyers. The facility shall be:

*a.* Within a building. **EXCEPTION:** For used motor vehicle dealers and for dealers selling new trucks or motor homes exclusively, the display facility may be an outdoor area with an all-weather surface. An all-weather surface does not include grass or exposed soil.

*b.* Of a minimum size.

(1) For display of motorcycles, motorized bicycles and autocycles, the minimum size of the display facility is 10 feet by 15 feet.

(2) For display of other motor vehicles, the minimum size of the display facility is 18 feet by 30 feet.

**425.12(4) Facility for reconditioning and repairing motor vehicles.** A motor vehicle dealer's principal place of business shall include a facility for reconditioning and repairing motor vehicles. The facility shall be an area that:

*a.* Is equipped to repair and recondition one or more motor vehicles of a type sold by the dealer.

*b.* Is within a building.

*c.* Has adequate access.

*d.* Is separated from the display and office areas by solid, floor-to-ceiling walls and solid, full-length doors.

*e.* Is of a minimum size.

(1) The minimum size facility for motorcycles, motorized bicycles and autocycles is an unobstructed rectangular area measuring 10 feet by 15 feet.

(2) The minimum size facility for other types of motor vehicles is an unobstructed rectangular area measuring 14 feet by 24 feet.

**425.12(5) Motor vehicle dealer who is also a recycler.** If a motor vehicle dealer also does business as a recycler, there shall be separate parking for motor vehicles being offered for sale at retail from motor vehicles that are salvage.

This rule is intended to implement Iowa Code sections 322.1 to 322.15.

[ARC 9048B, IAB 9/8/10, effective 10/13/10; ARC 0778C, IAB 6/12/13, effective 7/17/13; ARC 2985C, IAB 3/15/17, effective 4/19/17; ARC 4343C, IAB 3/13/19, effective 4/17/19]

#### **761—425.13(321,322) Business records of a motor vehicle dealer with multiple licenses.**

**425.13(1) Applicability.** A motor vehicle dealer licensed under Iowa Code chapter 322 and this chapter who holds more than one motor vehicle dealer license may maintain the dealer's collective business records together at any of the dealer's licensed locations.

**425.13(2) Separation of records.** Business records of licensed motor vehicle dealers kept at a single licensed location under this rule shall be stored separately and distinctly, in a manner distinguishable to each licensee, and shall not be commingled.

**425.13(3) Notification to the department.** A motor vehicle dealer shall notify the office of vehicle and motor carrier services in writing no fewer than ten days before moving the dealer's business records to another licensed location.

This rule is intended to implement Iowa Code sections 321.63 and 322.2 to 322.15.

[ARC 4343C, IAB 3/13/19, effective 4/17/19]

#### **761—425.14(322) Travel trailer dealer's place of business.**

**425.14(1) Telephone service and office area.** A travel trailer dealer's principal place of business shall include telephone service and an adequate office area, separate from other facilities, for keeping business

records, manufacturers' certificates of origin, certificates of title or other evidence of ownership for all travel trailers offered for sale. Telephone service must be a land line and not cellular phone service. Evidence of ownership may include a copy of an original document if the original document is held by a lienholder.

**425.14(2) Facility for displaying travel trailers.** A travel trailer dealer's principal place of business shall include a space of sufficient size to permit the display of one or more travel trailers. The display facility may be an indoor area or an outdoor area with an all-weather surface. An all-weather surface does not include grass or exposed soil. If an outdoor display facility is maintained, it may be used only to display, recondition or repair travel trailers or to park vehicles.

**425.14(3) Facility for repairing and reconditioning travel trailers.** A travel trailer dealer's principal place of business shall include a facility for reconditioning and repairing travel trailers. The facility:

- a. Shall be equipped and of sufficient size to repair and recondition one or more travel trailers of a type sold by the dealer.
- b. Shall have adequate access.
- c. May be an indoor area or an outdoor area with an all-weather surface. An all-weather surface does not include grass or exposed soil.
- d. May occupy the same area as the display facility.

**425.14(4) Travel trailer dealer also licensed as a motor vehicle dealer.** If a travel trailer dealer is also licensed as a motor vehicle dealer under the same name and at the same principal place of business, separate facilities for displaying, repairing and reconditioning travel trailers are not required.

This rule is intended to implement Iowa Code sections 322C.1 to 322C.6.

**761—425.15 and 425.16** Reserved.

**761—425.17(322) Extension lot license.** Extension lots of motor vehicle and travel trailer dealers must be licensed. Application to license an extension lot shall be made on a form prescribed by the department.

**425.17(1)** For a motor vehicle dealer, an extension lot is a car lot for the sale of motor vehicles that is located within the same city or township as, but is not adjacent to, the motor vehicle dealer's principal place of business.

**425.17(2)** For a travel trailer dealer, an extension lot is a travel trailer lot for the sale of travel trailers that is located within the same county as, but is not adjacent to, the travel trailer dealer's principal place of business.

**425.17(3)** An extension lot must be owned or leased by the dealer.

**425.17(4)** Parcels of property are adjacent if the parcels are owned or leased by the dealer and the parcels are either adjoining or are separated only by an alley, street or highway that is not a fully controlled access facility.

This rule is intended to implement Iowa Code sections 322.1 to 322.15 and 322C.1 to 322C.6.

**761—425.18(322) Supplemental statement of changes.** A motor vehicle dealer shall file a written statement with the office of vehicle and motor carrier services at least ten days before any change of name, location, hours, or method or plan of doing business. A license is not valid until the changes listed in the statement have been approved by the office of vehicle and motor carrier services.

This rule is intended to implement Iowa Code sections 322.1 to 322.15.  
[ARC 3687C, IAB 3/14/18, effective 4/18/18]

**761—425.19** Reserved.

**761—425.20(322) Fleet vehicle sales and retail auction sales.**

**425.20(1) Fleet sales.** Any person who has acquired vehicles for consumer use in a business shall obtain the appropriate dealer's license when more than six vehicles are offered for sale at retail in a 12-month period.

**425.20(2) Retail auction sales.** Any person who sells at public auction more than six vehicles in a 12-month period shall obtain the appropriate dealer's license. All certificates of title for the vehicles offered for sale at public auction shall be duly assigned to the dealer.

**425.20(3) Place of business.** A dealer's license issued under this rule does not require a place of business.

**425.20(4) Exceptions.**

*a.* The state of Iowa, counties, cities and other governmental subdivisions are not required to obtain a dealer's license to sell their vehicles at retail.

*b.* This rule does not apply to a vehicle owner, or to an auctioneer representing the owner, selling vehicles at a retail auction if the vehicles were acquired by the owner for consumer use, the vehicles are incidental to the auction, and only one owner's vehicles are sold.

This rule is intended to implement Iowa Code sections 322.1 to 322.15 and 322C.1 to 322C.6.

**761—425.21 to 425.23** Reserved.

**761—425.24(322) Miscellaneous requirements.**

**425.24(1)** The department shall not issue a license under Iowa Code chapter 322 or 322C to any other person at a principal place of business of a person currently licensed under Iowa Code chapter 322 or 322C.

**425.24(2)** A motor vehicle or travel trailer dealer shall not represent or advertise the dealership under any name or style other than the name which appears on the dealer's license.

**425.24(3)** Other business activities are allowed at a place of business of a dealer, but those activities shall not include the sale of firearms, dangerous weapons as defined in Iowa Code section 702.7, or alcoholic beverages as defined in Iowa Code subsection 123.3(4).

This rule is intended to implement Iowa Code sections 322.1 to 322.15 and 322C.1 to 322C.6.

[ARC 9048B, IAB 9/8/10, effective 10/13/10]

**761—425.25** Reserved.

**761—425.26(322) State fair, fairs, shows and exhibitions.**

**425.26(1) Definitions.** As used in this rule:

*"Community"* means an area of responsibility as defined in Iowa Code section 322A.1.

*"Display"* means having new motor vehicles or new travel trailers available for public viewing at fairs, vehicle shows or vehicle exhibitions. The dealer may also post, display or provide product information through literature or other descriptive media. However, the product information shall not include prices, except for the manufacturer's sticker price. *"Display"* does not mean offering new vehicles for sale or negotiating sales of new vehicles.

*"Fair"* means a county fair or a scheduled gathering for a predetermined period of time at a specific location for the exhibition, display or sale of various wares, products, equipment, produce or livestock, but not solely new vehicles, and sponsored by a person other than a single dealer.

*"Offer"* new vehicles *"for sale," "negotiate sales"* of new vehicles, or similar wording, means doing any of the following at the state fair or a fair, vehicle show or vehicle exhibition: posting prices in addition to the manufacturer's sticker price, discussing prices or trade-ins, arranging for payments or financing, and initiating contracts.

*"State fair"* means the fair as discussed in Iowa Code chapter 173.

*"Vehicle exhibition"* means a scheduled event conducted at a specific location where various types, makes or models of new vehicles are displayed either at the same time or consecutively in time, and sponsored by a person other than a single dealer.

*"Vehicle show"* means a scheduled event conducted for a predetermined period of time at a specific location for the purpose of displaying at the same time various types, makes or models of new vehicles, which may be in conjunction with other events or displays, and sponsored by a person other than a single dealer.

**425.26(2) Permits for dealers of new motor vehicles.**

*a.* A “display only” fair, vehicle show or vehicle exhibition permit allows a motor vehicle dealer to display new motor vehicles at a specified fair, vehicle show or vehicle exhibition in any Iowa county. The permit is valid on Sundays.

*b.* A “full” fair, state fair, vehicle show or vehicle exhibition permit allows a motor vehicle dealer to display and offer new motor vehicles for sale and negotiate sales of new motor vehicles at the state fair, or a specified fair, vehicle show or vehicle exhibition that is held within the motor vehicle dealer’s community. EXCEPTION: A motor vehicle dealer who is licensed to sell motor homes may be issued a permit to offer for sale Class “A” and Class “C” motor homes at a specified fair, vehicle show or vehicle exhibition in any Iowa county. A “full” fair, show or exhibition permit is not valid on Sundays.

*c.* The following restrictions are applicable to both types of permits:

(1) Permits will be issued to motor vehicle dealers only for the state fair, fairs, vehicle shows or vehicle exhibitions where more than one motor vehicle dealer may participate.

(2) A permit is limited to the line makes for which the motor vehicle dealer is licensed in Iowa.

**425.26(3)** Reserved.

**425.26(4)** *Permits for dealers of new travel trailers.* A fair, vehicle show or vehicle exhibition permit allows a travel trailer dealer to display and offer new travel trailers for sale and negotiate sales of new travel trailers at a specified fair, vehicle show, or vehicle exhibition in any Iowa county.

*a.* The permit is valid on Sundays.

*b.* The permit is limited to the line makes for which the travel trailer dealer is licensed in Iowa.

*c.* A travel trailer dealer who does not have a permit may display vehicles at fairs, vehicle shows and vehicle exhibitions.

**425.26(5)** *Permit application.* A motor vehicle or travel trailer dealer shall apply for a permit on an application form prescribed by the department. The application shall include the dealer’s name, address and license number and the following information about the event: name, location, sponsor(s) and duration, including the opening and closing dates.

**425.26(6)** *Display of permit.* The motor vehicle or travel trailer dealer shall display the permit in close proximity to the vehicles being exhibited.

This rule is intended to implement Iowa Code sections 322.5(2) and 322C.3(9).  
[ARC 3687C, IAB 3/14/18, effective 4/18/18]

**761—425.27** and **425.28** Reserved.

**761—425.29(322)** **Classic car permit.** A classic car permit allows a motor vehicle dealer to display and sell classic cars at a specified county fair, vehicle show or vehicle exhibition that is held in the same county as the motor vehicle dealer’s principal place of business. “Classic car” is defined in Iowa Code subsection 322.5(3).

**425.29(1)** The permit period is the duration of the event, not to exceed five days. The permit is valid on Sundays. Only one permit may be issued to each motor vehicle dealer for an event. No more than three permits may be issued to a motor vehicle dealer in any one calendar year.

**425.29(2)** Application for a classic car permit shall be made on a form prescribed by the department. The application shall include the dealer’s name, address and license number and the following information about the county fair, vehicle show or vehicle exhibition: name, location, sponsor(s) and duration, including the opening and closing dates.

**425.29(3)** The motor vehicle dealer shall display the permit in a prominent place at the location of the county fair, vehicle show or vehicle exhibition.

This rule is intended to implement Iowa Code subsection 322.5(3).

**761—425.30(322)** **Motor truck display permit.** Application for a permit under Iowa Code subsection 322.5(4) shall be made on a form prescribed by the department. The application shall include information or documentation showing that the nonresident motor vehicle dealer is eligible for issuance of a permit and that the event meets the statutory conditions for permit issuance.

This rule is intended to implement Iowa Code subsection 322.5(4).

**761—425.31(322) Firefighting and rescue show permit.**

**425.31(1)** Application for a firefighting and rescue show permit shall be made on a form prescribed by the department. The application shall include the name, address and license number of the applicant, the type of vehicles being displayed, and the following information about the vehicle show or vehicle exhibition: name, location, sponsor(s), and duration, including the opening and closing dates.

**425.31(2)** The permit is not valid on Sundays. Only one permit shall be issued to each licensee for an event.

**425.31(3)** The permit holder shall display the permit in a prominent place at the location of the vehicle show or vehicle exhibition.

This rule is intended to implement Iowa Code section 322.5(5).  
[ARC 9048B, IAB 9/8/10, effective 10/13/10; ARC 3687C, IAB 3/14/18, effective 4/18/18]

**761—425.32 to 425.39** Reserved.

**761—425.40(322) Salespersons of dealers.**

**425.40(1)** Every motor vehicle and travel trailer dealer shall:

*a.* Keep a current written record of all salespersons acting in its behalf. The record shall be open to inspection by any peace officer or any employee of the department.

*b.* Maintain a current record of authorized persons allowed to sign all documents required under Iowa Code chapter 321 for vehicle sales.

**425.40(2)** No person shall either directly or indirectly claim to represent a dealer unless the person is listed as a salesperson by that dealer.

This rule is intended to implement Iowa Code sections 322.3, 322.13, and 322C.4.

**761—425.41 to 425.49** Reserved.

**761—425.50(322) Manufacturers, distributors, and wholesalers.** This rule applies to the licensing of manufacturers, distributors, and wholesalers of new motor vehicles and travel trailers.

**425.50(1)** *Application for license.* To apply for a license, the applicant shall complete an application form prescribed by the department. A list of the applicant's franchised dealers in Iowa and a sample copy of a completed manufacturer's certificate of origin that is issued by the firm shall accompany the application. A distributor or wholesaler shall also provide a copy of written authorization from the manufacturer to act as its distributor or wholesaler.

**425.50(2)** *Licensing requirements.*

*a.* New motor homes delivered to Iowa dealers must contain the systems and meet the standards specified in Iowa Code section 321.1(36C) "d."

*b.* A licensee shall ensure that any new retail outlet is properly licensed as a dealer before any vehicles are delivered to the outlet.

*c.* A licensee shall notify the office of vehicle and motor carrier services in writing at least ten days prior to any:

(1) Change in name, location or method of doing business, as shown on the license.

(2) Issuance of a franchise to a dealer in this state to sell new vehicles at retail.

(3) Change in the trade name of a travel trailer manufactured for delivery in this state.

*d.* A licensee shall notify the office of vehicle and motor carrier services in writing at least ten days before any new make of vehicle is offered for sale at retail in this state.

This rule is intended to implement Iowa Code sections 322.27 to 322.30 and 322C.7 to 322C.9.  
[ARC 3687C, IAB 3/14/18, effective 4/18/18]

**761—425.51(322) Factory or distributor representatives.** Rescinded IAB 11/3/99, effective 12/8/99.

**761—425.52(322) Used vehicle wholesalers.** Rescinded IAB 11/7/07, effective 12/12/07.

**761—425.53(322) Wholesaler’s financial liability coverage.** A new motor vehicle wholesaler shall certify on the license application that it has the required financial liability coverage in the limits set forth in Iowa Code section 322.27A. It is the wholesaler’s responsibility to ensure that the required financial liability coverage is continuous with no lapse in coverage as long as the wholesaler maintains a valid wholesaler’s license.

This rule is intended to implement Iowa Code section 322.27A.

**761—425.54 to 425.59** Reserved.

**761—425.60(322) Right of inspection.**

**425.60(1)** Peace officers have the authority to inspect vehicles or component parts of vehicles, business records, and manufacturers’ certificates of origin, certificates of title and other evidence of ownership for all vehicles offered for sale.

**425.60(2)** The department has the right at any time to verify compliance of a person licensed under Iowa Code chapter 322 or 322C or issued a certificate under Iowa Code section 321.59 with all statutory and regulatory requirements.

This rule is intended to implement Iowa Code sections 321.62, 321.95, 322.13, and 322C.1.

**761—425.61** Reserved.

**761—425.62(322) Denial, suspension or revocation.**

**425.62(1)** The department may deny an application or suspend or revoke a certificate or license if the applicant, certificate holder or licensee fails to comply with the applicable provisions of this chapter of rules, Iowa Code sections 321.57 to 321.63 or Iowa Code chapter 322 or 322C.

**425.62(2)** The department may deny a dealer’s application for the state fair or a fair, vehicle show or vehicle exhibition permit for a period not to exceed six months if the dealer fails to comply with the applicable provisions of rule 761—425.26(322) or Iowa Code section 322.5(2) or 322C.3(9).

**425.62(3)** The department may deny a motor vehicle dealer’s application for a demonstration permit for a period not to exceed six months if the dealer fails to comply with rule 761—425.72(321).

**425.62(4)** The department shall send notice by certified mail to a person whose certificate, license or permit is to be revoked, suspended, canceled or denied. The notice shall be mailed to the person’s mailing address as shown on departmental records or, if the person is currently licensed, to the principal place of business, and shall become effective 20 days from the date mailed. A person who is aggrieved by a decision of the department and who is entitled to a hearing may contest the decision in accordance with 761—Chapter 13. The request shall be submitted in writing to the director of the office of vehicle and motor carrier services at the address in subrule 425.1(2). The request shall be deemed timely submitted if it is delivered or postmarked on or before the effective date specified in the notice of revocation, suspension, cancellation or denial.

This rule is intended to implement Iowa Code chapter 17A and sections 321.57 to 321.63, 322.6, 322.9, 322.31, and 322C.6.

[ARC 9048B, IAB 9/8/10, effective 10/13/10; ARC 3687C, IAB 3/14/18, effective 4/18/18]

**761—425.63 to 425.69** Reserved.

**761—425.70(321) Dealer plates.**

**425.70(1) Definition.** The definitions of “dealer” and “vehicle” in Iowa Code section 321.1 apply to this rule.

**425.70(2) Persons who may be issued dealer plates.** Dealer plates as provided in Iowa Code sections 321.57 to 321.63 may be issued to:

- a. Licensed motor vehicle dealers.
- b. Licensed travel trailer dealers.

c. A person engaged in the business of buying, selling or exchanging trailer-type vehicles subject to registration under Iowa Code chapter 321, other than travel trailers, and who has an established place of business for such purpose in this state.

d. Insurers selling vehicles of a type subject to registration under Iowa Code chapter 321 solely for the purpose of disposing of vehicles acquired as a result of a damage settlement or recovered stolen vehicles acquired as a result of a loss settlement. The plates shall display the words “limited use.”

e. Persons selling vehicles of a type subject to registration under Iowa Code chapter 321 solely for the purpose of disposing of vehicles acquired or repossessed by them in exercise of powers or rights granted by lien or title-retention instruments or contracts given as security for loans or purchase money obligations, and who are not required to be licensed dealers. The plates shall display the words “limited use.”

f. Persons engaged in the business of selling special equipment body units which have been or will be installed on motor vehicle chassis not owned by them, solely for the purpose of delivering, testing or demonstrating the special equipment body and the motor vehicle. The plates shall display the words “limited use.”

g. A licensed manufacturer of ambulances, rescue vehicles or fire vehicles, solely for the purpose of transporting, demonstrating, showing or exhibiting the vehicles. The plates shall display the words “limited use.”

h. A licensed wholesaler who is also licensed as a motor vehicle dealer as specified in paragraph 425.70(3)“e.”

**425.70(3) Use of dealer plates.**

a. Dealer plates shall not be displayed on vehicles that are rented or loaned. However, a dealer plate may be displayed on a motor vehicle, other than a truck or truck tractor, loaned to a customer of a licensed motor vehicle dealer while the customer’s motor vehicle is being serviced or repaired by the dealer.

b. Saddle-mounted vehicles being transported shall display dealer plates.

c. Dealer plates may be displayed on a trailer carrying a load, provided the motor vehicle towing the trailer is properly registered under Iowa Code section 321.109, 321.120, or 321.122, or is displaying a dealer plate described in paragraph 425.70(3)“e,” or a demonstration permit has been issued as described in rule 761—425.72(321).

d. Dealer plates may be used by a dealer licensed as a wholesaler for a new motor vehicle model when operating a new motor vehicle of that model if the motor vehicle is owned by the wholesaler and is operated solely for the purpose of demonstration, show or exhibition.

e. A dealer plate issued under Iowa Code section 321.60 for the purpose of hauling a load or towing a trailer shall be marked “HAUL & TOW.” Dealer “HAUL & TOW” plates may only be displayed on vehicles in the dealer’s inventory that are continuously offered for sale at retail.

This rule is intended to implement Iowa Code sections 321.57 to 321.63.  
[ARC 3687C, IAB 3/14/18, effective 4/18/18]

**761—425.71** Reserved.

**761—425.72(321) Demonstration permits.**

**425.72(1)** Demonstration permits may be issued by motor vehicle dealers to permit the use of dealer plates for the purpose of demonstrating the load capabilities of motor trucks and truck tractors. A demonstration permit must be issued on a form prescribed by the department.

**425.72(2)** The dealer shall complete the permit. The information to be filled out includes, but is not limited to, the following:

a. Date of issuance by the dealer, date of expiration, and the specific dates for which the permit is valid. The expiration date shall be five days or less from the date of issuance.

b. Dealer’s name, address and license number.

c. Name(s) of the prospective buyer(s) and all prospective drivers.

*d.* Route of the demonstration trip. The points of origin and destination shall be the dealership. The permit is not valid for a route outside Iowa.

*e.* The make, year and vehicle identification number of the motor vehicle being demonstrated.

**425.72(3)** The permit shall at all times be carried in the motor vehicle to which it refers and shall be shown to any peace officer upon request.

**425.72(4)** Only one demonstration permit per motor vehicle shall be issued for a prospective buyer.

**425.72(5)** The demonstration permit is valid only for a movement that does not exceed the legal length, width, height and weight restrictions. The permit is not valid for an overdimensional or overweight movement.

**425.72(6)** A dealer plate issued under Iowa Code section 321.60 for the purpose of hauling a load or towing a trailer may be used in lieu of a demonstration permit.

This rule is intended to implement Iowa Code sections 321.57 to 321.63.

[ARC 3687C, IAB 3/14/18, effective 4/18/18]

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[Filed ARC 4343C (Notice ARC 4230C, IAB 1/16/19), IAB 3/13/19, effective 4/17/19]

<sup>◇</sup> Two or more ARCs



CHAPTER 511  
SPECIAL PERMITS FOR OPERATION AND MOVEMENT OF  
VEHICLES AND LOADS OF EXCESS SIZE AND WEIGHT

[Appeared as Ch 2, Highway Commission, 1973 IDR; amended in July 1974 and January and July 1975 Supplements]

[Previously numbered as (07,E) Ch 12, transferred at the request of the department on 10/8/75]

[Prior to 6/3/87, Transportation Department[820]—(07,F) Ch 2]

**761—511.1(321E) Definitions.** As used in this chapter, unless the context otherwise requires:

“*Compacted rubbish vehicle*” means any vehicle hauling rubbish that has been mechanically compacted with a hydraulic, electric, or air-operated ram.

“*Department*” means the Iowa department of transportation.

“*Dimensions*” or “*size*” means length, width or height limits.

“*Indivisible load*” means any load or vehicle exceeding applicable length or weight limits which, if separated into smaller loads or vehicles, would:

1. Compromise the intended use of the vehicle, i.e., make it unable to perform the function for which it was intended;
2. Destroy the value of the load or vehicle, i.e., make it unusable for its intended purpose; or
3. Require more than eight work hours to dismantle using appropriate equipment. The applicant for an indivisible load permit has the burden of proof as to the number of work hours required to dismantle the load.

“*Overdimensional*” or “*oversize*” means the exceeding of statutory length, width or height limits.

“*Permit*” means a permit issued under Iowa Code chapter 321E for the movement of an overdimensional or overweight vehicle, combination of vehicles, or vehicle with load. The term includes any additions or supplements thereto issued by the permit-issuing authority.

“*Permit-issuing authority*” means the:

1. Department’s office of vehicle and motor carrier services for permits for movement on the primary road system.
2. Authority responsible for the maintenance of a nonprimary system of highways or streets for permits for movement on that system. However, the office of vehicle and motor carrier services may issue single-trip permits on primary road extensions in cities in conjunction with movement on the rural primary road system.

“*Primary roads*” or “*primary road system*” is defined in Iowa Code section 306.3. The primary road system includes the interstate road system.

“*Rubbish*” means any unwanted or useless material that has no commercial or practical value or use and that would normally be discarded.

“*Special or emergency situation*” means one or more of the following:

1. Circumstances where the movement is necessary to cooperate with cities, counties, other state agencies or other states in response to a national or other disaster.
2. Circumstances where the movement is necessary to cooperate with national defense officials.
3. Circumstances where the movement is necessary to cooperate with public or private utilities in order to maintain their public services.
4. Circumstances where the movement is essential to ensure safety and protection of any person or property due to an event such as, but not limited to, pollution of natural resources, a potential fire or an explosion.
5. Circumstances where weather or transportation problems create an undue hardship for citizens of the state of Iowa.
6. Circumstances where the movement involves emergency-type vehicles.
7. Uncommon or extraordinary circumstances where the movement is essential to the existence of an Iowa business and the move may be accomplished without causing undue hazards to the safety of the traveling public or undue damage to private or public property.
8. Other unique circumstances that warrant the issuance of a permit as determined by the permit-issuing authority.

“Statutory” when used with size or weight limits refers to those limits found in Iowa Code chapter 321.

This rule is intended to implement Iowa Code sections 321E.9, 321E.15, 321E.29, 321E.30 and 321E.34.

[ARC 3193C, IAB 7/5/17, effective 8/9/17]

#### **761—511.2(321E) Location and general information.**

**511.2(1)** Applications, forms, instructions and restrictions are available on the department’s website at [www.iowadot.gov](http://www.iowadot.gov) and by mail from the Office of Vehicle and Motor Carrier Services, Iowa Department of Transportation, P.O. Box 10382, Des Moines, Iowa 50306-0382; in person at 6310 SE Convenience Blvd., Ankeny, Iowa; by telephone at (515)237-3264; or by facsimile at (515)237-3257. Permits may be obtained electronically upon making application to the office of vehicle and motor carrier services.

**511.2(2)** No overdimensional or overweight vehicle, combination of vehicles, or vehicle with load shall be moved on the highways of this state without permit except as provided in Iowa Code section 321.453.

**511.2(3)** Rescinded IAB 2/7/01, effective 3/14/01.

**511.2(4)** Except as provided in subrule 511.7(6) and rule 761—511.14(321,321E), permits may be issued only for the transporting of a single article which exceeds statutory size or weight limits or both, and which cannot reasonably be divided or reduced to statutory size and weight limits. However, permits may be issued for the transporting of property consisting of more than one article when:

- a. The statutory weight limits are not exceeded,
- b. One of the articles exceeds the statutory size limits, and
- c. The inclusion of other articles does not cause the statutory size limits to be exceeded by an additional amount.

**511.2(5)** Nothing in the permit shall be construed as waiving any load limits which have been or which might be established on any bridge or any road which is posted with embargo signs, unless specifically stated on the permit.

**511.2(6)** The state of Iowa, the department, and any other permit-issuing authority assume no responsibility for the property of the permit holder. Permit holders shall hold permit-issuing authorities harmless of any damages that may be sustained by the traveling public, adjacent property owners or the highways of this state on account of movements made under permit.

This rule is intended to implement Iowa Code sections 17A.3 and 321E.2.

[ARC 3193C, IAB 7/5/17, effective 8/9/17]

#### **761—511.3(321E) Movement under permit.**

**511.3(1)** During the movement of a vehicle or object under permit, the permit holder shall comply with the terms and conditions of the permit and shall take all reasonable precautions to protect and safeguard the lives and property of the traveling public and adjacent property owners.

**511.3(2)** Movement shall be made only when roads are clear of ice and snow and visibility is at least one-quarter mile. Snow removal equipment operating under permit is exempt from this restriction while snow removal operations are conducted. EXCEPTION: Nothing in this subrule shall be construed to mean that the movement of a compacted rubbish vehicle permitted under rule 761—511.11(321E) shall be subject to this restriction.

**511.3(3)** Movement shall be permitted only during the hours from one-half hour before sunrise to one-half hour after sunset unless it is established by the permit-issuing authority that the movement can be better accomplished at another period of time because of traffic volume conditions.

**511.3(4)** Except as provided in Iowa Code section 321.457, no movement shall be permitted on the holidays of Memorial Day, Independence Day and Labor Day, after 12 noon on days preceding these holidays and holiday weekends, during holiday weekends, or during special events when abnormally high traffic volumes can be expected. A holiday weekend occurs when the holiday falls on Friday, Saturday, Sunday or Monday. No movement shall be permitted until one-half hour before sunrise on the day after the holiday or holiday weekend.

**511.3(5)** Continuous moves. Vehicles and loads may travel by permit between one-half hour after sunset and one-half hour before sunrise if, in addition to the general provisions and general requirements specified by the permit, the following conditions are met.

- a. Dimensions shall not exceed:
  - (1) Width. 11 feet.
  - (2) Height. 14 feet, 6 inches.
  - (3) Length. 100 feet.
  - (4) Weight. Legal axle limits.
- b. Travel must be on roadways with a minimum width of 22 feet and minimum lane width of 11 feet.
- c. Safety lighting shall be provided at the widest part of a load. The lamps may be placed at the outer ends of the load itself or on appurtenances which are equal in width to the widest part of the load and positioned at both the extreme front and rear of the vehicle or trailer as follows:
  - (1) One lighted red lamp on each side at the rear of the load.
  - (2) One lighted yellow or amber lamp on each side at the front of the load.

This rule is intended to implement Iowa Code sections 321E.2 and 321E.11.  
 [ARC 3193C, IAB 7/5/17, effective 8/9/17]

**761—511.4(321E) Permits.** Permits issued shall be in writing or in electronic format and may be either single-trip, multitrip, annual, annual oversize/overweight, compacted rubbish or all-systems permits.

**511.4(1) Methods of issuance.**

- a. Permits for movement on the primary road system may be obtained in person, by facsimile, online, or by mail at the address in subrule 511.2(1).
- b. Reserved.

**511.4(2) Forms.**

- a. Applications for permits for movement on the primary road system shall be made online or on a form prescribed by the department.
- b. Any applications to other permit-issuing authorities made upon department forms shall be sufficient and accepted as properly made by these authorities.
- c. Subject to the preceding paragraph, permit-issuing authorities may adopt, amend or modify these forms provided that the amended or modified forms adequately identify the applicant, the hauling vehicle and load, the manner and extent that the vehicle with load exceeds the statutory size and weight limits, the route, and the authorization of the issuing authority. However, the load for a multitrip permit does not have to be identified but the vehicle and load cannot exceed either the weight per axle or the total weight identified on the multitrip permit. Axle spacings cannot change.

**511.4(3) Validity.**

- a. Annual, annual oversize/overweight, compacted rubbish, and all-systems permits shall expire one year from the date of issuance.
- b. A single-trip permit shall be effective for five days.
- c. The validity of a multitrip permit shall not exceed 60 calendar days.

**511.4(4) Duplicate permit.** If a permit is lost or destroyed before it has expired, a duplicate permit may be issued at the discretion of the permit-issuing authority. The expiration date on the duplicate permit shall be the same as on the original permit.

This rule is intended to implement Iowa Code sections 321E.2 and 321E.3.  
 [ARC 0136C, IAB 5/30/12, effective 7/4/12; ARC 3193C, IAB 7/5/17, effective 8/9/17]

**761—511.5(321,321E) Fees and charges.**

**511.5(1) Annual oversize permit.** A fee of \$50 shall be charged for each annual permit issued pursuant to Iowa Code section 321E.8, payable prior to the issuance of the permit. Carriers purchasing annual permits in advance of use cannot return unused permits for refunds.

**511.5(2) Annual oversize permit for certain divisible loads.** A fee of \$25 shall be charged for each annual permit issued pursuant to Iowa Code section 321E.29, payable prior to the issuance of the permit. Only divisible loads of hay, straw, stover, or bagged livestock bedding are permitted under this permit.

**511.5(3) Annual oversize/overweight permit.** A fee of \$400 shall be charged for each annual oversize/overweight permit, payable prior to the issuance of the permit. Transfer of current annual oversize/overweight permit to a replacement vehicle may be allowed when the original vehicle has been damaged in an accident, junked or sold.

**511.5(4) All-systems permit.** A fee of \$160 shall be charged for each annual all-systems permit, payable prior to the issuance of the permit.

**511.5(5) Bridge-exempt permit.** A fee of \$25 shall be charged for each bridge-exempt permit issued pursuant to Iowa Code section 321E.7, payable prior to the issuance of the permit.

**511.5(6) Multitrip permit.** A fee of \$200 shall be charged for each multitrip permit, payable prior to the issuance of the permit.

**511.5(7) Raw milk permit.** A fee of \$25 shall be charged for each raw milk permit issued pursuant to Iowa Code section 321E.29A, payable prior to the issuance of the permit.

**511.5(8) Single-trip permit.** A fee of \$35 shall be charged for each single-trip permit, payable prior to the issuance of the permit.

**511.5(9) Compacted rubbish permit.** A fee of \$100 shall be charged for each compacted rubbish permit, payable prior to the issuance of the permit.

**511.5(10) Duplicate permit.** A fee of \$2 shall be charged for each duplicate permit, payable prior to the issuance of the permit.

**511.5(11) Registration fee.** A registration fee shall be charged for vehicles transporting buildings, except mobile homes and factory-built structures, on a single-trip basis. The vehicle shall be registered for the combined gross weight of the vehicle and load. The fee shall be 5 cents per ton exceeding the weight registered under Iowa Code section 321.122 per mile of travel and shall be payable prior to the issuance of the permit. Fees shall not be prorated for fractions of miles.

**511.5(12) Fair and reasonable costs.** Permit-issuing authorities may charge any permit applicant:

*a.* A fair and reasonable cost for the removal and replacement of natural obstructions or official signs and signals.

*b.* A fair and reasonable cost for measures necessary to avoid damage to public property including structures and bridges.

**511.5(13) Methods of payment.** Fees and costs required under this chapter shall normally be paid by credit card, certified check, cashier's check, traveler's check, bank draft or cash. Personal checks may be accepted at the discretion of the permit-issuing authority.

This rule is intended to implement Iowa Code sections 321.12, 321.122, 321E.14, 321E.29, 321E.29A and 321E.30.

[ARC 3193C, IAB 7/5/17, effective 8/9/17]

## **761—511.6(321E) Insurance and bonds.**

### **511.6(1) Insurance.**

*a.* Public liability insurance in the amounts of \$100,000 bodily injury each person, \$200,000 bodily injury each occurrence, and \$50,000 property damage with an expiration date to cover the tenure of the annual, annual oversize/overweight, all-systems, multitrip or single-trip permit shall be required. In lieu of filing with the permit-issuing authority, a copy of the current certificate of public liability insurance in these amounts shall be carried in the vehicle for which the permit has been issued. Proof of liability insurance may be either in writing or in electronic format.

*b.* Notwithstanding paragraph “a” of this subrule, a carrier may act as a self-insurer if an application for self-insurance is filed with and approved by the department.

### **511.6(2) Bond.**

*a.* The permit-issuing authority may require the applicant to file a bond, certified check or other assurance in an amount sufficient to cover the reasonably anticipated cost of damage or loss to private property, either real or personal, likely to be caused by or arising out of the movement of the vehicle and load or to ensure compliance with permit provisions.

*b.* The amount in the preceding paragraph may be reduced either in whole or in part by the applicant's submission to the permit-issuing authority of written permission from an affected third party

stating in substance that the third party either owns or has the right of exclusive possession and control over the affected property, does by the party's signature consent to the move and that the applicant has in hand paid or secured the payment of the anticipated cost of loss or damage to the party's property.

This rule is intended to implement Iowa Code section 321E.13.  
[ARC 3193C, IAB 7/5/17, effective 8/9/17]

**761—511.7(321,321E) Annual permits.** Annual permits are issued for indivisible vehicles or indivisible loads for travel when the dimensions of the vehicle or load exceed statutory limits but the weight is within statutory limits. Routing is subject to embargoed bridges and roads and posted speed limits. The owner or operator shall select a route using the vertical clearance map and road construction and travel restrictions map provided by the department. Detour and road embargo information may also be found online at: [www.511ia.org](http://www.511ia.org). Prior to making the move, the owner or operator shall contact the department by telephone at (515)237-3264 between 8 a.m. and 4:30 p.m., Monday through Friday, except for legal holidays, to verify that the owner or operator is using the most recent information. Annual permits are issued for the following:

**511.7(1)** Vehicles with indivisible loads, including special mobile equipment, mobile homes and factory-built structures, provided the following are not exceeded:

- a. *Width.* 12 feet 5 inches including appurtenances.
- b. *Length.* 120 feet 0 inches overall.
- c. *Height.* 13 feet 10 inches.
- d. *Weight.* See rule 761—511.13(321,321E).
- e. *Distance.* Movement is allowed for unlimited distance; routing through the office of vehicle and motor carrier services is not required.

**511.7(2)** Vehicles with indivisible loads, including special mobile equipment, mobile homes and factory-built structures, provided the following are not exceeded:

- a. *Width.* 14 feet 6 inches.
- b. *Length.* 120 feet 0 inches overall.
- c. *Height.* 15 feet 5 inches.
- d. *Weight.* See rule 761—511.13(321,321E).
- e. *Distance.* Movement is restricted to 50 miles unless trip routes are obtained from the office of vehicle and motor carrier services or the route continues on at least four-lane roads. Trip routes are valid for five days.

**511.7(3)** Vehicles with indivisible loads, including special mobile equipment, mobile homes and factory-built structures, provided the following are not exceeded:

- a. *Width.* 16 feet 0 inches.
- b. *Length.* 120 feet 0 inches.
- c. *Height.* 15 feet 5 inches.
- d. *Weight.* See rule 761—511.13(321,321E).
- e. *Distance.* Trip routes must be obtained from the office of vehicle and motor carrier services.

**511.7(4)** Rescinded IAB 1/23/02, effective 2/27/02.

**511.7(5)** Truck trailers manufactured or assembled in the state of Iowa provided the following are met:

- a. *Width.* Not to exceed 10 feet 0 inches.
- b. *Length.* Overall combination length must comply with Iowa Code section 321.457.
- c. *Height.* Statutory: Not to exceed 13 feet 6 inches.
- d. *Weight.* See rule 761—511.13(321,321E).
- e. *Speed.* Rescinded IAB 2/7/01, effective 3/14/01.
- f. *Roadway width.* At least 24 feet 0 inches.
- g. *Limited movement.* Movement shall be solely for the purpose of delivery or transfer from the point of manufacture or assembly to another point of manufacture or assembly within the state or to a point outside the state and shall be on the most direct route necessary for the movement.

**511.7(6)** Vehicles with divisible loads of hay, straw, stover, or bagged livestock bedding provided the following are not exceeded:

- a. *Width.* 12 feet 5 inches.
- b. *Length.* Statutory: 75 feet.
- c. *Height.* Statutory: 14 feet 6 inches.
- d. *Weight.* See rule 761—511.13(321,321E).
- e. *Distance.* Unlimited.

This rule is intended to implement Iowa Code sections 321.454, 321.456, 321.457, 321.463, 321E.2, 321E.3, 321E.8, 321E.10, 321E.29 and 321E.29A.

[ARC 3193C, IAB 7/5/17, effective 8/9/17]

**761—511.8(321,321E) Annual oversize/overweight permits.** Annual oversize/overweight permits are issued for indivisible vehicles or indivisible loads for travel when either the dimensions or the weight or both the dimensions and the weight exceed statutory limits. Travel is not allowed on the interstate. However, a carrier moving under this annual oversize/overweight permit may operate under the same restrictions as an annual permit under rule 511.7(321,321E) when the vehicle meets the dimensions required by that rule. Routing is subject to embargoed bridges and roads and posted speed limits. Annual oversize/overweight permits are issued for the following:

**511.8(1)** Vehicles with indivisible loads, including special mobile equipment, mobile homes and factory-built structures, provided the following are not exceeded:

- a. *Width.* 13 feet 5 inches.
- b. *Length.* 120 feet 0 inches.
- c. *Height.* 15 feet 5 inches.
- d. *Weight.* See rule 761—511.13(321,321E).
- e. *Routing.* The owner or operator shall select a route using a vertical clearance map, kip map, bridge embargo map and detour and road embargo map provided by the department. Detour and road embargo information may also be found online at [www.511ia.org](http://www.511ia.org). The owner or operator shall contact the department by telephone at (515)237-3264 between 8 a.m. and 4:30 p.m., Monday through Friday, except for legal holidays, prior to making the move to verify that the owner or operator is using the most recent information.

**511.8(2)** Reserved.

This rule is intended to implement Iowa Code sections 321.454, 321.456, 321.457, 321.463, 321E.2, 321E.3, and 321E.8.

[ARC 3193C, IAB 7/5/17, effective 8/9/17]

**761—511.9(321,321E) All-systems permits.** All-systems permits are issued by the office of vehicle and motor carrier services for indivisible vehicles or indivisible loads for travel on the primary road system and specified city streets and county roads when the dimensions of the vehicle or load exceed statutory limits but the weight is within statutory limits. Routing is subject to embargoed bridges and roads and posted speed limits. The office of vehicle and motor carrier services will provide a list of the authorized city streets and county roads. Permit holders shall consult with local officials when traveling on county roads or city streets for bridge embargo, vertical clearance, detour, and road construction information. These permits are issued for the following:

**511.9(1)** Vehicles with indivisible loads, including special mobile equipment, mobile homes and factory-built structures, provided the following are not exceeded:

- a. *Width.* 12 feet 5 inches including appurtenances.
- b. *Length.* 120 feet 0 inches overall.
- c. *Height.* 13 feet 10 inches.
- d. *Weight.* See rule 761—511.13(321,321E).
- e. *Distance.* Movement is allowed for unlimited distance; routing through the office of vehicle and motor carrier services and city and county jurisdictions is not required.

**511.9(2)** Vehicles with indivisible loads, including special mobile equipment, mobile homes and factory-built structures, provided the following are not exceeded:

- a. *Width.* 14 feet 6 inches.
- b. *Length.* 120 feet 0 inches overall.
- c. *Height.* 15 feet 5 inches.
- d. *Weight.* See rule 761—511.13(321,321E).
- e. *Distance.* Movement is restricted to 50 miles unless trip routes are obtained from the office of vehicle and motor carrier services and city and county jurisdictions or the route continues on at least four-lane roads. Trip routes are valid for five days.

**511.9(3)** Vehicles with indivisible loads, including special mobile equipment, mobile homes and factory-built structures, provided the following are not exceeded:

- a. *Width.* 16 feet 0 inches.
- b. *Length.* 120 feet 0 inches.
- c. *Height.* 15 feet 5 inches.
- d. *Weight.* See rule 761—511.13(321,321E).
- e. *Distance.* Trip routes must be obtained from the office of vehicle and motor carrier services and city and county jurisdictions.

**511.9(4)** Rescinded IAB 1/23/02, effective 2/27/02.

**511.9(5)** Truck trailers manufactured or assembled in the state of Iowa provided the following are met:

- a. *Width.* Not to exceed 10 feet 0 inches.
- b. *Length.* Overall combination length must comply with Iowa Code section 321.457.
- c. *Height.* Statutory: Not to exceed 13 feet 6 inches.
- d. *Weight.* See rule 761—511.13(321,321E).
- e. *Speed.* Rescinded IAB 2/7/01, effective 3/14/01.
- f. *Roadway width.* At least 24 feet 0 inches.
- g. *Limited movement.* Movement shall be solely for the purpose of delivery or transfer from the point of manufacture or assembly to another point of manufacture or assembly within the state or to a point outside the state and shall be on the most direct route necessary for the movement.

**511.9(6)** Vehicles with divisible loads of hay, straw, stover, or bagged livestock bedding provided the following are not exceeded:

- a. *Width.* 12 feet 5 inches.
- b. *Length.* Statutory: 75 feet.
- c. *Height.* Statutory: 14 feet 6 inches.
- d. *Weight.* See rule 761—511.13(321,321E).
- e. *Distance.* Movement is allowed for unlimited distance; routing through the office of vehicle and motor carrier services and city and county jurisdictions is not required.

**511.9(7)** Necessary trip routes must be obtained from the appropriate city and county jurisdictions.

This rule is intended to implement Iowa Code sections 321.454, 321.456, 321.457, 321.463, 321E.2, 321E.3, 321E.8, 321E.10 and 321E.29.

[ARC 3193C, IAB 7/5/17, effective 8/9/17]

**761—511.10(321,321E) Multitrip permits.** Multitrip permits are issued for indivisible vehicles or indivisible loads for travel when either the dimensions or the weight or both the dimensions and the weight exceed statutory limits. The permit shall be for unlimited trips along a specific route between one point of origin and one point of destination. Additional routes will require a new permit. Multitrip permits are issued for the following:

**511.10(1)** Multitrip permits may be issued for vehicles with indivisible loads, including special mobile equipment, mobile homes and factory-built structures, provided the following are not exceeded:

- a. *Width.* 16 feet.
- b. *Length.* 120 feet.
- c. *Height.* 15 feet 5 inches.
- d. *Weight.* 156,000 pounds total gross weight.
- e. *Distance.* On routes specified by the permit-issuing authority.

**511.10(2)** Multitrip permits may be issued for all movements allowed under the single-trip permit provisions of rule 761—511.12(321,321E) provided the movement is within the size and weight limitations of subrule 511.10(1).

**511.10(3)** The dimensions listed on the permit are considered maximums. The movement is legal as long as the vehicle and load do not exceed these dimensions and the movement meets all other requirements of Iowa Code chapter 321E and this chapter of rules.

This rule is intended to implement Iowa Code sections 321.454, 321.456, 321.457, 321.463, 321E.2, 321E.3 and 321E.9A.

[ARC 3193C, IAB 7/5/17, effective 8/9/17]

**761—511.11(321E) Compacted rubbish vehicle permits.** All compacted rubbish vehicle permits issued by the department shall be subject to the following:

**511.11(1)** Permits issued shall be in writing or in an electronic format, shall be carried in the vehicle for which the permit has been issued and shall be available for inspection by any peace officer or authorized agent of any permit-granting authority.

**511.11(2)** Movements by permit shall be allowed day and night, seven days a week including holidays.

**511.11(3)** Vehicles traveling under permit shall be registered for the gross weight or combined gross weight of the vehicle and load.

**511.11(4)** Vehicles under permit must be in compliance with posted bridge and road embargoes and speed limits.

**511.11(5)** Maximum axle weight allowed on the interstate system shall be 20,000 pounds on a single axle and 34,000 pounds on a tandem axle.

This rule is intended to implement Iowa Code section 321E.30.

[ARC 3193C, IAB 7/5/17, effective 8/9/17]

**761—511.12(321,321E) Single-trip permits.** Single-trip permits are issued for indivisible vehicles or indivisible loads for travel when either the dimensions or the weight or both the dimensions and the weight exceed statutory limits. The permit shall be for a specific route between an origin and destination. Single-trip permits are issued for the following:

**511.12(1)** Vehicles with indivisible loads, including special mobile equipment, mobile homes and factory-built structures, provided the following are not exceeded:

*a. Width.* Limited to the maximum physical limitations and clearances of the roadway and infrastructure along the intended route of travel.

*b. Length.* Limited to the maximum physical limitations and clearances of the roadway along the intended route of travel.

*c. Height.* Limited only to the height of underpasses, bridges, power lines, and other established height restrictions. The carrier shall be required to contact affected public utilities when the height of the vehicle with load exceeds 16 feet 0 inches. At the discretion of the permit-issuing authority, a written verification may be required from the affected utility.

*d. Weight.* See rule 761—511.13(321,321E).

*e. Distance.* Limited at the discretion of the permit-issuing authority. The following factors shall be considered:

Road conditions; road width; traffic volume; weather conditions; and roadside obstructions, including bridges, signs and overhead obstructions.

**511.12(2)** Reserved.

This rule is intended to implement Iowa Code sections 321.454, 321.456, 321.457, 321.463, 321E.2, 321E.3, 321E.9 and 321E.29.

[ARC 3193C, IAB 7/5/17, effective 8/9/17]

**761—511.13(321,321E) Maximum axle weights and maximum gross weights for vehicles and loads moved under permit.**

**511.13(1)** *Annual and all-systems permits.*

a. For movement under an annual or all-systems permit, the axle weight and combined gross weight shall not exceed the limits found in Iowa Code section 321.463(3).

b. See subrule 511.13(5) for exceptions for special mobile equipment.

**511.13(2) Annual oversize/overweight permits.**

a. For movement under an annual oversize/overweight permit, the gross weight on any axle shall not exceed 20,000 pounds, with a maximum of 156,000 pounds total gross weight.

b. See subrule 511.13(5) for exceptions for special mobile equipment.

**511.13(3) Multitrip permits.**

a. For movement under a multitrip permit, the gross weight on any axle shall not exceed 20,000 pounds with a maximum of 156,000 pounds total gross weight.

b. See subrule 511.13(5) for exceptions for special mobile equipment.

**511.13(4) Single-trip permits.**

a. For movement under a single-trip permit, the gross weight on any axle shall not exceed 20,000 pounds.

b. If the combined gross weight exceeds 100,000 pounds, a single-trip permit may be issued for the movement only if the permit-issuing authority determines that it would not cause undue damage to the road and is in the best interest of the public.

c. Cranes may have a maximum of 24,000 pounds per axle for movement under a single-trip permit. Routes must be reviewed by the permit-issuing authority prior to issuance.

d. See subrule 511.13(5) for exceptions for special mobile equipment.

**511.13(5) Special mobile equipment.** Special mobile equipment may have a gross weight of 36,000 pounds on any single axle equipped with minimum size 26.5-inch by 25-inch flotation pneumatic tires and a maximum gross weight of 20,000 pounds on any single axle equipped with minimum size 18-inch by 25-inch flotation pneumatic tires, provided that the total gross weight of the vehicle or a combination of vehicles does not exceed a maximum of 80,000 pounds for movement under an annual or all-systems permit and 126,000 pounds for movement under a single-trip, multitrip or annual oversize/overweight permit.

For tire sizes and weights allowed between the maximum and minimum indicated, the following formula shall apply: Axle weight = 20,000 pounds + (tire width - 18) × 1,882 pounds.

**511.13(6) Permitted tandem axle weights.**

a. Vehicles operating under an annual oversize permit, annual oversize/overweight permit, single-trip permit, or multitrip permit may have a gross weight not to exceed 46,000 pounds on a single-tandem axle of the truck tractor and a gross weight not to exceed 46,000 pounds on a single-tandem axle of the trailer or semitrailer if each axle of each tandem group has at least four tires.

b. The maximum weight of any single axle within a permitted tandem axle group shall be 24,000 pounds.

c. A permitted tandem axle shall not be a part of a larger group of axles whose centers are greater than 96 inches apart.

This rule is intended to implement Iowa Code sections 321.463, 321E.7, 321E.8, 321E.9, 321E.9A and 321E.32.

[ARC 3193C, IAB 7/5/17, effective 8/9/17; ARC 4345C, IAB 3/13/19, effective 4/17/19]

**761—511.14(321,321E) Movement of vehicles with divisible loads exceeding statutory size or weight limits.**

**511.14(1)** Vehicles with divisible loads exceeding statutory size or weight limits may be moved under a single-trip permit if the permit-issuing authority determines that a special or emergency situation warrants its issuance.

**511.14(2)** At the discretion of the permit-issuing authority, the combined gross weight may exceed the statutory weight, but the axle weights shall be subject to rule 761—511.13(321,321E).

**511.14(3)** Movement shall be subject to the routes established by the permit-issuing authority.

**511.14(4)** This rule does not apply to divisible loads of hay, straw, stover or bagged livestock bedding.

This rule is intended to implement Iowa Code sections 321.463 and 321E.29.  
[ARC 3193C, IAB 7/5/17, effective 8/9/17]

**761—511.15(321E) Towing units.** The towing unit shall be a truck or truck tractor with dual wheels and with a gross vehicle weight rating of at least 10,000 pounds when towing mobile homes or loads exceeding 10,000 pounds.

This rule is intended to implement Iowa Code section 321.457.  
[ARC 3193C, IAB 7/5/17, effective 8/9/17]

**761—511.16(321E) Escorting.**

**511.16(1) Escort qualification.** An escort shall be a person aged 18 or over who possesses a valid driver's license which allows driving unaccompanied and who carries proof of public liability insurance in the amounts of \$100,000/\$200,000/\$50,000.

**511.16(2) Escorting responsibilities.**

*a.* The escorting vehicle shall be a mid-size automobile or motor truck with sufficient mobility to be able to assist in an emergency and designed to afford clear and unobstructed vision both front and rear. The escorting vehicle shall not be used to tow a trailer while performing escorting duties. In questionable cases the permit-issuing authority shall determine if a vehicle meets these conditions.

*b.* The escorting vehicle shall have a flashing or strobe amber light that is visible for at least 500 feet and provides 360° warning. While escorting a permit load, the light shall be mounted on top of the escort vehicle and shall be burning. Additional escort vehicle markings may be approved or required by the permit-issuing authority.

*c.* An 18-inch by 18-inch red or orange fluorescent flag shall be mounted on each corner of the front bumper of the escort vehicle.

*d.* The escort shall remain a distance of approximately 300 feet in front or to the rear of the load. However, when traveling within the corporate limits of a city, the escort shall maintain a reasonable and proper distance consistent with existing traffic conditions.

*e.* A separate escort shall be provided for each load hauled under escort.

*f.* All traffic laws and provisions of the oversize permit for the load shall be obeyed.

*g.* The escort shall not assume responsibility for stopping traffic. An on-duty peace officer, as defined in Iowa Code section 321.1, shall be contacted to provide any traffic control needed.

*h.* Immediately prior to an escorting trip, the escort shall determine that the escorting vehicle is in a safe operational condition and that the dimensions of the vehicle and load are in compliance with the permit issued.

*i.* Escort fees charged by state and local authorities shall not exceed \$250 per day per escort vehicle.

*j.* A pole used for measuring vertical clearances shall be mounted on the front escort vehicle. The escort shall be required to measure all vertical clearances whenever the height of the permitted vehicle exceeds 14 feet 6 inches up to and including 20 feet.

**511.16(3) Requirements for escorts, flags, signs and lights.** The following chart explains the minimum escort and warning devices required for vehicles operating under permit.

**Minimum Warning Devices and Escort Requirements  
For Vehicles Operating Under Permit**

	Flags/Signs	Lights	Escorts	
			4-Lane	2-Lane
<b>Length</b>				
75'1" up to and including 85'	yes	not required	not required	not required
Over 85' up to and including 120'	yes	yes	not required	not required
Over 120'	yes	not required	rear	rear
<b>Projections</b>				
Front: over 25'	not required	yes	not required	not required
Rear: over 4' up to and including 10'	flags only	not required	not required	not required
Rear: over 10'	flags only	yes	not required	not required
<b>Height</b>				
Over 14'6" up to and including 20'	yes	not required	front with a height pole	front with a height pole
<b>Weight</b>				
Over 80,000 lbs.	not required	yes	not required	not required
<b>Width</b>				
Over 8'6" up to 12'0"	yes	not required	not required	not required
Over 12'0" up to and including 14'6"	yes	not required	rear *	front *
Over 14'6" up to and including 16'6"	yes	not required	rear *	front
Over 16'6" up to and including 18'	yes	not required	rear	front

\*In lieu of an escort, a carrier can display an amber light or strobe light on the power unit and on the rear extremity of the vehicle or load.

yes = required

**Definitions:**

**Flags** - Red or orange fluorescent flags at least 18" square must be mounted as follows: one flag at each front corner of the towing unit and one flag at each rear corner of the load. In addition, there must be a flag at any additional protrusion in the width of the load.

**Signs** - A sign reading "Oversize Load" must be used. The sign must be at least 18" high by 7' long with a minimum of 10" black letters, with a 1½" stroke, on a yellow background, and mounted on the front bumper and on the rear of the load. The rear sign for mobile homes and factory-built structures must be mounted at least 7' above the highway surface, measuring from the bottom of the sign.

**Lights** - A flashing or strobe amber light that is visible for at least 500 feet and provides 360° warning must be mounted on the towing unit and be visible from front and rear. More than one light may be necessary.

The permit-issuing authority may require additional escorts when deemed necessary. The signs or warning devices must be removed or covered when the vehicle is within legal dimensions.

This rule is intended to implement Iowa Code sections 321E.14, 321E.24 and 321E.34.  
[ARC 3193C, IAB 7/5/17, effective 8/9/17]

**761—511.17(321,321E) Permit violations.**

Permit violations are to be reported to the permit-issuing authority by the arresting officer and the permit holder. If a permit holder is found to have willfully violated permit provisions, the office of vehicle and motor carrier services may, after notice and hearing, suspend, modify or revoke the permit privileges of the permit holder consistent with Iowa Code section 321E.20.

This rule is intended to implement Iowa Code sections 321.492, 321E.16 and 321E.20.  
[ARC 3193C, IAB 7/5/17, effective 8/9/17]

**761—511.18(321) Movement of combination vehicles on economic export corridors.****511.18(1) Designation of economic export corridors.**

a. The department may in its discretion establish economic export corridors for the transportation of goods or products manufactured in Iowa to or through the state of South Dakota and for the return of unladen semitrailers or unladen full trailers used for the transportation of those goods or products. An economic export corridor shall not include any segment of the interstate system or any part of the national network of highways identified pursuant to 23 CFR Part 658. However, if appropriate, the department may petition the Federal Highway Administration to remove a road or road segment from the national network of highways for the purpose of including it in an economic export corridor.

b. The department may initiate designation of economic export corridors, or a request for economic export corridor designation may be submitted to the department by an interested party. If a proposed economic export corridor includes any roads or road segments that are under the jurisdiction of a city or a county, a resolution from all relevant local jurisdictions must be submitted to the department indicating their support for economic export corridor designation. The resolution must include a description of the proposed economic export corridor under local jurisdiction.

c. The department shall exercise due regard for the safety of the traveling public and the protection of the highway surfaces and structures when establishing an economic export corridor. Factors to be considered include ability of the proposed economic export corridor to safely accommodate combinations of vehicles described in subrule 511.18(2), taking into account physical configurations and restrictions and traffic demands and capacity, as well as connection to markets that will benefit from the established economic export corridor.

d. The department will post established economic export corridors on the department's Web site.

**511.18(2) Combination vehicles that may be operated on an economic export corridor.**

a. In addition to combinations of vehicles lawful for operation on roads or road segments not designated as an economic export corridor, the following combinations of vehicles may be operated on an economic export corridor designated under subrule 511.18(1) if the combinations of vehicles meet the requirements in paragraph 511.18(2) "b":

(1) A truck tractor-semitrailer-semitrailer converted to a full trailer by use of a dolly equipped with a fifth wheel which is considered a part of the trailer for all purposes, and not a separate unit; or

(2) A truck tractor-semitrailer-full trailer; or

(3) A truck tractor-semitrailer-semitrailer combination, where the semitrailers are connected by a rigid frame extension including a fifth wheel connection point attached to the rear frame of the first semitrailer.

b. The combination of vehicles shall meet all of the following requirements:

(1) The length of the combination of vehicles, excluding the length of the truck tractor, shall not exceed 81½ feet.

(2) The length of either semitrailer or full trailer shall not exceed 45 feet.

(3) The weight of the second semitrailer or full trailer shall not exceed the weight of the first semitrailer by more than 3,000 pounds.

(4) The gross weight of the combination of vehicles shall not exceed 80,000 pounds and the combination of vehicles shall not exceed the gross axle weight limits of Iowa Code section 321.463(2).

(5) The load on each semitrailer or full trailer in the combination shall be an indivisible load. For the purpose of issuing permits for height or width under Iowa Code chapter 321E, the combination of

vehicles shall be considered an indivisible load so long as the load on each semitrailer or full trailer in the combination remains an indivisible load.

*c.* The length of the frame extension shall not be included when determining the overall length of the first semitrailer in a truck tractor-semi-trailer-semi-trailer combination in which the semi-trailers are connected by a rigid frame extension including a fifth wheel connection point attached to the rear frame of the first semitrailer.

*d.* For purposes of this subrule, “full trailer” means as defined in 49 CFR Section 390.5.

This rule is intended to implement Iowa Code section 321.457(2) “n.”

[ARC 3193C, IAB 7/5/17, effective 8/9/17]

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[Filed ARC 4345C (Notice ARC 4231C, IAB 1/16/19), IAB 3/13/19, effective 4/17/19]

<sup>1</sup> Effective date of 511.2(1), 511.4(1) “a,” 511.4(2) “a” and “b,” 511.5(1), 511.5(6) “b”(3), 511.7, 511.8, 511.9(1) to 511.9(5), 511.14(2) “g” and “i,” 511.14(3) “e,” delayed 70 days by the Administrative Rules Review Committee at its meeting held May 12, 1993; delay lifted by this Committee June 8, 1993, effective June 9, 1993.



CHAPTER 524  
FOR-HIRE INTRASTATE MOTOR CARRIER AUTHORITY

**761—524.1(325A) Purpose and applicability.**

**524.1(1)** This chapter establishes requirements concerning for-hire intrastate motor carriers as authorized by Iowa Code chapter 325A.

**524.1(2)** This chapter applies to motor carriers of household goods, bulk liquid commodities, all other property, and passengers being transported for hire on any highway of this state other than a transportation network company or transportation network company driver as both are defined in Iowa Code section 321N.1 and provided for in 761—Chapter 540.

[ARC 4346C, IAB 3/13/19, effective 4/17/19]

**761—524.2(325A) General information.**

**524.2(1) Information and location.** Applications, forms and information on motor carrier permits and motor carrier certificates are available by mail from the Office of Vehicle and Motor Carrier Services, Iowa Department of Transportation, P.O. Box 10382, Des Moines, Iowa 50306-0382; in person at 6310 SE Convenience Blvd., Ankeny, Iowa; by telephone at (515)237-3268; by facsimile at (515)237-3225; or by email at [omcs@iowadot.us](mailto:omcs@iowadot.us).

**524.2(2) Waiver of rules.** In accordance with 761—Chapter 11, the director of transportation may, in response to a petition, waive provisions of this chapter. A waiver shall not be granted unless the director finds that special or emergency circumstances exist.

“*Special or emergency circumstances*” means one or more of the following:

1. Circumstances where the movement is necessary to cooperate with cities, counties, other state agencies or other states in response to a national or other disaster.
2. Circumstances where the movement is necessary to cooperate with national defense officials.
3. Circumstances where the movement is necessary to cooperate with public or private utilities in order to maintain their public services.
4. Circumstances where the movement is essential to ensure safety and protection of any person or property due to events such as, but not limited to, pollution of natural resources, a potential fire or an explosion.
5. Circumstances where weather or transportation problems create an undue hardship for citizens of the state of Iowa.
6. Circumstances where movement involves emergency-type vehicles.
7. Uncommon or extraordinary circumstances where the movement is essential to the existence of an Iowa business and the move may be accomplished without causing undue hazards to the safety of the traveling public or undue damage to private or public property.

**524.2(3) Complaints.** Complaints against motor carriers pertaining to the provisions of this chapter shall be submitted in writing to the office of vehicle and motor carrier services.

[ARC 4346C, IAB 3/13/19, effective 4/17/19]

**761—524.3(325A) Applications and supporting documents.**

**524.3(1) Application.** An application for a motor carrier permit or motor carrier certificate shall be made to the office of vehicle and motor carrier services on a form prescribed for that purpose and furnished upon request. The department may require application forms and supporting documentation to be submitted electronically.

**524.3(2) Application fee.** An application for a motor carrier permit or motor carrier certificate shall be accompanied by the statutory application fee. This fee shall be paid by credit card or by cash, check or money order made payable to the Iowa Department of Transportation.

**524.3(3) Supporting documents.** An application for a motor carrier permit or motor carrier certificate must be accompanied by the following:

- a. Proof of insurance.
- b. Safety self-certification. (See rule 761—524.9(325A).)
- c. A U.S. DOT number if required by the Federal Motor Carrier Safety Administration.

*d.* Financial statement, only for motor carriers of bulk liquid commodities (nondairy) and regular-route passengers. (See rule 761—524.10(325A).)

*e.* Tariff, only for motor carriers of household goods.  
[ARC 4346C, IAB 3/13/19, effective 4/17/19]

**761—524.4(325A) Issuance of credentials.** When all requirements are met, the department shall issue the motor carrier permit or certificate. The motor carrier shall make a copy of the permit or certificate and carry it in each motor vehicle at all times. The copy may be in either a physical or an electronic format as prescribed by the department. The permit or certificate shall be available for display to any peace officer upon request.

[ARC 4346C, IAB 3/13/19, effective 4/17/19]

**761—524.5(325A) Duplicate motor carrier permit or motor carrier certificate.** Written requests for a duplicate motor carrier permit or motor carrier certificate shall be sent to the office of vehicle and motor carrier services. Requests shall include the carrier name, certificate number, or U.S. DOT number. Any motor carrier in good standing shall be issued a duplicate document upon payment of the required fee.

[ARC 4346C, IAB 3/13/19, effective 4/17/19]

**761—524.6(325A) Amendment to a motor carrier permit or certificate.**

**524.6(1) Update to a motor carrier permit.** To change the commodities being transported under a permit, an updated application must be submitted to the office of vehicle and motor carrier services. The updated application shall include the permit number and the required fee for a duplicate permit. Transporting of commodities not listed on the permit shall not commence until a new permit or temporary permit has been issued and is carried in the vehicle.

**524.6(2) Change of name or address for a motor carrier permit or certificate.** Notification of a name or address change shall be sent to the office of vehicle and motor carrier services within 30 days after the change. Notification shall include the permit or certificate number, old name or address, new name or address, and the required fee.

[ARC 4346C, IAB 3/13/19, effective 4/17/19]

**761—524.7(325A) Insurance—suspension.**

**524.7(1) Insurance.** Each motor carrier shall at all times maintain on file with the department the effective certificate(s) of insurance or a surety bond on a form prescribed by the department.

*a.* The insurance or the surety bond shall be written for a period of one year or more.

*b.* The department shall be given written notice 30 days prior to the cancellation of the insurance or the surety bond.

**524.7(2) Self-insurance.** In lieu of maintaining the above insurance, intrastate carriers that also operate interstate and have been approved by a federal agency to self-insure may apply to the department to self-insure by submitting a written request to the office of vehicle and motor carrier services. The written request shall include a copy of the federal agency's approval. The department shall allow self-insurance as long as a federal agency has approved the carrier to self-insure and the motor carrier provides the department with copies of any information required by that federal agency. The department must be notified immediately by the motor carrier if there is any change in the status of the self-insurance for interstate operation.

**524.7(3) Suspension for no insurance.** If a motor carrier fails to maintain the required insurance on file with the department, the department shall suspend the motor carrier's permit or certificate in accordance with Iowa Code chapter 325A and rule 761—524.17(325A). The suspension shall remain in effect until the requirements are met and a reinstatement fee is paid. A motor carrier shall not continue operation without proper insurance.

[ARC 4346C, IAB 3/13/19, effective 4/17/19]

**761—524.8(325A) Self-insurance for motor carriers of passengers.**

**524.8(1) Applications for self-insurance.** A motor carrier of passengers with more than 25 motor vehicles may request self-insurance by submitting a written request to the office of vehicle and motor

carrier services. The written request shall include a copy of the most recent audited financial statement and a vehicle list.

**524.8(2) *Review by the department.*** The department may request additional information. The department shall deny the request to self-insure or suspend existing approval if the motor carrier fails to meet the self-insurance standard. Approval of self-insurance is continuous. However, the motor carrier shall annually file audited financial statements with the office of vehicle and motor carrier services within 60 days after the end of the motor carrier's fiscal year.

**524.8(3) *Cancellation of self-insurance approval.*** The department may cancel approval of self-insurance on reasonable grounds. Reasonable grounds include, but are not limited to, the following: failure to pay a final judgment within 30 days or failure to file an annual, audited financial statement. The department shall give five days' notice to the motor carrier prior to any hearing to cancel approval of self-insurance.

[ARC 4346C, IAB 3/13/19, effective 4/17/19]

**761—524.9(325A) Safety self-certification.** All motor carriers shall follow the safety regulations as stated in 761—Chapter 520 concerning operation, maintenance and inspection of vehicles used in the business. Motor carriers shall submit on a form prescribed by the department a self-certification stating knowledge, understanding and willingness to follow these safety regulations.

**761—524.10(325A) Financial statement.** An application by a motor carrier of bulk liquid commodities (nondairy) or regular-route passengers must include a statement signed by an authorized agent of a lending institution or a certified public accountant attesting to the financial capability of that carrier. At a minimum, the certification shall be based on meeting the following ratios:

Current Ratio: Minimum of 1.2:1

Current Assets

Current Liabilities = \_\_\_\_\_

Projected Operating Ratio: Maximum of 95

1. New Operation

(Use 5-Year Projection)  $\frac{\text{Operating Expenses}}{\text{Operating Revenue}} \times 100 = \underline{\hspace{2cm}}$

2. Existing Operation

(Use 1-Year Projection)

Working Capital Ratio: Minimum 12 days Capital

Current Assets Less Current Liabilities

Average Daily Operating Expenses = \_\_\_\_\_

**761—524.11(325A) Safety education seminar.**

**524.11(1) *Requirement.*** Motor carriers of bulk liquid commodities (nondairy) and passengers shall attend an approved safety education seminar within six months of issuance of the permit or certificate except as provided in subrule 524.11(4). The individuals in attendance shall be the persons responsible for the safety records and driver training. Failure to attend an approved safety education seminar within the time provided shall result in suspension of the motor carrier permit or certificate.

**524.11(2) *Availability.*** The department shall provide an approved safety education seminar periodically. Information on the seminar schedule is available by mail from the Office of Vehicle and Motor Carrier Services, Iowa Department of Transportation, P.O. Box 10382, Des Moines, Iowa 50306-0382; in person at 6310 SE Convenience Blvd., Ankeny, Iowa; or by telephone at (515)237-3268.

**524.11(3) *Third-party safety education seminar approval.*** The office of motor vehicle enforcement shall approve the course curriculum before approving individuals outside the department to conduct safety education seminars. The course curriculum shall be submitted for approval to the office of motor vehicle enforcement. At a minimum, the safety course curriculum shall include the following information:

a. Commercial driver's license regulations.

- b.* A general overview of the U.S. DOT's motor carrier safety regulations and hazardous materials regulations which are adopted annually by the department.
- c.* Iowa Code sections 321.449 and 321.450 and all associated administrative rules.
- d.* Iowa Code section 321.463 and all associated administrative rules.
- e.* Out-of-service criteria.
- f.* A general overview of the U.S. DOT's Emergency Response Guide Book.

**524.11(4) Exemption.** Passenger carriers with vehicles not meeting the definition of a commercial vehicle as defined in Iowa Code section 321.1 are exempt from attending the safety education seminar and paying the seminar fee. A motor carrier certificate issued for such a carrier contains the statement: "limited to noncommercial vehicles only." If a motor carrier wishes to start operating vehicles that meet the definition of a commercial motor vehicle, the motor carrier must update its authority with the office of vehicle and motor carrier services. A motor carrier must pay the seminar fee and attend the seminar within six months of updating the certificate. A new motor carrier certificate removing the limitation would then be issued.

[ARC 0136C, IAB 5/30/12, effective 7/4/12; ARC 4346C, IAB 3/13/19, effective 4/17/19]

**761—524.12(325A) Marking of motor vehicles.** "Motor vehicle" is defined in Iowa Code chapter 325A. Before placing any motor vehicle in service, the motor vehicle shall be clearly marked with letters and figures large enough to be easily read at a distance of 50 feet and in a color in contrast to the background. These markings shall be painted on each side of the motor vehicle or may consist of a removable device that meets identification and legibility requirements and is securely placed on each side of the motor vehicle.

**524.12(1)** Motor carriers operating intrastate only shall display:

- a.* Name of motor carrier under whose authority the motor vehicle is being operated.
- b.* U.S. DOT number followed by the letters "IA" if the motor carrier has been issued a number by the Federal Motor Carrier Safety Administration.

**524.12(2)** Motor carriers operating both interstate and intrastate shall display markings in accordance with 49 CFR Part 390.21, as adopted in 761—Chapter 520.

[ARC 4346C, IAB 3/13/19, effective 4/17/19]

**761—524.13(325A) Bills of lading or freight receipts.**

**524.13(1) Requirements.** Every motor carrier operating under a motor carrier permit, except for those motor carriers transporting unprocessed agricultural and horticultural products and livestock, shall issue a bill of lading or receipt in triplicate on the date freight is received for shipment. The bill of lading or receipt shall show the following:

- a.* Name of motor carrier.
- b.* Date and place received.
- c.* Name of consignor.
- d.* Name of consignee.
- e.* Destination.
- f.* Description of shipment.
- g.* Signature of motor carrier or agent issuing the bill of lading or receipt.
- h.* Freight described in apparent good order unless an exception is noted.

**524.13(2) Retention.** There shall be one copy of the bill of lading or receipt for the consignor, one for the consignee and one to be kept by the motor carrier. The motor carrier's copy shall be carried with the cargo and shall show the total of all charges made for the movement of freight. The motor carrier shall keep the bill of lading or receipt for a period of not less than one year. At any reasonable time, the bill of lading or receipt is subject to inspection by the department's representatives.

**761—524.14(325A) Lease of a vehicle.**

**524.14(1) Lease defined.** "Lease," for the purpose of these rules, means a written document providing for the exclusive possession, control and responsibility over the operation of a vehicle by the lessee for a specific period of time as if the lessee were the owner. A copy of the lease must be carried

in the leased vehicle at all times. No motor carrier may have more than one lease covering a specific vehicle in effect at a given time.

**524.14(2) *Lease of a vehicle to a shipper or a receiver.*** No motor carrier shall lease a vehicle with or without a driver to a shipper or a receiver.

**524.14(3) *Marking of a motor vehicle.*** Each lessee shall properly identify each motor vehicle during the period of the lease as specified in rule 761—524.12(325A).

**524.14(4) *Lease requirements.*** Any lease of a vehicle by any motor carrier except under the following conditions is prohibited:

*a.* Every lease must be in writing and signed by the parties or their regular employees or agents duly authorized to act for them.

*b.* Every lease shall specify the time that the lease begins and the time or circumstances on which it ends.

### **761—524.15(325A) Tariffs.**

**524.15(1) *Requirements.*** All motor carriers of household goods shall maintain on file with the office of vehicle and motor carrier services a tariff stating the rates and charges that apply for the services performed under the permit.

**524.15(2) *Printing.*** All tariffs and amendments or supplements must be in book, pamphlet or loose-leaf form. They must be plainly printed or reproduced. No alteration in writing or erasure shall be made in any tariff or supplement.

**524.15(3) *Filing date.*** All changes to tariffs and supplements must be filed with the office of vehicle and motor carrier services at least seven days prior to the effective date. Tariffs, supplements or adoption notices issued in connection with applications for motor carriers of household goods may become effective on the date the permits are issued.

**524.15(4) *Copy to department.*** To file a tariff with the office of vehicle and motor carrier services, motor carriers of household goods or their agents shall submit a transmittal letter listing all the enclosed tariffs and include one copy of each tariff, supplement or revised page.

**524.15(5) *Title page.*** The title page of every tariff and supplement shall include the following:

*a.* Each tariff shall be numbered in the upper right-hand corner, beginning with number 1. The number shall be shown as follows: Ia. DOT No. ....

When a tariff is issued canceling a tariff previously filed, the Ia. DOT number that has been canceled must be shown in the right-hand corner under the Ia. DOT number of the new tariff.

*b.* Supplements or changes to a tariff shall be numbered beginning with number 1, and this information shall be shown in the upper right-hand corner along with the number of any previous supplements canceled or changed by the supplement.

*c.* The name of each motor carrier of household goods must be the same as it appears on the permit. If the motor carrier of household goods is not a corporation and uses a trade name, the name of the individual or partners must precede the trade name.

*d.* Each tariff shall include a brief description of the territory or points from which and to which the tariff applies.

*e.* Each tariff shall contain the issue and effective dates.

*f.* Each tariff shall include the name, title and street address of the motor carrier of household goods or the agent by whom the tariff is issued.

**524.15(6) *Contents of tariff.*** Each tariff shall include the following:

*a.* A table of contents that is arranged alphabetically.

*b.* A complete index of all commodities including the page number. However, no index or table of contents is needed in tariffs of less than five pages or if the rates are alphabetically arranged by commodities.

*c.* An explanation of all abbreviations, symbols and reference marks used.

*d.* All rates in the tariff explicitly stated in cents or in dollars and cents per one hundred pounds, per mile, per hour, per ton or two thousand pounds, per truck load (of stated amount) or other definable measure. Where rates are stated in amounts per package or bundle, definite specifications of the packages

or bundles must be shown and ambiguous terms, rates, descriptions or plans for determining charges shall not be accepted.

**524.15(7) *Duplication of rates.*** Motor carriers of household goods or their agents shall not publish duplicate or conflicting rates.

**524.15(8) *Tariff changes.*** All rates and charges which have been filed with the office of vehicle and motor carrier services must be allowed to become effective and remain in effect for a period of at least seven days before being changed, canceled or withdrawn. All tariffs, supplements and revised pages shall indicate changes from the preceding issue by use of the following symbols:

(R) to denote reductions

(A) to denote increases

(C) to denote changes, the result of which is neither an increase nor a reduction.

The proper symbol must be shown directly in connection with each change.

**524.15(9) *Posting regulations.*** Each motor carrier of household goods must post and file at its principal place of business all of its tariffs and supplements. All tariffs must be kept available for public inspection.

**524.15(10) *Application for special permission.*** Motor carriers of household goods and agents when making application for permission to establish rates, charges, or rules of the tariff on less than the statutory seven days' notice shall use the form prescribed by the office of vehicle and motor carrier services.

**524.15(11) Powers of attorney and participation notices.**

*a.* Whenever a motor carrier of household goods desires to give authority to an agent or to another motor carrier of household goods to issue and file tariffs and supplements in its stead, a power of attorney in the form prescribed by the department must be used.

*b.* The original power of attorney shall be filed with the office of vehicle and motor carrier services and a copy sent to the agent or motor carrier of household goods on whose behalf the document was issued.

*c.* Whenever a motor carrier of household goods desires to cancel the authority granted an agent or another motor carrier of household goods by power of attorney, this may be done by a letter addressed to the department revoking the authority on 60 days' notice. For good cause, the department may authorize less than 60 days' notice. Copies of the notice must also be mailed to all interested parties by the motor carrier.

**524.15(12) *Nonconforming tariffs.*** The office of vehicle and motor carrier services shall review tariffs that do not conform with subrules 524.15(1) to 524.15(11) to determine if the tariffs contain the necessary information and are acceptable. Tariffs that are unacceptable shall be returned with an explanation.

[ARC 4346C, IAB 3/13/19, effective 4/17/19]

**761—524.16(325A) Transfer of motor carrier regular-route passenger certificate or motor carrier permit for household goods.** Rescinded IAB 5/30/12, effective 7/4/12.

**761—524.17(325A) Suspension, revocation or reinstatement.** The department may suspend or revoke a motor carrier permit or certificate for a violation of Iowa Code chapter 325A or this chapter. The suspension or revocation shall continue until the motor carrier is no longer in violation and the reinstatement fee is paid. A new permit or certificate shall be issued upon reinstatement.

**761—524.18(325A) Hearings.** A person whose application for a motor carrier permit or certificate has been denied for a reason other than noncompliance with insurance requirements or whose motor carrier permit or certificate has been suspended or revoked for a reason other than noncompliance with insurance requirements may contest the decision in accordance with Iowa Code chapter 17A and 761—Chapter 13. The request for a hearing shall be submitted in writing to the director of the office of vehicle and motor carrier services. The request shall include, as applicable, the motor carrier's name, permit or certificate

number, complete address and telephone number. The request must be submitted within 20 days after the date of the notice of suspension, revocation or denial.

[ARC 4346C, IAB 3/13/19, effective 4/17/19]

These rules are intended to implement Iowa Code chapter 325A.

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CHAPTER 620  
OWI AND IMPLIED CONSENT  
[Prior to 6/3/87, Transportation Department[820]—(07,C)Ch 11]

**761—620.1(321J) Definitions.** Rescinded IAB 1/8/92, effective 2/12/92.

**761—620.2(321J) Information and location.** Applications, forms, information, assistance, and answers to questions relating to this chapter are available by mail from Driver and Identification Services, Iowa Department of Transportation, P.O. Box 9204, Des Moines, Iowa 50306-9204; in person at 6310 SE Convenience Blvd., Ankeny, Iowa; by telephone at (515)244-8725; or by facsimile at (515)239-1837.

[ARC 4001C, IAB 9/12/18, effective 10/17/18]

**761—620.3(321J) Issuance of temporary restricted license.**

**620.3(1) Eligibility and application.**

*a.* The department may issue a temporary restricted license to a person who is eligible under and for the purposes listed in Iowa Code chapter 321J. The department shall not issue a temporary restricted license to a person who is otherwise ineligible.

*b.* To apply for a temporary restricted license, an applicant shall, at any time before or during the revocation period, submit application Form 430400 to driver and identification services at the address in 761—620.2(321J). The application form should be furnished by the arresting officer. It may also be obtained upon oral or written request to driver and identification services.

*c.* A temporary restricted license issued for any purpose may include permission for the licensee to participate in the sobriety and drug monitoring program established pursuant to Iowa Code chapter 901D. For purposes of this chapter, a sobriety and drug monitoring program means the sobriety and drug monitoring program established pursuant to Iowa Code chapter 901D. If the licensee is required to participate in and comply with the sobriety and drug monitoring program as a condition of the license, the licensee shall notify the department of the jurisdiction to which the licensee is reporting in compliance with the program.

**620.3(2) Additional requirements.** A person applying for a temporary restricted license shall also comply with all of the following requirements:

*a.* Provide a description of all motor vehicles owned or operated under the temporary restricted license.

*b.* Submit proof of financial responsibility under Iowa Code chapter 321A for all motor vehicles owned or operated under the temporary restricted license.

*c.* Provide certification of installation of an approved ignition interlock device on every motor vehicle owned or operated.

*d.* Pay the \$200 civil penalty.

**620.3(3) Issuance and restrictions.**

*a.* The department shall not issue the temporary restricted license until the application is approved, all requirements are met, the applicable reinstatement and license fees have been paid, and the applicant has passed the appropriate examination for the type of vehicle to be operated under the temporary restricted license.

*b.* The department shall determine the restrictions to be imposed by the temporary restricted license. The licensee shall apply to the department in writing with a justification for any requested change in license restrictions.

**620.3(4) Denial.** A person who has been denied a temporary restricted license or who contests the restrictions imposed by the department may request an informal settlement conference by submitting a written request to the director of driver and identification services at the address given

in 761—620.2(321J). Following an unsuccessful informal settlement or instead of that procedure, the person may request a contested case hearing in accordance with rule 761—620.4(321J).

[ARC 8024B, IAB 8/12/09, effective 7/14/09; ARC 8203B, IAB 10/7/09, effective 11/11/09; ARC 4001C, IAB 9/12/18, effective 10/17/18; ARC 4347C, IAB 3/13/19, effective 4/17/19]

### **761—620.4(321J) Hearings and appeals.**

#### **620.4(1) Contested case hearing.**

a. A person may request a contested case hearing by checking the appropriate box on Form 432018 and submitting it to the department or by submitting a written request to the director of driver and identification services at the address given in 761—620.2(321J). The request shall include the person's name, date of birth, driver license number, complete address and telephone number.

b. A request for a hearing to contest the denial of a temporary restricted license or to contest the restrictions may be submitted at any time.

c. A request for a hearing to contest a revocation shall be submitted within ten days after receipt of the revocation notice. The request shall be deemed timely submitted if it is delivered to the director of driver and identification services or properly addressed and postmarked within this time period.

d. Failure to timely request a hearing on a revocation is a waiver of the right to a hearing under Iowa Code chapter 321J, and the revocation shall become effective on the date specified in the revocation notice.

e. After a hearing, a written decision will be issued by the presiding officer.

**620.4(2) Appeal.** A decision by a presiding officer shall become the final decision of the department and shall be binding on the department and the person who requested the hearing unless either appeals the decision in accordance with this subrule.

a. The appeal shall be decided on the basis of the record made before the presiding officer in the contested case hearing and no additional evidence shall be presented.

b. The appeal shall include a statement of the specific issues presented for review and the precise ruling or relief requested.

c. An appeal of the presiding officer's decision shall be submitted in writing by sending the original and one copy of the appeal to the director of driver and identification services at the address given in 761—620.2(321J).

d. An appeal shall be deemed timely submitted if it is delivered to the director of driver and identification services or properly addressed and postmarked within ten days after receipt of the presiding officer's decision.

e. The director of driver and identification services shall forward the appeal to the director of transportation. The director of transportation may affirm, modify or reverse the decision of the presiding officer, or may remand the case to the presiding officer.

f. Failure to timely appeal a decision shall be considered a failure to exhaust administrative remedies.

**620.4(3) Final agency action.** The decision of the director of transportation shall be the final decision of the department and shall constitute final agency action for purposes of judicial review. No further steps are necessary to exhaust administrative remedies.

#### **620.4(4) Default.**

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

b. Any party may move for default against a party who has requested the contested case proceeding and who has failed to appear after proper service.

c. A default decision or a decision rendered on the merits after a party has failed to appear or participate in a contested case proceeding becomes final agency action unless, within ten days after receipt of the decision, either a motion to vacate is filed and served on the presiding officer and the other parties or an appeal of a decision on the merits is timely submitted in accordance with subrule 620.4(2).

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.

*d.* The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

*e.* Timely filed motions to vacate shall be granted only for good cause shown. The burden of proof is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate.

*f.* "Good cause" for the purpose of this rule means surprise, excusable neglect or unavoidable casualty.

*g.* A decision denying a motion to vacate is subject to further appeal in accordance with subrule 620.4(2).

*h.* A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party in accordance with subrule 620.4(2).

*i.* 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.

**620.4(5) *Petition to reopen a hearing.***

*a.* A petition to reopen a hearing pursuant to Iowa Code section 17A.16 shall be submitted in writing to the director of driver and identification services at the address in 761—620.2(321J). If a petition is based on a court order, a copy of the court order shall be submitted with the petition. If a petition is based on new evidence, the petitioner shall submit a concise statement of the new evidence and the reason(s) for the unavailability of the evidence at the original hearing.

*b.* A petition to reopen a hearing may be submitted at any time even if a hearing to contest the revocation was not originally requested or held.

*c.* A person may appeal a denial of the petition to reopen. The appeal shall be deemed timely if it is delivered to the director of driver and identification services at the address in 761—620.2(321J) or properly addressed and postmarked within 20 days after issuance of the decision denying the petition to reopen.

[ARC 4001C, IAB 9/12/18, effective 10/17/18]

**761—620.5(321J) Reinstatement.** The department may reinstate the license when the revocation has ended if the person has:

**620.5(1)** Filed proof of financial responsibility under Iowa Code chapter 321A for all motor vehicles to be operated.

**620.5(2)** Paid the \$200 civil penalty.

**620.5(3)** Provided proof of satisfactory completion of a course for drinking drivers and proof of completion of substance abuse evaluation and treatment or rehabilitation services on a form and in a manner approved by the department.

**620.5(4)** Successfully completed the required driver license examination.

**620.5(5)** Paid the specified reinstatement fee.

**620.5(6)** Paid the appropriate license or permit fee.

**620.5(7)** Provided, if required by Iowa Code section 321J.17(3), proof of installation of an approved ignition interlock device or proof the person remains in compliance with the ignition interlock device requirement if the device was installed for a temporary restricted license.

**620.5(8)** Provided, if required in accordance with Iowa Code section 321J.20, proof of participation in and compliance with the sobriety and drug monitoring program.

[ARC 4001C, IAB 9/12/18, effective 10/17/18]

**761—620.6(321J) Issuance of temporary restricted license after revocation period has expired.** The department may issue a temporary restricted license to a person whose period of revocation under Iowa Code chapter 321J has expired but who has not met all the requirements for license reinstatement. The period of issuance shall be determined by the department, but it shall not exceed six months from the end of the original revocation period.

**620.6(1)** An applicant for a temporary restricted license under this rule must meet one of the following two conditions:

*a.* The applicant must demonstrate to the satisfaction of the department that a course for drinking drivers was not readily available to the person during the revocation period and that the applicant has enrolled in a course for drinking drivers. The applicant must furnish the dates the class will begin and end.

*b.* The applicant must demonstrate to the satisfaction of the department that substance abuse evaluation and treatment or rehabilitation services have not been completed because of an inability to schedule them or because they are ongoing.

**620.6(2)** An applicant for a temporary restricted license under this rule must meet all other conditions for issuance of a temporary restricted license under rule 761—620.3(321J) and Iowa Code section 321J.20, including installation of an ignition interlock device.

**761—620.7 to 620.9** Reserved.

**761—620.10(321J) Revocation for deferred judgment.** The revocation period under Iowa Code subsection 321J.4(3) shall be 90 days.

**761—620.11 to 620.14** Reserved.

**761—620.15(321J) Substance abuse evaluation and treatment or rehabilitation services.** When the department revokes a person's license under Iowa Code chapter 321J, the department shall also order the person to submit to substance abuse evaluation and, if recommended, treatment or rehabilitation services. A provider of substance abuse evaluation and treatment or rehabilitation programs shall be licensed by the Iowa department of public health, division of substance abuse.

**620.15(1) Reporting.**

*a.* When a person who has been ordered to attend a substance abuse program has satisfactorily completed the program, the program provider shall electronically report completion to the department in a manner approved by the department.

*b.* Reporting to the department shall be in accordance with Iowa Code sections 125.37, 125.84 and 125.86 and the federal confidentiality regulations, "Confidentiality of Alcohol and Drug Abuse Patient Records," 42 CFR Part 2.

**620.15(2) Payment.** Payment of substance abuse evaluation and treatment or rehabilitation costs shall be in accordance with Iowa department of public health rules.

[ARC 4001C, IAB 9/12/18, effective 10/17/18]

**761—620.16(321J) Drinking drivers course.** When the department revokes a person's license under Iowa Code chapter 321J, the department shall order the person to enroll, attend and satisfactorily complete a course for drinking drivers, as provided in Iowa Code section 321J.22.

**620.16(1) Reporting.**

*a.* When a person who has been ordered to attend a drinking drivers course has successfully completed the course, the program provider under Iowa Code section 321J.22(2) "a" shall electronically report completion to the department in a manner approved by the department.

*b.* Reserved.

**620.16(2) Payment.** A person ordered to complete a drinking drivers course is responsible for payment of course fees and expenses in accordance with Iowa Code section 321J.22.

[ARC 4001C, IAB 9/12/18, effective 10/17/18]

**761—620.17(321J) Sobriety and drug monitoring program.** When the department revokes a person's driver's license under Iowa Code chapter 321J, and the person seeks a temporary restricted license, or the person seeks reinstatement of the person's driver's license under Iowa Code section 321J.17, the department shall, if applicable, require the person to participate in and comply with the sobriety and drug monitoring program.

**620.17(1) Condition of license.** Participation in and compliance with the sobriety and drug monitoring program shall be a condition of the license if all of the following apply:

a. The person committed an eligible offense as defined in Iowa Code section 901D.2(4). A first offense means the person has no previous revocation under Iowa Code chapter 321J, and a second or subsequent offense means the person has had a previous revocation under Iowa Code chapter 321J.

b. The eligible offense was committed in a participating jurisdiction.

**620.17(2) Duration.** Unless otherwise provided in Iowa Code chapter 901D or Iowa Code section 321J.20, the person shall be required to participate in the sobriety and drug monitoring program for the length of time that an ignition interlock device is required as provided in Iowa Code section 321J.20.

**620.17(3) Excuse from participation and compliance.** Participation in and compliance with the sobriety and drug monitoring program shall not be required as a condition of the person's driver's license if the court enters an order finding the person is not required to participate in and comply with the program.

**620.17(4) Cancellation.** If the department is notified that a person required to participate in the sobriety and drug monitoring program has not completed enrollment in the program, the department shall cancel the person's driver's license in accordance with the department's existing provisions for cancellation of a license.

**620.17(5) Noncompliance.** If the department is notified pursuant to Iowa Code section 901D.9 that a person required to participate in the sobriety and drug monitoring program is no longer in compliance with the program, the department shall revoke the person's driver's license in accordance with the department's existing provisions for revocation of a license.

[ARC 4001C, IAB 9/12/18, effective 10/17/18]

These rules are intended to implement Iowa Code chapters 17A, 321J and 901D and sections 321.193, 321.201, 321.376 and 707.6A.

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