State of Iowa

Iowa Administrative Code Supplement

Biweekly
April 21, 2021

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

The Iowa Administrative Code Supplement is published biweekly pursuant to Iowa Code sections 2B.5A and 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 or suspension 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

Professional Licensing and Regulation Bureau[193]

Replace Analysis
Replace Chapter 5
Replace Chapters 13 and 14
Insert Chapter 15

Accountancy Examining Board[193A]

Replace Chapters 3 to 8
Replace Chapters 12 to 14

Architectural Examining Board[193B]

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Replace Chapters 1 to 4
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Law Enforcement Academy[501]

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Replace Chapters 1 to 3
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Replace Chapter 10
Remove Reserved Chapters 14 and 15
Insert Chapter 14 and Reserved Chapter 15

Public Safety Department[661]

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Replace Chapter 89

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Created by 1986 Iowa Acts, chapter 1245, under the "umbrella" of the Department of Commerce[181]; renamed in 2006 Iowa Acts, House File 2521, section 52

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193—5.1(17A,546) Definitions. For purposes of this chapter, "a waiver" means action by a board which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. "Board" includes every board and commission in the professional licensing and regulation bureau of the banking division of the department of commerce.
[**ARC 5573C**, IAB 4/21/21, effective 5/26/21]

193—5.2(17A,546) Scope of chapter. This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by boards in situations where no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

193—5.3(17A,546) Applicability. A board may grant a waiver from a rule only if the board has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. A board may not waive requirements created or duties imposed by statute.

193—5.4(17A,546) Criteria for waiver. In response to a petition completed pursuant to rule 193—5.6(17A,546), a board may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the board finds, based on clear and convincing evidence, all of the following:

1. The application of the rule would impose an undue hardship on the person for whom the waiver is requested;
2. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;
3. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and
4. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

[**ARC 5573C**, IAB 4/21/21, effective 5/26/21]

193—5.5(17A,546) Filing of petition. A petition for a waiver must be submitted in writing to the board as follows:

5.5(1) *License application.* If the petition relates to a license application, the petition shall be made in accordance with the filing requirements for the license in question.

5.5(2) *Contested cases.* If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case.

5.5(3) *Other.* If the petition does not relate to a license application or a pending contested case, the petition may be submitted to the board's executive officer.

193—5.6(17A,546) Content of petition. A petition for waiver shall include the following information where applicable and known to the requester:

1. The name, address, email address, and telephone number of the entity or person for whom a waiver is requested and the case number of any related contested case.
2. A description and citation of the specific rule from which a waiver is requested.
3. The specific waiver requested, including the precise scope and duration.
4. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in rule 193—5.4(17A,546). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver.

5. A history of any prior contacts between the board and the petitioner relating to the regulated activity or license affected by the proposed waiver, including a description of each affected license held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity or license within the past five years.

6. Any information known to the requester regarding the board's treatment of similar cases.

7. The name, address, email address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver.

8. The name, address, email address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.

9. The name, address, email address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

10. Signed releases of information authorizing persons with knowledge regarding the request to furnish the board with information relevant to the waiver.

[**ARC 2754C**, IAB 10/12/16, effective 11/16/16]

193—5.7(17A,546) Additional information. Prior to issuing an order granting or denying a waiver, the board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the board may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the board's executive officer, a committee of the board, or a quorum of the board.

193—5.8(17A,546) Notice. The board shall acknowledge a petition upon receipt. The board shall ensure that, within 30 days of the receipt of the petition, notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law. In addition, the board may give notice to other persons. To accomplish this notice provision, the board may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the board attesting that notice has been provided. Notice may be provided by email or similar electronic means.

[**ARC 2754C**, IAB 10/12/16, effective 11/16/16]

193—5.9(17A,546) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case and shall otherwise apply to board proceedings for a waiver only when the board so provides by rule or order or is required to do so by statute.

193—5.10(17A,546) Ruling. An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

5.10(1) *Board discretion.* The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the board, upon consideration of all relevant factors. Each petition for a waiver shall be evaluated by the board based on the unique, individual circumstances set out in the petition.

5.10(2) *Burden of persuasion.* The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the board should exercise its discretion to grant a waiver from a board rule.

5.10(3) *Narrowly tailored.* A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

5.10(4) *Administrative deadlines.* When the rule from which a waiver is sought establishes administrative deadlines, the board shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

5.10(5) *Conditions.* The board may place any condition on a waiver that the board finds desirable to protect the public health, safety, and welfare.

5.10(6) *Time period of waiver.* A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the board, a waiver may be renewed if the board finds that grounds for a waiver continue to exist.

5.10(7) *Time for ruling.* The board shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the board shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

5.10(8) *When deemed denied.* Failure of the board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the board. However, the board shall remain responsible for issuing an order denying a waiver.

5.10(9) *Service of order.* Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law. Service of the written notice shall be sent to the email address provided by the petitioner unless the petitioner specifically requests a mailed copy.
[**ARC 2754C**, IAB 10/12/16, effective 11/16/16]

193—5.11(17A) Interim rulings.

5.11(1) The board chair, or vice chair, if the chair is unavailable, may rule on a petition for waiver if (a) the petition was not filed in a contested case, (b) the ruling would not be timely if made at the next regularly scheduled board meeting, and (c) the ruling can be based on board precedent or a reasonable extension of prior board action on similar requests.

5.11(2) The board chair or vice chair may call a special telephonic meeting of the board if a ruling cannot be made under subrule 5.11(1) and the practical result of waiting until the next regularly scheduled board meeting would be denial of the request due to timing issues.

5.11(3) Interim rulings are effective when made, but they shall also be placed on the agenda at the next regularly scheduled board meeting and recorded in the minutes.
[**ARC 2754C**, IAB 10/12/16, effective 11/16/16; **ARC 5573C**, IAB 4/21/21, effective 5/26/21]

193—5.12(17A,546) Public availability. All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying a waiver petition are public records under Iowa Code chapter 22. Some petitions or orders may contain information the board is authorized or required to keep confidential. The board may accordingly redact confidential information from petitions or orders prior to public inspection.
[**ARC 2754C**, IAB 10/12/16, effective 11/16/16]

193—5.13(17A,546) Submission of waiver information. Within 60 days of granting or denying a waiver, each board shall make a submission on the Internet site established pursuant to Iowa Code section 17A.9A for the submission of waiver information. The submission shall identify the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the board's actions on waiver requests. If practicable, the submission shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself.
[**ARC 2754C**, IAB 10/12/16, effective 11/16/16; **ARC 5573C**, IAB 4/21/21, effective 5/26/21]

193—5.14(17A,546) Cancellation of a waiver. A waiver issued by a board pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the board issues an order finding any of the following:

1. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or

2. The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or

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

[**ARC 2754C**, IAB 10/12/16, effective 11/16/16]

193—5.15(17A,546) Violations. Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

[**ARC 2754C**, IAB 10/12/16, effective 11/16/16]

193—5.16(17A,546) Defense. After the board issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

[**ARC 2754C**, IAB 10/12/16, effective 11/16/16]

193—5.17(17A,546) Judicial review. Judicial review of a board's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

[**ARC 2754C**, IAB 10/12/16, effective 11/16/16]

These rules are intended to implement Iowa Code sections 17A.9A and 546.10.

[Filed 2/15/01, Notice 12/27/00—published 3/7/01, effective 4/11/01]

[Filed 1/16/07, Notice 11/8/06—published 2/14/07, effective 3/21/07]

[Filed ARC 2754C (Notice ARC 2456C, IAB 3/16/16), IAB 10/12/16, effective 11/16/16]

[Filed ARC 5573C (Notice ARC 5400C, IAB 1/27/21), IAB 4/21/21, effective 5/26/21]

CHAPTER 13
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

193—13.1(17A,22) Definitions. As used in this chapter:

"Agency" in these rules means each board within the Iowa professional licensing and regulation bureau.

"Confidential record" in these rules means a record which is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include records or information contained in records that the agency is prohibited by law from making available for examination by members of the public, and records or information contained in records that are specified as confidential by Iowa Code section 22.7, or other provision of law, but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record. Mere inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record.

"Custodian" in these rules means each board within the Iowa professional licensing and regulation bureau.

"Personally identifiable information" in these rules means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system.

"Record" in these rules means the whole or a part of a "public record," as defined in Iowa Code section 22.1, that is owned by or in the physical possession of this agency.

"Record system" in these rules means any group of records under the control of the agency from which a record may be retrieved by a personal identifier such as the name of an individual, number, symbol, or other unique retriever assigned to an individual.

193—13.2(17A,22) Statement of policy. The purpose of this chapter is to facilitate broad public access to open records. It also seeks to facilitate sound agency determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. This agency is committed to the policies set forth in Iowa Code chapter 22; agency staff shall cooperate with members of the public in implementing the provisions of that chapter.

193—13.3(17A,22) Requests for access to records.

13.3(1) *Location of record.* A request for access to a record should be directed to the board which owns or is in physical possession of the record. The request shall be directed to the appropriate board at 200 East Grand Avenue, Suite 350, Des Moines, Iowa 50309. If a request for access to a record is misdirected, agency personnel will promptly forward the request to the appropriate person within the agency.

13.3(2) *Office hours.* Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m., Monday through Friday.

13.3(3) *Request for access.* Requests for access to open records may be made in writing, in person, by facsimile, email, or other electronic means or by telephone. Requests shall identify the particular record sought by name or description in order to facilitate the location of the record. Mail, electronic, or telephone requests shall include the name, address, email address, and telephone number of the person requesting the information to facilitate the board's response, unless other arrangements are made to permit production to a person wishing to remain anonymous. A person shall not be required to give a reason for requesting an open record.

13.3(4) *Response to requests.* Access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access infeasible. If the size or nature of the request for access to an open record requires time for compliance, the custodian shall comply with the request as soon as feasible. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). The custodian shall promptly give notice to the requester of the reason for any delay in access to an open record and an estimate of the length of that delay and, upon request, shall promptly provide that notice to the requester in writing.

The custodian of a record may deny access to the record by members of the public only on the grounds that such a denial is warranted under Iowa Code sections 22.8(4) and 22.10(4), or that it is a confidential record, or that its disclosure is prohibited by a court order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 193—13.4(17A,22) in this chapter and other applicable provisions of law.

13.3(5) *Security of record.* No person may, without permission from the custodian, search or remove any record from agency files. Examination and copying of agency records shall be supervised by the custodian or a designee of the custodian. Records shall be protected from damage and disorganization.

13.3(6) *Copying.* A reasonable number of copies of an open record may be made in the agency's office. If photocopy equipment is not available in the agency office where an open record is kept, the custodian shall permit its examination in that office and shall arrange to have copies promptly made elsewhere.

13.3(7) *Fees.*

a. When charged. The agency may charge fees in connection with the examination or copying of records only if the fees are authorized by law. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

b. Copying and postage costs. Price schedules for published materials and for photocopies of records supplied by the agency shall be prominently posted in agency offices. Copies of records may be made by or for members of the public on agency photocopy machines or from electronic storage systems at cost as determined and posted in agency offices by the custodian. When the mailing of copies of records is requested, the actual costs of such mailing may also be charged to the requester.

c. Supervisory fee. An hourly fee may be charged for actual agency expenses in supervising the examination and copying of requested records when the supervision time required is in excess of one-half hour. The custodian shall prominently post in agency offices the hourly fees to be charged for supervision of records during examination and copying. That hourly fee shall not be in excess of the hourly wage of an agency clerical employee who ordinarily would be appropriate and suitable to perform this supervisory function. To the extent permitted by law, a search fee may be charged to the same rate as and under the same conditions as are applicable to supervisory fees.

d. Advance deposits.

(1) When the estimated total fee chargeable under this subrule exceeds $25, the custodian may require a requester to make an advance payment to cover all or a part of the estimated fee.

(2) When a requester has previously failed to pay a fee chargeable under this subrule, the custodian may require advance payment of the full amount of any estimated fee before the custodian processes a new request from that requester.

[**ARC 2754C**, IAB 10/12/16, effective 11/16/16]

193—13.4(17A,22) Access to confidential records. Under Iowa Code section 22.7 or other applicable provisions of law, the lawful custodian may disclose certain confidential records to one or more members of the public. Other provisions of law authorize or require the custodian to release specified confidential records under certain circumstances or to particular persons. In requesting the custodian to permit the examination and copying of such a confidential record, the following procedures apply and are in addition to those specified for requests for access to records in rule 193—13.3(17A,22).

13.4(1) *Proof of identity.* A person requesting access to a confidential record may be required to provide proof of identity or authority to secure access to the record.

13.4(2) *Requests.* The custodian may require a request to examine and copy a confidential record to be in writing. A person requesting access to such a record may be required to sign a certified statement or affidavit enumerating the specific reasons justifying access to the confidential record and to provide any proof necessary to establish relevant facts.

13.4(3) *Notice to subject of record and opportunity to obtain injunction.* After the custodian receives a request for access to a confidential record, and before the custodian releases such a record, the custodian may make reasonable efforts to notify promptly any person who is a subject of that record, is identified

in that record, and whose address, email address, or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian may give the subject of such a confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

13.4(4) *Request denied.* When the custodian denies a request for access to a confidential record, the custodian shall promptly notify the requester. If the requester indicates to the custodian that a written notification of the denial is desired, the custodian shall promptly provide such a notification that is signed by the custodian and that includes:

a. The name and title or position of the custodian responsible for the denial; and

b. A citation to the provision of law vesting authority in the custodian to deny disclosure of the record and a brief statement of the reasons for the denial to this requester.

13.4(5) *Request granted.* When the custodian grants a request for access to a confidential record to a particular person, the custodian shall notify that person and indicate any lawful restrictions imposed by the custodian on that person's examination and copying of the record.

[**ARC 2754C**, IAB 10/12/16, effective 11/16/16]

193—13.5(17A,22) Requests for treatment of a record as a confidential record and its withholding from examination. The custodian may treat a record as a confidential record and withhold it from examination only to the extent that the custodian is authorized by Iowa Code section 22.7, another applicable provision of law, or a court order to refuse to disclose that record to members of the public.

13.5(1) *Persons who may request.* Any person who would be aggrieved or adversely affected by disclosure of a record and who asserts that Iowa Code section 22.7, another applicable provision of law, or a court order authorizes the custodian to treat the record as a confidential record may request the custodian to treat that record as a confidential record and to withhold it from public inspection.

13.5(2) *Request.* A request that a record be treated as a confidential record and be withheld from public inspection shall be in writing and shall be filed with the custodian. The request must set forth the legal and factual basis justifying such confidential record treatment for that record, and the name, address, email address, and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request. A person requesting treatment of a record as a confidential record may also be required to sign a certified statement or affidavit enumerating the specific reasons justifying the treatment of that record as a confidential record and to provide any proof necessary to establish relevant facts. Requests for treatment of a record as such a confidential record for a limited time period shall also specify the precise period of time for which that treatment is requested.

A person filing such a request shall, if possible, accompany the request with a copy of the record in question with those portions deleted for which such confidential record treatment has been requested. If the original record is being submitted to the agency by the person requesting such confidential treatment at the time the request is filed, the person shall indicate conspicuously on the original record that all or portions of it are confidential.

13.5(3) *Failure to request.* Failure of a person to request confidential record treatment for a record does not preclude the custodian from treating it as a confidential record. However, if a person who has submitted business information to the agency does not request that it be withheld from public inspection under Iowa Code sections 22.7(3) and 22.7(6), the custodian of records containing that information may proceed as if that person has no objection to its disclosure to members of the public.

13.5(4) *Timing of decision.* A decision by the custodian with respect to the disclosure of a record to members of the public may be made when a request for its treatment as a confidential record that is not available for public inspection is filed, or when the custodian receives a request for access to the record by a member of the public.

13.5(5) *Request granted or deferred.* If a request for such confidential record treatment is granted, or if action on such a request is deferred, a copy of the record from which the matter in question has been deleted and a copy of the decision to grant the request or to defer action upon the request will be made available for public inspection in lieu of the original record. If the custodian subsequently receives a

request for access to the original record, the custodian will make reasonable and timely efforts to notify any person who has filed a request for its treatment as a confidential record that is not available for public inspection of the pendency of that subsequent request.

13.5(6) *Request denied and opportunity to seek injunction.* If a request that a record be treated as a confidential record and be withheld from public inspection is denied, the custodian shall notify the requester in writing of that determination and the reasons therefor. On application by the requester, the custodian may engage in a good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief under the provisions of Iowa Code section 22.8, or other applicable provision of law. However, such a record shall not be withheld from public inspection for any period of time if the custodian determines that the requester had no reasonable grounds to justify the treatment of that record as a confidential record. The custodian shall notify requester in writing of the time period allowed to seek injunctive relief or the reasons for the determination that no reasonable grounds exist to justify the treatment of that record as a confidential record. The custodian may extend the period of good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief only if no request for examination of that record has been received, or if a court directs the custodian to treat it as a confidential record, or to the extent permitted by another applicable provision of law, or with the consent of the person requesting access.

[**ARC 2754C**, IAB 10/12/16, effective 11/16/16]

193—13.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records. Except as otherwise provided by law, a person may file a request with the custodian to review, and to have a written statement of additions, dissents, or objections entered into, a record containing personally identifiable information pertaining to that person. However, this does not authorize a person who is a subject of such a record to alter the original copy of that record or to expand the official record of any agency proceeding. The requester shall send the request to review such a record or the written statement of additions, dissents, or objections to the board at 200 East Grand Avenue, Suite 350, Des Moines, Iowa 50309. The request to review such a record or the written statement of such a record of additions, dissents, or objections must be dated and signed by the requester, and shall include the current address and telephone number of the requester or the requester's representative.

[**ARC 2754C**, IAB 10/12/16, effective 11/16/16]

193—13.7(17A,22) Consent to disclosure by the subject of a confidential record. To the extent permitted by any applicable provision of law, a person who is the subject of a confidential record may have a copy of the portion of that record concerning the subject disclosed to a third party. A request for such a disclosure must be in writing and must identify the particular record or records that may be disclosed, and the particular person or class of persons to whom the record may be disclosed and, where applicable, the time period during which the record may be disclosed. The person who is the subject of the record and, where applicable, the person to whom the record is to be disclosed, may be required to provide proof of identity. Additional requirements may be necessary for special classes of records. Appearance of counsel before the agency on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the agency to disclose records about that person to the person's attorney.

This rule does not allow the subject of a record which is confidential under Iowa Code section 272C.6(4) to consent to its release.

193—13.8(17A,22) Disclosures without the consent of the subject.

13.8(1) Open records are routinely disclosed without the consent of the subject.

13.8(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use as defined in rule 193—13.9(17A,22) or in the notice for a particular record system.

b. To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.

e. To the legislative services agency.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

h. To other licensing authorities inside and outside Iowa as described in Iowa Code section 272C.6(4).

13.8(3) Notwithstanding any statutory confidentiality provision, the board may share information with the child support recovery unit of the department of human services through manual or automated means for the sole purpose of identifying registrants or applicants subject to enforcement under Iowa Code chapter 252J or 598.

13.8(4) Notwithstanding any statutory confidentiality provision, the board may share information with the child support recovery unit of the department of human services and the centralized collection unit of the department of revenue for state debt for the sole purpose of identifying applicants or registrants subject to enforcement under Iowa Code chapters 252J and 272D.

[**ARC 2754C**, IAB 10/12/16, effective 11/16/16; **ARC 5573C**, IAB 4/21/21, effective 5/26/21]

193—13.9(17A,22) Routine use. "Routine use" means the disclosure of a record without the consent of the subject or subjects for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22. To the extent allowed by law, the following uses are considered routine uses of all board records:

13.9(1) Disclosure to those officers, employees, and agents of the board who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer or employee, or on the custodian's own initiative, determine what constitutes legitimate need to use confidential records.

13.9(2) Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

13.9(3) Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the board.

13.9(4) Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

13.9(5) Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

13.9(6) Any disclosure specifically authorized by the statute under which the record was collected or maintained.

13.9(7) Disclosure to the public and news media of pleadings, motions, orders, final decisions, and informal settlement filed in licensee disciplinary proceedings.

13.9(8) Transmittal to the district court of the record in a disciplinary hearing, pursuant to Iowa Code section 17A.19(6), regardless of whether the hearing was open or closed.

13.9(9) Name and address of licensees, date of licensure, type of license, status of licensure and related information are routinely disclosed to the public upon request.

13.9(10) Name and license numbers of licensees are routinely disclosed to the public upon request.

193—13.10(17A,22) Consensual disclosure of confidential records.

13.10(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to board disclosure of confidential records as provided in rule 193—13.7(17A,22).

13.10(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the board may, to the extent permitted by law, be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

193—13.11(17A,22) Release to subject.

13.11(1) The subject of a confidential record may file a written request to review confidential records about that person. However, the agency need not release the following records to the subject:

a. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

b. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

c. Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code. (Iowa Code section 22.7(5))

d. All information in licensee complaint and investigation files maintained by the board for purposes of licensee discipline are required to be withheld from the subject prior to the filing of formal charges and the notice of hearing in a licensee disciplinary proceeding, except those files the board can provide to the licensee before charges are filed pursuant to rules adopted under Iowa Code section 546.10(9).

e. As otherwise authorized by law.

13.11(2) Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

[**ARC 2754C**, IAB 10/12/16, effective 11/16/16]

193—13.12(17A,22) Availability of records.

13.12(1) *General.* Agency records are open for public inspection and copying unless otherwise provided by rule or law.

13.12(2) *Confidential records.* The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Personal related information in confidential personnel records of board staff and board members. (Iowa Code section 22.7(11))

b. All information in complaint and investigation files maintained by the board for purposes of licensee discipline is confidential in accordance with Iowa Code section 272C.6(4), except that the information may be released to the licensee once a licensee disciplinary proceeding has been initiated by the filing of formal charges and a notice of hearing or those files the board can provide to the licensee before charges are filed pursuant to rules adopted under Iowa Code section 546.10(9). Unlicensed complaint files are open to the public.

c. The record of a disciplinary hearing which is closed to the public pursuant to Iowa Code section 272C.6(1) is confidential under Iowa Code section 21.5(4). However, in the event a record is transmitted to the district court pursuant to Iowa Code section 17A.19(6) for purposes of judicial review, the record shall not be considered confidential unless the district court so orders. Unlicensed hearing files are open to the public.

d. Information relating to the examination results other than final score, except for information about the results of an examination which is given to the person who took the examination. (Iowa Code sections 542.17, 542B.32, 543B.52, 544A.27, and 544B.8)

e. Information relating to the contents of an examination for licensure. (Iowa Code sections 542.17, 542B.32, 543B.52, 544A.27, and 544B.8)

f. Minutes and tapes of closed meetings of the board. (Iowa Code section 21.5(4))

g. Information or records received from a restricted source and any other information or records made confidential by law, such as academic transcripts or substance abuse treatment information.

h. References for examination or licensure applicants. (Iowa Code section 22.7(18))

i. Records which constitute attorney work products or attorney-client communications or which are otherwise privileged pursuant to Iowa Code section 22.7, 272C.6(4), 622.10 or 622.11, state and federal rules of evidence or procedure, the Code of Professional Responsibility, and case law.

j. Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1)*"d."*

k. Those portions of agency staff manuals, instructions or other statements issued which set forth the criteria or guidelines to be used by agency staff in auditing, making inspections, or in selecting or handling cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would:

(1) Enable law violators to avoid detection;

(2) Facilitate disregard of requirements imposed by law; or

(3) Give a clearly improper advantage to persons who are in an adverse position to the board. (Iowa Code sections 17A.2 and 17A.3)

l. Email addresses of licensees when solicited for the purpose of mass communication. An email address may be open to the public when given as part of a specific, individual email correspondence.

13.12(3) *Authority to release confidential records.* The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 193—13.4(17A,22). If the agency initially determines that it will release such records, the agency may where appropriate notify interested parties and withhold the records from inspection as provided in subrule 13.4(3).

[**ARC 2754C**, IAB 10/12/16, effective 11/16/16]

193—13.13(17A,22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 193—13.1(17A,22). For each record system, this rule describes the legal authority for the collection of that information. Records are stored on paper and in electronic form. The bureau's records retention schedule shall permit the destruction of paper records once the records are converted to an electronic format. Data regarding licensees is stored in a data processing system that permits the comparison of personally identifiable information in one record system with personally identifiable information in another system. Some information may also be placed on the board's website or in its newsletter or shared with others to display in databases, national registries, and similar systems. The record systems maintained by the agency are:

13.13(1) Information in complaint and investigation files maintained by the board for purposes of licensee discipline. This information is required to be kept confidential pursuant to Iowa Code section 272C.6(4). However, it may be released to the licensee once a disciplinary proceeding is commenced by the filing of formal charges and the notice of hearing. Only charges and final orders are maintained electronically.

13.13(2) Information on nonlicensee investigation files maintained by the board. This information is a public record except to the extent that certain information may be exempt from disclosure under Iowa Code section 22.7(18) or other provision of law.

13.13(3) The following information regarding licensee disciplinary proceedings:

a. Formal charges and notices of hearing.

b. Complete records of open disciplinary hearings. If a hearing is closed pursuant to Iowa Code section 272C.6(1), the record is confidential under Iowa Code section 21.5(4).

c. Final written decisions, including informal stipulations and settlements.

13.13(4) Licensure. Records pertaining to licensure by examination may include:

a. Transcripts from education programs. This information is collected pursuant to Iowa Code sections 542.5, 542.8, 542B.13, 543B.15, 543D.9, 544A.8, 544B.9, and 544C.5.

b. Applications for examination. This information is collected pursuant to Iowa Code sections 542.4, 542.8, 542B.13, 543B.20, 543D.7, 544A.8, 544B.9, and 544C.5.

c. References. These may be requested from applicants pursuant to Iowa Code section 542B.13 or 544A.8.

d. Past criminal and disciplinary record. This information is collected pursuant to Iowa Code sections 542.5, 542B.13, 543B.15, 543D.12, 544A.27, 544B.9, and 544C.9.

e. Examination scores. This information is collected pursuant to Iowa Code sections 542.5, 542.8, 542B.14, 543B.20, 543D.8, 544A.8, 544B.9, and 544C.5.

f. Social security numbers of license applicants and licensees as required by Iowa Code section 252J.8(1).

13.13(5) In addition to the above records, records pertaining to licensure by reciprocity or comity may include:

a. Disciplinary actions taken by other boards. This information is collected pursuant to Iowa Code sections 542.10, 542B.21, 543B.15, 543D.10, 544A.8, 544B.15, and 544C.6.

b. Verification of licensure by another board. This information is collected pursuant to Iowa Code sections 542.8, 542.19, 542B.20, 543B.21, 543D.11, 544A.8, 544B.10, and 544C.6.

c. Verification of experience and other licensure qualifications.

13.13(6) Firm and business entity registrations and renewals. This information is collected pursuant to Iowa Code sections 542.7, 542.8, 543B.28, and 544A.21.

13.13(7) Renewal forms. This information is collected pursuant to Iowa Code sections 542.6, 542B.18, 543B.28, 543D.16, 544A.10, 544B.13, and 544C.3(5). Some renewal forms are only stored in data processing systems when licensees renew electronically.

13.13(8) Continuing education records. This information is collected pursuant to Iowa Code section 272C.2.

13.13(9) Trust account records. This information is obtained under the authority of Iowa Code section 543B.46, which may include records such as consents to audit trust accounts, transactional records, bank account and ledger records, examination reports, examiner exit interviews, correspondence and related records.

13.13(10) Errors and omissions insurance records. This information is obtained under the authority of Iowa Code section 543B.47.

[**ARC 2754C**, IAB 10/12/16, effective 11/16/16]

193—13.14(22) Other groups of records. This rule describes groups of records maintained by the agency other than record systems as defined in rule 193—13.1(17A,22). These records are routinely available to the public. However, the agency's files of these records may contain confidential information. In addition, the records listed in rule 193—13.13(17A,22) may contain information about individuals. Records are paper and electronic and may be stored in automated data processing systems. The bureau's records retention schedule shall permit the destruction of paper records once the records are converted to an electronic format.

13.14(1) Rule-making records. Rule-making records may contain information about individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. This information is not generally stored in an automated data processing system, although rule-making dockets may also be found on the board's website.

13.14(2) Board records. Agendas, minutes, and materials presented to the board members in preparation for board meetings are available from the office of the board, except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5(4). Board records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. This information is not stored in an automated data processing system, although minutes and other information may be found on the board's website.

13.14(3) Publications. News releases, annual reports, project reports, agency newsletters, and other publications are available from the office of the board. Information concerning examinations and registration is available from the board office. Agency news releases, project reports, and newsletters

may contain information about individuals, including agency staff or members of agency councils or committees. This information is not stored in an automated data processing system, although some board publications may be found on the board's website.

13.14(4) Appeal decisions and advisory opinions. All final orders, decisions and opinions are open to the public except for information that is confidential according to subrule 13.12(2), paragraphs *"b"* and *"c."* These records may contain information about individuals collected under the authority of Iowa Code sections 542.10, 542B.21, 543B.29, 543D.17, 544A.13, 544B.15, and 544C.9.

13.14(5) Policy manuals. The agency employees' manual, containing the policies and procedures for programs administered by the agency, is available in the office of the agency. Policy manuals do not contain information about individuals.

13.14(6) Other records. All other records that are not exempted from disclosure by law.

13.14(7) Waivers. Requests for waivers, board proceedings and rulings on such requests, and reports prepared for the administrative rules committee and others.

13.14(8) Declaratory orders.

13.14(9) Rule-making initiatives. All boards maintain both paper and electronic records on rule-making initiatives in accordance with Executive Order Numbers 8 and 9.

13.14(10) Personnel records of board staff and board members which may be confidential pursuant to Iowa Code section 22.7(11). The agency maintains files containing information about employees, families and dependents, and applicants for positions with the agency. The files may include payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship.

13.14(11) General correspondence, reciprocity agreements with other states, and cooperative agreements with other agencies.

13.14(12) Administrative records. These records include documents concerning budget, property inventory, purchasing, yearly reports, office policies for employees, time sheets, and printing and supply requisitions.

13.14(13) Subdivided land filings and related correspondence collected pursuant to Iowa Code chapter 543C.

13.14(14) Time-share filings and related correspondence collected pursuant to Iowa Code chapter 557A.

13.14(15) All other records that are not confidential by law.

[**ARC 2754C**, IAB 10/12/16, effective 11/16/16; **ARC 5573C**, IAB 4/21/21, effective 5/26/21]

193—13.15(17A,22) Data processing systems. All data processing systems used by the board permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

193—13.16(17A,22) Applicability. This chapter does not:

1. Require the agency to index or retrieve records which contain information about individuals by a person's name or other personal identifier.
2. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.
3. Govern the maintenance or disclosure of, notification of, or access to records in the possession of the agency which are governed by the regulations of another agency.
4. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.
5. Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and

constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable regulations of the agency.

193—13.17(17A,22) Notice to suppliers of information. When the agency requests a person to supply information about that person, the agency shall notify the person of the use that will be made of the information, which persons outside the agency might routinely be provided this information, which parts of the requested information are required and which are optional, and the consequences of a failure to provide the information requested. This notice may be given in these rules, on the written form used to collect the information, on a separate fact sheet or letter, in brochures, in formal agreements, in contracts, in handbooks, in manuals, verbally, or by other appropriate means.

13.17(1) *License and examination applicants.* License and examination applicants are requested to supply a wide range of information depending on the qualifications for licensure or sitting for an examination, as provided by board statutes, rules and application forms. Failure to provide requested information may result in denial of the application. Some requested information, such as college transcripts, social security numbers, examination scores, and criminal histories, are confidential under state or federal law, but most of the information contained in license or examination applications is treated as public information, freely available for public examination.

13.17(2) *Home address.* License applicants and licensees are requested to provide both home and business addresses. Both addresses are treated as open records. The boards within the bureau will honor the "safe at home" address issued by any state's program and protective orders in domestic abuse proceedings or otherwise issued to preserve confidentiality of a person's physical location. If a license applicant or licensee has a basis to shield a home address from public disclosure, such as a domestic abuse protective order, written notification should be provided to the board office. Absent a court order, the board may not have a basis under Iowa Code chapter 22 to shield the home address from public disclosure, but the board may refrain from placing the home address on its website and may notify the applicant or licensee before the home address is released to the public to provide an opportunity for the applicant or licensee to seek injunction.

13.17(3) *License renewal.* Licensees are requested to supply a wide range of information in connection with license renewal, including continuing education information, criminal history and disciplinary actions, as provided by board statutes, rules and application forms, both on paper and electronically. Failure to provide requested information may result in denial of the application. Most information contained on renewal applications is treated as public information freely available for public examination, but some information, such as credit card numbers, may be confidential under state or federal law.

13.17(4) *Subdivided land/time-shares.* All disclosures and other documents filed with the real estate commission in connection with Iowa Code chapter 543C (subdivided land) or 557A (time-shares) is public information freely available for public examination.

13.17(5) *Investigations.* Licensees are required to respond to board requests for information involving the investigation of disciplinary complaints against licensees. Failure to timely respond may result in disciplinary action against the licensee to whom the request is made. Information provided in response to such a request is confidential pursuant to Iowa Code section 272C.6(4), but may become public if introduced at a hearing which is open to the public, contained in a final order, or filed with a court of judicial review.

[**ARC 2754C**, IAB 10/12/16, effective 11/16/16]

These rules are intended to implement Iowa Code chapters 22 and 252J.

[Filed 8/22/01, Notice 6/27/01—published 9/19/01, effective 10/24/01]
[Filed 1/16/07, Notice 11/8/06—published 2/14/07, effective 3/21/07]
[Filed 9/2/08, Notice 5/7/08—published 9/24/08, effective 10/29/08]
[Filed ARC 2754C (Notice ARC 2456C, IAB 3/16/16), IAB 10/12/16, effective 11/16/16]
[Filed ARC 5573C (Notice ARC 5400C, IAB 1/27/21), IAB 4/21/21, effective 5/26/21]

CHAPTER 14
ALTERNATIVE PATHS TO LICENSURE

193—14.1(272C) Definitions.

"Board" means an examining board or commission within the professional licensing and regulation bureau.

"Issuing jurisdiction" means any state, commonwealth, the District of Columbia, or other insular territory of the United States.

"License" or *"licensure"* means any license, registration, certificate, or permit that may be granted by an examining board or commission within the professional licensing and regulation bureau.

"Military service" means honorably serving on federal active duty, state active duty, or national guard duty, as defined in Iowa Code section 29A.1; in the military services of other states, as provided in 10 U.S.C. Section 101(c); or in the organized reserves of the United States, as provided in 10 U.S.C. Section 10101.

"Military service applicant" means an individual requesting credit toward licensure for military education, training, or service obtained or completed in military service.

"Veteran" means an individual who meets the definition of "veteran" in Iowa Code section 35.1(2).

[**ARC 1734C**, IAB 11/26/14, effective 12/31/14; **ARC 4828C**, IAB 12/18/19, effective 1/22/20; **ARC 5573C**, IAB 4/21/21, effective 5/26/21]

193—14.2(272C) Military education, training, and service credit. A military service applicant may apply for credit for verified military education, training, or service toward any experience or educational requirement for licensure by submitting a military service application form to the board office.

14.2(1) The application may be submitted with an application for licensure or examination or prior to an applicant's applying for licensure or to take an examination. No fee is required for submission of an application for military service credit.

14.2(2) The applicant shall identify the experience or educational licensure requirement to which the credit would be applied if granted. Credit shall not be applied to an examination requirement.

14.2(3) The applicant shall provide documents, military transcripts, a certified affidavit, or forms that verify completion of the relevant military education, training, or service, which may include, when applicable, the applicant's Certificate of Release or Discharge from Active Duty (DD Form 214) or Verification of Military Experience and Training (VMET) (DD Form 2586).

14.2(4) Upon receipt of a completed military service application, the board shall promptly determine whether the verified military education, training, or service will satisfy all or any part of the identified experience or educational qualifications for licensure.

14.2(5) The board shall grant the application in whole or in part if the board determines that the verified military education, training, or service satisfies all or part of the experience or educational qualifications for licensure.

14.2(6) The board shall inform the military service applicant in writing of the credit, if any, given toward an experience or educational qualification for licensure or explain why no credit was granted. The applicant may request reconsideration upon submission of additional documentation or information.

14.2(7) A military service applicant who is aggrieved by the board's decision may request a contested case (administrative hearing) and may participate in a contested case by telephone. A request for a contested case shall be made within 30 days of issuance of the board's decision. The provisions of 193—Chapter 7 shall apply, except that no fees or costs shall be assessed against the military service applicant in connection with a contested case conducted pursuant to this subrule.

14.2(8) The board shall grant or deny the military service application prior to ruling on the application for licensure. The applicant shall not be required to submit any fees in connection with the licensure application unless the board grants the military service application. If the board does not grant the military service application, the applicant may withdraw the licensure application or request that the licensure application be placed in pending status for up to one year or as mutually agreed. The

withdrawal of a licensure application shall not preclude subsequent applications supported by additional documentation or information.
[**ARC 1734C**, IAB 11/26/14, effective 12/31/14; **ARC 4828C**, IAB 12/18/19, effective 1/22/20]

193—14.3(272C) Veteran reciprocity.

14.3(1) A veteran with an unrestricted professional license in another jurisdiction may apply for licensure in Iowa through reciprocity. A veteran must pass any examinations required for licensure to be eligible for licensure through reciprocity and will be given credit for examinations previously passed when consistent with board laws and rules on examination requirements. A fully completed application for licensure submitted by a veteran under this subrule shall be given priority and shall be expedited.

14.3(2) Such an application shall contain all of the information required of all applicants for licensure who hold unrestricted licenses in other jurisdictions and who are applying for licensure by reciprocity, including, but not limited to, completion of all required forms, payment of applicable fees, disclosure of criminal or disciplinary history, and, if applicable, a criminal history background check. The applicant shall use the same forms as any other applicant for licensure by reciprocity and shall additionally provide such documentation as is reasonably needed to verify the applicant's status as a veteran under Iowa Code section 35.1(2).

14.3(3) Upon receipt of a fully completed licensure application, the board shall promptly determine if the professional or occupational licensing requirements of the jurisdiction where the applicant is licensed are substantially equivalent to the licensing requirements in Iowa. The board shall make this determination based on information supplied by the applicant and such additional information as the board may acquire from the applicable jurisdiction. As relevant to the license at issue, the board may consider the following factors in determining substantial equivalence: scope of practice, education and coursework, degree requirements, postgraduate experience, and examinations required for licensure.

14.3(4) The board shall promptly grant a license to the applicant if the applicant is licensed in the same or similar profession in another jurisdiction whose licensure requirements are substantially equivalent to those required in Iowa, unless the applicant is ineligible for licensure based on other grounds, for example, the applicant's disciplinary or criminal background.

14.3(5) If the board determines that the licensing requirements in the jurisdiction in which the applicant is licensed are not substantially equivalent to those required in Iowa, the board shall promptly inform the applicant of the additional experience, education, or examinations required for licensure in Iowa. Unless the applicant is ineligible for licensure based on other grounds, such as disciplinary or criminal background, the following shall apply:

a. If an applicant has not passed the required examination(s) for licensure, the applicant may not be issued a provisional license but may request that the licensure application be placed in pending status for up to one year or as mutually agreed to provide the applicant with the opportunity to satisfy the examination requirements.

b. If additional experience or education is required in order for the applicant's qualifications to be considered substantially equivalent, the applicant may request that the board issue a provisional license for a specified period of time during which the applicant will successfully complete the necessary experience or education. The board shall issue a provisional license for a specified period of time upon such conditions as the board deems reasonably necessary to protect the health, welfare or safety of the public unless the board determines that the deficiency is of a character that the public health, welfare or safety will be adversely affected if a provisional license is granted.

c. If a request for a provisional license is denied, the board shall issue an order fully explaining the decision and shall inform the applicant of the steps the applicant may take in order to receive a provisional license.

d. If a provisional license is issued, the application for full licensure shall be placed in pending status until the necessary experience or education has been successfully completed or the provisional license expires, whichever occurs first. The board may extend a provisional license on a case-by-case basis for good cause.

14.3(6) An applicant who is aggrieved by the board's decision to deny an application for a reciprocal license or a provisional license or is aggrieved by the terms under which a provisional license will be granted may request a contested case (administrative hearing) and may participate in a contested case by telephone. A request for a contested case shall be made within 30 days of issuance of the board's decision. The provisions of 193—Chapter 7 shall apply, except that no fees or costs shall be assessed against the applicant in connection with a contested case conducted pursuant to this subrule.

14.3(7) The licensure requirements for some professions regulated by the boards are very similar or identical across jurisdictions. Given federal mandates, for instance, the requirements to become certified as a real estate appraiser authorized to perform appraisals for federally related transactions are substantially the same nationwide. The requirements to become certified as a certified public accountant are also substantially equivalent nationwide as long as the certified public accountant also holds a license or permit to practice in those jurisdictions which have a two-tiered system of issuing a certificate and a separate license or permit to practice public accounting. For other professions, the applicant is encouraged to consult with board staff prior to submitting an application for reciprocal licensure to determine in advance whether there are jurisdictional variations that may impact reciprocal licensure.

[**ARC 1734C**, IAB 11/26/14, effective 12/31/14; **ARC 4828C**, IAB 12/18/19, effective 1/22/20; **ARC 5573C**, IAB 4/21/21, effective 5/26/21]

193—14.4(272C) Licensure by verification. Licensure by verification is available in accordance with the following:

14.4(1) *Eligibility.* A person may seek licensure by verification if the person is licensed in at least one other jurisdiction that has a scope of practice substantially similar to that of Iowa, and either:

a. The person establishes residency in the state of Iowa; or

b. The person is married to an active duty member of the military forces of the United States and is accompanying the member on an official permanent change of station to a military installation located in the state of Iowa.

14.4(2) *Board application.* The applicant must submit the following:

a. A completed application for licensure by verification.

b. Payment of the application fee.

c. Completed fingerprint cards and a signed waiver form to facilitate a national criminal history background check, if required for initial licensure by the board.

d. A verification form completed by the licensing authority in the jurisdiction that issued the applicant's license, verifying that the applicant's license in that jurisdiction complies with the requirements of Iowa Code section 272C.12. The completed verification form must be sent directly from the licensing authority to the board.

e. Proof of residency in the state of Iowa or proof of military member's official permanent change of station. Proof of residency includes:

(1) Residential mortgage, lease, or rental agreement;

(2) Utility bill;

(3) Bank statement;

(4) Paycheck or pay stub;

(5) Property tax statement;

(6) A federal or state government document; or

(7) Any other board-approved document that reliably confirms Iowa residency.

f. A copy of the complete criminal record, if the applicant has a criminal history.

g. A copy of relevant disciplinary documents, if another jurisdiction has taken disciplinary action against the applicant.

h. Copies of relevant laws setting forth the scope of practice in the other state.

14.4(3) *Applicants with prior discipline.* If another jurisdiction has taken disciplinary action against an applicant, the board will determine whether the cause for the disciplinary action has been corrected and the matter has been resolved. If the board determines the disciplinary matter has not been resolved, the board will neither issue a license nor deny the application for licensure until the matter is resolved.

A person who has had a license revoked, or who has voluntarily surrendered a license, in another jurisdiction is ineligible for licensure by verification.

14.4(4) *Applicants with pending licensing complaints or investigations.* If an applicant is currently the subject of a complaint, allegation, or investigation relating to unprofessional conduct pending before any regulating entity in another jurisdiction, the board will neither issue a license nor deny the application for licensure until the complaint, allegation, or investigation is resolved.

14.4(5) *Compact privileges.* A person who has a privilege to practice in Iowa by virtue of an interstate licensure compact is ineligible for licensure by verification. Licenses issued pursuant to this rule do not grant privileges to practice in any other jurisdiction pursuant to any interstate licensure compact.

14.4(6) *Determination by board.* The board shall make the determination of whether to issue a license under this rule based on information supplied by the applicant in the application and on such additional information as the board may acquire, including information or verification from other jurisdictions.

[**ARC 5573C**, IAB 4/21/21, effective 5/26/21]

193—14.5 and **14.6** Reserved

193—14.7(272C) Applicants with work experience in jurisdictions without licensure requirements.

14.7(1) *Work experience.* An applicant for initial licensure who has relocated to Iowa from another jurisdiction that did not require a professional license to practice in the profession may be considered to have met any educational and training requirements if the person has at least three years of work experience with a scope of practice substantially similar to that of the profession for which a license in Iowa is sought. The three years of work experience must be within the four years preceding the date of application for initial licensure. The applicant must satisfy all other requirements, including passing any required examinations, to receive a license.

14.7(2) *Required documentation.* An applicant who wishes to substitute work experience in lieu of satisfying applicable education or training requirements shall carry the burden of providing all of the following by submitting relevant documents as part of a completed license application:

a. Proof of Iowa residency, which may include:

(1) Residential mortgage, lease, or rental agreement;

(2) Utility bill;

(3) Bank statement;

(4) Paycheck or pay stub;

(5) Property tax statement;

(6) A document issued by the federal or state government; or

(7) Any other board-approved document that reliably confirms Iowa residency.

b. Proof of three or more years of work experience within the four years preceding the application for licensure, which may include:

(1) A letter from the applicant's prior employer documenting the dates of employment;

(2) Paychecks or pay stubs;

(3) If self-employed, business documents filed with the secretary of state; or

(4) Any other board-approved evidence of sufficient work experience.

c. Proof that the work experience was in a practice with a scope of practice substantially similar to that for the license sought in Iowa, which must include:

(1) A written statement by the applicant detailing the scope of practice; and

(2) Business or marketing materials detailing the services provided.

[**ARC 5573C**, IAB 4/21/21, effective 5/26/21]

These rules are intended to implement Iowa Code chapter 272C.

[Filed ARC 1734C (Notice ARC 1630C, IAB 9/17/14), IAB 11/26/14, effective 12/31/14]

[Filed ARC 4828C (Notice ARC 4680C, IAB 10/9/19), IAB 12/18/19, effective 1/22/20]

[Filed ARC 5573C (Notice ARC 5400C, IAB 1/27/21), IAB 4/21/21, effective 5/26/21]

CHAPTER 15
USE OF CRIMINAL CONVICTIONS IN ELIGIBILITY DETERMINATIONS AND INITIAL LICENSING DECISIONS

193—15.1(272C) Definitions. For the purposes of these rules, the following definitions shall apply:

"Complete criminal record" includes the complaint and judgment of conviction for each offense of which the applicant has been convicted, regardless of whether the offense is classified as a felony or a misdemeanor, and regardless of the jurisdiction in which the offense occurred.

"Conviction" means a finding, plea, or verdict of guilt made or returned in a criminal proceeding, even if the adjudication of guilt is deferred, withheld, or not entered. "Conviction" includes Alford pleas and pleas of nolo contendere.

"Disqualifying offense" means a conviction directly related to the duties and responsibilities of the profession. A conviction is directly related to the duties and responsibilities of the profession if either (1) the actions taken in furtherance of an offense are actions customarily performed within the scope of practice of a licensed profession, or (2) the circumstances under which an offense was committed are circumstances customary to a licensed profession.

"License" means any license or registration issued by a board.

[**ARC 5573C**, IAB 4/21/21, effective 5/26/21]

193—15.2(272C) License application. Unless an applicant for licensure petitions the board for an eligibility determination pursuant to rule 193—15.3(272C), the applicant's convictions will be reviewed when the board receives a completed license application.

15.2(1) An applicant must disclose all convictions on a license application. Failure to disclose all convictions is grounds for license denial or disciplinary action following license issuance.

15.2(2) An applicant with one or more convictions shall submit the complete criminal record for each conviction and a personal statement regarding whether each conviction directly relates to the practice of the profession in order for the license application to be considered complete.

15.2(3) An applicant must submit as a part of the license application all evidence of rehabilitation that the applicant wishes to be considered by the board.

15.2(4) The board may deny a license if the applicant has a disqualifying offense unless the applicant demonstrates by clear and convincing evidence that the applicant is rehabilitated pursuant to Iowa Code section 272C.15.

15.2(5) An applicant with one or more disqualifying offenses who has been found rehabilitated must still satisfy all other requirements for licensure.

15.2(6) Any application fees paid will not be refunded if the license is denied.

[**ARC 5573C**, IAB 4/21/21, effective 5/26/21]

193—15.3(272C) Eligibility determination.

15.3(1) An individual who has not yet submitted a completed license application may petition the board for a determination of whether one or more of the individual's convictions are disqualifying offenses that would render the individual ineligible for licensure. An individual with a conviction is not required to petition the board for an eligibility determination prior to applying for licensure.

15.3(2) To petition the board for an eligibility determination of whether one or more of the petitioner's convictions are disqualifying offenses, a petitioner shall submit all of the following:

a. A completed petition for eligibility determination form;

b. The complete criminal record for each of the petitioner's convictions;

c. A personal statement regarding whether each conviction directly relates to the duties and responsibilities of the profession and why the board should find the petitioner rehabilitated;

d. All evidence of rehabilitation that the petitioner wishes to be considered by the board; and

e. Payment of a nonrefundable fee of $25.

[**ARC 5573C**, IAB 4/21/21, effective 5/26/21]

193—15.4(272C) Appeal. A petitioner deemed ineligible or an applicant denied a license because of a disqualifying offense may appeal the decision in the manner and time frame set forth in the board's written decision. A timely appeal will initiate a nondisciplinary contested case proceeding. The board's rules governing contested case proceedings will apply unless otherwise specified in this rule. If the petitioner or applicant fails to timely appeal, the board's written decision will become a final order.

15.4(1) An administrative law judge will serve as the presiding officer of the nondisciplinary contested case proceeding, unless the board elects to serve as the presiding officer. When an administrative law judge serves as the presiding officer, the decision rendered shall be a proposed decision.

15.4(2) The contested case hearing shall be closed to the public and the board's review of a proposed decision shall occur in closed session.

15.4(3) The office of the attorney general shall represent the board's initial ineligibility determination or license denial and shall have the burden of proof to establish that the petitioner or applicant's convictions include at least one disqualifying offense. Upon satisfaction of this burden by a preponderance of the evidence by the office of the attorney general, the burden of proof shall shift to the petitioner or applicant to establish rehabilitation by clear and convincing evidence.

15.4(4) A petitioner or applicant must appeal an ineligibility determination or license denial in order to exhaust administrative remedies. A petitioner or applicant may only seek judicial review of an ineligibility determination or license denial after the issuance of a final order following a contested case proceeding. Judicial review of the final order following a contested case proceeding shall be in accordance with Iowa Code chapter 17A.

[**ARC 5573C**, IAB 4/21/21, effective 5/26/21]

193—15.5(272C) Future petitions or applications. If a final order determines a petitioner is ineligible, the petitioner may not submit a subsequent petition for eligibility determination or a license application prior to the date specified in the final order. If a final order denies a license application, the applicant may not submit a subsequent license application or a petition for eligibility determination prior to the date specified in the final order.

[**ARC 5573C**, IAB 4/21/21, effective 5/26/21]

These rules are intended to implement Iowa Code chapter 272C.

[Filed ARC 5573C (Notice ARC 5400C, IAB 1/27/21), IAB 4/21/21, effective 5/26/21]

CHAPTER 3
CERTIFICATION OF CPAs
[Prior to 7/13/88, see Accountancy, Board of[10]]

193A—3.1(542) Qualifications for a certificate as a certified public accountant.

3.1(1) A person of good moral character who makes application pursuant to Iowa Code section 542.6 may be granted a certificate as a certified public accountant if the person satisfies all of the following qualifications:

a. Satisfactory completion of the educational requirements of Iowa Code section 542.5(7) and rule 193A—3.2(542);

b. No less than one year of verified experience including the types of services described in Iowa Code section 542.5(12) and rule 193A—3.12(542); and

c. Successful completion of the examination described in Iowa Code section 542.5(8) and rule 193A—3.5(542) and the ethics course and examination outlined in 193A—3.13(542).

3.1(2) An application may be denied if the applicant:

a. Subject to the limitations and processes set forth at Iowa Code section 272C.15 and corresponding implementing rules located at 193—Chapter 15, has been convicted of a crime described in Iowa Code section 542.5(2);

b. Has had a professional license of any kind revoked in this or any other jurisdiction, as provided in Iowa Code section 542.5(3);

c. Makes a false statement of material fact on an application for a certificate or is otherwise implicated in the submission of a false application as provided in Iowa Code section 542.5(4);

d. Has violated a provision of Iowa Code section 542.20 or has been assessed penalties pursuant to Iowa Code section 542.14 or 193A—Chapter 17;

e. Is the subject of a notice of noncompliance as provided in 193—Chapter 8;

f. Demonstrates a lack of moral character in a manner which the board reasonably believes will impair the applicant's ability to practice public accountancy in full compliance with the public interest and state policies described in Iowa Code section 542.2. While it is not possible to itemize all actions or behaviors which may demonstrate a lack of moral character, the following nonexclusive list of factors will guide the board in making its determination. However, the board shall not deny an application on the basis of an arrest that was not followed by a conviction based on a finding that because of that arrest the applicant lacks moral character.

(1) A pattern and practice of making false or deceptive representations, or of omitting material facts, while providing the public any of the services described in Iowa Code section 542.3(20);

(2) Fraud or dishonesty while advertising or selling goods or services to the public;

(3) Willful or repeated failure to timely file tax returns or other mandatory submittals due a governmental body;

(4) Fiscally irresponsible behavior in the absence of mitigating circumstances;

g. Is subject to discipline on any ground that would form the basis for discipline against a licensee; or

h. Has had a practice privilege revoked in this or another jurisdiction.

[**ARC 7715B**, IAB 4/22/09, effective 7/1/09; **ARC 5562C**, IAB 4/21/21, effective 5/26/21]

193A—3.2(542) Colleges or universities recognized by the board. Iowa Code section 542.5, in providing for educational qualifications for a certificate as a certified public accountant, refers to colleges or universities "recognized by the board." For such purpose, the board recognizes educational institutions accredited by the Association to Advance Collegiate Schools of Business and the regional accrediting bodies listed in the current publication of the Accredited Institutions of Post Secondary Education, which listing is made a part of these rules by reference.

This rule is intended to implement Iowa Code section 542.5.

[**ARC 2152C**, IAB 9/30/15, effective 11/4/15]

193A—3.3(542) Accounting concentration.

3.3(1) A candidate will be deemed to have met the educational requirement if, as part of the 150 semester hours of education as outlined in Iowa Code section 542.5, the candidate has met one of the following four conditions:

a. Earned a graduate degree with a concentration in accounting from a program that is accredited in accounting by an accrediting agency recognized by the board.

b. Earned a graduate degree in business from a program that is accredited in business by an accrediting agency recognized by the board and completed at least 24 semester hours in accounting including courses covering the subjects of financial accounting, auditing, taxation, and management accounting. Such accounting hours shall not include elementary accounting or principles of accounting, internships or life experience.

c. Earned a baccalaureate degree in business or accounting from a program that is accredited in business by an accrediting agency recognized by the board and completed at least 24 semester hours in accounting courses covering the subjects of financial accounting, auditing, taxation, and management accounting. Such accounting hours shall not include elementary accounting or principles of accounting, internships or life experience.

d. Earned a baccalaureate or higher degree and completed the following hours from an accredited institution recognized by the board:

(1) At least 24 semester hours in accounting courses above elementary accounting or principles of accounting covering the subjects of financial accounting, auditing, taxation, and management accounting, not including internships or life experience; and

(2) At least 24 additional semester hours in business-related courses, not including internships or life experience. Elementary accounting hours that do not qualify under subparagraph 3.3(1)*"d"*(1) above may apply toward business-related courses.

Quarter hours will be accepted in lieu of semester hours at a 3:2 ratio; that is, three quarter hours is equivalent to two semester hours. Internships and life experience hours may apply toward the total 150 hours' requirement.

3.3(2) The board will consider correspondence study and study in other schools not meeting the above requirements on an individual basis if the candidate can provide evidence that such study would be acceptable for credit by a college or university recognized by the board; provided, however, that at least 18 of the required hours in accounting and at least 16 of the required hours in business-related subjects must be obtained in a college or university recognized by the board.

3.3(3) The applicant's claim to college or university credits must be confirmed by an official transcript of credit issued by the institution in question. The applicant shall be responsible for having such transcripts sent to the board's test administrator at the time of making application. The applicant shall also be responsible for having any institution not listed under rule 193A—3.2(542) furnish the board evidence that it meets the accreditation requirements of the board.

3.3(4) Graduates of foreign colleges or universities shall have their education evaluated by a foreign credentials evaluation advisory service specified by the board.

193A—3.4(542) Examination applications.

3.4(1) An individual desiring to take the certified public accountant examination as an initial candidate should apply to the board's test administrator. An application shall not be approved until complete in all respects. A complete application includes a completed application form, the designated fee, and all applicable college transcripts.

3.4(2) To be eligible to make application for the examination, a candidate shall fulfill the requirements of rule 193A—3.3(542).

3.4(3) Subject to the limitations and processes set forth at Iowa Code section 272C.15 and corresponding implementing rules located at 193—Chapter 15, a candidate for the examination who has been convicted in a court of competent jurisdiction in this state, or another state, territory, or a district of the United States, or in a foreign jurisdiction of forgery, embezzlement, obtaining money under false pretenses, theft, extortion, conspiracy to defraud, or other similar offense, or of any crime involving moral character or dishonesty may be denied admittance to the examination by the board on

the grounds of the conviction. For purposes of this subrule, "conviction" means a conviction for an indictable offense and includes a guilty plea, deferred judgment from the time of entry of the deferred judgment until the time the defendant is discharged by the court without entry of judgment, or other finding of guilt by a court of competent jurisdiction.

3.4(4) A candidate for examination who has had a professional license of any kind revoked in this or any other jurisdiction may be denied admittance to the examination by the board on the grounds of the revocation.

3.4(5) A candidate who makes a false statement of material fact on an application for examination for a certificate, or who causes to be submitted or has been a party to preparing or submitting a false application for a certificate, may be denied a certificate by the board on the grounds of the false statement or submission.

3.4(6) A candidate may be considered as a reexamination applicant regardless of whether or not the candidate sat for the examination once initially approved. Reexamination applicants may apply by telephone to the board's test administrator or may apply on-line if the technology is available.

3.4(7) A nonrefundable proctoring fee shall be collected from a candidate who wishes to be proctored in Iowa.

[**ARC 5562C**, IAB 4/21/21, effective 5/26/21]

193A—3.5(542) Content and grading of the examination.

3.5(1) The board may make use of the uniform certified public accountant's examination prepared by the American Institute of Certified Public Accountants or another nationally recognized organization under a plan of cooperation with the boards of all states and territories of the United States.

3.5(2) The board may also make use of the advisory grading service provided by the American Institute of Certified Public Accountants or another nationally recognized organization under a plan of cooperation with the boards of all states and territories of the United States.

3.5(3) A grade of at least 75 in each subject shall be considered passing.

193A—3.6(542) Conditional requirements.

3.6(1) Effective with the implementation of the computer-based examination, a candidate may take the required test subjects individually and in any order. Except as provided in rule 193A—3.7(542), credit for any subjects passed shall be valid for 18 months from the actual date the candidate sat for the subject, without the candidate's having to attain a minimum score on any failed subject(s) and without regard to whether the candidate sat for any other subjects. The candidate shall also be subject to the following:

a. The candidate must pass all four subjects of the examination within a rolling 18-month period that begins on the date that the first subject is passed. If all four subjects are not passed within the 18-month period, credit for any subject taken outside the 18-month period shall expire.

b. Subject to paragraph 3.6(1)*"c,"* if a candidate fails a subject, the candidate cannot retake the same failed subject in an examination window. An "examination window" refers to a three-month period in which a candidate has the opportunity to take the examination (comprised of two months when the examination is offered and one month when the examination will not be offered while routine maintenance is performed and the item bank is refreshed). Thus, the candidate will be able to sit for the examination two out of three months within an examination window.

c. If and when the board determines that examination system changes necessary to eliminate examination window limitations have been implemented, paragraph 3.6(1)*"b"* will no longer be effective and a candidate will be permitted to retake a subject once the candidate's grade for any previous attempt of that same subject has been released.

3.6(2) A candidate shall be deemed to have passed the examination once the candidate holds, at the same time, valid credit for passing each of the four subjects of the examination. For purposes of this rule, credit for passing a subject of the examination is valid from the actual date of the testing event for that subject, regardless of the date the candidate actually received notice of the passing score.

This rule is intended to implement Iowa Code section 542.5.

[**ARC 9482B**, IAB 5/4/11, effective 6/8/11; **ARC 4657C**, IAB 9/11/19, effective 10/16/19]

193A—3.7(542) Extension of conditional status.

3.7(1) The time limit within which a candidate is required to pass all subjects under these rules shall not include any period during which the candidate was serving in the armed forces of the United States. This exception does not apply if the candidate takes an examination while so serving. The board may extend the time limit in particular instances on a case-by-case basis.

3.7(2) The time limit within which a candidate is required to pass all subjects under these rules may be extended for hardship cases, such as when the applicant for the examination is prevented from attending for such reasons as unexpected illness, verified by a medical doctor, or a death in the family, verified in writing.

3.7(3) The time limit within which a candidate is required to pass all subjects under these rules may be extended if circumstances occur which prevent the score from an examination from reaching the candidate in a reasonable period of time. Such circumstances would allow the candidate the opportunity to retake a failed subject.

193A—3.8(542) Transfer of credit from another jurisdiction.

3.8(1) A candidate requesting transfer of grades from any other jurisdiction will be subject to the same provisions of these rules as an Iowa candidate, provided that the examination given by the licensing authority in the other state was an examination approved by the Iowa board.

3.8(2) A candidate requesting transfer of grades from any other jurisdiction who does not meet the provisions of these rules, but who meets all of the requirements for issuance of an original certificate in the examining state other than residency, may, at the board's discretion, be required to take at least one section of the examination designated by the board.

193A—3.9(542) Examination procedures.

3.9(1) At the examination, a candidate must provide evidence of identification with two forms of official documentation such as a driver's license, student identification, service identification, or passport that contains the candidate's photograph and signature.

3.9(2) The candidate may be photographed by the test administrator at each appearance for the examination. The test administrator may collect from the candidate a fee for the processing of the photograph.

3.9(3) Scratch paper and supplies furnished by the board's test administrator shall remain the administrator's property and must be returned whether used or not.

3.9(4) In the event that a computer malfunction or failure occurs while the examination is being conducted, the liability of the board or its test administrator will be limited to the fee paid by the applicant for the examination.

193A—3.10(542) Conduct of the examination.

3.10(1) Any individual who subverts or attempts to subvert the examination process may, at the discretion of the board, have the individual's examination scores declared invalid for the purpose of certification in Iowa, be barred from accountancy licensing and certification examinations in Iowa, or be subject to the imposition of other sanctions the board deems appropriate.

3.10(2) Conduct that subverts or attempts to subvert the examination process includes, but is not limited to:

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

b. Conduct which violates the standards of test administration, such as communicating with any other examination candidate during the administration of the licensing examination; communicating with others outside of the examination site during the administration of the examination; copying answers from another candidate or permitting one's answers to be copied by another candidate during

the administration of the examination; having in one's possession during the administration of the licensing examination any books, notes, written or printed materials or data of any kind, other than the examination materials distributed.

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

3.10(3) Any examination candidate who wishes to appeal a decision of the board under this rule may request a contested case hearing. The request for hearing shall be in writing, shall briefly describe the basis for the appeal, and shall be filed in the board's office within 30 days of the date of the board decision being appealed. Any hearing requested under this subrule shall be governed by the rules applicable to contested case hearings under 193—Chapter 7.

193A—3.11(542) Refunding of examination fees. Examination fees shall not be refunded except in hardship cases, such as when the candidate for the examination is prevented from attending for such reasons as unexpected illness, verified by a medical doctor, a death in the family, or a call to active military service, 50 percent of the fee may be returned. Written documentation including evidence of the hardship shall be provided to the board's test administrator.

193A—3.12(542) Experience for certificate.

3.12(1) Experience shall include providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax or consulting skills. Experience may be gained through employment in government, industry, academia, or public practice.

3.12(2) One year of experience shall consist of full- or part-time employment that extends over a period of no less than one year and no more than three years and includes no fewer than 2,000 hours of performance of services outlined in subrule 3.12(1). Experience may be gained in more than one employment situation, including an internship.

3.12(3) An applicant seeking qualification as an attest CPA shall have at a minimum two years of experience as more fully described in 193A—subrule 6.3(1).

3.12(4) All experience shall be verified by a licensee with direct supervisory control over the applicant or by a licensee who can attest that the experience gained by the applicant meets the requirements of subrule 3.12(1) if the applicant is not supervised by a licensee.

3.12(5) Teaching experience shall be in the employment of an institution of higher education and shall include teaching a minimum of 24 semester hours of accounting courses for which the course participants receive credit on an official transcript. Teaching of noncredit continuing education courses shall not qualify under this rule.

193A—3.13(542) Ethics course and examination. A successful candidate shall also be required to pass an examination covering the code of ethical conduct prior to issuance of the certificate.

193A—3.14(542) Obtaining the certificate.

3.14(1) A candidate who successfully passes the examination, completes the ethics course and examination and meets all of the requirements outlined in rule 193A—3.1(542) shall make application for the certificate on a form which may be obtained on the board's website. An applicant for a certificate may be denied the certificate for reasons outlined in subrule 3.4(3), 3.4(4), or 3.4(5) regardless of when the incident occurred.

3.14(2) A candidate who meets the requirements for a certificate outlined in rule 193A—3.1(542) shall file an application for a certificate within three years of the date of passing the examination. If the candidate does not file an application for a certificate within the required time frame, the candidate must comply with the basic continuing education requirements outlined in rule 193A—10.5(542) prior to filing an application. The required continuing education hours shall include a minimum of eight hours of continuing education every three years devoted to financial statement presentation, such as courses

covering the statements on standards for accounting and review services (SSARS) and accounting and auditing updates.
[**ARC 9482B**, IAB 5/4/11, effective 6/8/11; **ARC 4243C**, IAB 1/16/19, effective 2/20/19]

193A—3.15(542) Use of title.

3.15(1) Only a person who holds an active, unexpired certificate and who complies with the requirements of 193A—Chapters 5 and 10 or a person lawfully exercising a practice privilege under Iowa Code section 542.20 may use or assume the title "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a certified public accountant.

3.15(2) Rules regarding the use of the title "CPA" in a firm name are found in the AICPA Code of Professional Conduct as adopted by reference in 193A—Chapter 13.
[**ARC 7715B**, IAB 4/22/09, effective 7/1/09; **ARC 9482B**, IAB 5/4/11, effective 6/8/11; **ARC 3230C**, IAB 8/2/17, effective 9/6/17]

These rules are intended to implement Iowa Code chapter 542 and Iowa Code section 546.10.

[Filed and effective September 22, 1975]
[Filed 9/27/78, Notice 8/23/78—published 10/18/78, effective 11/22/78]
[Filed 6/22/88, Notice 3/9/88—published 7/13/88, effective 8/17/88]
[Filed 8/1/91, Notice 5/15/91—published 8/21/91, effective 9/25/91]
[Filed 12/30/92, Notice 10/28/92—published 1/20/93, effective 2/24/93]
[Filed 12/17/93, Notice 10/13/93—published 1/5/94, effective 2/9/94]
[Filed 12/30/94, Notice 10/12/94—published 1/18/95, effective 2/22/95]
[Filed 4/12/02, Notice 3/6/02—published 5/1/02, effective 7/1/02]
[Filed 1/30/04, Notice 12/24/03—published 2/18/04, effective 3/24/04]
[Filed 1/19/05, Notice 12/8/04—published 2/16/05, effective 3/23/05]
[Filed ARC 7715B (Notice ARC 7484B, IAB 1/14/09), IAB 4/22/09, effective 7/1/09]
[Filed ARC 9482B (Notice ARC 9370B, IAB 2/23/11), IAB 5/4/11, effective 6/8/11]
[Filed ARC 2152C (Notice ARC 2058C, IAB 7/8/15), IAB 9/30/15, effective 11/4/15]
[Filed ARC 3230C (Notice ARC 3019C, IAB 4/12/17), IAB 8/2/17, effective 9/6/17]
[Filed ARC 4243C (Notice ARC 3988C, IAB 9/12/18), IAB 1/16/19, effective 2/20/19]
[Filed ARC 4657C (Notice ARC 4507C, IAB 6/19/19), IAB 9/11/19, effective 10/16/19]
[Filed ARC 5562C (Notice ARC 5357C, IAB 12/30/20), IAB 4/21/21, effective 5/26/21]

CHAPTER 4
LICENSURE OF LPAs
[Prior to 7/13/88, see Accountancy, Board of[10]]

193A—4.1(542) Qualifications for a license as a licensed public accountant.

4.1(1) A person of good moral character who makes application pursuant to Iowa Code section 542.8 may be granted a license as a licensed public accountant if the person satisfies all of the following qualifications:

a. Satisfactory completion of the educational requirements of Iowa Code section 542.8(1) and rule 193A—4.2(542);

b. No less than one year of verified experience including the types of services described in Iowa Code section 542.8(8) and rule 193A—4.12(542); and

c. Successful completion of the examination described in Iowa Code section 542.8(3) and rule 193A—4.7(542) and the ethics course and examination outlined in 193A—4.13(542).

4.1(2) An application may be denied if the applicant:

a. Subject to the limitations and processes set forth at Iowa Code section 272C.15 and corresponding implementing rules located at 193—Chapter 15, has been convicted of a crime;

b. Has had a professional license of any kind revoked in this or any other jurisdiction;

c. Makes a false statement of material fact on an application for a license or is otherwise implicated in the submission of a false application;

d. Has been assessed penalties pursuant to Iowa Code section 542.14 or 193A—Chapter 17;

e. Is the subject of a notice of noncompliance as provided in 193—Chapter 8;

f. Demonstrates a lack of moral character in a manner that the board reasonably believes will impair the applicant's ability to practice public accountancy in full compliance with the public interest and state policies described in Iowa Code section 542.2. While it is not possible to itemize all actions or behaviors which may demonstrate a lack of moral character, the following nonexclusive list of factors will guide the board in making its determination. However, the board shall not deny an application on the basis of an arrest that was not followed by a conviction based on a finding that because of that arrest the applicant lacks moral character.

(1) A pattern and practice of making false or deceptive representations, or of omitting material facts, while providing any accounting services to the public;

(2) Fraud or dishonesty while advertising or selling goods or services to the public;

(3) Willful or repeated failure to timely file tax returns or other mandatory submittals due a governmental body;

(4) Fiscally irresponsible behavior in the absence of mitigating circumstances; or

g. Is subject to discipline on any ground that would form the basis for discipline against a licensee.

[**ARC 7715B**, IAB 4/22/09, effective 7/1/09; **ARC 5562C**, IAB 4/21/21, effective 5/26/21]

193A—4.2(542) Examination application.

4.2(1) An individual desiring to take the examination to qualify for a license as a licensed public accountant shall apply to the board's test administrator.

4.2(2) To be eligible to take the examination, the applicant must meet the requirements of Iowa Code section 542.8(1)*"b"* at the time of filing the application.

4.2(3) Subject to the limitations and processes set forth at Iowa Code section 272C.15 and corresponding implementing rules located at 193—Chapter 15, a candidate for the examination who has been convicted in a court of competent jurisdiction in this state, or another state, territory, or a district of the United States, or in a foreign jurisdiction of forgery, embezzlement, obtaining money under false pretenses, theft, extortion, conspiracy to defraud, or other similar offense, or of any crime involving moral character or dishonesty may be denied admittance to the examination by the board on the grounds of the conviction. For purposes of this subrule, "conviction" means a conviction for an indictable offense and includes a guilty plea, deferred judgment from the time of entry of the deferred judgment until the time the defendant is discharged by the court without entry of judgment, or other finding of guilt by a court of competent jurisdiction.

4.2(4) A candidate for examination who has had a professional license of any kind revoked in this or any other jurisdiction may be denied admittance to the examination by the board on the grounds of the revocation.

[**ARC 5562C**, IAB 4/21/21, effective 5/26/21]

193A—4.3(542) Major in accounting. In determining whether the requirement in Iowa Code section 542.8(1)*"b"*(2) as to a "major in accounting" has been met, the board will follow the rules associated with a "concentration in accounting" outlined in 193A—paragraph 3.3(2)*"c."*

193A—4.4(542) Transcripts required. The applicant's claim to college, university, business school, or correspondence school credit must be confirmed by an official transcript issued by the institution. The applicant shall be responsible for having such transcripts sent to the board at the time of making application. The applicant shall also be responsible for having the institution furnish the board evidence that the institution meets the accreditation requirements of the board. The applicant is also responsible for all such material being in possession of the board by the deadline for filing the application; otherwise, the application shall be considered incomplete and disapproved by the board.

193A—4.5(542) Deadline for filing applications. Rescinded **ARC 4243C**, IAB 1/16/19, effective 2/20/19.

193A—4.6(79GA,ch55) Admittance prior to completing educational requirements. Rescinded IAB 2/16/05, effective 3/23/05.

193A—4.7(542) Content and grading of the examination.

4.7(1) The board may use the examination prepared by the Accreditation Council for Accountancy and Taxation. The examination shall not include any questions regarding auditing or attest functions.

4.7(2) The board may use the grading services provided by the Accreditation Council for Accountancy and Taxation.

4.7(3) The identity of the person taking the examination shall be concealed until after the examination papers have been graded. Absent a showing of good cause, the board shall accept the passing grade established by the Accreditation Council for Accountancy and Taxation.

4.7(4) Alternatively, an applicant may satisfy the examination requirement of this rule by passing the Financial Accounting and Reporting-Business Enterprises and Accounting and Reporting-Taxation, Managerial, Governmental and Not-for-Profit Organization sections of the CPA examination provided by the AICPA.

193A—4.8(542) Conditioning requirements.

4.8(1) An applicant must take all subjects at one sitting unless the applicant becomes a conditional candidate or passes all subjects.

4.8(2) If an applicant receives a passing grade in any of the subjects and obtains a grade of not less than 50 in the subject or subjects failed, the applicant shall be considered a conditional candidate entitled to receive credit for the subject or subjects passed and be reexamined in the subject or subjects not passed during the next six succeeding examinations upon payment of the required fee.

4.8(3) The time limit within which an applicant is required to pass all subjects under this rule shall not include any period during which the applicant was serving in the armed forces of the United States, unless the applicant takes an examination while so serving, in which case such time shall be included in computing the time limitation.

4.8(4) The time limit within which a candidate is required to pass all subjects under this rule may be extended for hardship cases, such as when the applicant for the examination is prevented from attending for such reasons as unexpected illness, verified by a medical doctor, or a death in the family, verified in writing.

193A—4.9(542) Examination procedures. The examination procedures to be followed by a candidate for the certified public accountants' examination as outlined in rule 193A—3.8(542) shall also apply to a licensed public accountant examination candidate.

193A—4.10(542) Refunding of examination fees. Examination fees will not be refunded except as provided by the rules concerning the refunding of examination fees to an examination candidate for a certified public accountant certificate outlined in 193A—3.10(542).

193A—4.11(542) Credit for an examination taken in another state. A candidate who has partially passed an examination in another state will be given credit for the part or parts passed, provided the candidate meets the conditioning requirements of the board and further provided the examination given by the licensing authority in the other state was an examination prepared and graded by the Board of Examiners of the American Institute of Certified Public Accountants or the Accreditation Council for Accountancy and Taxation.

193A—4.12(542) Experience for license.

4.12(1) Experience shall include providing any type of service or advice involving the use of accounting, compilation, management advisory, financial advisory, tax or consulting skills. Experience may be gained through employment in government, industry, academia, or public practice.

4.12(2) One year of experience shall consist of full- or part-time employment that extends over a period of no less than one year and no more than three years and includes no fewer than 2,000 hours of performance of services outlined in subrule 4.12(1). Experience may be gained in more than one employment situation, including an internship.

4.12(3) All experience shall be verified by a licensee with direct supervisory control over the applicant or by a licensee who can attest that the experience gained by the applicant meets the requirements of subrule 4.12(1) if the applicant is not supervised by a licensee.

4.12(4) Teaching experience shall be in the employment of an institution of higher education and shall include teaching a minimum of 24 semester hours of accounting courses for which the course participants shall receive credit on an official transcript. Teaching of noncredit continuing education courses shall not qualify under this rule.

193A—4.13(542) Ethics course and examination. A successful candidate shall also be required to pass an examination covering the code of ethical conduct prior to issuance of the license.

193A—4.14(542) Statements on standards for accounting and review services (SSARS) education. An LPA license applicant shall complete a minimum of seven hours of continuing education devoted to statements on standards for accounting and review services (SSARS) prior to issuance of the license. An LPA license applicant is exempt from this requirement if the applicant has passed the CPA examination provided by the AICPA.

193A—4.15(542) Obtaining the license. A candidate who successfully passes the examination and completes the requirements outlined in rules 193A—4.12(542), 193A—4.13(542) and 193A—4.14(542) shall make application for licensure on a form available through the online application process. An applicant shall list on the application all states in which the applicant has applied for or holds a certificate, license or permit and shall also list any past denial, revocation, suspension, refusal to renew, or voluntary surrender to avoid disciplinary action of a certificate, license or permit. An applicant shall notify the board in writing within 30 days after the occurrence of any issuance, denial, revocation, suspension, refusal to renew, or voluntary surrender to avoid disciplinary action of a certificate, license or permit by another state. An applicant for licensure may be denied the license for reasons outlined in subrule 4.1(2) regardless of when the incident occurred.

[**ARC 4243C**, IAB 1/16/19, effective 2/20/19]

193A—4.16(542) Licensure by reciprocity.

4.16(1) The examination required by Iowa Code section 542.8 will be waived for an applicant who has passed the examination required under the laws of another state, provided the examination given by the licensing authority of the other state was an examination prepared and graded by the Board of Examiners of the American Institute of Certified Public Accountants or the Accreditation Council for Accountancy and Taxation.

4.16(2) For the purpose of Iowa Code section 542.8, the title by which such other state designates its accountants shall not be controlling, but the matter shall be controlled by substantive requirements, whether such accountants be called licensed public accountants, public accountants, accounting practitioners or any other similar title.

4.16(3) A person desiring a license as a licensed public accountant in this state on the basis of a licensed public accountant license issued by another state must apply through the online application process. The burden is on the applicant to obtain information satisfactory to the board that the applicant's license in such other state is in full force and effect and that the requirements for obtaining such license were substantially equivalent to those of this state to obtain a license as a licensed public accountant.

4.16(4) An applicant shall list on the application all states in which the applicant has applied for or holds a certificate, license or permit and shall also list any past denial, revocation, suspension, refusal to renew or voluntary surrender to avoid disciplinary action of a certificate, license, or permit. An applicant shall notify the board in writing within 30 days after the occurrence of any issuance, denial, revocation, suspension, refusal to renew or voluntary surrender to avoid disciplinary action of a certificate, license or permit by another state.

4.16(5) An applicant shall affirm that all information provided on the form is true and correct. Providing false information shall be considered prima facie evidence of a violation of Iowa Code chapter 542. A nonrefundable application fee will be charged each applicant.

[**ARC 4243C**, IAB 1/16/19, effective 2/20/19]

193A—4.17(542) Use of title. Only a person holding a license as a licensed public accountant shall use or assume the title "licensed public accountant" or the abbreviation "LPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a licensed public accountant.

These rules are intended to implement Iowa Code section 542.8.

[Filed and effective September 22, 1975]
[Filed 9/27/78, Notice 8/23/78—published 10/18/78, effective 11/22/78]
[Filed 6/22/88, Notice 3/9/88—published 7/13/88, effective 8/17/88]
[Filed 8/1/91, Notice 5/15/91—published 8/21/91, effective 9/25/91]
[Filed 12/17/93, Notice 10/13/93—published 1/5/94, effective 2/9/94]
[Filed 4/12/02, Notice 3/6/02—published 5/1/02, effective 7/1/02]
[Filed 1/19/05, Notice 12/8/04—published 2/16/05, effective 3/23/05]
[Filed ARC 7715B (Notice ARC 7484B, IAB 1/14/09), IAB 4/22/09, effective 7/1/09]
[Filed ARC 4243C (Notice ARC 3988C, IAB 9/12/18), IAB 1/16/19, effective 2/20/19]
[Filed ARC 5562C (Notice ARC 5357C, IAB 12/30/20), IAB 4/21/21, effective 5/26/21]

CHAPTER 5
LICENSURE STATUS AND RENEWAL OF CERTIFICATES AND LICENSES

[Prior to 7/13/88, see Accountancy, Board of[10]]
[Prior to 5/1/02, see 193A—Chapter 6]

193A—5.1(542) Licensure status and practice privilege.

5.1(1) Licenses issued by the board pursuant to Iowa Code section 542.6, 542.8, or 542.19, or any other applicable law or rule, may be in active, inactive, or lapsed status, as follows:

a. An initial license is issued in active status with an expiration date. Maintaining active status requires periodic renewal as provided in rule 193A—5.3(542). Renewal in active status requires satisfaction of continuing education as provided in 193A—Chapter 10.

b. A license may be renewed in inactive status as provided in rule 193A—5.9(272C,542) if the licensee does not satisfy the continuing education required for renewal in active status. A renewal license issued in inactive status shall lapse if not timely renewed pursuant to rule 193A—5.3(542). An inactive license may be reinstated to active status at any time pursuant to subrule 5.9(7).

c. An active or inactive license that is not timely renewed shall be in lapsed status. A lapsed license may be reinstated to active or inactive status at any time pursuant to subrule 5.6(3).

5.1(2) An individual holding an active license is authorized to use the title "CPA" or "LPA," as applicable, in the individual's practice of public accounting in Iowa or for a client with a home office in Iowa.

5.1(3) An individual holding an inactive or lapsed license is not authorized to practice public accounting in Iowa or for a client with a home office in Iowa using the title "CPA" or "LPA."

5.1(4) Practicing public accounting in Iowa or for a client with a home office in Iowa while holding an inactive or lapsed license is a ground for discipline under Iowa Code section 542.10 and may also or alternatively provide grounds for the regulatory actions described in Iowa Code section 542.14.

5.1(5) Out-of-state individuals holding an inactive or lapsed Iowa CPA certificate and out-of-state individuals to whom an Iowa CPA certificate has never been issued under Iowa Code chapter 542 or prior law may exercise a practice privilege under Iowa Code section 542.20 if they hold an active CPA certificate in the jurisdiction in which they maintain their principal place of business and otherwise satisfy all of the conditions described in Iowa Code section 542.20 and 193A—Chapter 20.

5.1(6) Exercising a practice privilege in Iowa or for a client with a home office in Iowa while holding an inactive or lapsed Iowa CPA certificate places a special burden on the individual to ensure that the public is informed about the individual's licensure status in Iowa and in the jurisdiction of active licensure, as provided in 193A—paragraphs 20.8(2)*"b"* and 20.8(3)*"b."* As a practical matter, an individual's failure to clarify licensure status in Iowa and in the jurisdiction of the individual's principal place of business may confuse the public. However, the public may consult CPAverify, a comprehensive national data bank, to verify an individual's licensure in another jurisdiction. CPAverify may be accessed at www.cpaverify.org. A client contacting the board or consulting the board's website will be informed of the individual's licensure status in Iowa.

[**ARC 7715B**, IAB 4/22/09, effective 7/1/09; **ARC 9482B**, IAB 5/4/11, effective 6/8/11; **ARC 2152C**, IAB 9/30/15, effective 11/4/15; **ARC 5562C**, IAB 4/21/21, effective 5/26/21]

193A—5.2(542) Renewal of license that expires on or before June 30, 2010. Rescinded IAB 5/4/11, effective 6/8/11.

193A—5.3(542) License renewal. Licenses issued by the board pursuant to Iowa Code section 542.6 (CPA certificates), 542.8 (LPA licenses), or 542.19 (CPA certificates by substantial equivalency), or any other applicable law or rule, shall be renewed on an annual basis and shall expire on June 30 of each year. Licenses shall be renewed through the online renewal process. An annual renewal fee will be charged.

[**ARC 7715B**, IAB 4/22/09, effective 7/1/09; **ARC 8691B**, IAB 4/21/10, effective 3/26/10; **ARC 2152C**, IAB 9/30/15, effective 11/4/15; **ARC 4243C**, IAB 1/16/19, effective 2/20/19; **ARC 5562C**, IAB 4/21/21, effective 5/26/21]

193A—5.4(542) Notices.

5.4(1) The board typically sends, by electronic means, a notice to licensees in the May preceding license expiration, but neither the failure of the board to send nor a licensee's failure to receive a renewal notice shall excuse the requirement to timely renew a license.

5.4(2) A licensee shall notify the board within 30 days of any change of address or firm affiliation.
[**ARC 7715B**, IAB 4/22/09, effective 7/1/09; **ARC 4243C**, IAB 1/16/19, effective 2/20/19]

193A—5.5(542) Renewal procedures.

5.5(1) A licensee shall submit an electronic online renewal application with the board by the June 30 deadline in the renewal year. An application shall be deemed filed on the date of electronic renewal.

5.5(2) An applicant for renewal under this chapter shall disclose on the application all background and character information requested by the board including, but not limited to:

a. All states or foreign jurisdictions in which the applicant has applied for or holds a CPA certificate or license, an LPA license, or a substantially equivalent designation from a foreign country;

b. Any past denial, revocation, suspension, or refusal to renew a CPA certificate, license or permit to practice, or LPA license, or voluntary surrender of a CPA certificate, license or permit or LPA license to resolve or avoid disciplinary action, or similar actions concerning a substantially equivalent foreign designation;

c. Any other form of discipline or other penalty imposed against a CPA certificate, license or permit, LPA license, or a substantially equivalent foreign designation, or a practice privilege;

d. The conviction of any crime; and

e. The revocation of a professional license of any kind in this or any other jurisdiction.

5.5(3) A licensee who performs compilation services for the public other than through a certified public accounting or licensed public accounting firm shall submit a certification of completion of a peer review conducted in accordance with 193A—Chapter 11 no less often than once every three years.

5.5(4) Within the meaning of Iowa Code section 17A.18(2), a timely and sufficient renewal application shall be:

a. Received by the board in electronic form on or before the date the license is set to expire or lapse;

b. Certified as accurate through the online renewal process;

c. Fully completed, including continuing education, if applicable; and

d. Accompanied with the proper fee. The fee shall be deemed improper if, for instance, the amount is incorrect, the fee was not included with the application, the credit card number provided by the applicant is incorrect, the date of expiration of a credit card is omitted or incorrect, the attempted credit card transaction is rejected, or the applicant's check is returned for insufficient funds or a closed account.

5.5(5) The administrative processing of an application to renew an existing license shall not prevent the board from subsequently commencing a contested case to challenge the licensee's qualifications for continued licensure if grounds exist to do so.

5.5(6) If grounds exist to deny a timely and sufficient application to renew, the board shall send written notification to the applicant by restricted certified mail, return receipt requested. Grounds may exist to deny an application to renew if, for instance, the licensee failed to satisfy the continuing education as required as a condition for licensure. If the basis for denial is pending disciplinary action or disciplinary investigation which is reasonably expected to culminate in disciplinary action, the board shall proceed as provided in 193—Chapter 7. If the basis for denial is not related to a pending or imminent disciplinary action, the applicant may contest the board's decision as provided in 193—subrule 7.39(1).

5.5(7) When a licensee appears to be in violation of mandatory continuing education requirements, the board may, in lieu of proceeding to a contested case hearing on the denial of a renewal application as provided in rule 193—7.39(546,272C), offer a licensee the opportunity to renew in inactive status or to sign a consent order. While the terms of the consent order will be tailored to the specific circumstances at issue, the consent order will typically impose a penalty between $50 and $250, depending on the severity of the violation; establish deadlines for compliance; and may impose additional educational

requirements on the licensee. A licensee is free to accept or reject the offer. If the offer of settlement is accepted, the licensee will be issued a renewed license and will be subject to disciplinary action if the terms of the consent order are not complied with. If the offer of settlement is rejected, the matter will be set for hearing, if timely requested by the applicant pursuant to 193—subrule 7.39(1). A licensee who falsely reports continuing education to the board shall be subject to additional sanctions including, when appropriate, suspension or revocation.

5.5(8) A certificate or license holder who continues to practice public accounting as a CPA or an LPA in Iowa after the certificate or license has expired shall be subject to disciplinary action. Such unauthorized activity may also be grounds to deny a licensee's application for reinstatement.

[**ARC 7715B**, IAB 4/22/09, effective 7/1/09; **ARC 4243C**, IAB 1/16/19, effective 2/20/19]

193A—5.6(542) Failure to renew.

5.6(1) A license or certificate holder who fails to renew the certificate or license by the expiration date, but does so within 30 days following its expiration date, shall be assessed a penalty as provided in rule 193A—12.1(542).

5.6(2) If the holder fails to renew the certificate or license within the 30-day grace period outlined in subrule 5.6(1), the certificate or license will lapse and the licensee shall be required to reinstate in accordance with subrule 5.6(3). The licensee is not authorized to practice during the period of time that the certificate or license is lapsed, including the 30-day grace period.

5.6(3) The board may reinstate a lapsed certificate or license upon the applicant's submission of an application to reinstate and completion of all of the following:

a. Paying a penalty as provided in rule 193A—12.1(542); and

b. Paying the current renewal fee; and

c. Providing evidence of completed continuing education outlined in rule 193A—10.5(542), if the licensee wishes to reinstate to active status; and

d. Providing a written statement outlining the professional activities of the applicant during the period in which the applicant's license was lapsed. The statement shall describe all services performed which constitute the practice of accounting including, but not limited to, those professional practice activities described in subrule 5.9(2). Such statement shall state whether the applicant exercised a practice privilege in the period during which the license was lapsed and, if so, the jurisdiction of the applicant's principal place of business and status of out-of-state licensure.

5.6(4) A licensee holding a lapsed CPA certificate is not authorized to perform attest or compilation services or to otherwise practice public accounting using the title "CPA" in Iowa or for a client with a home office in Iowa. A licensee holding a lapsed LPA license is not authorized to perform compilation services or to otherwise practice public accounting in Iowa using the title "LPA." A licensee holding a lapsed CPA certificate or LPA license shall not use the title "CPA" or "LPA" in any context unless the licensee discloses that the certificate or license has lapsed. Additionally, a person holding a lapsed Iowa CPA certificate and who is actively licensed as a CPA in another jurisdiction in which the person maintains the principal place of business may be eligible to exercise a practice privilege pursuant to Iowa Code section 542.20 and 193A—Chapter 20.

5.6(5) Practicing public accounting on a lapsed license is a ground for discipline. The board may find probable cause to file charges if the individual continues to offer services defined as the practice of public accounting while using the title "CPA" or "LPA" during the period of lapsed licensure. In addition to the disciplinary sanctions described in rule 193A—16.3(272C,542), individuals found to have practiced public accounting on a lapsed license will be required to notify clients upon such terms as the board shall order.

[**ARC 7715B**, IAB 4/22/09, effective 7/1/09; **ARC 9482B**, IAB 5/4/11, effective 6/8/11]

193A—5.7(272C,542) Certificates and licenses—property of the board. Every certificate or license granted by the board shall, while it remains in the possession of the holder, be preserved by the holder but shall, nevertheless, always remain the property of the board. In the event that the certificate or license is revoked or suspended, or is not renewed in the manner prescribed by Iowa Code chapter 542 or 272C, it shall, on demand, be delivered by the holder to the board. However, a person shall be entitled to

retain possession of a lapsed certificate or license which has not been revoked, suspended or voluntarily surrendered in a disciplinary action as long as the person complies with all provisions of Iowa Code sections 542.10 and 542.13. A lapsed certificate or license may be reinstated to active or inactive status at any time pursuant to subrule 5.6(3).
[**ARC 7715B**, IAB 4/22/09, effective 7/1/09]

193A—5.8(542) Licensee's continuing duty to report. An active or inactive licensee shall notify the board in writing of the licensee's conviction of a crime within 30 days of the date of conviction. "Conviction" is defined in Iowa Code section 542.5(2). Licensees shall also notify the board in writing within 30 days of the date of any issuance, denial, revocation, or suspension of a certificate, license or permit by another state.
[**ARC 7715B**, IAB 4/22/09, effective 7/1/09]

193A—5.9(272C,542) Inactive status.

5.9(1) *General purpose.* This rule establishes a procedure under which a person issued a certificate as a certified public accountant or a license as a licensed public accountant may apply to the board for licensure in inactive status. Inactive licensure under this rule is available to a certificate or license holder residing within or outside the state of Iowa who is not engaged in Iowa or for a client with a home office in Iowa in any practice for which an active certificate or license is required. A person eligible for inactive status may, as an alternative, allow the person's certificate or license to lapse. The board will continue to maintain a database on licensees in inactive status, including information which may not routinely be maintained after a certificate or license has lapsed through failure to renew. An inactive licensee will accordingly receive board newsletters and other mass communications from the board.

5.9(2) *Eligibility.* A person holding a lapsed or active certificate or license which has not been revoked or suspended may apply to renew in inactive status through the online application process if the person is not engaged in the state of Iowa or for clients with a home office in Iowa in any practice for which an active certificate or license is required, including:

a. Supervising or performing any attest services, such as audits, reviews or agreed-upon procedures (which may only be performed by a CPA within a CPA firm that holds a permit to practice);

b. Supervising or performing compilation services or otherwise issuing compilation reports (which may only be performed by a CPA or LPA); or

c. Performing any accounting, tax, consulting, or financial or managerial advisory services for any client, business, employer, government body, or other entity while holding oneself out as a CPA or LPA, or otherwise using titles restricted in Iowa Code section 542.13.

5.9(3) *Affirmation.* The application form shall contain a statement in which the applicant affirms that the applicant will not engage in any of the practices in Iowa listed in subrule 5.9(2) without first complying with all rules governing reinstatement to active status. A person in inactive status may reinstate to active status at any time pursuant to subrule 5.9(7).

5.9(4) *Renewal.* A person licensed in inactive status may renew the person's certificate or license on the schedule described in rule 193A—5.1(542). Such person is exempt from the continuing education requirements and will be charged a reduced renewal fee as provided in rule 193A—12.1(542). An inactive certificate or license shall lapse if not timely renewed.

5.9(5) *Permitted practices.* A person may, while registered as inactive, perform for a client, business, employer, government body, or other entity those accounting, tax, consulting, or financial or managerial advisory services which may lawfully be performed by a person to whom a certificate or license has never been issued as long as the person does not in connection with such services use the title "CPA" or "LPA," or any other title restricted for use only by CPAs or LPAs in Iowa Code section 542.13 (with or without additional designations such as "inactive"). Restricted titles may only be used by active CPAs or LPAs who are subject to continuing education requirements to ensure that the use of such titles is consistently associated with the maintenance of competency through continuing education. Additionally, individuals who are actively licensed as CPAs in another jurisdiction in which they maintain their principal place of business may be eligible to exercise a practice privilege pursuant to Iowa Code section 542.20 and 193A—Chapter 20.

5.9(6) *Prohibited practices.* A person who, while licensed in inactive status, engages in any of the practices described in subrule 5.9(2) or violates any provision of rule 193A—14.2(17A,272C,542) is subject to disciplinary action. A person in inactive status is not authorized to verify the experience of an applicant for a CPA certificate under Iowa Code section 542.5(12) or an applicant for an LPA license under Iowa Code section 542.8(8).

5.9(7) *Reinstatement to active status.* A person licensed in inactive status shall, prior to engaging in any of the practices in Iowa listed in subrule 5.9(2) or for a client with a home office in Iowa, apply to the board to reinstate to active status. Such person shall pay the applicable renewal fee for active status, but shall be given credit for renewal fees previously paid for inactive status if the person applies for reinstatement at a date other than the person's regular renewal date. Such person must demonstrate compliance with all applicable continuing education and peer review requirements. A person who has engaged in the practice of public accounting as an active licensee of another jurisdiction while licensed as inactive in Iowa will be deemed to have satisfied the continuing education required for reinstatement if the person demonstrates that the person has satisfied substantially equivalent continuing education in the other jurisdiction.

5.9(8) *Retired status.* A person holding an inactive license who does not reasonably expect to return to the workforce in any capacity for which an active certificate or license is required due to bona fide retirement or disability may use the title "CPA, retired" or "LPA, retired," as applicable, in the context of non-income-producing personal activities.

[**ARC 7715B**, IAB 4/22/09, effective 7/1/09; **ARC 4243C**, IAB 1/16/19, effective 2/20/19]

These rules are intended to implement Iowa Code chapters 272C and 542 and Iowa Code section 546.10.

[Filed and effective September 22, 1975, under 17A, C '73]
[Filed 10/9/80, Notice 9/3/80—published 10/29/80, effective 12/3/80]
[Filed 2/8/82, Notice 12/23/81—published 3/3/82, effective 4/7/82]
[Filed emergency 6/16/82—published 7/7/82, effective 6/18/82]
[Filed 6/22/88, Notice 3/9/88—published 7/13/88, effective 8/17/88]
[Filed 8/1/91, Notice 5/15/91—published 8/21/91, effective 9/25/91]
[Filed 7/11/97, Notice 4/23/97—published 7/30/97, effective 9/3/97]
[Filed 4/12/02, Notice 3/6/02—published 5/1/02, effective 7/1/02]
[Filed 7/18/02, Notice 6/12/02—published 8/7/02, effective 9/11/02]
[Filed 1/19/05, Notice 12/8/04—published 2/16/05, effective 3/23/05]
[Filed ARC 7715B (Notice ARC 7484B, IAB 1/14/09), IAB 4/22/09, effective 7/1/09]
[Filed Emergency ARC 8691B, IAB 4/21/10, effective 3/26/10]
[Filed ARC 9482B (Notice ARC 9370B, IAB 2/23/11), IAB 5/4/11, effective 6/8/11]
[Filed ARC 2152C (Notice ARC 2058C, IAB 7/8/15), IAB 9/30/15, effective 11/4/15]
[Filed ARC 4243C (Notice ARC 3988C, IAB 9/12/18), IAB 1/16/19, effective 2/20/19]
[Filed ARC 5562C (Notice ARC 5357C, IAB 12/30/20), IAB 4/21/21, effective 5/26/21]

CHAPTER 6
ATTEST AND COMPILATION SERVICES

193A—6.1(542) Who may perform attest services.

6.1(1) Only a CPA may perform audit, review, or other attest services, as defined in Iowa Code section 542.3(1).

6.1(2) CPAs who perform attest services in Iowa or for a client with a home office in Iowa must hold an active Iowa CPA certificate or exercise a practice privilege under Iowa Code section 542.20. CPAs are cautioned, however, that the auditor of state, the department of agriculture and land stewardship, another governmental official or body, or a client may require that an individual be licensed in Iowa as a condition of performing attest services in Iowa or for a client with a home office in Iowa, whether or not the individual may otherwise satisfy the conditions for a practice privilege. Iowa licensure as a certified public accountant is required, for example, to perform certain audit services described in Iowa Code chapter 11.

6.1(3) CPAs performing attest services, whether the CPAs are certified in Iowa or exercising a practice privilege, must do so in a CPA firm that holds a permit to practice pursuant to Iowa Code section 542.7 or in an out-of-state CPA firm exercising a practice privilege in compliance with Iowa Code sections 542.20(5) and 542.20(6) and associated rules and the peer review and ownership provisions of Iowa Code section 542.7.

6.1(4) CPAs who are responsible for supervising attest services for a CPA firm or who sign or authorize someone to sign the accountant's report on behalf of a CPA firm shall satisfy the experience or competency requirements established by nationally recognized professional standards that are applicable to the attest services performed and shall, at a minimum, satisfy the experience requirements of rule 193A—6.2(542).

[**ARC 7715B**, IAB 4/22/09, effective 7/1/09; **ARC 0413C**, IAB 10/31/12, effective 12/5/12; **ARC 2152C**, IAB 9/30/15, effective 11/4/15; **ARC 3422C**, IAB 10/25/17, effective 11/29/17]

193A—6.2(542) Attest experience required.

6.2(1) A CPA who is responsible for supervising attest services or who signs or authorizes someone to sign the accountant's report on behalf of a firm shall have two years of full-time or part-time equivalent experience that extends over a period of no less than two years and includes no fewer than 4,000 hours, at least 2,000 of which shall be in providing attest services under the supervision of one or more CPAs responsible for supervising attest services on behalf of a CPA firm that holds a permit to practice in Iowa or an equivalent form of CPA firm licensure in another jurisdiction.

6.2(2) Experience shall include all of the following:

a. Experience in applying a variety of auditing procedures and techniques to the usual and customary financial transactions recorded in accounting records.

b. Experience in the preparation of audit working papers covering the examination of the accounts usually found in accounting records.

c. Experience in the planning of the program of audit work including the selection of the procedures to be followed.

d. Experience in the preparation of written explanations and comments on the findings of the examinations and on the content of the accounting records.

e. Experience in the preparation and analysis of reports and financial statements together with explanations and notes thereon.

6.2(3) Verification of attest experience shall be provided by the applicant and by a CPA who supervised the applicant or, if a supervising CPA is unavailable, by a CPA or CPA firm with sufficient factual documentation to verify the applicant's attest qualification.

6.2(4) Any applicant or CPA who has been requested to submit to the board evidence of an applicant's attest experience and has refused to do so shall, upon request by the board, explain in writing or in person the basis for the refusal. The board may require any applicant or CPA who furnished the evidence of an applicant's experience to substantiate the information provided. An applicant may be

required to appear before the board to supplement or verify evidence of experience. The board may inspect documentation relating to an applicant's claimed experience.
[**ARC 7715B**, IAB 4/22/09, effective 7/1/09; **ARC 2152C**, IAB 9/30/15, effective 11/4/15]

193A—6.3(542) Attest qualification.

6.3(1) Attest qualification is required before a CPA may perform attest services in Iowa or for a client with a home office in Iowa. "Attest qualification" or "attest qualified" means that the CPA has satisfied the experience requirements of rule 193A—6.2(542).

6.3(2) All CPAs who held an individual permit to practice in Iowa at any point prior to July 1, 2002, are deemed to be attest qualified. Under Iowa law prior to July 1, 2002, CPAs were only issued an individual permit to practice if they verified qualification to perform attest services. Individual permits to practice were discontinued under Iowa law effective July 1, 2002.

6.3(3) CPAs who did not hold a permit to practice prior to July 1, 2002, may attain or establish attest qualification as follows:

a. Applicants may apply for attest qualification when initially applying for a certificate as an Iowa CPA under Iowa Code section 542.6 or when applying for reciprocal Iowa certification under Iowa Code section 542.19 or any other applicable law or rule.

b. Iowa CPA certificate holders may apply for attest qualification at any time at which they are qualified to do so.

c. Out-of-state CPAs performing attest services while exercising a practice privilege under Iowa Code section 542.20 are not required to individually apply to the board for attest qualification. However, if:

(1) CPAs perform attest services in an Iowa CPA firm, the Iowa CPA firm shall affirm when applying for an initial or renewal firm permit to practice that the CPAs who supervise attest services for the firm or who sign or authorize someone to sign the accountant's report on behalf of the firm, as such attest services are or will in the following year be performed in Iowa or for a client with a home office in Iowa, have been qualified to perform attest services in Iowa or another jurisdiction.

(2) CPAs perform attest services through an out-of-state CPA firm exercising a practice privilege, the out-of-state CPA firm shall affirm upon request from the board that the CPAs who supervise attest services for the firm or who sign or authorize someone to sign the accountant's report on behalf of the firm, as such attest services are or will in the following year be performed in Iowa or for a client with a home office in Iowa, have been qualified to perform attest services in Iowa or another jurisdiction.
[**ARC 7715B**, IAB 4/22/09, effective 7/1/09; **ARC 2152C**, IAB 9/30/15, effective 11/4/15; **ARC 3422C**, IAB 10/25/17, effective 11/29/17; **ARC 5562C**, IAB 4/21/21, effective 5/26/21]

193A—6.4(542) Compilation services.

6.4(1) Only a CPA licensed by the board under Iowa Code section 542.6 or 542.19, or any other applicable law or rule; an LPA licensed by the board under Iowa Code section 542.8 or any other applicable law or rule; or a person exercising a practice privilege under Iowa Code section 542.20 shall issue a report in standard form upon a compilation of financial information or otherwise provide compilation services in Iowa or for a client with a home office in Iowa.

6.4(2) An individual described in subrule 6.4(1) may perform compilation services through a CPA firm which holds a permit to practice under Iowa Code section 542.7, an LPA firm which holds a permit to practice under Iowa Code section 542.8, a CPA firm exercising a practice privilege under Iowa Code section 542.20, or, if both the individual and business comply with the requirements of Iowa Code section 542.13(13), through any other form of business.

6.4(3) All individuals described in subrule 6.4(1) who are responsible for supervising compilation services or who will sign or authorize someone to sign the accountant's compilation report on financial statements, as such compilation services will be performed in Iowa or for a client with a home office in Iowa, shall comply with the nationally recognized professional standards that are applicable to compilation services, including SSARS.

6.4(4) All individuals described in subrule 6.4(1) shall satisfy peer review requirements, individually or through the peer review of a CPA or LPA firm holding a permit to practice pursuant to Iowa Code section 542.7 or 542.8 or a CPA firm exercising a practice privilege under Iowa Code section 542.20.
[**ARC 7715B**, IAB 4/22/09, effective 7/1/09; **ARC 5562C**, IAB 4/21/21, effective 5/26/21]

These rules are intended to implement Iowa Code chapter 542.

[Filed 4/12/02, Notice 3/6/02—published 5/1/02, effective 7/1/02]
[Filed ARC 7715B (Notice ARC 7484B, IAB 1/14/09), IAB 4/22/09, effective 7/1/09]
[Filed ARC 0413C (Notice ARC 0254C, IAB 8/8/12), IAB 10/31/12, effective 12/5/12]
[Filed ARC 2152C (Notice ARC 2058C, IAB 7/8/15), IAB 9/30/15, effective 11/4/15]
[Filed ARC 3422C (Notice ARC 3224C, IAB 8/2/17), IAB 10/25/17, effective 11/29/17]
[Filed ARC 5562C (Notice ARC 5357C, IAB 12/30/20), IAB 4/21/21, effective 5/26/21]

CHAPTER 7
CERTIFIED PUBLIC ACCOUNTING FIRMS
[Prior to 5/1/02, see 193A—Chapter 8]

193A—7.1(542) When licensure is required.

7.1(1) Except as provided in subrule 7.1(6), a sole proprietorship, corporation, partnership, limited liability company, or any other form of organization shall apply for a permit to practice as a firm of certified public accountants prior to:

a. Performing or offering to perform audit, review or other attest services in Iowa or for a client with a home office in Iowa; or

b. Establishing an office in Iowa at which the firm uses the title "CPAs," "CPA firm," "certified public accountants," or "certified public accounting firm."

7.1(2) A firm which is not subject to subrule 7.1(1) may practice public accounting in Iowa or for a client with a home office in Iowa without a permit issued by the board in conformance with Iowa Code section 542.20 and 193A—Chapter 21.

7.1(3) Unless individual Iowa licensure is required by the auditor of state, the department of agriculture and land stewardship, other governmental official or body, or a client, the public accounting services provided by a CPA firm holding an Iowa permit to practice may be performed in Iowa or for a client with a home office in Iowa by Iowa CPAs or wholly by persons exercising a practice privilege under Iowa Code section 542.20.

7.1(4) If a CPA firm that is issued a permit to practice by the board has one or more offices in Iowa, the public accounting services performed at each such office must be supervised by an Iowa CPA with an unexpired certificate issued under Iowa Code section 542.6 or 542.19.

7.1(5) A CPA firm issued a permit to practice by the board is accountable to the board and subject to discipline by the board for the acts of its owners or other agents, pursuant to 193A—subrule 14.2(4), whether or not such persons are individually licensed by the board. In order to ensure public accountability, all CPA firms issued a permit to practice under Iowa Code section 542.7 shall:

a. Designate an Iowa CPA or a nonlicensee owner who is responsible for the proper licensure of the firm and the firm's compliance with all applicable laws and rules of the state;

b. Designate an Iowa CPA or Iowa CPAs who are responsible for the proper registration of each Iowa office and each office's compliance with all applicable laws and rules of this state;

c. Designate an Iowa CPA or person with a practice privilege under Iowa Code section 542.20 who is responsible for supervising attest services or who will sign or authorize someone to sign the accountant's report on behalf of the firm, as such attest services will be performed in Iowa or for a client with a home office in Iowa; and

d. Designate an Iowa CPA or LPA or person with a practice privilege under Iowa Code section 542.20 who is responsible for supervising compilation services or who will sign or authorize someone to sign the accountant's compilation report on financial statements, as such compilation services will be performed in Iowa or for a client with a home office in Iowa.

7.1(6) An out-of-state CPA firm exercising a practice privilege may perform attest services in Iowa or for a client with a home office in Iowa without first obtaining a firm permit to practice in Iowa as long as the firm is validly licensed in the state of its principal place of business, complies with Iowa Code sections 542.20(5) and 542.20(6) and associated rules, and complies with the peer review and ownership provisions of Iowa Code section 542.7.

[**ARC 7715B**, IAB 4/22/09, effective 7/1/09; **ARC 0413C**, IAB 10/31/12, effective 12/5/12; **ARC 2152C**, IAB 9/30/15, effective 11/4/15; **ARC 3422C**, IAB 10/25/17, effective 11/29/17]

193A—7.2(542) Application process.

7.2(1) All applications shall be submitted through the board's online application process. The board shall only process fully completed applications accompanied by the proper fee. A nonrefundable application fee shall be charged.

7.2(2) Fraud or deceit, by commission or omission, in obtaining a firm permit to practice is a ground for discipline, including permanent revocation of the firm's permit to practice, the individual certificate of an Iowa CPA, or an individual's practice privilege, as applicable to the entity or persons responsible.

7.2(3) An initial or renewal application for a firm permit to practice may be denied:

a. Upon any ground that would form a basis for discipline against the firm pursuant to Iowa Code section 542.10 or 193A—Chapter 14; or

b. Based on the firm's failure to comply with the requirements of Iowa Code section 542.7 including, but not limited to, a failure to make the designations described in subrule 7.1(5) or a failure to sustain the simple majority of ownership required by Iowa Code section 542.7(3); or

c. Based on a regulatory or disciplinary action or to the extent applicable, subject to the limitations and processes set forth at Iowa Code section 272C.15 and corresponding implementing rules located at 193—Chapter 15, criminal conviction described in subrules 7.3(14) and 7.3(15) against any of the firm's licensed or unlicensed owners.

[**ARC 7715B**, IAB 4/22/09, effective 7/1/09; **ARC 2152C**, IAB 9/30/15, effective 11/4/15; **ARC 4243C**, IAB 1/16/19, effective 2/20/19; **ARC 5562C**, IAB 4/21/21, effective 5/26/21]

193A—7.3(542) Application contents. Applicants for a firm permit to practice shall provide such information as the board may require, including:

7.3(1) The lawful name of the firm.

7.3(2) The legal form and jurisdiction of the firm's organization.

7.3(3) Contact information for the principal place of business of the firm and each Iowa office.

7.3(4) All jurisdictions in which the firm is licensed or has applied for licensure.

7.3(5) The names, licensure, and contact information for all persons described in subrule 7.1(5).

7.3(6) The highest level of public accounting services offered by the firm, such as compilation or attest.

7.3(7) Evidence of satisfactory completion of the last firm peer review, when applicable.

7.3(8) Sufficient information from which the board can determine that a simple majority of owners hold a CPA certificate under Iowa Code section 542.6 or 542.19 or hold a CPA certificate in another state and are eligible to exercise a practice privilege under Iowa Code section 542.20. The board reserves the right to require at any time a full list of owners, or a targeted sublist, such as a list of those persons who perform services from an Iowa office or those who perform attest or compilation services in Iowa or for a client with a home office in Iowa.

7.3(9) The affirmation described in 193A—paragraph 6.3(3)*"c."*

7.3(10) Affirmation that all CPAs who are responsible for supervising attest services for the CPA firm or who sign or authorize someone to sign the accountant's report on behalf of the CPA firm satisfy the experience or competency requirements established by nationally recognized professional standards that are applicable to the attest services performed in Iowa or for clients with a home office in Iowa.

7.3(11) Affirmation that all CPAs or LPAs who are responsible for supervising compilation services or who sign or authorize someone to sign the accountant's compilation report on behalf of the firm comply with nationally recognized professional standards that are applicable to the compilation services performed in Iowa or for a client with a home office in Iowa.

7.3(12) Affirmation that all nonlicensee owners are active participants in the firm or affiliated entity.

7.3(13) Affirmation that the firm and its licensed or unlicensed owners will comply with all applicable Iowa laws and rules, including rules of professional conduct, when practicing in Iowa or for a client with a home office in Iowa.

7.3(14) Details of any past denial, cancellation, revocation, suspension, refusal to renew, or voluntary surrender of a professional license of any kind, authority to practice, or practice privilege by the board or another state agency in any jurisdiction, a federal agency, or the PCAOB, regarding the firm and the firm's current owners (e.g., partners, shareholders, or members).

7.3(15) Details of any past felony conviction or the conviction of any crime, any element of which is dishonesty or fraud, as provided in Iowa Code section 542.5(2), under the laws of any state or the United States, regarding the firm and the firm's current owners (e.g., partners, shareholders, or members).
[**ARC 7715B**, IAB 4/22/09, effective 7/1/09; **ARC 2152C**, IAB 9/30/15, effective 11/4/15; **ARC 3422C**, IAB 10/25/17, effective 11/29/17]

193A—7.4(542) Annual renewal of permit. Permits to practice must be renewed annually and shall expire on June 30 of each year. Applications to renew a permit to practice may be obtained through electronic online renewal. While the board generally sends, by electronic means, a renewal notice in the May preceding permit expiration, neither the board's failure to send a notice nor a permit holder's failure to receive a notice shall excuse the requirement to timely renew and pay the renewal fee.
[**ARC 7715B**, IAB 4/22/09, effective 7/1/09; **ARC 4243C**, IAB 1/16/19, effective 2/20/19]

193A—7.5(542) Renewal procedures.

7.5(1) The permit holder shall submit an electronic online renewal by the June 30 deadline each year. Applications shall be deemed filed on the date of electronic renewal.

7.5(2) The permit holder shall list on the renewal application all states in which the applicant has applied for or holds a permit as a certified public accounting firm and list any past denial, revocation, suspension, refusal to renew or voluntary surrender to avoid disciplinary action of a permit to practice or practice privilege. Renewal applications may request such additional information as the board requires, including all of the information described in rule 193A—7.3(542).

7.5(3) Within the meaning of Iowa Code chapters 17A, 272C and 542, a timely and sufficient renewal application shall be:

a. Received by the board in electronic form on or before the date the permit is set to expire or lapse;

b. Certified as accurate through the online renewal process;

c. Fully completed and accompanied with the proper fee. The fee shall be deemed improper if, for instance, the amount is incorrect, the fee was not included with the application, the credit card number provided by the applicant is incorrect, the date of expiration of a credit card is omitted or incorrect, the attempted credit card transaction is rejected, or the applicant's check is returned for insufficient funds or a closed account.
[**ARC 7715B**, IAB 4/22/09, effective 7/1/09; **ARC 4243C**, IAB 1/16/19, effective 2/20/19]

193A—7.6(542) Failure to renew permit.

7.6(1) A firm that fails to renew the permit by the expiration date, but does so within 30 days following the expiration date, shall be assessed a penalty as provided in rule 193A—12.1(542).

7.6(2) If the firm fails to renew the permit within the 30-day grace period outlined in subrule 7.6(1), the permit will lapse and the firm shall be required to reinstate in accordance with subrule 7.6(3). The firm is not authorized to practice during the period of time that the permit is lapsed, including the 30-day grace period.

7.6(3) The board may reinstate the permit upon payment of the proper renewal fee and a penalty as provided in rule 193A—12.1(542). The board shall also require a written statement outlining the firm's professional activities during the period of lapsed licensure, including a list of Iowa clients and the services performed.

7.6(4) The board may find probable cause to file charges for unlicensed practice if the firm engaged in any activity that required licensure pursuant to subrule 7.1(1) during the period of lapsed licensure. In addition to the disciplinary sanctions described in rule 193A—16.3(272C,542), firms found to have practiced public accounting in violation of subrule 7.1(1) on a lapsed license will be required to notify clients upon such terms as the board shall order.
[**ARC 7715B**, IAB 4/22/09, effective 7/1/09; **ARC 9482B**, IAB 5/4/11, effective 6/8/11]

193A—7.7(542) Notices required. A holder of or applicant for a permit shall notify the board in writing within 30 days after an occurrence of any of the following:

7.7(1) A change in the number or location of offices within this state.

7.7(2) A change in the identity of a person in charge of such offices.

7.7(3) The denial, revocation, suspension, refusal to renew, or voluntary surrender of a permit to practice, other professional license of any kind, authority to practice, or practice privilege by another state, a state agency in any jurisdiction, a federal agency, or the PCAOB, regarding the firm or any of the firm's owners (e.g., partners, shareholders, or members).

7.7(4) A change of physical or mailing address of the primary office of the firm or of any office located in Iowa, or of any person designated by the firm pursuant to subrule 7.1(5).
[**ARC 7715B**, IAB 4/22/09, effective 7/1/09; **ARC 2152C**, IAB 9/30/15, effective 11/4/15]

193A—7.8(542) Firms not in compliance with requirements. A firm that, after receiving or renewing a permit, is not in compliance with Iowa Code section 542.7 as a result of a change in firm ownership or personnel shall take corrective action to bring the firm back into compliance as quickly as possible or apply to modify or amend the permit. The board may grant a reasonable period of time, usually 90 days, for a firm to take such corrective action. Failure to comply within a reasonable period as deemed by the board shall result in the suspension or revocation of the firm permit.
[**ARC 7715B**, IAB 4/22/09, effective 7/1/09]

193A—7.9(542) Peer review required. As a condition of renewal of a permit to practice as a certified public accounting firm, the firm shall undergo, at least once every three years, a peer review conducted under the provisions outlined in 193A—Chapter 11.
[**ARC 7715B**, IAB 4/22/09, effective 7/1/09]

These rules are intended to implement Iowa Code chapters 17A, 272C and 542 and Iowa Code section 546.10.

[Filed 4/12/02, Notice 3/6/02—published 5/1/02, effective 7/1/02]
[Filed 1/19/05, Notice 12/8/04—published 2/16/05, effective 3/23/05]
[Filed ARC 7715B (Notice ARC 7484B, IAB 1/14/09), IAB 4/22/09, effective 7/1/09]
[Filed ARC 9482B (Notice ARC 9370B, IAB 2/23/11), IAB 5/4/11, effective 6/8/11]
[Filed ARC 0413C (Notice ARC 0254C, IAB 8/8/12), IAB 10/31/12, effective 12/5/12]
[Filed ARC 2152C (Notice ARC 2058C, IAB 7/8/15), IAB 9/30/15, effective 11/4/15]
[Filed ARC 3422C (Notice ARC 3224C, IAB 8/2/17), IAB 10/25/17, effective 11/29/17]
[Filed ARC 4243C (Notice ARC 3988C, IAB 9/12/18), IAB 1/16/19, effective 2/20/19]
[Filed ARC 5562C (Notice ARC 5357C, IAB 12/30/20), IAB 4/21/21, effective 5/26/21]

CHAPTER 8
LICENSED PUBLIC ACCOUNTING FIRMS
[Prior to 7/13/88, see Accountancy, Board of[10]]

193A—8.1(542) Initial permit to practice.

8.1(1) A sole proprietorship, corporation, partnership, limited liability company, or any other form of organization shall apply for a permit to practice under Iowa Code section 542.8 and these rules as a firm of licensed public accountants in order to use the title "LPAs" or "LPA firm." A nonrefundable application fee shall be charged.

8.1(2) The application shall be completed and submitted through the online application process and shall provide sufficient information from which the board can determine that a simple majority of owners hold licenses issued by the board under Iowa Code section 542.8 or certificates issued by the board under Iowa Code section 542.6 or 542.19, or any other applicable law or rule, or are eligible to practice under practice privilege pursuant to Iowa Code section 542.20, or otherwise hold a license or certificate to practice public accounting in another state. At least one owner must be licensed under Iowa Code section 542.8.

8.1(3) The application shall list the name, licensure, and contact information for each licensee or practice privilege practitioner who is responsible for supervising compilation services and who signs or authorizes someone to sign the accountant's report on financial statements on behalf of the firm. The application shall affirm that any licensee listed meets the competency requirements set forth in SSARS and holds a valid license or certificate issued by the board under Iowa Code section 542.6, 542.8, or 542.19, or any other applicable law or rule, or is eligible to exercise a practice privilege under Iowa Code section 542.20.

8.1(4) The application shall list the physical location and contact information for all offices within this state and the licensee in charge of each such office.

8.1(5) Persons in charge of an office located in Iowa shall be licensed in Iowa under Iowa Code section 542.6, 542.8, or 542.19, or any other applicable law or rule.

8.1(6) The application shall designate an individual who holds a valid license or certificate issued by the board under Iowa Code section 542.6, 542.8, or 542.19, or any other applicable law or rule, or who is eligible to exercise a practice privilege under Iowa Code section 542.20 as the person responsible for ensuring that the firm has complied with all of the requirements for a permit to practice, and shall provide contact and licensure information for such individual.

8.1(7) The application shall affirm that all nonlicensee owners are of good moral character as defined in 193A—paragraph 4.1(2)*"f"* and active participants in the firm or an affiliated entity.

8.1(8) The application shall affirm that all nonlicensee owners shall comply with all applicable rules of professional conduct.

8.1(9) The application for initial issuance of a permit shall list all states in which the applicant or any of the individuals described in subrules 8.1(2) to 8.1(5) have applied for or hold a permit as a licensed public accounting firm, certified public accounting firm, or individual license or certificate, and list any past denial, revocation, surrender, or suspension of a permit, license or certificate by another state.

8.1(10) The application shall list the names of any licensed or unlicensed owner who has been convicted of a felony or other crime described in Iowa Code section 542.5(2) or has had a professional license of any kind revoked in this or any other jurisdiction.

8.1(11) Fraud or deceit, by commission or omission, in obtaining a firm permit to practice is a ground for discipline, including permanent revocation of the firm's permit to practice, the individual certificate of an Iowa LPA or CPA, or an individual's practice privilege, as applicable to the entity or persons responsible.

8.1(12) An initial or renewal application for a firm permit to practice may be denied:

a. Upon any ground that would form a basis for discipline against the firm pursuant to Iowa Code section 542.10 or rule 193A—14.3(17A,272C,542) including, but not limited to, the regulatory and disciplinary actions and, to the extent applicable, subject to the limitations and processes set forth at

Iowa Code section 272C.15 and corresponding implementing rules located at 193—Chapter 15, criminal convictions described in subrules 8.1(9) and 8.1(10);

b. Based on the firm's failure to comply with the requirements of Iowa Code section 542.8 including, but not limited to, a failure to make the designations described in subrules 8.1(3), 8.1(4), and 8.1(6), or a failure to sustain the simple majority of ownership required by Iowa Code section 542.8(12)*"a"*; or

c. Based on a regulatory or disciplinary action or, to the extent applicable, subject to the limitations and processes set forth at Iowa Code section 272C.15 and corresponding implementing rules located at 193—Chapter 15, criminal conviction described in subrules 8.1(9) and 8.1(10) against any of the firm's owners (e.g., partners, shareholders, or members).

[**ARC 7715B**, IAB 4/22/09, effective 7/1/09; **ARC 2152C**, IAB 9/30/15, effective 11/4/15; **ARC 3422C**, IAB 10/25/17, effective 11/29/17; **ARC 4243C**, IAB 1/16/19, effective 2/20/19; **ARC 5562C**, IAB 4/21/21, effective 5/26/21]

193A—8.2(542) Annual renewal of permit. A permit issued under the provisions of Iowa Code section 542.8 shall be renewed annually by June 30. Applications to renew a permit to practice shall be completed and submitted through the online renewal process. While the board generally sends, by electronic means, a renewal notice in the May preceding permit expiration, neither the board's failure to send a notice nor a permit holder's failure to receive a notice shall excuse the requirement to timely renew and pay the renewal fee.

[**ARC 7715B**, IAB 4/22/09, effective 7/1/09; **ARC 4243C**, IAB 1/16/19, effective 2/20/19]

193A—8.3(542) Renewal procedures.

8.3(1) The permit holder shall submit an online renewal with the board by the June 30 deadline each year. Applications shall be deemed filed on the date of renewal.

8.3(2) The permit holder shall list on the renewal application all states in which the applicant has applied for or holds a permit as a licensed public accounting firm and list any past denial, revocation, suspension, refusal to renew or voluntary surrender to avoid disciplinary action of a permit. Permit holders shall notify the board in writing within 30 days after the occurrence of any issuance, denial, revocation, suspension or refusal to renew or voluntary surrender to avoid disciplinary action of a permit to practice as a licensed public accounting firm by another state. Renewal applications may request such additional information as the board requires of initial applicants.

8.3(3) Within the meaning of Iowa Code chapters 17A, 272C, and 542, a timely and sufficient renewal application shall be:

a. Received by the board in electronic form on or before the date the permit is set to expire or lapse;

b. Certified as accurate through the online renewal process;

c. Fully completed and accompanied with the proper fee. The fee shall be deemed improper if, for instance, the amount is incorrect, the fee was not included with the application, the credit card number provided by the applicant is incorrect, the date of expiration of a credit card is omitted or incorrect, the attempted credit card transaction is rejected, or the applicant's check is returned for insufficient funds or a closed account.

[**ARC 7715B**, IAB 4/22/09, effective 7/1/09; **ARC 4243C**, IAB 1/16/19, effective 2/20/19]

193A—8.4(542) Failure to renew permit.

8.4(1) A firm that fails to renew the permit by the expiration date, but does so within 30 days following the expiration date, shall be assessed a penalty of 25 percent of the annual renewal fee.

8.4(2) If the firm fails to renew the permit within the 30-day grace period outlined in subrule 8.4(1), the permit will lapse and the firm shall be required to reinstate in accordance with subrule 8.4(3). The firm is not authorized to practice as an LPA firm during the period of time that the permit is lapsed, including the 30-day grace period.

8.4(3) The board may reinstate the permit upon payment of the proper renewal fee and a penalty as provided in rule 193A—12.1(542). The board shall also require a written statement outlining the firm's professional activities during the period of lapsed licensure.

8.4(4) The board may find probable cause to file charges for unlicensed practice if the firm continues to offer services defined as the practice of accounting while using the title "LPAs" or "LPA firm" during the period of lapsed licensure.
[**ARC 7715B**, IAB 4/22/09, effective 7/1/09]

193A—8.5(542) Notices required. A holder of or an applicant for a permit shall notify the board in writing within 30 days after an occurrence of any of the following:

8.5(1) A change in the identity of an owner (e.g., partner, shareholder, or member) who performs professional services in this state or for clients with a home office in this state. This is a statutory requirement the board will enforce consistent with the disclosures and affirmations required on initial and renewal application forms.

8.5(2) A change in the number or location of offices within this state.

8.5(3) A change in the identity of a person in charge of such offices.

8.5(4) The issuance, denial, revocation, suspension, refusal to renew, or voluntary surrender of a permit to practice, other professional license of any kind, authority to practice, or practice privilege by another state, or a state or federal agency in any jurisdiction, regarding the firm or any of the persons described in subrule 8.1(3), 8.1(4), or 8.1(6).

8.5(5) A change of physical or mailing address of the primary office of the firm or of any office located in Iowa or of any person designated by the firm pursuant to subrule 8.1(3), 8.1(4), or 8.1(6).
[**ARC 7715B**, IAB 4/22/09, effective 7/1/09]

193A—8.6(542) Firms not in compliance with requirements. A firm which, after receiving or renewing a permit, is not in compliance with Iowa Code section 542.8 as a result of a change in firm ownership or personnel shall take corrective action to bring the firm back into compliance as quickly as possible or apply to modify or amend the permit. The board may grant a reasonable period of time, usually 90 days, for a firm to take such corrective action. Failure to comply within a reasonable period as deemed by the board shall result in the suspension or revocation of the firm permit.
[**ARC 7715B**, IAB 4/22/09, effective 7/1/09]

193A—8.7(542) Peer review required. As a condition for renewal of a permit to practice as a licensed public accounting firm, the firm shall undergo, at least once every three years, a peer review conducted under the provisions outlined in 193A—Chapter 11.
[**ARC 7715B**, IAB 4/22/09, effective 7/1/09]

These rules are intended to implement Iowa Code chapters 17A, 272C and 542 and Iowa Code section 546.10.

[Filed and effective September 22, 1975 under ch 17A, C'73]
[Filed 6/22/88, Notice 3/9/88—published 7/13/88, effective 8/17/88]
[Filed 8/1/91, Notice 5/15/91—published 8/21/91, effective 9/25/91]
[Filed 12/17/93, Notice 10/13/93—published 1/5/94, effective 2/9/94]
[Filed 7/11/97, Notice 4/23/97—published 7/30/97, effective 9/3/97]
[Filed 4/12/02, Notice 3/6/02—published 5/1/02, effective 7/1/02]
[Filed 1/19/05, Notice 12/8/04—published 2/16/05, effective 3/23/05]
[Filed ARC 7715B (Notice ARC 7484B, IAB 1/14/09), IAB 4/22/09, effective 7/1/09]
[Filed ARC 2152C (Notice ARC 2058C, IAB 7/8/15), IAB 9/30/15, effective 11/4/15]
[Filed ARC 3422C (Notice ARC 3224C, IAB 8/2/17), IAB 10/25/17, effective 11/29/17]
[Filed ARC 4243C (Notice ARC 3988C, IAB 9/12/18), IAB 1/16/19, effective 2/20/19]
[Filed ARC 5562C (Notice ARC 5357C, IAB 12/30/20), IAB 4/21/21, effective 5/26/21]

CHAPTER 12
FEES

[Prior to 7/13/88, see Accountancy, Board of[10]]
[Prior to 5/1/02, see 193A—Chapter 14]

193A—12.1(542) Required fees. The following is a schedule of the fees for examinations, certificates, licenses, permits and renewals adopted by the board:

Initial CPA examination application:	
Paid directly to CPA examination services	not to exceed $1500
Reexamination:	
Paid directly to CPA examination services	not to exceed $1500
Original issuance of CPA certificate or LPA license by examination (fee includes wall certificate)	$100
Original issuance of CPA certificate by reciprocity or substantial equivalency	$100
CPA wall certificate or LPA license issued by reciprocity or substantial equivalency	$50
Replacement of lost or destroyed wall CPA certificate or LPA license	$50
Original issuance of attest qualification	$100
Annual renewal of CPA certificate or LPA license—active status	$100
Late renewal of CPA certificate or LPA license within 30-day grace period (July 1 to July 30)—active status	$25
Annual renewal of CPA certificate or LPA license—inactive status	$50
Late renewal of CPA certificate or LPA license within 30-day grace period (July 1 to July 30)—inactive status	$10
Penalty for failure to comply with continuing education requirements	$50 to $250
Original issuance of firm permit to practice	$100
Annual renewal of firm permit to practice	$100
Reinstatement of lapsed CPA certificate or LPA license	$100 + renewal fee + $25 per month of expired registration
Reinstatement of lapsed firm permit to practice	$100 + renewal fee + $25 per month of expired registration
Interstate Transfer Form	$25
License predetermination fee	$25

[**ARC 7715B**, IAB 4/22/09, effective 7/1/09; **ARC 8866B**, IAB 6/30/10, effective 8/4/10; **ARC 8867B**, IAB 6/30/10, effective 8/4/10; **ARC 9040B**, IAB 9/8/10, effective 10/13/10; **ARC 9327B**, IAB 1/12/11, effective 2/16/11; **ARC 5562C**, IAB 4/21/21, effective 5/26/21]

193A—12.2(542) Reinstatement.

12.2(1) *Reinstatement of a lapsed CPA certificate or LPA license.* The fee for the reinstatement of a lapsed CPA certificate or LPA license for applications filed on or after July 1, 2009, is $100 plus the renewal fee plus $25 per month of expired registration up to a maximum of $1,000.

12.2(2) *Reinstatement of lapsed firm permit to practice.* The fee for the reinstatement of a lapsed CPA or LPA firm permit to practice for applications filed on or after July 1, 2009, is $100 plus the renewal fee plus $25 per month of expired registration up to a maximum of $1,000.

12.2(3) *Applicants for reinstatement.* All applicants for reinstatement shall be assessed the $100 reinstatement fee. The $25 per month penalty fee described in subrules 12.2(1) and 12.2(2) shall not be assessed if the applicant for reinstatement did not, during the period of lapse, engage in any acts or

practices for which an active CPA certificate, LPA license, or firm permit to practice as a CPA or LPA firm is required in Iowa. Falsely claiming an exemption from the monthly penalty fee is a ground for discipline; in addition, other grounds for discipline may arise from practicing on a lapsed certificate, license or permit to practice.
[**ARC 7715B**, IAB 4/22/09, effective 7/1/09; **ARC 8867B**, IAB 6/30/10, effective 8/4/10; **ARC 9123B**, IAB 10/6/10, effective 11/10/10]

193A—12.3(542) Prorating of certain fees. Fees for the issuance of an original CPA certificate or LPA license, pursuant to rule 193A—5.3(542), or the issuance of an initial permit to practice to a CPA or LPA firm, pursuant to rule 193A—7.1(542), will not be prorated.
[**ARC 7715B**, IAB 4/22/09, effective 7/1/09; **ARC 0174C**, IAB 6/13/12, effective 7/18/12]

These rules are intended to implement Iowa Code chapter 542.

[Filed and effective September 22, 1975 under ch 17A, C ’73]
[Filed 2/2/79, Notice 12/27/78—published 2/21/79, effective 3/28/79]
[Filed emergency 3/9/79—published 4/4/79, effective 3/9/79]
[Filed 2/12/81, Notice 10/29/80—published 3/4/81, effective 4/8/81]
[Filed 2/8/82, Notice 12/9/81—published 3/3/82, effective 4/7/82]
[Filed 6/22/88, Notice 3/9/88—published 7/13/88, effective 8/17/88]
[Filed 3/30/89, Notice 2/8/89—published 4/19/89, effective 5/24/89]
[Filed 8/1/91, Notice 5/15/91—published 8/21/91, effective 9/25/91]
[Filed 12/30/92, Notice 10/28/92—published 1/20/93, effective 2/24/93]
[Filed 12/17/93, Notice 10/13/93—published 1/5/94, effective 2/9/94]
[Filed 4/12/02, Notice 3/6/02—published 5/1/02, effective 7/1/02]
[Filed 7/18/02, Notice 6/12/02—published 8/7/02, effective 9/11/02]
[Filed 1/30/04, Notice 12/24/03—published 2/18/04, effective 3/24/04]
[Filed ARC 7715B (Notice ARC 7484B, IAB 1/14/09), IAB 4/22/09, effective 7/1/09]
[Filed ARC 8866B (Notice ARC 8616B, IAB 3/24/10), IAB 6/30/10, effective 8/4/10]
[Filed ARC 8867B (Notice ARC 8617B, IAB 3/24/10), IAB 6/30/10, effective 8/4/10]
[Filed ARC 9040B (Notice ARC 8868B, IAB 6/30/10), IAB 9/8/10, effective 10/13/10]
[Filed ARC 9123B (Notice ARC 8988B, IAB 8/11/10), IAB 10/6/10, effective 11/10/10]
[Filed ARC 9327B (Notice ARC 9202B, IAB 11/3/10), IAB 1/12/11, effective 2/16/11]
[Filed ARC 0174C (Notice ARC 9980B, IAB 1/25/12), IAB 6/13/12, effective 7/18/12]
[Filed ARC 5562C (Notice ARC 5357C, IAB 12/30/20), IAB 4/21/21, effective 5/26/21]

CHAPTER 13
RULES OF PROFESSIONAL ETHICS AND CONDUCT
[Prior to 5/1/02, see 193A—Chapter 11]

193A—13.1(542) Applicability.

13.1(1) The rules of professional ethics and conduct, both adopted by reference in subrule 13.1(2) and specifically enumerated herein (collectively referred to herein as the "rules of professional ethics and conduct"), rest upon the premise that the reliance of the public in general and of the business community in particular on sound financial reporting and on the implication of professional competence inherent in the authorized use of a legally restricted title relating to the practice of public accountancy imposes on persons engaged in such practice certain obligations both to their clients and to the public. These obligations, which the rules of professional ethics and conduct are intended to enforce where necessary, include the obligation to maintain independence of thought and action and a continued commitment to learning and professional improvement, to observe applicable generally accepted accounting principles and generally accepted auditing standards, to promote the public interest through sound and informative financial reporting, to hold the affairs of clients in confidence, and to maintain high standards of personal conduct in all professional activities in whatever capacity performed.

13.1(2) In addition to the rules specifically enumerated herein, and only to the extent applicable to certificate holders' and licensees' respective scope of practice, all certificate holders and licensees shall comply with the Code of Professional Conduct of the AICPA (AICPA Code of Professional Conduct), effective December 15, 2014, as updated for all official releases through October 31, 2016, and adopted by reference herein. In the event of a conflict or inconsistency between the AICPA Code of Professional Conduct and rules specifically enumerated herein, the rules specifically enumerated herein shall prevail.

13.1(3) The rules of professional ethics and conduct apply to all professional services performed by all CPAs and LPAs whether or not they are engaged in the practice of public accountancy, except where the wording of a rule clearly indicates that the applicability is specifically limited to the practice of public accountancy.

13.1(4) A CPA or LPA who is engaged in the practice of public accountancy outside the United States will not be subject to discipline by the board for departing, with respect to such foreign practice, from any of the board's rules of professional ethics and conduct, so long as the CPA's or LPA's conduct is in accordance with the standards of professional conduct applicable to the practice of public accountancy in the country in which the CPA or LPA is practicing. However, even in such a case, if a CPA's or LPA's name is associated with financial statements in such manner as to imply that the CPA or LPA is acting as an independent public accountant and under circumstances that would entitle the reader of the financial statement to assume that United States practices are followed, the CPA or LPA will be expected to comply with applicable generally accepted engagement standards and applicable generally accepted accounting principles.

13.1(5) A CPA or LPA may be held responsible for compliance with the rules of professional ethics and conduct by all persons associated with the accountant in the practice of public accounting who are either under the accountant's supervision or are licensees, partners or shareholders in the accountant's practice.

13.1(6) CPAs and CPA firms exercising a practice privilege in Iowa or for a client with a home office in Iowa are subject to the professional standards set forth in this chapter.

13.1(7) These rules complement the grounds for discipline set out in 193A—Chapter 14.

[**ARC 3230C**, IAB 8/2/17, effective 9/6/17]

193A—13.2(542) Rules applicable to all CPAs and LPAs.

13.2(1) *Cooperation with board inquiry.* A CPA or LPA shall, when requested, respond to communications from the board within 30 days of the mailing of such communications by certified mail.

13.2(2) *Reporting convictions, judgments, and disciplinary actions.* In addition to any other reporting requirement in Iowa Code chapter 542 or these rules, a CPA or LPA shall notify the board within 30 days of:

a. Imposition upon the CPA or LPA of discipline including, but not limited to, censure, reprimand, sanction, probation, civil penalty, fine, consent decree or order, or suspension, revocation or modification of a license, certificate, permit or practice rights by:

(1) The SEC, PCAOB, or IRS (by the Director of Practice); or

(2) Another state board of accountancy for cause other than failure to pay a professional fee by the due date or failure to meet the continuing education requirements of another state board of accountancy; or

(3) Any other federal or state agency regarding the CPA's or LPA's conduct while rendering professional services; or

(4) Any foreign authority or credentialing body that regulates the practice of accountancy;

b. Occurrence of any matter that must be reported by the CPA or LPA to the PCAOB pursuant to Sarbanes-Oxley Section 102(b)(2)(f) and PCAOB rules and forms adopted pursuant thereto;

c. Any judgment, award or settlement of a civil action or arbitration proceeding in which the CPA or LPA was a party if the matter included allegations of gross negligence, violation of specific standards of practice, fraud, or misappropriation of funds in the practice of accounting; provided, however, licensed firms shall notify the board regarding civil judgments, settlements or arbitration awards directly involving the firm's practice of public accounting in this state; or

d. Criminal charges, deferred prosecution or conviction or plea of no contest to which the CPA or LPA is a defendant if the crime is:

(1) Any felony under the laws of the United States or any state of the United States or any foreign jurisdiction; or

(2) Any crime, including a misdemeanor, if an essential element of the offense is dishonesty, deceit or fraud, as more fully described in Iowa Code section 542.5(2).

13.2(3) *Firm's duty to report.* The CPA or LPA designated by each firm as responsible for the proper licensure of the firm or registration of an office of the firm shall report any matter reportable under this rule to which a nonlicensee owner with a principal place of business in this state is a party.

13.2(4) *Solicitation or disclosure of CPA examination questions and answers.* A CPA or LPA who solicits or knowingly discloses a Uniform CPA Examination question(s) or answer(s) without the written authorization of the AICPA shall be considered to have committed an act discreditable to the profession.

13.2(5) *Falsely reporting continuing professional education (CPE).* A CPA or LPA shall be considered to have committed an act discreditable to the profession when the CPA or LPA falsely reports CPE credits during the CPA's or LPA's required reporting renewal or board CPE audit.

13.2(6) *Mandatory ethics continuing professional education.* Every CPA certificate holder or LPA license holder shall complete a minimum of four hours of continuing professional education devoted to ethics and rules of professional conduct during the three-year period ending December 31 or June 30, prior to the July 1 annual renewal date. This requirement is more fully described in 193A—subrule 10.7(2).

[**ARC 3230C**, IAB 8/2/17, effective 9/6/17]

193A—13.3(542) Rules applicable to CPAs and LPAs who use the titles in offering or rendering products or services to clients.

13.3(1) *Use of title.*

a. *Certified public accountant.* Only a person who holds an active, unexpired certificate and who complies with the requirements of 193A—Chapter 5, Licensure Status and Renewal of Certificates and Licenses, and 193A—Chapter 10, Continuing Education, or a person lawfully exercising a practice privilege under Iowa Code section 542.20 may use or assume the title "certified public accountant" or the abbreviation "CPA" or any other title, designation, word(s), letter(s), abbreviation(s), sign, card, or device tending to indicate that such person is a certified public accountant.

b. *Licensed public accountant.* Only a person holding a license as a licensed public accountant shall use or assume the title "licensed public accountant" or the abbreviation "LPA" or any other title, designation, word(s), letter(s), abbreviation(s), sign, card, or device tending to indicate that such person is a licensed public accountant.

13.3(2) *Forms of practice.*

a. Certified public accountant firms. A sole proprietorship, corporation, partnership, limited liability company, or any other form of organization shall apply for a permit to practice under Iowa Code section 542.7 and these rules as a firm of certified public accountants in order to use the title "CPAs" or "CPA firm," as more fully described in 193A—Chapter 7.

b. Licensed public accounting firms. A sole proprietorship, corporation, partnership, limited liability company, or any other form of organization shall apply for a permit to practice under Iowa Code section 542.8 and these rules as a firm of licensed public accountants in order to use the title "LPAs" or "LPA firm," as more fully described in 193A—Chapter 8.

13.3(3) *Acting through others.* A CPA or LPA shall not permit others to carry out on the CPA's or LPA's behalf, either with or without compensation, acts which, if carried out by the CPA or LPA, would violate the rules of professional ethics and conduct.

[**ARC 3230C**, IAB 8/2/17, effective 9/6/17]

193A—13.4(542) Audit, review and other attest services.

13.4(1) *Definitions.*

"Attest" or *"attest service"* means providing any of the following services:

1. An audit or other engagement to be performed in accordance with the statements on auditing standards.
2. A review of a financial statement to be performed in accordance with the statements on standards for accounting and review services.
3. Any engagement to be performed in accordance with the statements on standards for attestation engagements.
4. Any engagement to be performed in accordance with the auditing standards of the PCAOB.

The standards specified in the definition of "attest" are those standards adopted by the board, by rule, by reference to the standards developed for general application by the AICPA, the PCAOB, or other recognized national accountancy organization.

"Attest engagement team" means the team of individuals participating in attest service, including those who perform concurring or second partner reviews. The "attest engagement team" includes all employees and contractors retained by the firm who participate in attest service, irrespective of their functional classification.

"Audit" means the procedures performed in accordance with applicable auditing standards for the purpose of expressing or disclaiming an opinion on the fairness with which the historical financial or other information is presented in conformity with generally accepted accounting principles, another comprehensive basis of accounting, or basis of accounting described in the report.

"Review" means to perform inquiry and analytical procedures that permit a CPA to determine whether there is a reasonable basis for expressing limited assurance that there are no material modifications that should be made to financial statements in order for them to be in conformity with generally accepted accounting principles or, if applicable, with another comprehensive basis of accounting.

13.4(2) *Practice privilege.* All audit, review, and other attest services performed in Iowa or for a client with a home office in Iowa must be performed through a CPA firm that holds an active Iowa firm permit to practice or through an out-of-state CPA firm exercising a practice privilege in compliance with Iowa Code sections 542.20(5) and 542.20(6) and associated rules and the peer review and ownership provisions of Iowa Code section 542.7. Unless Iowa certification is specifically required by a governmental body or client, the individual CPAs performing such attest services may either hold an active Iowa CPA certificate or exercise a practice privilege as more fully described in Iowa Code section 542.20. LPAs and LPA firms are not authorized to perform attest services.

13.4(3) *Peer review required.* As a condition of renewal of a permit to practice as a CPA firm, the firm shall undergo, at least once every three years, a peer review conducted under the provisions outlined in 193A—Chapter 11 and Iowa Code section 542.7.

[**ARC 3230C**, IAB 8/2/17, effective 9/6/17; **ARC 3422C**, IAB 10/25/17, effective 11/29/17]

193A—13.5(542) Compilation.

13.5(1) *Who can perform.* Only a CPA licensed under Iowa Code section 542.6 or 542.19, or any other applicable law or rule; an LPA licensed under Iowa Code section 542.8, or any other applicable law or rule; or a CPA exercising a practice privilege under Iowa Code section 542.20 shall issue a report in standard form upon a compilation of financial information or otherwise provide compilation services in Iowa or for a client with a home office in Iowa. (Refer to rule 193A—6.4(542).)

13.5(2) *Peer review.* All individuals described in 193A—subrule 6.4(1) shall satisfy peer review requirements, individually or through a peer review of a CPA or LPA firm holding a permit to practice pursuant to Iowa Code section 542.7 or 542.8 or a CPA firm exercising a practice privilege under Iowa Code section 542.20.

13.5(3) *Mandatory financial statement presentation continuing professional education.* In each renewal period in which compilation reports are issued, every CPA certificate holder or LPA license holder who is responsible for supervising compilation services or who signs or authorizes someone to sign the accountant's compilation report on behalf of a firm shall complete, as a condition of certificate or license renewal, a minimum of eight hours of continuing education devoted to financial statement presentation every three years, such as courses covering the Statements on Standards for Accounting and Review Services (SSARS) and accounting and auditing updates. This requirement is more fully described in 193A—subrule 10.7(1).

[**ARC 3230C**, IAB 8/2/17, effective 9/6/17; **ARC 3422C**, IAB 10/25/17, effective 11/29/17; **ARC 5562C**, IAB 4/21/21, effective 5/26/21]

193A—13.6(542) Rules applicable to tax practice. CPAs, LPAs, and persons who are not CPAs or LPAs may perform tax services in Iowa. The rules of professional ethics and conduct in this chapter shall apply to any CPA or LPA who is licensed in Iowa and to any CPA exercising a practice privilege in Iowa whenever such person informs the client or prospective client that the person is a CPA or LPA. Clients may be so informed in a number of ways, including oral or written representations, the display of a CPA certificate or LPA license, or use of the CPA or LPA title in advertising, telephone or Internet directories, letterhead, business cards or email. Clients and prospective clients who select a tax professional holding oneself out as a CPA or LPA have the right to expect compliance with these rules.

[**ARC 3230C**, IAB 8/2/17, effective 9/6/17]

These rules are intended to implement Iowa Code chapters 272C and 542.

[Filed and effective 9/22/75 under 17A, C '73]
[Filed 9/27/78, Notice 8/23/78—published 10/18/78, effective 11/22/78]
[Filed 10/9/80, Notice 9/3/80—published 10/29/80, effective 12/3/80]
[Filed 6/22/88, Notice 3/9/88—published 7/13/88, effective 8/17/88]
[Filed 8/1/91, Notice 5/15/91—published 8/21/91, effective 9/25/91]
[Filed 12/17/93, Notice 10/13/93—published 1/5/94, effective 2/9/94]
[Filed 7/11/97, Notice 4/23/97—published 7/30/97, effective 9/3/97]
[Filed 4/12/02, Notice 3/6/02—published 5/1/02, effective 7/1/02]
[Filed 9/13/02, Notice 8/7/02—published 10/2/02, effective 11/6/02]
[Filed 1/19/05, Notice 12/8/04—published 2/16/05, effective 3/23/05]
[Filed ARC 7715B (Notice ARC 7484B, IAB 1/14/09), IAB 4/22/09, effective 7/1/09]
[Filed ARC 9003B (Notice ARC 8836B, IAB 6/16/10), IAB 8/11/10, effective 1/1/11]
[Filed ARC 0174C (Notice ARC 9980B, IAB 1/25/12), IAB 6/13/12, effective 7/18/12]
[Filed ARC 0413C (Notice ARC 0254C, IAB 8/8/12), IAB 10/31/12, effective 12/5/12]
[Filed ARC 2152C (Notice ARC 2058C, IAB 7/8/15), IAB 9/30/15, effective 11/4/15]
[Filed ARC 3230C (Notice ARC 3019C, IAB 4/12/17), IAB 8/2/17, effective 9/6/17]
[Filed ARC 3422C (Notice ARC 3224C, IAB 8/2/17), IAB 10/25/17, effective 11/29/17]
[Filed ARC 5562C (Notice ARC 5357C, IAB 12/30/20), IAB 4/21/21, effective 5/26/21]

CHAPTER 14
DISCIPLINARY AUTHORITY AND GROUNDS FOR DISCIPLINE

193A—14.1(17A,272C,542) Disciplinary authority. The board is empowered to administer Iowa Code chapters 17A, 272C and 542 and related administrative rules for the protection and well-being of those persons who may rely upon licensed individuals and firms for the performance of public accounting services within this state or for clients in this state. To perform these functions, the board is broadly vested with authority to review and investigate alleged acts or omissions of licensees, determine whether disciplinary proceedings are warranted, initiate and prosecute disciplinary proceedings, establish standards of professional conduct, and impose discipline, pursuant to Iowa Code sections 17A.13, 272C.3 to 272C.6, 272C.10, 542.4, and 542.10 to 542.16.
[**ARC 7715B**, IAB 4/22/09, effective 7/1/09]

193A—14.2(17A,272C,542) Disciplinary policy.

14.2(1) In exercising its disciplinary authority and in construing the meaning of the phrase "conduct discreditable to the public accounting profession" as used in Iowa Code section 542.10, subsection 1 paragraph *"i,"*, the board shall be guided by the legislative policies, goals and standards set forth in Iowa Code section 542.2.

14.2(2) The board's disciplinary policy rests upon the premise that the reliance of the public in general and of the business community in particular on sound financial reporting, and on the implication of professional competence inherent in the authorized use of a legally restricted title relating to the practice of public accountancy, imposes on persons and firms engaged in such practice certain obligations both to their clients and to the public. These obligations include the obligation to maintain independence of thought and action; to strive continuously to improve one's professional skills; to observe, where applicable, generally accepted accounting principles, generally accepted auditing standards, and similar principles and standards; to promote sound and informative financial reporting; to hold the affairs of clients in confidence; and to maintain high standards of personal conduct in all matters affecting one's fitness to practice public accountancy.

14.2(3) The public interest requires that persons professing special competence in accountancy or offering assurance as to the reliability or fairness of presentation of such information shall have demonstrated their qualifications to do so, and that persons who have not demonstrated and maintained such qualifications not be permitted to represent themselves as having such special competence or to offer such assurance; that the conduct of persons licensed as having special competence in accountancy be regulated in all aspects of their professional work; that a public authority competent to prescribe and assess the qualifications and to regulate the conduct of licensees be established; and that the use of titles that have a capacity or tendency to deceive the public as to the status or competence of the persons using such titles be prohibited.

14.2(4) A CPA or LPA firm is subject to discipline for its own violations of Iowa Code chapter 542 and administrative rules and the violations of the firm's CPAs, LPAs, nonlicensee owners, persons acting or purporting to act under a practice privilege, and others performing professional services on the firm's behalf. Whether a CPA or LPA firm will be charged based on the acts of such individuals will depend on the circumstances. Among the factors the board will consider are whether the firm took reasonable steps to prevent the violation, whether the violation was or could have been discovered by the firm upon reasonable inquiry, what steps the firm took upon discovering the violation, whether the acts or omissions involved licensees of the board or were committed by persons who are not individually licensed by the board, the nature of the services at issue, and whether the violations are isolated matters or more systemic to the firm's performance.
[**ARC 7715B**, IAB 4/22/09, effective 7/1/09]

193A—14.3(17A,272C,542) Grounds for discipline. The board may initiate disciplinary action against a CPA or LPA, or a firm of CPAs or LPAs, which holds an active, inactive or lapsed certificate, license or permit to practice on any of the following grounds:

14.3(1) *Fraud or deceit in procuring a license.* Fraud or deceit in procuring or attempting to procure an initial, reciprocal, renewal, or reinstated certificate, license, or permit to practice includes any intentional perversion of the truth when submitting an application to the board, or when submitting information in support of another's application to the board, including:

a. False representation of a material fact, whether by word or by conduct, by false or misleading allegation, or by concealment of that which should have been disclosed.

b. Attempting to file or filing with the board any false or forged record or document, such as a college transcript, diploma or degree, examination report, verification of licensure, continuing education certificate, or verification of peer review.

c. Failing or refusing to provide complete information in response to a question on an application.

d. Reporting information, such as satisfaction of continuing education, peer review, or attest qualification, in a false manner through overt deceit or with reckless disregard for the truth or accuracy of the information asserted.

e. Otherwise participating in any form of fraud or misrepresentation by act or omission.

14.3(2) *Professional incompetence.* Professional incompetence includes, but is not limited to:

a. A substantial lack of knowledge or ability to discharge professional obligations within the practice of public accounting.

b. A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other practitioners in the state of Iowa acting in the same or similar circumstances.

c. A failure to exercise the degree of care which is ordinarily exercised by the average practitioner acting in the same or similar circumstances.

d. Failure to conform to the minimum standards of acceptable and prevailing practice of public accounting in this state.

e. A willful, repeated, or material deviation from generally accepted engagement standards, generally accepted accounting standards, generally accepted auditing standards, or any other nationally recognized standard applicable to the public accounting services at issue.

f. Any other act or omission that demonstrates an inability to safely practice in a manner protective of the public's interest.

14.3(3) *Deceptive practices.* Deceptive practices are grounds for discipline, whether or not actual injury is established, and include:

a. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of public accounting.

b. Use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a licensee in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation.

c. Acceptance of any fee by fraud or misrepresentation.

d. Falsification of business or client records.

e. Submission of false or misleading reports or information to the board including information supplied in an audit of continuing education, reports submitted as a condition of probation, or any reports identified in this rule or 193A—Chapter 18.

f. Knowingly presenting as one's own a certificate, license, or permit to practice, or a certificate, license, or permit number, or the signature of another or of a fictitious licensee, or otherwise falsely impersonating a person holding a CPA certificate or LPA license, or a permit to practice as a firm of CPAs or LPAs.

g. Representing oneself as a CPA, LPA, CPA firm, or LPA firm when the certificate, license, or permit to practice has been suspended, revoked, surrendered, or placed on inactive status, or has lapsed, except as allowed under Iowa Code section 542.20.

h. Fraud in representations as to skill or ability.

14.3(4) *Unethical, harmful or detrimental conduct.* Licensees engaging in unethical conduct or practices harmful or detrimental to the public may be disciplined whether or not injury is established.

Behaviors and conduct which are unethical, harmful or detrimental to the public may include, but are not limited to, the following actions:

a. Verbal or physical abuse, or improper sexual contact, if such behavior occurs within the practice of public accounting or if such behavior otherwise provides a reasonable basis for the board to conclude that such behavior within the practice of public accounting would place the public at risk.

b. A violation of a rule of professional conduct relating to improper conflicts of interest, or lack of integrity, objectivity or independence, as provided in the AICPA Code of Professional Conduct as adopted by reference in 193A—Chapter 13.

c. A violation of a provision of Iowa Code section 542.13, or aiding or abetting any unlawful activity for which a civil penalty can be imposed under Iowa Code sections 542.13 and 542.14.

14.3(5) *Lack of proper qualifications.* Lack of proper qualifications includes, but is not limited to:

a. Continuing to practice as a CPA or LPA without satisfying the continuing education required for certificate or license renewal.

b. Continuing to perform attest services or compilation services without timely completion of peer review.

c. Performing attest services as an individual without proper certification or attest qualification, or without acting through a CPA firm holding a permit to practice pursuant to Iowa Code section 542.7 or exercising a practice privilege pursuant to Iowa Code section 542.20.

d. Performing attest services as a firm without holding a permit to practice pursuant to Iowa Code section 542.7 or exercising a practice privilege pursuant to Iowa Code section 542.20, or without ensuring that the individuals responsible for supervising attest services or signing or authorizing someone to sign the accountant's report are attest qualified, hold the required certification or are eligible to exercise a practice privilege, or otherwise performing attest services in a manner inconsistent with Iowa Code chapter 542 or the rules of the board.

e. Habitual intoxication or addiction to the use of drugs, or impairment which adversely affects the CPA's or LPA's ability to practice in a safe and competent manner.

f. Any act, conduct, or condition, including lack of education or experience and careless or intentional acts or omissions, that demonstrates a lack of qualifications which are necessary to ensure a high standard of professional care as provided in Iowa Code section 272C.3(2)*"b,"* or that impairs a practitioner's ability to safely and skillfully practice the profession.

14.3(6) *Negligence in the practice of public accounting.* Negligence in the practice of public accounting includes the following acts, practices, or omissions, whether or not injury results:

a. Failure or refusal without good cause to exercise reasonable diligence in the practice of public accounting.

b. A failure to exercise due care including negligent delegation of duties in the practice of public accounting.

c. Neglect of contractual or other duties to a client.

14.3(7) *Professional misconduct.* Professional misconduct includes, but is not limited to, the following:

a. Violation of a generally accepted engagement standard, generally accepted accounting standard, generally accepted auditing standard, or any other nationally recognized standard applicable to the public accounting services at issue, as provided in rule 193A—13.4(542), or any other violation of a provision of the AICPA Code of Professional Conduct as adopted by reference in 193A—Chapter 13.

b. Violation of a regulation or law of this state, another state, the United States, or the PCAOB in the practice of public accounting.

c. Engaging in any conduct that subverts or attempts to subvert a board investigation of a licensed or unlicensed firm, individual, or other entity, or failure to fully cooperate with a disciplinary investigation of a licensee or with an investigation of firms, individuals or other entities that are not licensed by the board, including, without limitation, failure to comply with a subpoena issued by the board or to respond to a board inquiry within 30 calendar days of the date of mailing by certified mail of a written communication directed to the licensee's last address on file at the board office.

d. Revocation, suspension, or other disciplinary action taken against a licensee or person or firm exercising a practice privilege by a licensing authority of this state or another state, territory, or country. 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, discipline by the board based solely on such action shall be vacated.

e. Suspension or revocation of the right to practice before any state or federal agency, or the PCAOB.

f. A violation of Iowa Code section 542.17 (confidential communication).

g. A violation of Iowa Code section 542.18 (licensees' working papers—client records).

h. Violating or aiding and abetting another's violation of Iowa Code section 542.13 or 542.20.

i. Violation of the terms of an initial agreement with the impaired practitioner review committee or violation of the terms of an impaired practitioner recovery contract with the impaired practitioner review committee.

j. A violation of a practice privilege afforded to an Iowa licensee in another state.

k. Engaging in the practice of public accounting on a lapsed or inactive certificate, license or permit when the acts or practices require active Iowa licensure and, in the case of a firm, allowing such acts or practices by firm CPAs or LPAs.

14.3(8) *Willful or repeated violations.* The willful or repeated violation or disregard of any provision of Iowa Code chapter 272C or 542 or any administrative rule adopted by the board in the administration or enforcement of such chapters.

14.3(9) *Failure to report.*

a. Failure by a CPA firm to timely report as provided in rule 193A—7.7(542).

b. Failure of an LPA firm to timely report as provided in rule 193A—8.5(542).

c. Failure to timely report judgments and settlements and reportable violations by others as provided in 193A—Chapter 18.

d. Failure to report in writing to the board any issuance, denial, revocation, or suspension of a license by another state, or the voluntary surrender of a license to resolve a pending disciplinary investigation or action, within 30 calendar days of the licensing authority's final action.

e. Failure to report the conviction of any felony, or a crime described in Iowa Code section 542.5(2), within 30 calendar days of the conviction.

f. Failure to report to the board a change in the licensee's physical or mailing address within 30 calendar days of the change.

g. Failure to report as provided in 193A—subrule 13.4(3) or as otherwise required in the AICPA Code of Professional Conduct as adopted by reference in 193A—Chapter 13.

14.3(10) *Failure to comply with board order.* Failure to comply with the terms of a board order or the terms of a settlement agreement or consent order, or other decision of the board imposing discipline.

14.3(11) *Conviction of a crime.* Conviction, in this state or any other jurisdiction, of any felony, or of any crime described in Iowa Code section 542.5(2). A certified copy of the final order or judgment of conviction or plea of guilty in this state or in another jurisdiction shall be conclusive evidence of the conviction. "Conviction" shall include any plea of guilty or nolo contendere, including Alford pleas, or finding of guilt whether or not judgment or sentence is deferred, withheld, not entered, or suspended, and whether or not the conviction is on appeal. If such conviction is overturned or reversed by a court of last resort, discipline by the board based solely on the conviction shall be vacated. A conviction qualifies as a felony offense if the offense is designated as a felony in the jurisdiction in which the conviction occurred; or had the offense been committed in this state the offense would be a felony, without regard to its designation elsewhere. Notwithstanding the foregoing, a conviction may be grounds for revocation or suspension only if an unreasonable risk to public safety exists because the offense directly relates to the duties and responsibilities of the profession. An offense directly relates to the profession if either (1) the actions taken in furtherance of an offense are actions customarily performed within the scope of practice of the profession, or (2) the circumstances under which an offense was committed are circumstances customary to the profession.

14.3(12) *Conduct discreditable to the accounting profession.* Conduct discreditable to the accounting profession includes any act or practice that diminishes the public's confidence in the profession, impairs the credibility of the profession, or otherwise compromises the public's trust. While it is not possible to list all conduct that is discreditable to the accounting profession, the following list provides an illustrative range of acts or practices that are implicated:

a. Dishonesty in business or financial affairs, or a pattern of fiscal irresponsibility.

b. Placement on the sex offender registry.

c. Securities fraud or violation of the Iowa consumer fraud Act.

d. Willful or repeated failure to timely file tax returns or other tax documents.

e. False testimony in a court or administrative proceeding, or affidavit, or otherwise under oath.

f. Providing false or misleading information to a financial institution or governmental body or official.

g. Stating or implying an ability to improperly influence a government agency or official, or attempting to do so through deception, bribery or other unlawful means.

h. Violation of a breach of fiduciary duty when acting in the capacity of a trustee, conservator, or other fiduciary, or as the professional advisor to a fiduciary.

i. Any violation of Iowa Code chapter 542 or administrative rules that involves dishonesty, bad faith, or unethical behavior.

[**ARC 7715B**, IAB 4/22/09, effective 7/1/09; **ARC 2152C**, IAB 9/30/15, effective 11/4/15; **ARC 3230C**, IAB 8/2/17, effective 9/6/17; **ARC 3422C**, IAB 10/25/17, effective 11/29/17; **ARC 5562C**, IAB 4/21/21, effective 5/26/21]

These rules are intended to implement Iowa Code chapters 17A, 272C and 542 and Iowa Code section 546.10.

[Filed 4/12/02, Notice 3/6/02—published 5/1/02, effective 7/1/02]
[Filed ARC 7715B (Notice ARC 7484B, IAB 1/14/09), IAB 4/22/09, effective 7/1/09]
[Filed ARC 2152C (Notice ARC 2058C, IAB 7/8/15), IAB 9/30/15, effective 11/4/15]
[Filed ARC 3230C (Notice ARC 3019C, IAB 4/12/17), IAB 8/2/17, effective 9/6/17]
[Filed ARC 3422C (Notice ARC 3224C, IAB 8/2/17), IAB 10/25/17, effective 11/29/17]
[Filed ARC 5562C (Notice ARC 5357C, IAB 12/30/20), IAB 4/21/21, effective 5/26/21]

ARCHITECTURAL EXAMINING BOARD[193B]

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CHAPTER 1
DESCRIPTION OF ORGANIZATION

[Prior to 7/13/88, see Architectural Examiners, Board of[80]]

193B—1.1(544A,17A) Duties.

1.1(1) The purpose of the architectural examining board is to administer and enforce the provisions of Iowa Code chapter 544A with regard to the practice of architecture in the state of Iowa, including the examining of candidates; issuing licenses to practice architecture; assuring continuing competency through continued education; investigating violations and infractions of the architecture law; disciplining licensees; and imposing civil penalties against nonlicensees. To this end, the board has promulgated these rules to clarify the board's intent and procedures.

1.1(2) The primary mission of the board is to protect the public interest. All board rules shall be construed as fostering the guiding policies and principles described in Iowa Code section 544A.5. The board and its licensees shall strive at all times to protect the public interest by promoting the highest standards of architecture.

1.1(3) The board shall maintain a roster of all architects authorized to practice architecture in the state.

1.1(4) Chairperson. The chairperson shall preside at all meetings, shall appoint all committees, and shall otherwise perform all duties pertaining to the office of the chairperson.

1.1(5) Vice chairperson. The vice chairperson shall, in the absence or incapacity of the chairperson, exercise the duties and possess the powers of the chairperson.

1.1(6) Board administrator. The professional licensing and regulation bureau may employ a board administrator, who will maintain all necessary records of the board and perform all duties in connection with the operation of the board office. The board administrator is the lawful custodian of board records. The board administrator shall determine when the legal requirements for licensure have been satisfied with regard to issuance of certificates, licenses or registrations, and the board administrator shall submit to the board any questionable application. The bureau chief or designee shall sign vouchers for payment of board obligations.

[**ARC 1505C**, IAB 6/25/14, effective 7/30/14; **ARC 2674C**, IAB 8/17/16, effective 9/21/16; **ARC 3331C**, IAB 9/27/17, effective 11/1/17; **ARC 5563C**, IAB 4/21/21, effective 5/26/21]

193B—1.2(544A,17A) Office of the board. The mailing address of the board shall be: Iowa Architectural Examining Board, 200 E. Grand Avenue, Suite 350, Des Moines, Iowa 50309.

[**ARC 1505C**, IAB 6/25/14, effective 7/30/14]

193B—1.3(544A,17A) Meetings. Calls for meetings shall be issued in accordance with Iowa Code section 21.4. The annual meeting of the board shall be the first meeting scheduled after April 30. At this meeting, the chairperson and vice chairperson shall be elected to serve until their successors are elected. The newly elected officers shall assume the duties of their respective offices at the conclusion of the meeting at which they are elected. Officers shall serve no more than three consecutive one-year terms in each office to which they are elected. Special meetings may be called by the chairperson or board administrator, who shall set the time and place of the meeting.

[**ARC 1505C**, IAB 6/25/14, effective 7/30/14; **ARC 2674C**, IAB 8/17/16, effective 9/21/16; **ARC 5563C**, IAB 4/21/21, effective 5/26/21]

193B—1.4(544A,17A) Certificates. Certificates issued to successful applicants shall contain the licensee's name and state license number. All licenses are renewable biennially on July 1, with licensees whose last names begin with the letters A through K renewing in even-numbered years and licensees whose last names begin with the letters L through Z renewing in odd-numbered years as provided in rule 193B—2.5(17A,272C,544A).

The board shall maintain an electronic roster of those holders of certificates of licensure who have failed to renew. The certificate of licensure may be reinstated in accordance with rule 193B—2.6(544A,17A).

[**ARC 1505C**, IAB 6/25/14, effective 7/30/14; **ARC 3331C**, IAB 9/27/17, effective 11/1/17; **ARC 5563C**, IAB 4/21/21, effective 5/26/21]

These rules are intended to implement Iowa Code sections 544A.5, 544A.8 to 544A.10, and 272C.4.

[Filed 4/8/70, amended 1/2/74]
[Filed 10/1/76, Notice 9/8/76—published 10/20/76, effective 12/8/76]
[Filed 3/15/78, Notice 11/30/77—published 4/5/78, effective 5/10/78]
[Filed 5/8/81, Notice 4/1/81—published 5/27/81, effective 7/1/81]
[Filed 2/7/83, Notice 12/22/82—published 3/2/83, effective 4/6/83]
[Filed 6/24/88, Notice 3/9/88—published 7/13/88, effective 8/17/88]
[Filed 3/30/89, Notice 1/25/89—published 4/19/89, effective 5/24/89]
[Filed 2/15/91, Notice 1/9/91—published 3/6/91, effective 4/10/91]
[Filed 12/6/91, Notice 10/30/91—published 12/25/91, effective 1/29/92]
[Filed 2/6/95, Notice 12/7/94—published 3/1/95, effective 4/5/95]
[Filed 6/15/95, Notice 4/26/95—published 7/5/95, effective 8/9/95]
[Filed 9/20/96, Notice 7/31/96—published 10/9/96, effective 11/13/96]
[Filed 3/21/97, Notice 2/12/97—published 4/9/97, effective 5/14/97]
[Filed 4/30/98, Notice 12/31/97—published 5/20/98, effective 6/24/98]
[Filed 5/13/99, Notice 2/24/99—published 6/2/99, effective 7/7/99]
[Filed 9/12/01, Notice 6/27/01—published 10/3/01, effective 11/7/01]
[Filed ARC 1505C (Notice ARC 1251C, IAB 12/25/13), IAB 6/25/14, effective 7/30/14]
[Filed ARC 2674C (Notice ARC 2480C, IAB 3/30/16), IAB 8/17/16, effective 9/21/16]
[Filed ARC 3331C (Notice ARC 3169C, IAB 7/5/17), IAB 9/27/17, effective 11/1/17]
[Filed ARC 5563C (Notice ARC 5355C, IAB 12/30/20), IAB 4/21/21, effective 5/26/21]

CHAPTER 2
LICENSURE

[Prior to 7/13/88, see Architectural Examiners, Board of[80]]

193B—2.1(544A,17A) Definitions. The following definitions apply as used in Iowa Code chapter 544A, and this chapter of the architectural examining board rules, unless the context otherwise requires.

"Applicant" means an individual who has submitted an application for licensure to the board.

"Architectural intern" means an individual who holds a professional degree from a NAAB-accredited program, has completed or is currently enrolled in the NCARB Architectural Experience Program (AXP), and intends to actively pursue licensure by completing the Architect Registration Examination.

"ARE" means the current Architect Registration Examination, as prepared and graded by the National Council of Architectural Registration Boards (NCARB).

"AXP applicant" means an individual who has completed the AXP training requirements set forth in the NCARB Architectural Experience Program Guidelines, formerly known as the IDP Guidelines, and has submitted an application for licensure to the board.

"Examination" means the current Architect Registration Examination (ARE) accepted by the board.

"Inactive" means that an architect is not engaged in Iowa in any practice for which a certificate of licensure is required.

"Intern architect" has the same meaning as "architectural intern."

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

"NAAB" means the National Architectural Accrediting Board.

"NCARB" means the National Council of Architectural Registration Boards.

"NCARB Architect Registration Examination (ARE) Guidelines" means the most current edition of a document by the same title published by the National Council of Architectural Registration Boards. The document outlines the requirements for examination and is available through the National Council of Architectural Registration Boards, 1401 H Street NW, Suite 500, Washington, DC 20005; NCARB's website, www.ncarb.org; or the architectural examining board.

"NCARB Architectural Experience Program Guidelines" means the most current edition of a document by the same title published by the National Council of Architectural Registration Boards. The document outlines the requirements for training and is available through the National Council of Architectural Registration Boards, 1401 H Street NW, Suite 500, Washington, DC 20005; NCARB's website, www.ncarb.org; or the architectural examining board.

"NCARB Certification Guidelines" means the most current edition of a document by the same title published by the National Council of Architectural Registration Boards. The document outlines the requirements for licensure as an architect and is available through the National Council of Architectural Registration Boards, 1401 H Street NW, Suite 500, Washington, DC 20005; NCARB's website, www.ncarb.org; or the architectural examining board.

"Retired" means that an architect is not engaged in the practice of architecture or earning monetary compensation by providing professional architectural services in any licensing jurisdiction of the United States or a foreign country.

[**ARC 2674C**, IAB 8/17/16, effective 9/21/16; **ARC 3332C**, IAB 9/27/17, effective 11/1/17; **ARC 5563C**, IAB 4/21/21, effective 5/26/21]

193B—2.2(544A,17A) Application by reciprocity. Applicants for licensure are required to make application to the National Council of Architectural Registration Boards (NCARB) for a certificate. A completed state application form (available on the board's website) and a completed NCARB certificate, received within three months of application, shall be filed in the board office before an application will be considered by the board.

2.2(1) *Licensure requirements.* The board or the board administrator may waive examination requirements for applicants who, at the time of application, are licensed as architects in a different jurisdiction, where the applicant's qualifications for licensure are substantially equivalent to those

required of applicants for initial licensure in this state. All such applicants who hold an active NCARB certificate shall be deemed to possess qualifications that are substantially equivalent to those required of applicants for initial licensure in this state.

2.2(2) *Applicants seeking architectural commission in Iowa.* A person seeking an architectural commission in this state may be admitted to this state for the purpose of offering to provide architectural services, and for that purpose only, without first being licensed in this state if:

a. The person holds an NCARB certificate; and

b. The person holds a current and valid license issued by a licensing authority recognized by this state; and

c. The person notifies the board in writing on a form provided by the board that the person:

(1) Holds an NCARB certificate and a current and valid license issued by a licensing authority recognized by this state,

(2) Is not currently licensed in this state but will be present in this state for the purpose of offering to provide architectural services on a temporary basis, and

(3) Has no previous or pending disciplinary action by any licensing authority; and

d. The person delivers a copy of the notice referred to in paragraph *"c"* to every potential client to whom the person offers to provide architectural services; and

e. The person provides the board with a sworn statement of intent to apply immediately to the board for licensure if selected as the architect for a project in this state.

The person is prohibited from actually providing architectural services until the person has been issued a valid license in this state.

2.2(3) *Board refusal to issue license.* The board may refuse to issue a certificate of licensure to any person otherwise qualified upon any of the grounds for which a certificate of licensure may be revoked or suspended or may otherwise discipline a licensee based upon a suspension, revocation, or other disciplinary action taken by a licensing authority in this or another jurisdiction. For purposes of this subrule, "disciplinary action" includes the voluntary surrender of a license to resolve a pending disciplinary investigation or proceeding. A certified copy of the record or order of suspension, revocation, voluntary surrender, or other disciplinary action is prima facie evidence of such fact.

[**ARC 7737B**, IAB 5/6/09, effective 6/10/09; **ARC 2674C**, IAB 8/17/16, effective 9/21/16; **ARC 3332C**, IAB 9/27/17, effective 11/1/17]

193B—2.3(544A,17A) Application for licensure by examination.

2.3(1) Eligibility.

a. To be admitted to the examination, an applicant for licensure shall:

(1) Have completed the eligibility requirements of the education standards for NCARB certification, which include a professional degree from a program accredited by the National Architectural Accrediting Board (NAAB) or the Canadian Architectural Certification Board (CACB) or be a student actively participating in an NCARB-accepted Integrated Path to Architectural Licensure (IPAL) option within a NAAB-accredited professional degree program in architecture, and

(2) Be enrolled in or have completed the NCARB Architectural Experience Program.

b. NCARB shall notify the testing service of the applicant's eligibility prior to the applicant's scheduling of an examination.

2.3(2) Documentation of AXP training units shall be submitted on AXP report forms published by NCARB and shall be verified by signatures of the licensed architects serving as the intern architect's supervisors in accordance with the requirements outlined in the NCARB Architectural Experience Program Guidelines. The completed AXP report form shall demonstrate attainment of an aggregate of the minimum number of value units in each training area and shall be submitted to NCARB for evaluation.

2.3(3) All eligibility requirements shall have been verified and satisfied in accordance with the NCARB Architectural Experience Program Guidelines, which is available through NCARB's website www.ncarb.org or the architectural examining board.

2.3(4) To be eligible for licensure, all applicants shall have passed all divisions of the ARE prepared and provided by NCARB, have completed the NCARB Architectural Experience Program, and have attained an NCARB council record. A completed NCARB council record shall be transmitted to and filed in the board office within three months of application. Upon receipt of the council record, the board shall provide the applicant with an application for licensure form. The board shall issue a license number to the applicant upon receipt of the completed application form and appropriate fee.

2.3(5) The board may refuse to issue a certificate of licensure to any person otherwise qualified upon any of the grounds for which a license may be revoked or suspended or may otherwise discipline a licensee based upon a suspension, revocation, or other disciplinary action taken by a licensing authority in this or another jurisdiction. For purposes of this subrule, "disciplinary action" includes the voluntary surrender of a license to resolve a pending disciplinary investigation or proceeding. A certified copy of the record or order of suspension, revocation, voluntary surrender, or other disciplinary action is prima facie evidence of such fact.

[**ARC 8638B**, IAB 4/7/10, effective 5/12/10; **ARC 1624C**, IAB 9/17/14, effective 10/22/14; **ARC 2674C**, IAB 8/17/16, effective 9/21/16; **ARC 3332C**, IAB 9/27/17, effective 11/1/17; **ARC 5563C**, IAB 4/21/21, effective 5/26/21]

193B—2.4(544A,17A) Examination. Examinations for licensure as an architect shall be conducted by the board or its authorized representative.

2.4(1) *Content and grading of the examination.* The board shall make use of the ARE prepared and graded by NCARB under a plan of cooperation with the architectural examining boards of all states and territories of the United States.

2.4(2) *Testing service.* The board may make use of a testing service selected by NCARB to administer the examination, provided the examination is held in at least one location within the boundaries of this state.

[**ARC 3332C**, IAB 9/27/17, effective 11/1/17]

193B—2.5(17A,272C,544A) Renewal of certificates of licensure.

2.5(1) *Active status.* Certificates of licensure expire biennially on June 30. In order to maintain authorization to practice in Iowa, a licensee is required to renew the certificate of licensure prior to June 1 of the year of expiration. However, the board will accept an otherwise sufficient renewal application that is untimely if the board receives the application and late fee within 30 days prior to the date of expiration. A licensee who fails to renew by the expiration date is not authorized to practice architecture in Iowa until the certificate is reinstated as provided in rule 193B—2.6(544A,17A).

a. A licensee whose last name begins with the letter A through K shall renew in even-numbered years, and a licensee whose last name begins with the letter L through Z shall renew in odd-numbered years. However, a license issued on or after May 1 but before June 30 will not expire until June 30 of the next renewal. For example, a license issued on May 17, 2020, would not expire until June 30, 2022.

b. It is the policy of the board to send to each licensee a notice of the pending expiration date at the licensee's last-known address approximately one month prior to the date the certificate of licensure is scheduled to expire. The notice, when provided, may be by email communication or in the quarterly newsletter. Failure to receive this notice does not relieve the licensee of the responsibility to timely renew the certificate and pay the renewal fee. A licensee should contact the board office if the licensee does not receive a renewal notice prior to the date of expiration.

c. Upon the board's receipt of a timely and sufficient renewal application as provided in 193—subrule 7.40(3), the board's administrator shall issue a new certificate of licensure reflecting the next expiration date, unless grounds exist for denial of the application.

d. If grounds exist to deny a timely and sufficient application to renew, the board shall send notification to the applicant. Grounds may exist to deny an application to renew if, for instance, the licensee failed to satisfy the continuing education as required as a condition for licensure. If the basis for denial is pending disciplinary action or disciplinary investigation which is reasonably expected to culminate in disciplinary action, the board shall proceed as provided in 193—Chapter 7. If the basis for denial is not related to a pending or imminent disciplinary action, the applicant may contest the board's decision as provided in 193—subrule 7.40(1).

e. When a licensee appears to be in violation of mandatory continuing education requirements, the board may, in lieu of proceeding to a contested case hearing on the denial of a renewal application as provided in rule 193—7.40(546,272C), and after or in lieu of giving the licensee an opportunity to come into compliance under 193B—subrule 3.3(3), offer a licensee the opportunity to sign a consent order. While the terms of the consent order will be tailored to the specific circumstances at issue, the consent order will typically impose a penalty between $50 and $250, depending on the severity of the violation; establish deadlines for compliance; and require that the licensee complete hours equal to double the deficiency in addition to the required hours; and may impose additional educational requirements on the licensee. Any additional hours completed in compliance with the consent order cannot again be claimed at the next renewal. The board will address subsequent offenses on a case-by-case basis. A licensee is free to accept or reject the offer. If the offer of settlement is accepted, the licensee will be issued a renewed certificate of licensure and will be subject to disciplinary action if the terms of the consent order are not complied with. If the offer of settlement is rejected, the matter will be set for hearing, if timely requested by the applicant pursuant to 193—subrule 7.40(1).

f. The board may notify a licensee whose certificate of licensure has expired. The failure of the board to provide this courtesy notification or the failure of the licensee to receive the notification shall not extend the date of expiration.

g. A licensee who continues to practice architecture in Iowa after the license has expired shall be subject to disciplinary action. Such unauthorized activity may also be grounds to deny a licensee's application for reinstatement.

2.5(2) *Inactive status.* This subrule establishes a procedure under which a person issued a certificate of licensure as an architect may apply to the board to be licensed as inactive. Licensure under this subrule is available to a certificate holder residing within or outside the state of Iowa who is not engaged in Iowa in any practice for which a certificate of licensure as an architect is required. A person eligible to be licensed as inactive may, as an alternative to such licensure, allow the certificate of licensure to lapse. During any period of inactive status, a person shall not use the title "architect" or any other title that might imply that the person is offering services as an architect by such an action in violation of Iowa Code section 544A.15. The board will continue to maintain a data base of persons licensed as inactive, including information which is not routinely maintained after a certificate has lapsed through the person's failure to renew. A person who is licensed as inactive will accordingly receive renewal applications, board newsletters and other mass communications from the board.

a. *Affirmation.* The renewal application form shall contain a statement in which the applicant affirms that the applicant will not engage in any of the practices in Iowa that are listed in Iowa Code section 544A.16 without first complying with all rules governing reinstatement to active status. A person in inactive status may reinstate to active status at any time pursuant to rule 193B—2.7(544A).

b. *Renewal.* A person licensed as inactive may renew the person's certificate of licensure on the biennial schedule described in this rule. This person shall be exempt from the continuing education requirements and will be charged a reduced renewal fee as provided in 193B—2.10(544A,17A). An inactive certificate of licensure shall lapse if not timely renewed. However, the board will accept an otherwise sufficient renewal application that is untimely if the board receives the application and late fee within 30 days of the date prior to expiration.

c. *Permitted practices.* A person may, while licensed as inactive, perform for a client, business, employer, government body, or other entity those services which may lawfully be provided by a person to whom a certificate of licensure has never been issued. Such services may be performed as long as the person does not in connection with such services use the title "architect" or any other title restricted for use only by architects pursuant to Iowa Code section 544A.15 (with or without additional designations such as "inactive" or "retired"). Restricted titles may be used only by active architects who are subject to continuing education requirements to ensure that the use of such titles is consistently associated with the maintenance of competency through continuing education.

d. *Prohibited practices.* A person who, while licensed as inactive, engages in any of the practices described in Iowa Code sections 544A.15 and 544A.16 is subject to disciplinary action.

2.5(3) *Retired status.* A person who held a license as an architect and who does not reasonably expect to return to the workforce in any capacity for which a certificate of licensure is required due to bona fide retirement or disability may apply to the board for retired status and, if granted, may use the title "architect retired" in the context of non-income-producing personal activities. If the board determines an applicant is eligible, the retired status would become effective on the first scheduled license renewal date. Applicants do not need to reinstate an expired license to be eligible for retired status. Applicants may apply for retired status on forms provided by the board. The board will not provide a refund of biennial license fees if an application for retired status is granted in a biennium in which the applicant has previously paid the biennial fees for either active or inactive status. Persons licensed in retired status are exempt from the renewal requirement.

a. *Affirmation.* The retired status application form shall contain a statement in which the applicant affirms that the applicant will not engage in any of the practices in Iowa that are listed in Iowa Code section 544A.16 without first complying with all rules governing reinstatement to active status. A person in retired status may reinstate to active status at any time pursuant to rule 193B—2.7(544A).

b. *Permitted practices.* Persons licensed in retired status may engage in the practices identified in paragraph 2.5(2)*"c."* Such persons may also provide services as technical experts before a court, including prelitigation preparation, discovery, and testimony, on matters directly related to architectural services provided by such persons prior to being licensed with the board in retired status.

c. *Exemption.* A person whose license as an architect has been placed on probation, suspended, revoked, or voluntarily surrendered in connection with a disciplinary investigation or proceeding shall not be eligible for retired status unless, upon appropriate application, the board first reinstates the license to good standing.

[**ARC 1210C**, IAB 12/11/13, effective 1/15/14; **ARC 1504C**, IAB 6/25/14, effective 7/30/14; **ARC 1624C**, IAB 9/17/14, effective 10/22/14; **ARC 1985C**, IAB 4/29/15, effective 4/10/15; **ARC 2674C**, IAB 8/17/16, effective 9/21/16; **ARC 3332C**, IAB 9/27/17, effective 11/1/17; **ARC 5563C**, IAB 4/21/21, effective 5/26/21]

193B—2.6(544A,17A) Reinstatement of lapsed certificate of licensure to active status. An individual may reinstate a lapsed certificate of licensure to active licensure as follows:

2.6(1) Pay the current renewal fee.

2.6(2) Pay the reinstatement fee of $100 plus $25 per month or partial month of expired licensure up to a maximum of $750. All applicants for reinstatement shall be assessed the $100 reinstatement fee. The $25 per month shall not be assessed if the applicant for reinstatement did not, during the period of lapse, engage in any acts or practices for which an active architect license is required in Iowa. Falsely claiming an exemption from the monthly fee is a ground for discipline; in addition, other grounds for discipline may arise from practicing on a lapsed certificate, license or permit to practice.

2.6(3) Provide a written statement outlining the applicant's professional activities performed in Iowa during the period in which the individual was unlicensed. The statement shall include a list of all projects with which the applicant had involvement and shall explain the service provided by the applicant.

2.6(4) Submit documented evidence of completion of 24 continuing education hours, which should have been reported on the June 30 renewal date on which the applicant failed to renew, and 12 continuing education hours for each year or portion of a year of expired licensure up to a maximum of 48 continuing education hours. All continuing education hours must be completed in health, safety, and welfare subjects acquired in structured educational activities and be in compliance with requirements in 193B—Chapter 3. The hours reported shall not have been earned more than four years prior to the date of the application to reinstate to active status. The continuing education hours used for reinstatement may not be used again at the next renewal.

[**ARC 1624C**, IAB 9/17/14, effective 10/22/14; **ARC 1985C**, IAB 4/29/15, effective 4/10/15; **ARC 2674C**, IAB 8/17/16, effective 9/21/16; **ARC 3332C**, IAB 9/27/17, effective 11/1/17; **ARC 5563C**, IAB 4/21/21, effective 5/26/21]

193B—2.7(544A) Reinstatement from inactive status or retired status to active status.

2.7(1) An individual may reinstate an inactive license to an active license as follows:

a. Pay one-half of the current active license fee.

b. Submit documented evidence of completion of 24 continuing education hours in compliance with requirements in 193B—Chapter 3. All continuing education hours must be completed in health, safety, and welfare subjects acquired in structured educational activities. The hours used to reinstate to active status cannot again be used to renew.

(1) At the first biennial renewal date of July 1 that is less than 12 months from the date of the filing of the application to restore the certificate of licensure to active status, the person shall not be required to report continuing education hours.

(2) At the first biennial renewal date of July 1 that is 12 months or more, but less than 24 months, from the date of the filing of the application to restore the certificate of licensure to active status, the person shall report 12 hours of previously unreported continuing education hours.

c. Provide a written statement in which the applicant affirms that the applicant has not engaged in any of the practices in Iowa that are listed in Iowa Code section 544A.16 during the period of inactive licensure.

2.7(2) An individual may reinstate a retired license to an active license as follows:

a. Pay the current active license fee. If the individual is reinstating to active status at a date that is less than 12 months from the next biennial renewal date, one-half of the current active license fee shall be paid.

b. Submit documented evidence of completion of 24 continuing education hours in compliance with requirements in 193B—Chapter 3. All continuing education hours must be completed in health, safety, and welfare subjects acquired in structured educational activities. The hours used to reinstate to active status cannot again be used to renew.

(1) At the first biennial renewal date of July 1 that is less than 12 months from the date of the filing of the application to restore the certificate of licensure to active status, the person shall not be required to report continuing education hours.

(2) At the first biennial renewal date of July 1 that is 12 months or more, but less than 24 months, from the date of the filing of the application to restore the certificate of licensure to active status, the person shall report 12 hours of previously unreported continuing education hours.

c. Provide a written statement in which the applicant affirms that the applicant has not engaged in any of the practices in Iowa that are listed in Iowa Code section 544A.16 during the period of retired licensure.

2.7(3) An individual shall not be allowed to reinstate to inactive status from retired status.

[**ARC 1624C**, IAB 9/17/14, effective 10/22/14; **ARC 1985C**, IAB 4/29/15, effective 4/10/15; **ARC 2674C**, IAB 8/17/16, effective 9/21/16; **ARC 3332C**, IAB 9/27/17, effective 11/1/17; **ARC 5563C**, IAB 4/21/21, effective 5/26/21]

193B—2.8(544A,17A) Finding of probable cause for unlicensed practice. The board may find probable cause to file charges for unlicensed practice if the individual continues to offer services defined as the practice of architecture outlined in Iowa Code section 544A.16 while using the title "architect," "architectural designer," or similar designation during the period of lapsed licensure.

[**ARC 1624C**, IAB 9/17/14, effective 10/22/14; **ARC 1985C**, IAB 4/29/15, effective 4/10/15; **ARC 2674C**, IAB 8/17/16, effective 9/21/16; **ARC 3332C**, IAB 9/27/17, effective 11/1/17]

193B—2.9(544A,272C) Responsibility for accuracy of applications. The architect is responsible for verifying the accuracy of the information submitted on an application regardless of how the application is submitted or by whom it is submitted. For instance, if the office manager of an architect's firm submits an application for renewal on behalf of the architect and that information is incorrect, the architect will be held responsible for the information and may be subject to disciplinary action.

[**ARC 5563C**, IAB 4/21/21, effective 5/26/21]

193B—2.10(544A,17A) Fee schedule. Under the authority provided in Iowa Code chapter 544A, the following fees are hereby adopted:

Examination fees:	
Fees for examination subjects shall be paid directly to the testing service selected by NCARB.	
Initial license fee	$ 50
(plus $5 per month until renewal)	
Reciprocal application and license fee	$200
Biennial renewal fee	$200
Biennial renewal fee (inactive)	$100
Retired status	None
Reinstatement of lapsed individual license	$100 + renewal fee + $25 per month or partial month of expired license
Reinstatement of inactive individual license	$100
Reinstatement of retired individual license	$200
Duplicate wall certificate fee	$ 50
Late renewal fee	$ 25
(for renewals postmarked on or after June 1 and before June 30)	
License predetermination fee	$ 25

All fees are nonrefundable.

[**ARC 1210C**, IAB 12/11/13, effective 1/15/14; **ARC 1504C**, IAB 6/25/14, effective 7/30/14; **ARC 1624C**, IAB 9/17/14, effective 10/22/14; **ARC 1985C**, IAB 4/29/15, effective 4/10/15; **ARC 2674C**, IAB 8/17/16, effective 9/21/16; **ARC 3332C**, IAB 9/27/17, effective 11/1/17; **ARC 5563C**, IAB 4/21/21, effective 5/26/21]

These rules are intended to implement Iowa Code chapters 544A and 17A.

[Filed 10/1/76, Notice 9/8/76—published 10/20/76, effective 12/8/76]
[Filed 3/15/78, Notice 11/30/77—published 4/5/78, effective 5/10/78]
[Filed 1/23/81, Notice 9/3/80—published 2/18/81, effective 3/25/81]
[Filed 5/8/81, Notice 4/1/81—published 5/27/81, effective 7/1/81]
[Filed 2/7/83, Notice 12/22/82—published 3/2/83, effective 4/6/83]
[Filed 9/13/85, Notice 6/19/85—published 10/9/85, effective 11/13/85]
[Filed 10/8/87, Notice 7/15/87—published 11/4/87, effective 12/9/87]
[Filed 6/24/88, Notice 3/9/88—published 7/13/88, effective 8/17/88]
[Filed 3/30/89, Notice 1/25/89—published 4/19/89, effective 5/24/89]
[Filed 9/15/89, Notice 7/12/89—published 10/4/89, effective 11/8/89]
[Filed 2/15/91, Notice 1/9/91—published 3/6/91, effective 4/10/91]
[Filed 12/6/91, Notice 10/30/91—published 12/25/91, effective 1/29/92]
[Filed 3/12/93, Notice 2/3/93—published 3/31/93, effective 5/5/93]
[Filed 1/14/94, Notice 11/10/93—published 2/2/94, effective 3/23/94]
[Filed 2/6/95, Notice 12/7/94—published 3/1/95, effective 4/5/95]
[Filed 4/5/96, Notice 1/3/96—published 4/24/96, effective 5/29/96]
[Filed 9/20/96, Notice 7/31/96—published 10/9/96, effective 11/13/96]
[Filed 4/30/98, Notice 12/31/97—published 5/20/98, effective 6/24/98]
[Filed 11/12/98, Notice 6/17/98—published 12/2/98, effective 1/6/99]
[Filed 11/12/98, Notice 8/12/98—published 12/2/98, effective 1/6/99]
[Filed 5/13/99, Notice 2/24/99—published 6/2/99, effective 7/7/99]
[Filed 1/12/00, Notice 10/20/99—published 2/9/00, effective 3/15/00]
[Filed 9/12/01, Notice 6/27/01—published 10/3/01, effective 11/7/01]
[Filed 9/26/02, Notice 6/12/02—published 10/16/02, effective 11/20/02]
[Filed 1/30/03, Notice 12/11/02—published 2/19/03, effective 3/26/03]
[Filed 7/21/04, Notice 6/9/04—published 8/18/04, effective 9/22/04]

[Filed 9/20/05, Notice 7/6/05—published 10/12/05, effective 11/16/05]
[Filed 9/20/05, Notice 8/3/05—published 10/12/05, effective 11/16/05]
[Filed 11/22/06, Notice 10/11/06—published 12/20/06, effective 1/24/07]
[Filed 7/20/07, Notice 4/25/07—published 8/15/07, effective 9/19/07]
[Filed 9/21/07, Notice 8/15/07—published 10/10/07, effective 2/11/08]
[Filed ARC 7737B (Notice ARC 7545B, IAB 2/11/09), IAB 5/6/09, effective 6/10/09]
[Filed ARC 8638B (Notice ARC 8392B, IAB 12/16/09), IAB 4/7/10, effective 5/12/10]
[Filed ARC 1210C (Notice ARC 0978C, IAB 8/21/13), IAB 12/11/13, effective 1/15/14]
[Filed ARC 1504C (Notice ARC 1282C, IAB 1/8/14), IAB 6/25/14, effective 7/30/14]
[Filed ARC 1624C (Notice ARC 1501C, IAB 6/11/14), IAB 9/17/14, effective 10/22/14]
[Filed Emergency ARC 1985C, IAB 4/29/15, effective 4/10/15]
[Filed ARC 2674C (Notice ARC 2480C, IAB 3/30/16), IAB 8/17/16, effective 9/21/16]
[Filed ARC 3332C (Notice ARC 3170C, IAB 7/5/17), IAB 9/27/17, effective 11/1/17]
[Filed ARC 5563C (Notice ARC 5355C, IAB 12/30/20), IAB 4/21/21, effective 5/26/21]

CHAPTER 3
CONTINUING EDUCATION

[Prior to 7/13/88, see Architectural Examiners, Board of[80]]

193B—3.1(544A,272C) Continuing education. The following rules adopted by the architectural examining board are in compliance with Iowa Code chapter 544A and section 272C.2 requiring professional and occupational licensees to participate in a continuing education program as a condition of license renewal.

[**ARC 1625C**, IAB 9/17/14, effective 10/22/14; **ARC 3333C**, IAB 9/27/17, effective 11/1/17]

193B—3.2(544A,272C) Definitions. The following definitions apply as used in Iowa Code chapter 544A and this chapter of the architectural examining board rules, unless the context otherwise requires.

"Continuing education" or *"CE"* means postlicensure learning that enables a licensed architect to increase or update knowledge of and competence in technical and professional subjects related to the practice of architecture to safeguard the public's health, safety, and welfare.

"Continuing education hour" or *"CEH"* means one continuous instructional hour (50 to 60 minutes of contact) spent in structured educational activities intended to increase or update the architect's knowledge and competence in health, safety, and welfare subjects. If the provider of the structured educational activities prescribes a customary time for completion of such an activity and if the prescribed time is not deemed unreasonable by the board, then such prescribed time shall be accepted for CEH purposes as the architect's time irrespective of actual time spent on the activity.

"Distance learning" means any education process based on the geographical separation of student and instructor. "Distance learning" includes computer-generated programs, webinars, and home-study/correspondence programs.

"Health, safety, and welfare subjects" means technical and professional subjects that the board deems appropriate to safeguard the public and that are within the following enumerated areas necessary for the proper evaluation, design, construction, and utilization of buildings and the built environment.

1. Building systems: structural, mechanical, electrical, plumbing, communications, security, and fire protection.
2. Construction contract administration: contracts, bidding, and contract negotiations.
3. Construction documents: drawings, specifications, and delivery methods.
4. Design: urban planning, master planning, building design, site design, interiors, safety and security measures.
5. Environmental: energy efficiency, sustainability, natural resources, natural hazards, hazardous materials, weatherproofing, and insulation.
6. Legal: laws, codes, zoning, regulations, standards, life safety, accessibility, ethics, and insurance to protect owners and the public.
7. Materials and methods: construction systems, products, finishes, furnishings, and equipment.
8. Occupant comfort: air quality, lighting, acoustics, and ergonomics.
9. Predesign: land use analysis, programming, site selection, site and soils analysis, and surveying.
10. Preservation: historic, reuse, and adaptation.

"Not engaged in active practice" means that an architect is not engaged in the practice of architecture or earning monetary compensation by providing professional architectural services in any licensing jurisdiction of the United States or a foreign country.

"Retired from active practice" has the same meaning as "not engaged in active practice."

"Structured educational activities" means educational activities in which at least 75 percent of an activity's content and instructional time is to be devoted to health, safety, and welfare subjects related to the practice of architecture, including courses of study or other activities under the areas identified as health, safety, and welfare subjects and provided by qualified individuals or organizations, whether the courses of study or other activities are delivered by direct contact or distance learning methods.

[**ARC 1625C**, IAB 9/17/14, effective 10/22/14; **ARC 3333C**, IAB 9/27/17, effective 11/1/17]

193B—3.3(544A,272C) Basic requirements.

3.3(1) To renew licensure, an architect must, in addition to meeting all other requirements, complete a minimum of 24 CEHs for each 24-month period since the architect's last renewal of initial licensure or be exempt from these continuing education requirements as provided in rule 193B—3.5(544A,272C). Failure to comply with these requirements may result in nonrenewal of the architect's license.

3.3(2) All 24 CEHs must be completed in health, safety, and welfare subjects acquired in structured educational activities. CEHs may be acquired at any location. Excess CEHs cannot be credited to the next renewal.

3.3(3) An architect shall complete and submit forms as required by the board certifying that the architect has completed the required CEHs. Forms may be audited by the board for verification of compliance with these requirements. Documentation of reported CEHs shall be maintained by the architect for two years after the period for which the form was submitted. Any discrepancy between the number of CEHs reported and the number of CEHs actually supported by documentation may result in a disciplinary review. If, after the disciplinary review, the board disallows any CEHs, or the licensee has failed to complete the required CEHs, the architect shall have 60 days from notification of the board to either provide further evidence of having completed the CEHs disallowed or remedy the disallowance by completing the required number of CEHs (provided that such CEHs shall not again be used for the next renewal). An extension of time may be granted on an individual basis and must be requested by the licensee within 30 days of notification by the board. If the licensee fails to comply with the requirements of this subrule, the licensee may be subject to disciplinary action. If the board finds, after proper notice and hearing, that the architect willfully disregarded these requirements or falsified documentation of required CEHs, the architect may be subject to disciplinary action.

3.3(4) An architect who holds licensure in Iowa for less than 12 months from the date of initial licensure or who is reinstating to active status shall not be required to report CEHs at the first license renewal. An architect who holds licensure in Iowa for 12 months or more, but less than 23 months from the date of initial licensure or who is reinstating to active status, shall be required to report 12 CEHs earned in the preceding 12 months at the first license renewal.

[**ARC 1625C**, IAB 9/17/14, effective 10/22/14; **ARC 1985C**, IAB 4/29/15, effective 4/10/15; **ARC 3022C**, IAB 4/12/17, effective 5/17/17; **ARC 3333C**, IAB 9/27/17, effective 11/1/17; **ARC 5563C**, IAB 4/21/21, effective 5/26/21]

193B—3.4(544A,272C) Authorized structured educational activities. The following list may be used by all licensees in determining the types of activities which may fulfill CE requirements if the activities are conducted as structured educational activities on health, safety, and welfare subjects:

1. Short courses or seminars sponsored by colleges or universities.
2. Technical presentations held in conjunction with conventions or at seminars sponsored or accredited by the American Institute of Architects (AIA), Construction Specifications Institute, Construction Products Manufacturers Council, National Council of Architecture Registration Boards (NCARB), or similar organizations devoted to architectural education.
3. Distance learning sponsored by the AIA, NCARB, or similar organizations.
4. College or university credit courses. Each semester hour shall equal 12 CEHs. A quarter hour shall equal 8 CEHs.

[**ARC 1625C**, IAB 9/17/14, effective 10/22/14; **ARC 3333C**, IAB 9/27/17, effective 11/1/17]

193B—3.5(544A,272C) Exemptions.

3.5(1) As provided in Iowa Code section 272C.2(4), a licensed architect shall be deemed to have complied with the continuing education requirements set forth in this chapter if the architect attests in the required affidavit that for not less than 21 months of the preceding two-year period of licensure, the architect:

a. Has served honorably on active duty in the military service; or

b. Is a resident of another state or district having a continuing education requirement for licensure as an architect and has complied with all requirements of that state or district for practice therein; or

c. Is a government employee working as an architect and assigned to duty outside the United States.

3.5(2) Architects who so attest on their affidavits that they are retired from active practice or are not engaged in active practice may maintain their licenses in retired or inactive status without satisfying CE requirements. Such architects may, however, reenter practice only after satisfying the board of their proficiency. Proficiency may be established by any one of the following:

a. Submitting verifiable evidence of compliance with the aggregate continuing education requirements for the reporting periods attested as retired from active practice or not engaged in active practice up to a maximum of 48 CEHs.

b. Retaking the architectural registration examination.

c. Fulfilling alternative reentry requirements determined by the board which serve to assure the board of the current competency of the architect to engage in the practice of architecture.

3.5(3) The board shall have authority to make exceptions for reasons of individual hardship, including health (certified by a medical doctor) or other good cause. See Iowa Administrative Code 193—Chapter 5.

[**ARC 1625C**, IAB 9/17/14, effective 10/22/14; **ARC 1985C**, IAB 4/29/15, effective 4/10/15; **ARC 3333C**, IAB 9/27/17, effective 11/1/17]

193B—3.6(544A,272C) Transition provisions. Rescinded **ARC 1985C**, IAB 4/29/15, effective 4/10/15.

These rules are intended to implement Iowa Code section 272C.2.

[Filed 9/27/78, Notice 8/23/78—published 10/18/78, effective 11/22/78]
[Filed 3/2/82, Notice 1/6/82—published 3/31/82, effective 5/5/82]
[Filed 6/24/88, Notice 3/9/88—published 7/13/88, effective 8/17/88]
[Filed 3/30/89, Notice 12/28/88—published 4/19/89, effective 5/24/89]
[Filed 2/15/91, Notice 1/9/91—published 3/6/91, effective 4/10/91]
[Filed 12/6/91, Notice 10/30/91—published 12/25/91, effective 1/29/92]
[Filed 3/12/93, Notice 2/3/93—published 3/31/93, effective 5/5/93]
[Filed 1/14/94, Notice 11/10/93—published 2/2/94, effective 3/23/94]
[Filed 2/6/95, Notice 12/7/94—published 3/1/95, effective 4/5/95]
[Filed 9/20/96, Notice 7/31/96—published 10/9/96, effective 11/13/96]
[Filed 3/21/97, Notice 2/12/97—published 4/9/97, effective 5/14/97]
[Filed 9/12/01, Notice 6/27/01—published 10/3/01, effective 11/7/01]
[Filed ARC 1625C (Notice ARC 1500C, IAB 6/11/14), IAB 9/17/14, effective 10/22/14]
[Filed Emergency ARC 1985C, IAB 4/29/15, effective 4/10/15]
[Filed ARC 3022C (Notice ARC 2876C, IAB 1/4/17), IAB 4/12/17, effective 5/17/17]
[Filed ARC 3333C (Notice ARC 3171C, IAB 7/5/17), IAB 9/27/17, effective 11/1/17]
[Filed ARC 5563C (Notice ARC 5355C, IAB 12/30/20), IAB 4/21/21, effective 5/26/21]

CHAPTER 4
RULES OF CONDUCT

[Prior to 7/13/88, see Architectural Examiners, Board of[80]]

193B—4.1(544A,17A) Rules of conduct. Failure by a licensee to adhere to the provisions of Iowa Code sections 272C.10 and 544A.13 and the following rules of conduct shall be grounds for disciplinary action.

4.1(1) *Definitions.* The following definition applies as used in Iowa Code chapter 544A and this chapter of the architectural examining board rules, unless the context otherwise requires.

"Responsible charge" means the amount of control over and detailed professional knowledge of the content of technical submissions during their preparation as is ordinarily exercised by a licensed architect applying the required professional standard of care, including but not limited to an architect's integration of information from manufacturers, suppliers, installers; the architect's consultants, owners, contractors; or other sources the architect reasonably trusts that is incidental to and intended to be incorporated into the architect's technical submissions if the architect has coordinated and reviewed such information. Other review, or review and correction, of technical submissions after they have been prepared by others does not constitute the exercise of responsible charge because the reviewer has neither control over nor detailed professional knowledge of the content of such submissions throughout their preparation.

4.1(2) *Competence.*

a. In practicing architecture, an architect shall act with reasonable care and competence, and shall apply the technical knowledge and skill which is ordinarily applied by architects of good standing, practicing in the same locality.

b. In designing a project, an architect shall take into account all applicable state and municipal building laws and regulations. While an architect may rely on the advice of other professionals (e.g., attorneys, engineers and other qualified persons) as to the intent and meaning of such laws and regulations, once having obtained such advice, an architect shall not knowingly design a project in violation of these laws and regulations.

c. An architect shall undertake to perform professional services only when the architect, together with those whom the architect may engage as consultants, is qualified by education, training and experience in the specific technical areas involved.

d. No person shall be permitted to practice architecture if, in the board's judgment upon receipt of medical testimony or evidence, the person's professional competence is substantially impaired by physical or mental disabilities.

4.1(3) *Conflict of interest.*

a. An architect shall not accept compensation for services from more than one party on a project unless the circumstances are fully disclosed to and agreed to (such disclosures and agreement to be in writing) by all interested parties.

b. If an architect has any business association or direct or indirect financial interest which is substantial enough to influence the architect's judgment in connection with the architect's performance of professional services, the architect shall fully disclose, in writing, to the client or employer the nature of the business association or financial interest, and if the client or employer objects to the association or financial interest, the architect will either terminate such association or interest or offer to give up the commission or employment.

c. An architect shall not solicit or accept compensation from material or equipment suppliers in return for specifying or endorsing the products.

d. When acting as the interpreter of building contract documents and the judge of contract performance, an architect shall render decisions impartially, favoring neither party to the contract.

4.1(4) *Full disclosure.*

a. An architect, making public statements on architectural questions, shall disclose when compensation is being received for making the statements.

b. An architect shall accurately represent to a prospective or existing client or employer the architect's qualifications, capabilities, and experience and the scope of the architect's responsibility in connection with work for which the architect is claiming credit.

c. If, in the course of work on a project, an architect becomes aware of a decision taken by the employer or client against the architect's advice which violates applicable state or municipal building laws and regulations and which will, in the architect's judgment, adversely affect the safety to the public of the finished project, the architect shall:

1. Report the decision to the local building inspector or other public official charged with enforcement of the applicable state or municipal building laws and regulations,

2. Refuse to consent to the decisions, and

3. In circumstances where the architect reasonably believes that other decisions will be taken, notwithstanding the architect's objection, terminate the architect's services with reference to the project.

d. An architect shall not deliberately make a materially false statement or deliberately fail to disclose a material fact requested in connection with application for licensure or renewal of license.

e. An architect shall not assist the application for licensure of a person known by the architect to be unqualified in respect to education, training, experience or character.

f. An architect possessing knowledge of a violation of these rules by another architect shall report the knowledge to the board.

4.1(5) *Compliance with laws.*

a. An architect shall not, in the conduct of architectural practice, knowingly violate any state or federal criminal law. A "conviction" for purposes of this paragraph and Iowa Code section 544A.13 means a conviction for an indictable offense and includes the court's acceptance of a guilty plea, a deferred judgment from the time of entry of the deferred judgment until the time the defendant is discharged by the court without entry of judgment, or other finding of guilt by a court of competent jurisdiction. A copy of the record of conviction, guilty plea, deferred judgment, or other finding of guilt is conclusive evidence. A licensed architect shall notify the board of a conviction within 30 days of the conviction.

b. An architect shall neither offer nor make any payment or gift to a government official (whether elected or appointed) with the intent of influencing the official's judgment in connection with a prospective or existing project in which the architect is interested.

c. An architect shall comply with the licensing laws and regulations governing the architect's professional practice in any United States jurisdiction.

d. An Iowa-licensed architect shall report to the board in writing any revocation, suspension, or other disciplinary action taken by a licensing authority in any other state or jurisdiction within 30 days of the final action.

4.1(6) *Professional conduct.*

a. Each office engaged in the practice of architecture shall have an architect resident regularly employed in that office having responsible charge of such work or, in the situation of work performed remotely, immediately available to furnish assistance or direction throughout the performance of the work.

b. An architect shall not sign or seal drawings, specifications, reports or other professional work for which the architect does not have direct professional knowledge and direct supervisory control; provided, however, that in the case of the portions of professional work prepared by the architect's consultants, licensed under this or another professional licensing law of this jurisdiction, the architect may sign or seal that portion of the professional work if the architect has reviewed that portion, has coordinated its preparation and intends to be responsible for its adequacy.

c. An architect shall neither offer nor make any gifts to any public official with the intent of influencing the official's judgment in connection with a project in which the architect is interested. Nothing in this rule shall prohibit an architect from providing architectural services as a charitable contribution.

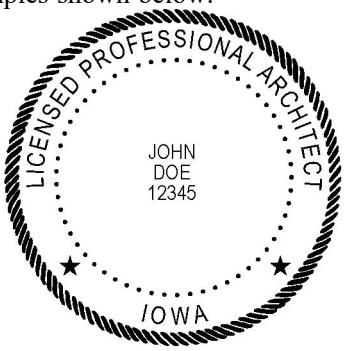
d. An architect shall not engage in conduct involving fraud or wanton disregard of the rights of others.

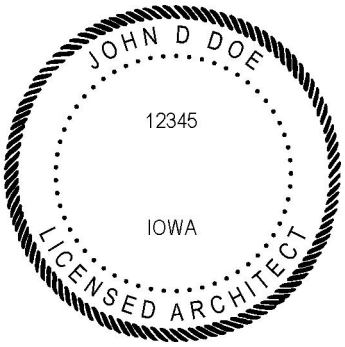
e. Architects shall adhere to the appropriate standards of conduct as outlined in the NCARB Model Rules of Conduct, dated July 2018, incorporated herein by reference.

4.1(7) *Seal and certificate of responsibility.*

a. Each architect shall procure a seal with which to identify all technical submissions issued by the architect for use in Iowa as provided in Iowa Code section 544A.28.

b. Description of seal: The diameter of the outside circle shall be approximately 1¾ inches. The seal shall include the name of the licensed architect and the words " Licensed Architect". The Iowa license number and the word "Iowa" shall be included. The seal shall substantially conform to the samples shown below:





c. A legible rubber stamp, electronic image or other facsimile of the seal may be used.

d. Each technical submission submitted to a client or any public agency, hereinafter referred to as the official copy, shall contain an information block on its first page or on an attached cover sheet with application of a seal by the architect in responsible charge and an information block with application of a seal by each professional consultant contributing to the technical submission. The seal and original signature shall be applied only to a final technical submission. Each official copy of a technical submission shall be stapled, bound or otherwise attached together so as to clearly establish the complete extent of the technical submission. Each information block shall display the seal of the individual responsible for that portion of the technical submission. The area of responsibility for each sealing professional shall be designated in the area provided in the information block, so that responsibility for the entire technical submission is clearly established by the combination of the stated seal responsibilities. The information block will substantially conform to the sample shown below:

S E A L	I hereby certify that the portion of this technical submission described below was prepared by me or under my direct supervision and responsible charge. I am a duly licensed architect under the laws of the state of Iowa. _____ Signature Date Printed or typed name_____ License number_____ My license renewal date is June 30,_____. Pages or sheets covered by this seal: _____ _____ _____ _____ _____

e. The information requested in each information block must be typed or legibly printed in permanent ink or a secure electronic signature. An electronic signature as defined in or governed by Iowa Code chapter 554D meets the signature requirements of this rule if it is protected by a security

procedure, as defined in Iowa Code section 554D.103(14), such as digital signature technology. It is the licensee's responsibility to ensure, prior to affixing an electronic signature to a technical submission, that security procedures are adequate to (1) verify that the signature is that of a specific person and (2) detect any changes that may be made or attempted after the signature of the specific person is affixed. The seal implies responsibility for the entire technical submission unless the area of responsibility is clearly identified in the information accompanying the seal.

f. It shall be the responsibility of the architect who signed the original submission to forward copies of all changes and amendments to the technical submission, which shall become a part of the official copy of the technical submission, to the public official charged with the enforcement of the state, county, or municipal building code.

g. An architect is responsible for the custody and proper use of the seal. Improper use of the seal shall be grounds for disciplinary action.

h. The seal appearing on any technical submission shall be prima facie evidence that said technical submission was prepared by or under the responsible charge of the individual named on that seal.

4.1(8) *Communications.* An architect shall, when requested, respond to communications from the board within 30 days of the mailing of such communication by certified mail. Failure to respond to such communication may be grounds for disciplinary action against the architect.

4.1(9) *Architectural Experience Program supervisor.* The Architectural Experience Program supervisor, formerly known as the Intern Development Program supervisor, shall not fail to respond to a request to verify experience hours reported to the National Council of Architectural Registration Board's Architectural Experience Program when requested by NCARB, the board, or a subordinate, associate, or intern who is, or has been, supervised by the Architectural Experience Program supervisor.

This rule is intended to implement Iowa Code chapters 17A and 544A.

[**ARC 9359B**, IAB 2/9/11, effective 3/16/11; **ARC 3141C**, IAB 6/21/17, effective 7/26/17; **ARC 3334C**, IAB 9/27/17, effective 11/1/17; **ARC 5563C**, IAB 4/21/21, effective 5/26/21]

193B—4.2(272C) Impaired licensee review committee. Rescinded IAB 10/3/01, effective 11/7/01.

[Filed 2/7/83, Notice 12/22/82—published 3/2/83, effective 4/6/83]
[Filed 10/8/87, Notice 7/15/87—published 11/4/87, effective 12/9/87]
[Filed 6/24/88, Notice 3/9/88—published 7/13/88, effective 8/17/88]
[Filed 2/15/91, Notice 1/9/91—published 3/6/91, effective 4/10/91]
[Filed 12/6/91, Notice 10/30/91—published 12/25/91, effective 1/29/92]
[Filed 1/14/94, Notice 11/10/93—published 2/2/94, effective 3/23/94]
[Filed 2/6/95, Notice 12/7/94—published 3/1/95, effective 4/5/95]
[Filed 3/21/97, Notice 2/12/97—published 4/9/97, effective 5/14/97]
[Filed 7/24/98, Notice 5/20/98—published 8/12/98, effective 9/16/98]
[Filed 5/13/99, Notice 2/24/99—published 6/2/99, effective 7/7/99]
[Filed 9/12/01, Notice 6/27/01—published 10/3/01, effective 11/7/01]
[Filed 3/29/07, Notice 2/14/07—published 4/25/07, effective 5/30/07]
[Filed ARC 9359B (Notice ARC 9260B, IAB 12/15/10), IAB 2/9/11, effective 3/16/11]
[Filed ARC 3141C (Notice ARC 3015C, IAB 4/12/17), IAB 6/21/17, effective 7/26/17]
[Filed ARC 3334C (Notice ARC 3174C, IAB 7/5/17), IAB 9/27/17, effective 11/1/17]
[Filed ARC 5563C (Notice ARC 5355C, IAB 12/30/20), IAB 4/21/21, effective 5/26/21]

CHAPTER 6
DISCIPLINARY ACTION AGAINST LICENSEES

[Previously Ch 4; Ch 5, IAB 3/2/83]
[Prior to 7/13/88, see Architectural Examiners, Board of[80]]
[Prior to 10/3/01, see 193B—Chapter 5]

193B—6.1(544A,272C) Disciplinary action. The architectural examining board has authority in Iowa Code chapters 544A, 17A and 272C to impose discipline for violations of these chapters and the rules promulgated thereunder.

193B—6.2(544A,272C) Investigation of complaints. The board shall, upon receipt of a complaint in writing, or may, upon its own motion, pursuant to other evidence received by the board, review and investigate alleged acts or omissions which the board reasonably believes constitute cause under applicable law or administrative rules. In order to determine if probable cause exists for a hearing on a complaint, the investigators designated by the chairperson shall cause an investigation to be made into the allegations of the complaint. If the board determines that the complaint does not present facts which constitute a basis for disciplinary action, the board shall take no further action.
[**ARC 5563C**, IAB 4/21/21, effective 5/26/21]

193B—6.3(544A,272C) Peer investigative committee. A peer investigative committee may be appointed by the chairperson to investigate a complaint. The committee members will consist of one or more architects, serve at the discretion of the chairperson, and shall have been licensed to practice in Iowa for at least five years. The committee will review and determine the facts of the complaint and make a report to the board in a timely manner.
[**ARC 3336C**, IAB 9/27/17, effective 11/1/17; **ARC 5563C**, IAB 4/21/21, effective 5/26/21]

193B—6.4(544A,272C) Investigation report. Upon completion of the investigation, the investigator(s) shall prepare for the board's consideration a report containing the position or defense of the licensee to determine what further action is necessary. The board may:

1. Order the matter be further investigated.
2. Allow the licensee who is the subject of the complaint an opportunity to appear before a committee of the board for an informal discussion regarding the circumstances of the alleged violation.
3. Determine there is no probable cause to believe a disciplinary violation has occurred and close the case.
4. Determine there is probable cause to believe that a disciplinary violation has occurred.

[**ARC 3336C**, IAB 9/27/17, effective 11/1/17]

193B—6.5(544A,272C) Informal discussion. If the board considers it advisable, or if requested by the affected licensee, the board may grant the licensee an opportunity to appear before the board or a committee of the board for a voluntary informal discussion of the facts and circumstances of an alleged violation. The licensee may be represented by legal counsel at the informal discussion. The licensee is not required to attend the informal discussion.

Unless disqualification is waived by the licensee, board members who personally investigated a disciplinary complaint are disqualified from making decisions at a later formal hearing. Because board members generally rely upon staff, investigators, auditors, peer review committees, or expert consultants to conduct investigations, the issue rarely arises. An informal discussion, however, is a form of investigation because it is conducted in a question-and-answer format. In order to preserve the ability of all board members to participate in board decision making, licensees who desire to attend an informal discussion must therefore waive their right to seek disqualification of a board member or staff based solely on the board member's or staff's participation in an informal discussion. Licensees would not be waiving their right to seek disqualification on any other ground. By electing to attend an informal discussion, a licensee accordingly agrees that participating board members or staff are not disqualified from acting as a presiding officer in a later contested case proceeding or from advising the decision maker.

Because an informal discussion constitutes a part of the board's investigation of a pending disciplinary case, the facts discussed at the informal discussion may be considered by the board in the event the matter proceeds to a contested case hearing and those facts are independently introduced into evidence. The board may seek a consent order at the time of the informal discussion. If the parties agree to a consent order, a statement of charges shall be filed simultaneously with the consent order.
[**ARC 3336C**, IAB 9/27/17, effective 11/1/17]

193B—6.6(544A,272C) Decisions. The board shall make findings of fact and conclusions of law and may take one or more of the following actions:

6.6(1) Dismiss the charges.

6.6(2) Revoke the architect's license. In the event of a revocation, the licensee shall not be allowed to remain a partner or shareholder of a business entity if the law requires all partners or shareholders of such entity to be licensed architects.

6.6(3) Suspend the licensee's license as authorized by law.

6.6(4) Impose civil penalties, the amount which shall be set at the discretion of the board but which shall not exceed $1000. Civil penalties may be imposed for any of the disciplinary violations specified in Iowa Code sections 544A.13 and 544A.15 and these rules. Factors the board may consider when determining whether to assess civil penalties and the amount to assess include:

a. Whether other forms of discipline are being imposed for the same violation.

b. Whether the amount imposed will be a substantial deterrent to the violation.

c. The circumstances leading to the violation.

d. The severity of the violation and the risk of harm to the public.

e. The economic benefits gained by the licensee as a result of the violation.

f. The interest of the public.

g. Evidence of reform or remedial action.

h. Time lapsed since the violation occurred.

i. Whether the violation is a repeat offense following a prior cautionary letter, disciplinary order, or other notice of the nature of the infraction.

j. The clarity of the issues involved.

k. Whether the violation was willful and intentional.

l. Whether the licensee acted in bad faith.

m. The extent to which the licensee cooperated with the board.

n. Whether the licensee practiced architecture with a lapsed, inactive, suspended or revoked certificate of licensure.

6.6(5) Impose a period of probation, either with or without conditions.

6.6(6) Require reexamination, using one or more parts of the examination given to architectural licensee candidates.

6.6(7) Require additional professional education, reeducation, or continuing education.

6.6(8) Issue a citation and a warning.

6.6(9) Issue a consent order.

Voluntary surrender of licensure is considered as disciplinary action.
[**ARC 3336C**, IAB 9/27/17, effective 11/1/17]

These rules are intended to implement Iowa Code section 544A.13 and chapter 272C.

[Filed 9/29/78, Notice 8/23/78—published 10/18/78, effective 11/22/78]
[Filed 2/7/83, Notice 12/22/82—published 3/2/83, effective 4/6/83]
[Filed 6/24/88, Notice 3/9/88—published 7/13/88, effective 8/17/88]
[Filed 12/6/91, Notice 10/3/91—published 12/25/91, effective 1/29/92]
[Filed 3/12/93, Notice 2/3/93—published 3/31/93, effective 5/5/93]
[Filed 2/6/95, Notice 12/7/94—published 3/1/95, effective 4/5/95]
[Filed 4/5/96, Notice 1/3/96—published 4/24/96, effective 5/29/96]
[Filed 2/21/97, Notice 1/1/97—published 3/12/97, effective 4/16/97]
[Filed 4/30/98, Notice 12/31/97—published 5/20/98, effective 6/24/98]

[Filed 11/12/98, Notice 8/12/98—published 12/2/98, effective 1/6/99]
[Filed 5/13/99, Notice 2/24/99—published 6/2/99, effective 7/7/99]
[Filed 9/12/01, Notice 6/27/01—published 10/3/01, effective 11/7/01]
[Filed ARC 3336C (Notice ARC 3173C, IAB 7/5/17), IAB 9/27/17, effective 11/1/17]
[Filed ARC 5563C (Notice ARC 5355C, IAB 12/30/20), IAB 4/21/21, effective 5/26/21]

CHAPTER 7
DISCIPLINARY ACTION—UNLICENSED PRACTICE

[Previously Ch 4; Ch 5, IAB 3/2/83]
[Prior to 7/13/88, see Architectural Examiners, Board of[80]]
[Prior to 10/3/01, see 193B—Chapter 5]

193B—7.1(544A,272C) Disciplinary action. The architectural examining board has authority in Iowa Code chapters 544A, 17A and 272C to impose discipline for violations of these chapters and the rules promulgated thereunder.

193B—7.2(544A,272C) Investigation of complaints. The board shall, upon receipt of a complaint in writing, or may, upon its own motion, pursuant to other evidence received by the board, review and investigate alleged acts which the board reasonably believes constitute cause under applicable law or administrative rules. In order to determine if probable cause exists for a hearing on a complaint, the investigators designated by the chairperson shall cause an investigation to be made into the allegations of the complaint. If the board determines that the complaint does not present facts which constitute a basis for disciplinary action, the board shall take no further action.
[**ARC 5563C**, IAB 4/21/21, effective 5/26/21]

193B—7.3(544A) Civil penalties against unlicensed person. The board may impose civil penalties by order against a person who is not licensed as an architect pursuant to Iowa Code chapter 544A based on the unlawful practices specified in Iowa Code section 544A.15(3). In addition to the procedures set forth in Iowa Code section 544A.15(3), this rule shall apply.

7.3(1) The notice of the board's intent to impose a civil penalty required by Iowa Code section 544A.15(3) shall be served upon the unlicensed person by restricted certified mail, return receipt requested, or personal service in accordance with Rule of Civil Procedure 1.305. Alternatively, the unlicensed person may accept service personally or through authorized counsel. The notice shall include the following:

a. A statement of the legal authority and jurisdiction under which the proposed civil penalty would be imposed.

b. Reference to the particular sections of the statutes and rules involved.

c. A short, plain statement of the alleged unlawful practices.

d. The dollar amount of the proposed civil penalty.

e. Notice of the unlicensed person's right to a hearing and the time frame in which hearing must be requested.

f. The address to which written request for hearing must be made.

7.3(2) Unlicensed persons must request a hearing within 30 days of the date the notice is mailed, if served through restricted certified mail to the last-known address, or within 30 days of the date of service, if service is accepted or made in accordance with Rule of Civil Procedure 1.305. A request for hearing must be in writing and is deemed made on the date of the United States Postal Service postmark or the date of personal service.

7.3(3) If a request for hearing is not timely made, the board chair or the chair's designee may issue an order imposing the civil penalty described in the notice. The order may be mailed by regular first-class mail or served in the same manner as the notice of intent to impose civil penalty.

7.3(4) If a request for hearing is timely made, the board shall issue a notice of hearing and conduct a hearing in the same manner as applicable to disciplinary cases against licensed architects.

7.3(5) In addition to the factors set forth in Iowa Code section 544A.15(3), the board may consider the following when determining the amount of civil penalty to impose, if any:

a. The time lapsed since the unlawful practice occurred.

b. Evidence of reform or remedial actions.

c. Whether the violation is a repeat offense following a prior warning letter or other notice of the nature of the infraction.

d. Whether the violation involved an element of deception.

e. Whether the unlawful practice violated a prior order of the board, court order, cease and desist agreement, consent order, or similar document.

f. The clarity of the issue involved.

g. Whether the violation was willful and intentional.

h. Whether the unlicensed person acted in bad faith.

i. The extent to which the unlicensed person cooperated with the board.

7.3(6) An unlicensed person may waive the right to hearing and all attendant rights and enter into a consent order imposing a civil penalty at any stage of the proceeding upon mutual consent of the board.

7.3(7) The notice of intent to impose civil penalty and order imposing civil penalty are public records available for inspection and copying in accordance with Iowa Code chapter 22. Copies may be provided to the media, the National Council of Architectural Registration Boards, and other entities. Hearings shall be open to the public.

[**ARC 3142C**, IAB 6/21/17, effective 7/26/17; **ARC 3337C**, IAB 9/27/17, effective 11/1/17]

These rules are intended to implement Iowa Code section 544A.15.

[Filed 9/29/78, Notice 8/23/78—published 10/18/78, effective 11/22/78]
[Filed 2/7/83, Notice 12/22/82—published 3/2/83, effective 4/6/83]
[Filed 6/24/88, Notice 3/9/88—published 7/13/88, effective 8/17/88]
[Filed 12/6/91, Notice 10/3/91—published 12/25/91, effective 1/29/92]
[Filed 3/12/93, Notice 2/3/93—published 3/31/93, effective 5/5/93]
[Filed 2/6/95, Notice 12/7/94—published 3/1/95, effective 4/5/95]
[Filed 4/5/96, Notice 1/3/96—published 4/24/96, effective 5/29/96]
[Filed 2/21/97, Notice 1/1/97—published 3/12/97, effective 4/16/97]
[Filed 4/30/98, Notice 12/31/97—published 5/20/98, effective 6/24/98]
[Filed 11/12/98, Notice 8/12/98—published 12/2/98, effective 1/6/99]
[Filed 5/13/99, Notice 2/24/99—published 6/2/99, effective 7/7/99]
[Filed 9/12/01, Notice 6/27/01—published 10/3/01, effective 11/7/01]
[Filed ARC 3142C (Notice ARC 3014C, IAB 4/12/17), IAB 6/21/17, effective 7/26/17]
[Filed ARC 3337C (Notice ARC 3175C, IAB 7/5/17), IAB 9/27/17, effective 11/1/17]
[Filed ARC 5563C (Notice ARC 5355C, IAB 12/30/20), IAB 4/21/21, effective 5/26/21]

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]

[Prior to 6/l/88, see Engineering and Land Surveying Examiners, Board of [390]]
[Engineering and Land Surveying Examining Board[193C] created by 1986 Iowa Acts, Ch 1245, §716,
within the Professional Licensing and Regulation Division[193] of the Commerce Department[181] "umbrella"]

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

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

3.1(1) *Application expiration.* On the examination and comity applications due date, the applications are considered current if it has been one year or less since the applications were received by the board office.

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

3.1(3) *Academic transcripts.*

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

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

[**ARC 9462B**, IAB 4/20/11, effective 5/25/11; **ARC 0362C**, IAB 10/3/12, effective 11/7/12; **ARC 4206C**, IAB 1/2/19, effective 2/6/19]

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

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

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

3.2(3) *Principles and Practice examination application components and due dates.* Principles and Practice of Engineering and Principles and Practice of Land Surveying examination applications require a detailed review and must, therefore, be submitted to the board office. To facilitate the transition to computer-based testing offered throughout the year, application files with all required components submitted to the board office by the first day of each month will be reviewed at the next regularly scheduled board meeting. The Principles and Practice examination application packet includes the following components: (1) the completed online application form, (2) the required number of references, (3) the project statement, and (4) the ethics questionnaire. In addition, a complete application file must include verification of examination records and transcripts. Examination applications will not be reviewed by the board until the application file is complete. Since the verification of examination records must be sent directly from the jurisdiction where the applicant took the Fundamentals of Engineering examination, the applicant should contact the other jurisdiction well in advance of the

deadline for submittal of the application to request this verification. For transcripts, the applicant should contact the university well in advance to ensure that the transcripts are received by the deadline.
[**ARC 7754B**, IAB 5/6/09, effective 6/10/09; **ARC 1349C**, IAB 2/19/14, effective 3/26/14; **ARC 2388C**, IAB 2/3/16, effective 3/9/16; **ARC 4206C**, IAB 1/2/19, effective 2/6/19]

193C—3.3(542B) Comity applications.

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

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

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

3.3(4) Temporary permits. The board does not issue temporary permits except as provided for in rule 193C—5.3(542B,272C). Based upon review by a board member, temporary permits were previously issued to applicants whose applications met all requirements and who were expected to qualify for approval by the full board at the next regularly scheduled board meeting. Since applications that meet these criteria are now routinely processed as they are completed and reviewed, temporary permits are no longer necessary.
[**ARC 7754B**, IAB 5/6/09, effective 6/10/09; **ARC 5564C**, IAB 4/21/21, effective 5/26/21]

193C—3.4(542B) Renewal applications.

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

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

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

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

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

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

a. Received by the board in paper or electronic form, or postmarked with a nonmetered United States Postal Service postmark on or before the expiration date of the certificate;

b. Fully completed; and

c. Accompanied by the proper fee. The fee shall be deemed improper if, for instance, the amount is incorrect, the fee was not included with the application, the credit card number provided by the applicant is incorrect, the date of expiration of a credit card is left off the application or is incorrect, the attempted credit card transaction is rejected, or the applicant's check is returned for insufficient funds.

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

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

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

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

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

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

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

a. Provide documentation of 45 professional development hours achieved within the current and previous biennium (dual licensees must provide documentation of 30 professional development hours for each profession); or

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

c. For an applicant for reinstatement who is an out-of-state resident, submit a statement from the resident state's licensing board as documented evidence of compliance with the resident state's mandatory continuing education requirement during the period that the licensee's Iowa license was

lapsed. The statement shall bear the seal of the licensing board. An applicant for reinstatement whose resident state has no mandatory continuing education requirement shall comply with the documented evidence requirement as outlined in this subrule and at 193C—subrule 7.8(2).

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

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

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

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

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

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

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

[Filed 10/24/01, Notice 8/8/01—published 11/14/01, effective 1/1/02]
[Filed 9/22/05, Notice 6/8/05—published 10/12/05, effective 11/16/05]
[Filed 2/20/08, Notice 10/24/07—published 3/12/08, effective 4/16/08]
[Filed ARC 7754B (Notice ARC 7433B, IAB 12/17/08), IAB 5/6/09, effective 6/10/09]
[Filed ARC 9462B (Notice ARC 9369B, IAB 2/9/11), IAB 4/20/11, effective 5/25/11]
[Filed ARC 0362C (Notice ARC 0156C, IAB 6/13/12), IAB 10/3/12, effective 11/7/12]
[Filed ARC 1349C (Notice ARC 1254C, IAB 12/25/13), IAB 2/19/14, effective 3/26/14]
[Filed ARC 2388C (Notice ARC 2219C, IAB 10/28/15), IAB 2/3/16, effective 3/9/16]
[Filed ARC 4206C (Notice ARC 3946C, IAB 8/15/18), IAB 1/2/19, effective 2/6/19]
[Filed ARC 5564C (Notice ARC 5356C, IAB 12/30/20), IAB 4/21/21, effective 5/26/21]

CHAPTER 5
LAND SURVEYING LICENSURE
[Prior to 11/14/01, see 193C—1.4(542B)]

193C—5.1(542B) Requirements for licensure by examination. The specific requirements for initial licensing in Iowa are established in Iowa Code section 542B.14, and it is the board's intention to issue initial licensure only when those requirements are satisfied chronologically as set forth in the statute.

5.1(1) First, the applicant for initial licensure in Iowa must satisfy the education plus experience requirements as follows: graduation from a course of two years or more in mathematics, physical sciences, mapping and surveying, or engineering in a school or college and six years of practical experience, all of which, in the opinion of the board, will properly prepare the applicant for the examination in fundamental land surveying subjects.

a. The six-year experience requirement above may be reduced based upon the number of years of the degree program from which the applicant graduated. Refer to the chart at 5.1(6).

b. Internet or on-line degrees will only be considered as qualifying degrees if the institution issuing the degree is accredited by a recognized accreditation board.

5.1(2) Second, the applicant must successfully complete the Fundamentals of Land Surveying examination.

a. The applicant may take the Fundamentals of Land Surveying examination anytime after the education and experience requirements described above are completed, but the applicant must successfully complete the Fundamentals of Land Surveying examination prior to taking the Principles and Practice of Land Surveying examination.

b. College seniors studying an Accreditation Board of Engineering and Technology (ABET) or Canadian Engineering Accreditation Board (CEAB) approved curriculum may take the Fundamentals of Land Surveying examination during the final academic year; applicants will be permitted to take the examination during the testing period which most closely precedes anticipated graduation. However, an official transcript from the applicant's college or university verifying that the applicant graduated must be sent by the registrar to the board office before an applicant's examination results will be released.

5.1(3) Third, the applicant must successfully complete the Principles and Practice of Land Surveying examination.

a. To qualify to take this examination, the applicant must present a record of four years or more of practical experience in land surveying work which is of a character satisfactory to the board. This experience must have been obtained after the receipt of the qualifying education and prior to the application due date for the examination. This practical experience is in addition to the initial experience required prior to taking the Fundamentals of Land Surveying examination.

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

5.1(4) Work project description. An applicant for initial licensure as a professional land surveyor must include with the application a statement of approximately 200 words describing a significant project on which the applicant worked closely during the last 12 months. The statement shall describe the applicant's degree of responsibility for the project and shall identify the project's owner and its location. The statement shall be signed and dated. Criteria the board shall use in evaluating the acceptability of the project as qualifying experience for the applicant shall include, but not be limited to, the following:

a. The degree to which the project and the experience described has progressed from assignments typical of initial assignments to those more nearly expected of a licensed professional;

b. The scope and quality of the professional tutelage experienced by the applicant;

c. The technical decisions required of the applicant in the project; and

d. The professional decisions required of the applicant.

The board reserves the right to contact the employer and the person providing tutelage on the project for information about the project experience presented to the applicant.

5.1(5) References. References are required for any applicant that must meet an experience requirement prior to taking an examination.

a. An applicant for the Principles and Practice of Land Surveying examination shall submit five references on forms provided by the board.

(1) At least three of the five references shall be from licensed professional land surveyors.

(2) If the applicant has had more than one supervisor, at least two of the references shall be from a supervisor of the applicant.

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

(4) The board reserves the right to contact employers for information about the applicant's professional experience and competence or to request additional references.

b. An applicant for the Fundamentals of Land Surveying examination must provide three references on forms provided by the board except that: (1) individuals applying with an ABET/EAC or CEAB accredited engineering or surveying and mapping degree with at least six semester hours of surveying or mapping do not have an experience requirement and, therefore, do not need to provide references; and (2) individuals applying with a non-ABET/EAC four-year surveying and mapping degree must submit only one reference.

5.1(6) Education and experience requirements. The board will require the minimum number of years set forth on the following chart before an applicant will be permitted to take either the Fundamentals of Land Surveying or the Principles and Practice of Land Surveying examination. Column 1 indicates the years of practical experience required prior to the Fundamentals of Land Surveying examination in addition to the completion of the required educational level. To determine the total years of practical experience required prior to taking the Principles and Practice of Land Surveying examination, column 2 is added to column 1.

EXPERIENCE REQUIREMENTS FOR EXAMINATION APPLICANTS		
If the applicant's educational level was:	The applicant must have had the following additional years of experience prior to taking the Fundamentals of Land Surveying examination:	The applicant must have had the following years of experience after receipt of the qualifying degree and prior to taking the Principles and Practice of Land Surveying examination:
A college or technology program with fewer than 6 semester hours of surveying		
Two-year degree	6	4
Four-year degree	4	4
A college or technology program with 6 or more semester hours of surveying		
Two-year degree	6	4
Four-year degree	2	4
Engineering program and 6 semester hours of surveying		
Two-year degree	6	4
Four-year BS degree	0	4
Engineering program with fewer than 6 semester hours of surveying		
Two-year degree	6	4
Four-year BS degree	2	4

EXPERIENCE REQUIREMENTS FOR EXAMINATION APPLICANTS		
If the applicant's educational level was:	The applicant must have had the following additional years of experience prior to taking the Fundamentals of Land Surveying examination:	The applicant must have had the following years of experience after receipt of the qualifying degree and prior to taking the Principles and Practice of Land Surveying examination:
Nonaccredited surveying and mapping program		
Two-year degree	6	4
Four-year BS degree	1	4
Accredited surveying and mapping program		
Two-year degree	6	4
Four-year BS degree	0	4

5.1(7) Practical experience requirements. Practical land surveying experience, of which a minimum of 25 percent is field experience, is required prior to licensing. The purpose of this requirement is to ensure that the applicant has acquired the professional judgment, capacity and competence to determine land boundaries. The following criteria will be considered by the board in determining whether an applicant's experience satisfies the statutory requirements.

a. Quality. Experience shall be of such quality as to demonstrate that the applicant has developed technical skill and initiative in the correct application of surveying principles. Such experience should demonstrate the capacity to review the applications of these principles by others and to assume responsibility for surveying work of a professional character. Up to three years of practical experience obtained after high school graduation and prior to satisfying the education requirement, if under the tutelage of a professional land surveyor, may be accepted toward the additional experience requirement for qualification to take the Fundamentals of Land Surveying examination. A minimum of four years of an applicant's experience after satisfying the education requirement shall be under the tutelage of a professional land surveyor.

b. Scope. Experience shall be of sufficient breadth and scope to ensure that the applicant has attained reasonably well-rounded professional competence in land surveying.

c. Progression. The record of experience shall indicate successive and continued progress from initial work of simpler character to recent work of greater complexity and higher degree of responsibility, as well as continued interest and effort on the part of the applicant toward further professional development and advancement.

d. Advanced education and military experience. An applicant's advanced education, military experience, or both will be reviewed in order to determine if they are applicable toward the statutory requirements for experience.

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

5.1(8) Required examinations. The board prepares and grades the Iowa State Specific Land Surveying examination administered to professional land surveyor candidates. All other examinations are uniform examinations prepared and graded by the National Council of Examiners for Engineering and Surveying (NCEES). The board may negotiate an agreement with an examination service to administer the examinations to applicants approved by the board, in which case applicants shall pay examination fees directly to the service.

a. Fundamentals examination. The Fundamentals of Land Surveying examination is a computer-based examination covering general surveying principles.

b. Professional land surveying examinations. The Principles and Practice of Land Surveying examination consists of two examinations. The first is a six-hour examination designed to determine

general proficiency and qualification to engage in the practice of land surveying. The second part is a two-hour Iowa State Specific closed-book examination that is designed to determine an applicant's proficiency and qualification to practice land surveying specifically in Iowa. Each of the two examinations shall be scored separately.

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

d. *Reexamination.* An applicant who fails an examination may request reexamination at the next examination period without reapplication.

(1) If the applicant intends to retake the examination, the applicant must notify the examination service selected by the board to administer the examinations prior to the application due date for the examination.

(2) Applicants failing one or both parts of the professional land surveying examination will be required to retake only the failed portions. An applicant successful in passing one portion of the land surveying examination need not be reexamined for that portion regardless of how much time elapses between the successfully passed portion and any future appearance to retake the failed portion of the examination. A satisfactory score must be obtained on each portion of the examination before the board will grant licensure as a professional land surveyor.

(3) An applicant for licensure as a professional land surveyor in Iowa (by comity or examination) who needs to be examined only for the state-specific portion of the professional land surveying examination may take the examination at the board office by appointment in accordance with all other requirements.

(4) An applicant who has failed two consecutive examinations of the state-specific portion of the professional land surveying examination shall not be allowed to retake the state-specific portion for one year in order for the applicant to acquire the necessary skill and knowledge to successfully pass the examination.

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

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

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

5.1(9) Examination subversion. Any individual who subverts or attempts to subvert the examination process may, at the discretion of the board, have the individual's examination scores declared invalid for the purpose of licensure in Iowa, be barred from land surveying licensure and examinations in Iowa, or be subject to the imposition of other sanctions the board deems appropriate.

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

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

(2) Conduct that violates the standards of test administration, such as communicating with any other examination candidate during the administration of the licensing examination; communicating with others outside of the examination site during the administration of the examination; copying

answers from another candidate or permitting one's answers to be copied by another candidate during the administration of the examination; or having in one's possession during the administration of the licensing examination any device or materials that might compromise the security of the examination or examination process, such as calculating and computing devices not on the list of devices approved by the examination provider or provided by the examination provider.

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

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

[**ARC 9805B**, IAB 10/19/11, effective 11/23/11; **ARC 0362C**, IAB 10/3/12, effective 11/7/12; **ARC 0684C**, IAB 4/17/13, effective 5/22/13; **ARC 4206C**, IAB 1/2/19, effective 2/6/19]

193C—5.2(542B) Requirements for licensure by comity. A person holding a certificate of licensure to engage in the practice of land surveying issued by a proper authority of a jurisdiction or possession of the United States, the District of Columbia, or any foreign country, based on requirements that do not conflict with the provisions of Iowa Code section 542B.14 and of a standard not lower than that specified in the applicable licensure Act in effect in this jurisdiction at the time such certificate was issued may, upon application and successful completion of the Iowa State Specific Land Surveying examination, be licensed without further examination. When determining whether the licensing standards satisfied by a comity applicant at time of foreign licensure are equal or superior to those required in Iowa, the board considers each of the four licensing prerequisites in Iowa Code section 542B.14(1) individually. The licensing standards satisfied by the comity applicant must accordingly have been equal or superior to those required in Iowa for education, fundamentals examination, experience, and professional examination. Unless expressly stated in this chapter, the board will not consider an applicant's superior satisfaction of one licensing prerequisite, such as a higher level of education than is required in Iowa, as resolving an applicant's lack of compliance with another prerequisite, such as professional examination. Comity applicants are governed by the same standards as are required of Iowa applicants.

5.2(1) *References.* An applicant for licensure by comity shall submit one or more professional land surveyor references on forms provided by the board to verify the number of years of satisfactory experience required with the applicant's level of education. The board reserves the right to contact employers for information about the applicant's professional experience and competence.

5.2(2) *Basis for evaluation of applications.* Applications for licensure by comity will be evaluated on the following basis:

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

b. The applicant's licensure in a jurisdiction other than Iowa will be reviewed to determine if it was granted only after satisfaction of requirements equal to or more stringent than those that were required by Iowa Code section 542B.14 at the time the applicant was licensed in the other jurisdiction.

5.2(3) *Evaluation of comity application process.*

a. First, the applicant for licensure by comity from a jurisdiction other than Iowa must have satisfied the education and experience requirements as set forth in Iowa Code section 542B.14 that were in effect at the time that the applicant was licensed initially.

b. Second, the applicant must have successfully completed the Fundamentals of Land Surveying examination. The applicant may take the Fundamentals of Land Surveying examination anytime after the practical experience and educational requirements are completed.

c. Third, the applicant must have successfully completed the Principles and Practice of Land Surveying examination. Prior to taking this examination, the applicant shall have had a record of four years or more of practical experience in land surveying which is of a character satisfactory to the board.

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

5.2(4) *Education and experience requirements.* The board will employ the following chart to determine if the applicant's licensure in a jurisdiction other than Iowa was granted after satisfaction of requirements equal to or more stringent than those that were required by Iowa Code section 542B.14 at the time the applicant was licensed in the other jurisdiction. Column 1 indicates the years of practical experience that were required prior to the Fundamentals of Land Surveying examination in addition to the completion of the required educational level. To determine the total years of practical experience that were required prior to taking the Principles and Practice of Land Surveying examination, column 2 is added to column 1.

EXPERIENCE REQUIREMENTS FOR COMITY APPLICANTS Who were licensed prior to July 1, 1988		
If the applicant's educational level was:	The applicant must have had the following additional years of experience prior to taking the Fundamentals of Land Surveying examination:	The applicant must have had the following years of experience after receipt of the qualifying degree and prior to taking the Principles and Practice of Land Surveying examination:
No post-high school education	8	4
College or technology program with fewer than 6 semester hours of surveying		
One year	7	4
Two years	6	4
Three years	5	4
Four-year degree	4	4
College or technology program with 6 or more semester hours of surveying		
One year	7	4
Two years	5.5	4
Three years	4	4
Four-year degree	2.5	4
Engineering program with 6 semester hours of surveying		
One year	7	4
Two years	5.5	4
Three years	4	4
Four-year BS degree	1.5	4

EXPERIENCE REQUIREMENTS FOR COMITY APPLICANTS Who were licensed prior to July 1, 1988		
If the applicant's educational level was:	The applicant must have had the following additional years of experience prior to taking the Fundamentals of Land Surveying examination:	The applicant must have had the following years of experience after receipt of the qualifying degree and prior to taking the Principles and Practice of Land Surveying examination:
Nonaccredited surveying and mapping program		
One year	7	4
Two years	5	4
Three years	3	4
Four-year BS degree	1	4
Accredited surveying and mapping program		
One year	7	4
Two years	4	4
Three years	2	4
Four-year BS degree	0	4

5.2(5) *Substantial equivalency.* Pursuant to Iowa Code section 546.10(8), the board may grant a comity application for licensure as a professional land surveyor if the board concludes that the applicant has met or exceeded all requirements for licensure applicable to initial applicants in Iowa, other than the sequence in which experience must be attained.

[**ARC 0363C**, IAB 10/3/12, effective 11/7/12; **ARC 4206C**, IAB 1/2/19, effective 2/6/19]

193C—5.3(542B,272C) Licensure by verification. In addition to the requirements of rule 193—14.4(272C), professional land surveying candidates applying for an Iowa license by verification must pass the Iowa State Specific Land Surveying examination prior to being issued a license. The board will issue a temporary license that is valid for a period of three months to professional land surveying candidates who have not yet passed the Iowa State Specific Land Surveying examination prior to their application. The professional land surveying candidate may request one renewal of the temporary license for an additional period of three months.

This rule is intended to implement Iowa Code section 272C.12.

[**ARC 5564C**, IAB 4/21/21, effective 5/26/21]

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

[Filed 10/24/01, Notice 8/8/01—published 11/14/01, effective 1/1/02]
[Filed 4/22/04, Notice 2/4/04—published 5/12/04, effective 6/16/04]
[Filed 7/25/07, Notice 6/6/07—published 8/15/07, effective 9/19/07]
[Filed 11/29/07, Notice 8/15/07—published 12/19/07, effective 1/23/08]
[Filed ARC 9805B (Notice ARC 9567B, IAB 6/29/11), IAB 10/19/11, effective 11/23/11]
[Filed ARC 0362C (Notice ARC 0156C, IAB 6/13/12), IAB 10/3/12, effective 11/7/12]
[Filed ARC 0363C (Notice ARC 0159C, IAB 6/13/12), IAB 10/3/12, effective 11/7/12]
[Filed ARC 0684C (Notice ARC 0530C, IAB 12/12/12), IAB 4/17/13, effective 5/22/13]
[Filed ARC 4206C (Notice ARC 3946C, IAB 8/15/18), IAB 1/2/19, effective 2/6/19]
[Filed ARC 5564C (Notice ARC 5356C, IAB 12/30/20), IAB 4/21/21, effective 5/26/21]

LANDSCAPE ARCHITECTURAL EXAMINING BOARD[193D]

Prior to 3/9/88, see Landscape Architectural Examiners Board[540]
[Landscape Architectural Examining Board[193D] created by 1986 Iowa Acts, ch 1245, §728
within the Professional Licensing and Regulation Division[193] of the Commerce Department[181] "umbrella"]

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CHAPTER 1
DESCRIPTION OF ORGANIZATION

[Prior to 3/9/88, see Landscape Architectural Examiners Board[540] Ch 1]

193D—1.1(544B,17A) Definitions. As used in these rules, the following definitions of words and terms shall apply:

"Board" means the Iowa landscape architectural examining board.

"CLARB" means the Council of Landscape Architectural Registration Boards.

"Evidence" means any document or record of any kind of drawings, specifications, photographs, diplomas, licensee statements, published data and certified personal statements as may be required as a part of any action on the part of the board. Each item of evidence shall be clearly marked to ensure positive and certain identification. It shall be the entire responsibility of the applicant to satisfy the board as to the sufficiency of the record and the evidence.

"Inactive" means that a landscape architect is not engaged in Iowa in any practice for which a certificate of licensure is required.

"Intern landscape architect" means an individual who is not licensed and has a degree in landscape architecture and is employed under the direct supervision of a professional landscape architect. The initials "I.L.A." should not be used.

"LARE" means the landscape architecture registration examination.

"P.L.A., retired" means the same as "professional landscape architect, retired."

"Practice of landscape architecture" means the performance of professional service or offering to render professional services to clients, including any one or any combination of the professional services defined in Iowa Code section 544B.1(2).

"Professional landscape architect" means a person who obtains a license and engages in the practice of landscape architecture under the authority of Iowa Code chapter 544B. For the purpose of these rules, a "professional landscape architect" may be referred to as a "landscape architect" and may use the initials "P.L.A."

"Professional landscape architect, retired" means a person who has retired from working as a landscape architect in all states of licensure and who has requested "landscape architect, retired" status on the licensure renewal form. The retired status would become effective on the first scheduled licensure renewal date. For the purpose of these rules, a "professional landscape architect, retired" may be referred to as a "landscape architect, retired."

"Retired" means that a landscape architect is not engaged in the practice of landscape architecture or earning monetary compensation by providing professional landscape architectural services in any licensing jurisdiction of the United States or a foreign country.

"Years of practical experience" means, for each year of practical experience the applicant has worked performing landscape architectural services, a minimum of 2,080 hours per year.

[**ARC 0213C**, IAB 7/25/12, effective 8/29/12; **ARC 3097C**, IAB 6/7/17, effective 7/12/17; **ARC 5571C**, IAB 4/21/21, effective 5/26/21]

193D—1.2(544B,17A) Organization and duties. The board consists of five members who are licensed professional landscape architects and two members who are not licensed professional landscape architects and who represent the general public.

1.2(1) *Qualifications of professional landscape architect board members.* Four of the five professional members shall be actively engaged in the practice of landscape architecture or the teaching of landscape architecture in an accredited college or university, and shall have been so engaged for five years preceding appointment, the last two of which shall have been in Iowa. One of the five professional members shall be actively engaged in the practice of landscape architecture or the teaching of landscape architecture in an accredited college or university, and may have been so engaged for fewer than five years preceding.

1.2(2) *Election of chairperson and vice chairperson.* The board elects annually from its members a chairperson and a vice chairperson. A quorum of the board shall be four members, and all final motions and actions must receive a vote by a majority of the members of the board.

1.2(3) *Duties of board.* The board enforces the provisions of Iowa Code chapter 544B and makes rules for the examination of applications for licensure. The board keeps records of its proceedings. The board adopts an official seal which is affixed to all certificates of licensure granted. The board makes other rules, not inconsistent with law, as necessary for the proper performance of its duties. The board maintains a roster showing the name, place of business, residence, and date and number of the certificate of licensure of every professional landscape architect in the state.

1.2(4) *Duties of chairperson.* The chairperson shall, when present, preside at meetings, appoint committees, and perform all duties and powers of the chairperson.

1.2(5) *Duties of vice chairperson.* The vice chairperson shall, in the absence or incapacity of the chairperson, exercise the duties and powers of the chairperson.

[**ARC 3097C**, IAB 6/7/17, effective 7/12/17; **ARC 5571C**, IAB 4/21/21, effective 5/26/21]

193D—1.3(544B,17A) Meetings. Calls for meetings shall be issued in accordance with Iowa Code section 21.4.

193D—1.4(544B,17A) Order of business. The chairperson or the board administrator shall prepare an agenda listing all matters to be discussed at meetings. A copy of this agenda shall be available to each member of the board.

[**ARC 3097C**, IAB 6/7/17, effective 7/12/17]

193D—1.5(22) Public records and fair information practices. Rescinded **ARC 3097C**, IAB 6/7/17, effective 7/12/17.

193D—1.6(68B) Sales of goods and services. Rescinded **ARC 3097C**, IAB 6/7/17, effective 7/12/17.

193D—1.7(17A) Petitions for rule making. Rescinded **ARC 3097C**, IAB 6/7/17, effective 7/12/17.

193D—1.8(17A) Declaratory orders. Rescinded **ARC 3097C**, IAB 6/7/17, effective 7/12/17.

193D—1.9(252J,261) Denial of issuance or renewal of license for nonpayment of child support or student loan. Rescinded **ARC 3097C**, IAB 6/7/17, effective 7/12/17.

193D—1.10(17A) Interim waivers and variances. In addition to the provisions of 193—Chapter 5, the following shall apply for interim rulings:

1.10(1) The board chairperson, or vice chairperson if the chairperson is not available, may rule on a petition for waiver or variance when it would not be timely to wait for the next regularly scheduled board meeting for a ruling from the board.

1.10(2) The board administrator shall, upon receipt of a petition that meets all applicable criteria established in 193—Chapter 5, present the request to the board chairperson or vice chairperson along with all pertinent information regarding established precedent for granting or denying such requests.

1.10(3) The chairperson or vice chairperson shall reserve the right to hold an electronic meeting of the board when prior board precedent does not clearly resolve the request, input of the board is deemed required and the practical result of waiting until the next regularly scheduled meeting would be a denial of the request due to timing issues.

1.10(4) A waiver report shall be placed on the agenda of the next regularly scheduled board meeting and recorded in the minutes of the meeting.

1.10(5) This rule on interim rulings does not apply if the waiver or variance was filed in a contested case.

[**ARC 3097C**, IAB 6/7/17, effective 7/12/17; **ARC 5571C**, IAB 4/21/21, effective 5/26/21]

193D—1.11(544B,17A,272C) Investigations and investigatory subpoenas. Rescinded **ARC 3097C**, IAB 6/7/17, effective 7/12/17.

193D—1.12(544B,17A,272C) Contested case procedures. Rescinded **ARC 3097C**, IAB 6/7/17, effective 7/12/17.

193D—1.13(272C) Impaired licensees. Rescinded **ARC 3097C**, IAB 6/7/17, effective 7/12/17.

These rules are intended to implement Iowa Code sections 544B.3, 544B.5, and 544B.15.

[Filed 2/2/76, Notice 12/29/75—published 2/9/76, effective 2/2/76]
[Filed emergency 4/14/78—published 5/3/78, effective 4/14/78]
[Filed 12/2/83, Notice 10/26/83—published 12/21/83, effective 1/25/84]
[Filed 2/18/88, Notice 12/16/87—published 3/9/88, effective 4/13/88]
[Filed without Notice 2/18/88—published 3/9/88, effective 4/13/88]
[Filed 10/16/95, Notice 8/2/95—published 11/8/95, effective 12/13/95]
[Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]
[Filed 12/19/01, Notice 11/14/01—published 1/9/02, effective 2/13/02]
[Filed 7/24/03, Notice 5/14/03—published 8/20/03, effective 9/24/03]
[Filed ARC 0213C (Notice ARC 0086C, IAB 4/18/12), IAB 7/25/12, effective 8/29/12]
[Filed ARC 3097C (Notice ARC 2941C, IAB 2/15/17), IAB 6/7/17, effective 7/12/17]
[Filed ARC 5571C (Notice ARC 5430C, IAB 2/10/21), IAB 4/21/21, effective 5/26/21]

CHAPTER 2
EXAMINATIONS AND LICENSING

[Prior to 3/9/88, see Landscape Architectural Examiners Board[540] Ch 2]

193D—2.1(544B,17A) Definitions. Rescinded **ARC 3097C**, IAB 6/7/17, effective 7/12/17.

193D—2.2(544B,17A) Application for licensure by examination.

2.2(1) Candidates shall contact CLARB to start the examination licensure process by creating a council record. A candidate's council record will include verified history of the candidate's education, experience, examination and licensure history, and professional references and is used to apply for examination, licensure and certification.

2.2(2) The candidate who successfully completes the LARE may make application for certificate of licensure to the board after meeting one of the requirements listed below and requesting that the candidate's council record be transmitted to the board.

a. Graduation from a course in landscape architecture in a school, college, or university offering an accredited minimum four-year curriculum in landscape architecture, and a minimum of three years of practical experience in landscape architectural work which in the opinion of the board is of satisfactory character, at least one year of which must be under the supervision of a professional landscape architect or a person who becomes a professional landscape architect within one year after July 1, 2002.

b. Graduation from a nonaccredited course of landscape architecture of a minimum of four years in a school, college, or university and a minimum of four years of practical experience in landscape architectural work which in the opinion of the board is of satisfactory character, at least one year of which must be under the supervision of a professional landscape architect.

c. A minimum of ten years of practical experience in landscape architectural work which in the opinion of the board is of satisfactory character to properly prepare the applicant for the examination.

2.2(3) A satisfactorily completed year of study in an accredited course of landscape architecture in an accredited school, college, or university may be accepted in lieu of one year of practical experience.

2.2(4) A master's degree from an accredited school, college, or university may be accepted in lieu of one year of practical experience.

2.2(5) Any four-year college or university degree may be accepted in lieu of two years of practical experience.

[**ARC 5571C**, IAB 4/21/21, effective 5/26/21]

193D—2.3(544B,17A) Procedure for processing applications. The board administrator shall determine when the legal requirements for licensure have been satisfied with regard to issuance of certificates, licenses or registrations, and the board administrator shall submit to the board any questionable application. An applicant's personal appearance before the board, if required, shall be at the time and place designated by the board. Failure to supply additional evidence or information within 30 days from the date of the written request from the board, or failure to appear before the board when an appearance is requested, may be considered cause for disapproval of the application. Unless otherwise provided by law, a request for a rehearing before the board shall be filed with the board in accordance with rule 193—7.39(543,272C). A judicial review can be filed in accordance with Iowa Code section 17A.19.

[**ARC 3097C**, IAB 6/7/17, effective 7/12/17; **ARC 5571C**, IAB 4/21/21, effective 5/26/21]

193D—2.4(544B,17A) Registration of applicants. Applicants must meet requirements of Iowa Code section 544B.9 for registration.

[**ARC 5571C**, IAB 4/21/21, effective 5/26/21]

193D—2.5(544B,17A) Written examination. The written examination shall consist of the professional landscape architectural licensure examination published by CLARB and may include supplementary questions developed by the board.

[**ARC 5571C**, IAB 4/21/21, effective 5/26/21]

193D—2.6(544B,17A) Exemption from written examination. The board may exempt from written examination an applicant who meets one of the following criteria:

2.6(1) The applicant holds a current CLARB certificate;

2.6(2) The applicant holds a license to practice landscape architecture issued upon written examination by another jurisdiction, and has submitted a certificate from the jurisdiction of original licensure verifying that the applicant passed the examination in that jurisdiction; or

2.6(3) The applicant:

a. Holds an active license to practice landscape architecture issued by another jurisdiction whose current licensure requirements, including the examination requirements, are substantially equivalent to or exceed those required for licensure as a landscape architect in Iowa, and during the time period in which the applicant was issued an initial license in the other jurisdiction, that jurisdiction did not require a written examination for initial applicants, but did require board review and approval of education and experience designed to demonstrate competence to practice;

b. Was grandparented in under the laws of the other jurisdiction, before written examinations for initial licensure were mandated by the other jurisdiction; and

c. Submits a certificate from the jurisdiction of original licensure verifying that the applicant was licensed during the period in which there was no written examination and submits proof of license in good standing.

[**ARC 2709C**, IAB 9/14/16, effective 10/19/16]

193D—2.7(544B,17A) Certificate of licensure. When an applicant has qualified for licensure under this chapter and has paid the required license fee, the secretary shall enroll the applicant's name in the roster of professional landscape architects and issue to the applicant a certificate of licensure.

2.7(1) *License number.* The certificate will indicate the license number of the landscape architect which must appear on the professional landscape architect's seal and on all works signed by the professional landscape architect.

2.7(2) *Certificate.* Only one certificate of licensure shall be issued to a professional landscape architect. The certificate shall be displayed in a conspicuous place at the place of employment.

[**ARC 3097C**, IAB 6/7/17, effective 7/12/17; **ARC 5571C**, IAB 4/21/21, effective 5/26/21]

193D—2.8(17A,272C,544B) Renewal of certificates of licensure. Certificates of licensure expire biennially on June 30. In order to maintain authorization to practice in Iowa, a licensee is required to renew the certificate of licensure prior to June 30 of the year of expiration. However, the board will accept an otherwise sufficient renewal application that is untimely if the board receives the application and late fee within 30 days after the date of expiration. A licensee who fails to renew by the expiration date is not authorized to practice landscape architecture in Iowa until the certificate is reinstated as provided in rule 193D—2.9(544B,17A).

2.8(1) It is the policy of the board to email to each licensee a notice of the pending expiration date at the licensee's last-known address approximately one month prior to the date the certificate of licensure is scheduled to expire. Failure to receive this notice does not relieve the licensee of the responsibility to timely renew the certificate and pay the renewal fee. A licensee should contact the board office if the licensee does not receive a renewal notice prior to the date of expiration.

2.8(2) If grounds exist to deny a timely and sufficient application to renew, the board shall send notification to the applicant. Grounds may exist to deny an application to renew if, for instance, the licensee failed to satisfy the continuing education as required as a condition for licensure. If the basis for denial is pending disciplinary action or disciplinary investigation that is reasonably expected to culminate in disciplinary action, the board shall proceed as provided in 193—Chapter 7. If the basis for denial is not related to a pending or imminent disciplinary action, the applicant may contest the board's decision as provided in 193—subrule 7.40(1).

2.8(3) When a licensee appears to be in violation of mandatory continuing education requirements, and after or in lieu of giving the licensee an opportunity to come into compliance under 193D—subrule 3.3(3), the board may, in lieu of proceeding to a contested case hearing on the denial of a renewal application as provided in rule 193—7.40(546,272C), offer the licensee the opportunity to sign a

consent order. While the terms of the consent order will be tailored to the specific circumstances at issue, the consent order will typically impose a penalty between $50 and $250, depending on the severity of the violation; establish deadlines for compliance; and require that the licensee complete hours equal to double the deficiency in addition to the required hours; and may impose additional educational requirements on the licensee. Any additional hours completed in compliance with the consent order cannot again be claimed at the next renewal. The board will address subsequent offenses on a case-by-case basis. A licensee is free to accept or reject the offer. If the offer of settlement is accepted, the licensee will be issued a renewed certificate of licensure and will be subject to disciplinary action if the terms of the consent order are not complied with. If the offer of settlement is rejected, the matter will be set for hearing, if timely requested by the licensee pursuant to 193—subrule 7.40(1).

2.8(4) The board may notify licensees whose certificates of licensure have expired. The failure of the board to provide this courtesy notification or the failure of the licensee to receive the notification shall not extend the date of expiration.

2.8(5) A licensee who continues to practice landscape architecture in Iowa after licensure has expired shall be subject to disciplinary action. Such unauthorized activity may also be grounds to deny a licensee's application for reinstatement.

2.8(6) Licensees shall notify the board within 30 days of any change of address or business connection.

2.8(7) Retired status. A person who held a license as a professional landscape architect, who is retired from the practice of landscape architecture in all states of licensure, and who has applied for and has been granted retired status from the board may use the title "professional landscape architect, retired" or " P.L.A., retired." The retired status would become effective on the first scheduled license renewal date. Applicants do not need to reinstate an expired license to be eligible for retired status. Applicants may apply for retired status on the renewal forms provided by the board. The board will not provide a refund of biennial licensure fees if an application for retired status is granted in a biennium in which the applicant has previously paid the biennial fees for either active or inactive status. Licensees with retired status are exempt from the renewal requirement.

a. Permitted practices. A person whose license is in retired status may engage in the practices identified in paragraph 2.8(8)*"c."* Such person may also provide services as a technical expert before a court, including pre-litigation preparation, discovery, and testimony, on matters directly related to landscape architectural services provided by such person prior to registering with the board in retired status.

b. Exemption. A person whose license as a landscape architect has been placed on probation, suspended, revoked, or voluntarily surrendered in connection with a disciplinary investigation or proceeding shall not be eligible for retired status unless the board, upon appropriate application, first reinstates the license to good standing.

2.8(8) Inactive status. This subrule establishes a procedure under which a person issued a certificate of licensure as a landscape architect may apply to the board to register as inactive. Licensure under this subrule is available to a licensee residing within or outside the state of Iowa who is not using the title "landscape architect" while offering services as a landscape architect. A person eligible to register as inactive may, as an alternative to licensure, allow the certificate of licensure to lapse. During any period of inactive status, a person shall not engage in the practice of landscape architecture while using the title "landscape architect" or any other title that might imply that the person is offering services as a landscape architect in violation of Iowa Code section 544B.18. The board will continue to maintain a database of persons licensed as inactive, including information which is not routinely maintained after a certificate of licensure has lapsed through the person's failure to renew. A person who registers as inactive will accordingly receive a renewal notice if the notice is sent by the board, board newsletters, and other mass communications from the board.

a. Affirmation. The renewal application shall contain a statement in which the applicant affirms that the applicant will not engage in the practice of landscape architecture while using the title "landscape architect" in violation of Iowa Code section 544B.18, without first complying with all rules governing

reinstatement to active status. A person in inactive status may reinstate to active status at any time pursuant to rule 193D—2.9(544B,17A).

b. *Renewal.* A person licensed as inactive may renew the person's certificate of licensure on the biennial schedule described in this rule. This person shall be exempt from the continuing education requirements and will be charged a reduced renewal fee as provided in rule 193D—2.11(544B,17A). An inactive certificate of licensure shall lapse if not timely renewed.

c. *Permitted practices.* A person may, while licensed as inactive or retired, perform for a client, business, employer, government body, or other entity those services which may lawfully be provided by a person to whom a certificate of licensure has never been issued. For an "inactive" licensee, such services may be performed as long as the person does not in connection with such services use the title "landscape architect" or any other title restricted for use only by landscape architects pursuant to Iowa Code section 544B.18 (with or without additional designations such as "inactive"). Restricted titles may be used only by active landscape architects who are subject to continuing education requirements to ensure that the use of such titles is consistently associated with the maintenance of competency through continuing education. A "professional landscape architect, retired" may use the "professional landscape architect, retired" title; however, the person shall inform anyone to whom the person is providing services that the person once held an active landscape architect license but is no longer actively licensed or permitted to practice landscape architecture.

d. *Prohibited practices.* A person who, while licensed as inactive, engages in any of the practices described in Iowa Code section 544B.18 is subject to disciplinary action.

[**ARC 0213C**, IAB 7/25/12, effective 8/29/12; **ARC 3097C**, IAB 6/7/17, effective 7/12/17; **ARC 5571C**, IAB 4/21/21, effective 5/26/21]

193D—2.9(544B,17A) Reinstatement.

2.9(1) An individual may reinstate a lapsed certificate of licensure to active status as follows:

a. Pay the current renewal fee;

b. Pay the reinstatement fee of $100 plus $25 per month or partial month of expired licensure up to a maximum of $750. All applicants for reinstatement shall be assessed the $100 reinstatement fee. The $25-per-month fee shall not be assessed if the applicant for reinstatement did not, during the period of lapse, engage in any acts or practices for which an active landscape architect license is required in Iowa. Falsely claiming an exemption from the monthly fee is a ground for discipline; in addition, other grounds for discipline may arise from practicing on a lapsed certificate, license or permit to practice;

c. Provide a written statement outlining the professional activities that the applicant performed in Iowa during the period of nonlicensure. The statement shall include a list of all projects with which the applicant had involvement and shall explain the service provided by the applicant; and

d. Submit documented evidence of completion of continuing education based on the licensee's date of licensure.

(1) A professional landscape architect who holds a license in Iowa for less than 12 months from the date of initial licensure shall not be required to report continuing education on the June 30 renewal on which the applicant failed to renew and 12 continuing education hours for each year or portion of a year of expired licensure up to a maximum of 48 continuing education hours; however, the hours reported shall not have been earned more than four years prior to the date of the application to reinstate to active status.

(2) A professional landscape architect who holds a license in Iowa for more than 12 months, but less than 24 months from the date of initial licensure, shall be required to report 12 contact hours which should have been reported on the June 30 renewal on which the applicant failed to renew and 12 continuing education hours for each year or portion of a year of expired licensure up to a maximum of 48 continuing education hours; however, the hours reported shall not have been earned more than four years prior to the date of the application to reinstate to active status.

(3) A professional landscape architect who holds a license in Iowa for 24 months or more from the date of initial licensure shall be required to report 24 contact hours which should have been reported on the June 30 renewal on which the applicant failed to renew and 12 continuing education hours for

each year or portion of a year of expired licensure up to a maximum of 48 continuing education hours; however, the hours reported shall not have been earned more than four years prior to the date of the application to reinstate to active status.

(4) All continuing education hours must be completed in health, safety, and welfare subjects acquired in structured educational activities and be in compliance with requirements in 193D—Chapter 3. The continuing education hours used for reinstatement may not be used again at the next renewal.

(5) Out-of-state residents may submit a statement from their resident state's licensing board as documented evidence of compliance with their resident state's mandatory continuing education requirements during the period of nonlicensure. The statement shall bear the seal of the licensing board. Out-of-state residents whose resident state has no mandatory continuing education shall comply with the documented evidence requirements outlined in this subrule.

2.9(2) An individual may reinstate an inactive license or retired license to an active license as follows:

a. The individual shall pay the current active licensure fee. If the individual is reinstating to active status at a date that is less than 12 months from the next biennial renewal date, one-half of the current active licensure fee shall be paid.

b. The individual shall submit documented evidence of completion of 24 contact hours of continuing education in health, safety, and welfare subjects in compliance with requirements in 193D—Chapter 3. The continuing education hours used for reinstatement to active status may not be used again at the next renewal.

c. Continuing education for subsequent renewals.

(1) At the first biennial renewal date of July 1 that is less than 12 months from the date of the filing of the application to restore the certificate of licensure to active status, the individual shall not be required to report continuing education.

(2) At the first biennial renewal date of July 1 that is more than 12 months, but less than 24 months, from the date of the filing of the application to restore the certificate of licensure to active status, the individual shall report 12 hours of previously unreported continuing education.

d. Provide a written statement in which the applicant affirms that the applicant has not engaged in any of the practices in Iowa that are listed in Iowa Code section 544B.1(2) during the period of inactive licensure.

2.9(3) An individual shall not be allowed to reinstate to inactive status from retired status.

2.9(4) The board shall review reinstatement applications on a case-by-case basis and may, at its discretion, require that the applicant take the LARE as a prerequisite to reinstatement to active status.

[**ARC 3097C**, IAB 6/7/17, effective 7/12/17]

193D—2.10(544B,17A) Responsibility for accuracy of applications. The landscape architect is responsible for verifying the accuracy of the information submitted on applications regardless of how the application is submitted or by whom it is submitted. For instance, if the office manager of a landscape architect's firm submits an application for renewal on behalf of the landscape architect and that information is incorrect, the landscape architect will be held responsible for the information and may be subject to disciplinary action.

[**ARC 5571C**, IAB 4/21/21, effective 5/26/21]

193D—2.11(544B,17A) Fee schedule. The appropriate fee shall accompany the application.

Fees for examination subjects shall be paid directly to the testing service selected by CLARB.	
Exemption fee	$300
(This certificate of licensure is to be effective to the June 30 which is at least 12 months beyond the date of the application.)	
Wall certificate replacement fee	$25
Certificate of licensure fee	$15/month
(This certificate of licensure is to be effective the day of board action until June 30.)	
Biennial licensure fee (active)	$350
Biennial licensure fee (inactive)	$100
Late renewal fee	$25
(for renewals submitted on or after July 1 and before July 30)	
"Professional landscape architect, retired" status	$0 (No fee)
Reinstatement of lapsed licensure to active status	$100 + renewal fee + $25 per month or partial month of lapsed licensure; not to exceed $750
Reinstatement of inactive or retired status to active status	$350
(If less than 12 months from the next biennial renewal, one-half of the current active licensure fee shall be paid.)	
Prelicense determination fee	$25

[**ARC 0213C**, IAB 7/25/12, effective 8/29/12; **ARC 3097C**, IAB 6/7/17, effective 7/12/17; **ARC 5571C**, IAB 4/21/21, effective 5/26/21]

These rules are intended to implement Iowa Code chapters 17A and 544B.

[Filed 2/2/76, Notice 12/29/75—published 2/9/76, effective 2/2/76]
[Filed emergency 5/18/76—published 5/31/76, effective 5/18/76]
[Filed emergency 5/25/77, Notice 4/20/77—published 6/15/77, effective 5/25/77]
[Filed 7/20/77, Notice 5/4/77—published 8/10/77, effective 9/14/77]
[Filed emergency 4/14/78—published 5/3/78, effective 4/14/78]
[Filed 3/13/80, Notice 2/6/80—published 4/2/80, effective 5/7/80]
[Filed emergency 4/30/80—published 5/28/80, effective 5/1/80]
[Filed 3/29/82, Notice 1/20/82—published 4/14/82, effective 5/19/82]
[Filed 12/2/83, Notice 10/26/83—published 12/21/83, effective 1/25/84]
[Filed 2/18/88, Notice 12/16/87—published 3/9/88, effective 4/13/88]
[Filed without Notice 2/18/88—published 3/9/88, effective 4/13/88]
[Filed 8/1/91, Notice 5/15/91—published 8/21/91, effective 9/25/91]
[Filed 12/30/92, Notice 10/28/92—published 1/20/93, effective 2/24/93]
[Filed 11/19/93, Notice 5/12/93—published 12/8/93, effective 1/12/94]
[Filed 10/20/94, Notice 5/11/94—published 11/9/94, effective 12/14/94]
[Filed 10/16/95, Notice 8/2/95—published 11/8/95, effective 12/13/95]
[Filed 4/5/96, Notice 1/3/96—published 4/24/96, effective 5/29/96]
[Filed 12/19/01, Notice 11/14/01—published 1/9/02, effective 2/13/02]
[Filed 7/24/03, Notice 5/14/03—published 8/20/03, effective 9/24/03]
[Filed 3/16/04, Notice 1/21/04—published 4/14/04, effective 5/19/04]
[Filed 11/3/04, Notice 7/7/04—published 11/24/04, effective 12/29/04]
[Filed 10/20/05, Notice 8/3/05—published 11/9/05, effective 12/14/05]

[Filed 5/3/07, Notice 2/14/07—published 5/23/07, effective 6/27/07]
[Filed 4/29/08, Notice 2/13/08—published 5/21/08, effective 6/25/08]
[Filed ARC 0213C (Notice ARC 0086C, IAB 4/18/12), IAB 7/25/12, effective 8/29/12]
[Filed ARC 2709C (Notice ARC 2475C, IAB 3/30/16), IAB 9/14/16, effective 10/19/16]
[Filed ARC 3097C (Notice ARC 2941C, IAB 2/15/17), IAB 6/7/17, effective 7/12/17]
[Filed ARC 5571C (Notice ARC 5430C, IAB 2/10/21), IAB 4/21/21, effective 5/26/21]

CHAPTER 3
CONTINUING EDUCATION

[Prior to 3/9/88, see Landscape Architectural Examiners Board[540] Ch 3]

193D—3.1(544B,17A) Definitions. As used in these rules, the following definitions shall apply:

"Distance learning" means any education process based on the geographical separation of student and instructor. "Distance learning" includes computer-generated programs, webinars, and home-study/correspondence programs.

"Health, safety, and welfare subjects" means technical and professional subjects that the board deems appropriate to safeguard directly the public's health, safety, and welfare. Such subjects include design, environmental systems, site design, land use analyses, landscape architecture programming, grading and drainage, storm water management, erosion control, site and soil analyses, accessibility, building codes, review of state registration laws including the rules of professional conduct, evaluation and selection of products and materials, cost analysis, construction methods, contract documentation, construction contract administration, construction administration, construction-phase office procedures, project management, and the like.

"Hours of continuing education" means a contact hour spent in either structured educational activities or individually planned activities intended to increase the professional landscape architect's knowledge and competence in public protection subjects and related practice subjects. "Contact hour" is defined as the typical 50-minute classroom instructional session or its equivalent.

"Structured educational activities" means educational activities in which the teaching methodology consists primarily of systematic presentation of public protection subjects or related practice subjects by qualified individuals or organizations including monographs, courses of study taught in person or by correspondence, organized lectures, presentations or workshops, and other means through which identifiable technical and professional subjects are presented in a planned manner.

[**ARC 3794C**, IAB 5/9/18, effective 6/13/18]

193D—3.2(544B,17A) Continuing education requirements. In order for professional landscape architects to provide competent, professional services to the public, continuing education shall consist of learning experiences that enhance, expand and keep current the skills, knowledge, and abilities of practicing professionals. Professional landscape architects may pursue learning experiences in technical, nontechnical, regulatory, ethics and business practice areas, provided that the continuing education directly benefits the health, safety, and welfare of the public.

3.2(1) Hours required. Each registrant shall complete during each two-year licensing term a minimum of 24 hours of continuing education approved by the board. Compliance with the continuing education requirements is a prerequisite for license renewal.

3.2(2) Within any biennial renewal period, 24 hours of continuing education must be acquired and shall be in health, safety, and welfare subjects acquired in structured educational activities. Hours acquired in any 24-month renewal period may not be carried over to a subsequent 24-month renewal period. Continuing education hours may be acquired in any location.

3.2(3) A professional landscape architect who holds a license in Iowa for less than 12 months from the date of initial licensure shall not be required to report continuing education at the first license renewal. A professional landscape architect who holds a license in Iowa for more than 12 months, but less than 24 months from the date of initial licensure, shall be required to report 12 hours of continuing education in health, safety, and welfare subjects earned in the preceding 12 months at the first license renewal.

3.2(4) Sources of continuing education. The following suggested list may be used by all licensees to determine the types of activities which may fulfill the continuing education requirements. All hours of continuing education must also comply with the directive in subrule 3.2(2).

a. Hours of continuing education in attendance at short courses or seminars dealing with landscape architectural subjects and sponsored by colleges, universities or professional organizations.

b. Hours of continuing education in attendance at presentations on landscape architectural subjects, which are held in conjunction with conventions or at seminars related to materials use and function. Presentations such as those presented by CLARB, American Society of Landscape

Architects, Construction Specification Institute, Construction Products Manufacturers Council or similar organizations devoted to landscape architecture education may qualify.

c. Hours of continuing education in attendance at short courses or seminars relating to business practice or new technology and offered by colleges, universities, professional organizations or system suppliers.

d. Hours of continuing education spent presenting or teaching courses or seminars in landscape architecture. Three preparation hours may be claimed for each class hour spent teaching landscape architectural courses or seminars. College or university faculty members may not claim credit for teaching regular curriculum courses.

e. Hours of continuing education spent learning through professional service to the public which draws upon the licensee's professional expertise on boards and commissions, such as serving on planning commissions, building code advisory boards, urban renewal boards, code study commissions or community boards. Hours of continuing education under this paragraph shall be limited to 6 hours earned in any biennial renewal period.

f. Hours of continuing education spent in landscape architectural research which is published or formally presented to the profession or public. Credit may be claimed only following proof of publication or presentation. Hours of continuing education under this paragraph shall be limited to 12 hours earned in any biennial renewal period.

g. Hours of continuing education spent in distance learning that concludes with an examination or other verification of course completion.

h. College or university courses dealing with landscape architectural subjects or business practice. Each semester hour shall equal 15 hours of continuing education. A quarter hour shall equal 10 hours of continuing education.

i. Hours of continuing education spent in educational tours or tours in areas significant to landscape architecture when the tour is sponsored by college, university or professional organizations and verification of participation is provided by the tour sponsor. Self-guided tours do not qualify. Hours of continuing education under this paragraph shall be limited to 6 hours earned in any biennial renewal period.

j. Hours of continuing education spent attending in-house educational programs, including dinner, luncheon, and breakfast meetings.

3.2(5) Financing. It is the responsibility of each licensee to finance the costs for continuing education.

[**ARC 9749B**, IAB 9/21/11, effective 10/26/11; **ARC 3794C**, IAB 5/9/18, effective 6/13/18]

193D—3.3(544B,17A) Compliance.

3.3(1) Each professional landscape architect shall file with the board a signed report, under penalty of perjury, on forms provided by the board or by online renewal, setting forth the continuing education activities in which the professional landscape architect has participated. The report shall be filed with the renewal application for each two-year renewal period in which the claimed hours of continuing education were completed. The information in the report shall include:

a. School, firm or organization conducting the course.

b. Location of the course.

c. Title of the course and description of the content.

d. Principal instructor(s).

e. Dates attended.

f. Hours claimed.

g. In instances of service on a professional or community board, or other undocumented hours of continuing education (non-HSW documentation such as LU, PDH), the licensee shall provide a narrative description of the materials the licensee reviewed, the nature of the licensee's service, and a description as to how the licensee's claimed hours of continuing education have contributed to the health, safety and welfare of the public.

This information shall be kept by the licensee for reported hours of continuing education for two years.

3.3(2) A professional landscape architect's continuing education report forms or online renewal may be selected for review by the board for verification of compliance with these requirements. Evidence of compliance shall be maintained by the professional landscape architect for two years after the period for which the form was submitted and shall include written verification of attendance by someone other than the licensee. Examples of evidence may include, but are not limited to, a certificate of completion presented by the program sponsor, a letter from an employer verifying attendance at an in-firm training session, or copies of minutes from public service meetings. Canceled checks, slideshow presentations, email confirmation or receipts for payments of fees to attend a program are not evidence of actual attendance and are not acceptable.

3.3(3) Any discrepancy between the number of continuing education hours reported and the number of continuing education hours actually supported by documentation may result in a disciplinary review. If, after the disciplinary review, the board disallows any continuing education hours, or the licensee has failed to complete the required continuing education hours, the landscape architect shall have 60 days from board notice to either provide further evidence of having completed the continuing education hours disallowed or remedy the discrepancy by completing the required number of continuing education hours (provided that such continuing education hours shall not again be used for the next renewal). Extension of time may be granted on an individual basis and must be requested by the licensee within 30 days of notification by the board. If the licensee fails to comply with the requirements of this subrule, the licensee may be subject to disciplinary action.

[**ARC 3794C**, IAB 5/9/18, effective 6/13/18; **ARC 5571C**, IAB 4/21/21, effective 5/26/21]

193D—3.4(544B,17A) Hearings. In the event of denial, in whole or in part, of any application for approval of credit for continuing education activity, the licensee shall have the right, within 20 days after the date of notification of the denial by mail, to request a hearing by the board. The hearing shall be held within 60 days after receipt of the request for the hearing. The decision of the board shall be final.

193D—3.5(544B,17A) Physical disability, illness, hardship, or extenuating circumstances. The board may, in individual cases involving physical disability, illness (certified by a medical doctor), hardship, or extenuating circumstances, grant waivers of the continuing education requirements for a period of time not to exceed one year. No waiver or extension of time shall be granted unless the licensee makes a written request to the board for such action.

193D—3.6(544B,17A) Methods of compliance and exemptions. A licensee licensed to practice as a professional landscape architect shall be deemed to have complied with the continuing education requirements during the continuing education compliance period that the licensee:

1. Serves honorably on active duty in the military service; or
2. Resides in another state or district having a continuing education requirement for the occupation or profession and meets all the requirements of that state or district for practice therein; or
3. Is a government employee working as a professional landscape architect and assigned to duty outside the United States; or
4. Is approved by the board for periods of active practice and absence from the state.

If the licensee was not engaged in active practice as a professional landscape architect and will maintain inactive status during the period for which renewal is requested, the board may exempt the licensee from continuing education. No exemption shall be granted without a written request from the licensee.

193D—3.7(544B,17A) Grounds for denial of license renewal. Failure of a licensee to complete the continuing education requirements as set forth in this chapter, or failure to file a report of completed continuing education, or failure to submit a written request for waiver or exemption shall be grounds for the board to deny renewal of the license.

These rules are intended to implement Iowa Code chapter 544B.

[Filed 11/9/78, Notice 10/4/78—published 11/29/78, effective 1/3/79]
[Filed 2/18/88, Notice 12/16/87—published 3/9/88, effective 4/13/88]
[Filed without Notice 2/18/88—published 3/9/88, effective 4/13/88]
[Filed 10/16/95, Notice 8/2/95—published 11/8/95, effective 12/13/95]
[Filed 2/17/00, Notice 12/15/99—published 3/8/00, effective 9/1/00]
[Filed 7/24/03, Notice 5/14/03—published 8/20/03, effective 9/24/03]
[Filed 10/20/05, Notice 8/3/05—published 11/9/05, effective 12/14/05]
[Filed 5/3/07, Notice 2/14/07—published 5/23/07, effective 6/27/07]
[Filed ARC 9749B (Notice ARC 9569B, IAB 6/29/11), IAB 9/21/11, effective 10/26/11]
[Filed ARC 3794C (Notice ARC 3653C, IAB 2/28/18), IAB 5/9/18, effective 6/13/18]
[Filed ARC 5571C (Notice ARC 5430C, IAB 2/10/21), IAB 4/21/21, effective 5/26/21]

CHAPTER 4
RULES OF PROFESSIONAL CONDUCT AND DISCIPLINE PROCEDURES

[Prior to 3/9/88, see Landscape Architectural Examiners Board[540] Ch 4]

193D—4.1(544B,17A) Rules of conduct. Failure by a licensee to adhere to the provisions of Iowa Code chapters 272C and 544B and rules implementing either chapter shall be grounds for disciplinary action.

4.1(1) *Definitions.* The following definition applies as used in Iowa Code chapter 544B and this chapter, unless the context otherwise requires.

"Official copy" means technical submission for purposes of required approval.

4.1(2) *Competence.*

a. When practicing landscape architecture, a professional landscape architect shall act with reasonable care and competence, and shall apply the technical knowledge and skill which is ordinarily applied by a landscape architect of good standing practicing in the same locality.

b. When designing a project, a professional landscape architect shall take into account all applicable state and municipal building laws and regulations. While professional landscape architects may rely on the advice of other professionals (e.g., attorneys, architects, engineers and other qualified persons) as to the intent and meaning of the regulations, once such advice is obtained, a landscape architect shall not knowingly design a project in violation of these laws and regulations.

c. A professional landscape architect shall undertake to perform professional services only when the professional landscape architect together with those whom the professional landscape architect may engage as consultants are qualified by education, training and experience in the specific technical areas involved.

d. No person shall be permitted to practice landscape architecture if, in the board's judgment upon receipt of medical testimony or evidence, the person's professional competence is substantially impaired by physical or mental disabilities or substance abuse.

4.1(3) *Conflict of interest.*

a. A professional landscape architect shall not accept compensation for services from more than one party on a project unless the circumstances are fully disclosed and agreed to (such disclosures and agreement to be in writing) by all interested parties.

b. If a professional landscape architect has any business association or direct or indirect financial interest which is substantial enough to influence judgment in connection with the professional landscape architect's performance of professional services, the professional landscape architect shall fully disclose, in writing, to the client or employer the nature of the business association or financial interest. If the client or employer objects to the association or financial interest, the professional landscape architect shall either terminate such association or interest or offer to give up the commission or employment.

c. A professional landscape architect shall not solicit or accept compensation from material or equipment suppliers in return for specifying or endorsing the products.

d. When acting as the interpreter of building contract documents and the judge of contract performance, a professional landscape architect shall render decisions impartially, favoring neither party to the contract.

4.1(4) *Full disclosure.*

a. A professional landscape architect making public statements on landscape architectural questions shall disclose when compensation is being received for making the statements.

b. A professional landscape architect shall accurately represent to a prospective or existing client or employer the professional landscape architect's qualifications and the scope of the professional landscape architect's responsibility in connection with work for which the professional landscape architect is claiming credit.

c. If, in the course of work on a project, a professional landscape architect becomes aware of an action taken by the employer or client against the professional landscape architect's advice which violates applicable state or municipal building laws and regulations and which will, in the professional landscape architect's judgment, adversely affect the safety to the public of the finished project, the professional landscape architect shall:

(1) Report the decision to the local building inspector or other public official charged with enforcement of the applicable state or municipal building laws and regulations,

(2) Refuse to consent to the decision, and

(3) In circumstances when the professional landscape architect reasonably believes that other actions will be taken, notwithstanding the landscape architect's objection, terminate the professional landscape architect's services with reference to the project. In the case of a termination in accordance with this clause, the professional landscape architect shall have no liability to the professional landscape architect's client or employer on account of such termination.

d. A professional landscape architect shall not deliberately make a materially false statement or deliberately fail to disclose a material fact requested in connection with application for licensure or renewal of license.

e. A professional landscape architect shall not assist in the application for licensure of a person known by the professional landscape architect to be unqualified with respect to education, training, experience or character.

f. A professional landscape architect possessing knowledge of a violation of these rules by another professional landscape architect shall report the knowledge to the board.

4.1(5) *Compliance with laws.*

a. A professional landscape architect shall not, in the conduct of landscape architectural practice, knowingly violate any state or federal criminal law.

b. A professional landscape architect shall neither offer nor make any payment to a government official (whether elected or appointed) with the intent of influencing the official's judgment in connection with a prospective or existing project in which the professional landscape architect is interested.

c. A professional landscape architect shall comply with the licensure laws and regulations governing the landscape architect's professional practice in any United States jurisdiction.

4.1(6) *Professional conduct.*

a. Each office maintained for the preparation of drawings, specifications, reports or other professional work shall have a professional landscape architect regularly employed in or assigned to that office who has responsible control of such work.

b. A professional landscape architect shall not sign or seal drawings, specifications, reports or other professional work for which the landscape architect does not have direct professional knowledge and direct supervisory control; provided, however, that in the case of the portions of professional work prepared by the landscape architect's consultants, licensed under this or another professional licensure law of this jurisdiction, the professional landscape architect may sign or seal that portion of the professional work if the landscape architect has reviewed that portion, has coordinated its preparation and intends to be responsible for its adequacy.

c. A professional landscape architect shall neither offer nor make any gifts to any public official with the intent of influencing the official's judgment in connection with a project in which the professional landscape architect is interested. Nothing in this rule shall prohibit a professional landscape architect from providing landscape architect services as a charitable contribution.

d. A professional landscape architect shall not engage in conduct involving fraud or wanton disregard of the rights of others.

4.1(7) *Seal and certificate of responsibility.*

a. Each professional landscape architect shall procure a seal with which to identify all technical submissions issued by the professional landscape architect for use in Iowa as provided in Iowa Code section 544B.12.

b. Description of seal. The diameter of the outside circle shall be approximately 1¾ inches. The seal shall include the name of the professional landscape architect and the words "Professional Landscape Architect, State of Iowa." The professional landscape architect's Iowa license number shall be included. The seal shall substantially conform to the sample shown below:

c. A legible rubber stamp, an electronic image or other facsimile of the seal may be used.

d. Each technical submission to a client or any public agency, hereinafter referred to as the official copy, shall contain an information block on its first page or on an attached cover sheet with application of a seal by the professional landscape architect in responsible charge and an information block with application of a seal by each professional consultant contributing to the technical submission. The seal and original signature shall be applied only to a final technical submission. Each official copy of a technical submission shall be stapled, bound or otherwise attached together so as to clearly establish the complete extent of the technical submission. Each information block shall display the seal of the individual responsible for that portion of the technical submission. The area of responsibility for each sealing professional shall be designated in the area provided in the information block, so that responsibility for the entire technical submission is clearly established by the combination of the stated seal responsibilities. The information block shall substantially conform to the sample shown below:

SEAL	I hereby certify that the portion of this technical submission described below was prepared by me or under my direct supervision and responsible charge. I am a duly licensed professional landscape architect under the laws of the state of Iowa.
	_____ Printed or typed name or secure electronic signature
	_____ Signature
	_____ Pages or sheets covered by this seal:
License Expires:	_____
	_____

e. The information requested in each information block must be typed or legibly printed in permanent ink or digital signature as defined in or governed by Iowa Code chapter 554D on each official copy. An electronic signature as defined in or governed by Iowa Code chapter 554D meets the signature requirements of this rule if it is protected by a security procedure, as defined in Iowa Code section 554D.103(14), such as digital signature technology. It is the licensee's responsibility to ensure, prior to affixing an electronic signature to a landscape architecture document, that security procedures are adequate to (1) verify that the signature is that of a specific person and (2) detect any changes that may be made or attempted after the signature of the specific person is affixed. The seal implies responsibility for the entire technical submission unless the area of responsibility is clearly identified in the information accompanying the seal.

f. It shall be the responsibility of the professional landscape architect who signed the original submission to forward copies of all changes and amendments to the technical submission, which shall

become a part of the official copy of the technical submission, to the public official charged with the enforcement of the state, county or municipal building code.

g. A professional landscape architect is responsible for the custody and proper use of the seal. Improper use of the seal shall be grounds for disciplinary action.

h. The seal appearing on any technical submission shall be prima facie evidence that said technical submission was prepared by or under the responsible control of the individual named on that seal.

4.1(8) *Communications.* A professional landscape architect shall, when requested, respond to communications from the board within 30 days of the mailing of such communication by certified mail. Failure to respond to such communication may be grounds for disciplinary action against the professional landscape architect.

[**ARC 3097C**, IAB 6/7/17, effective 7/12/17; **ARC 5571C**, IAB 4/21/21, effective 5/26/21]

193D—4.2(544B,17A) Receipt of complaints. The board shall receive and review all complaints which the board reasonably believes indicate that a licensee may have committed an act that is cause for disciplinary action.

4.2(1) *Complaints.* Any person may file a complaint with the board charging that a licensee may have committed an act that is in violation of applicable law or rules. The complaint shall be written and signed by the complainant and accompanied with substantial evidence indicating when, where, and how the licensee committed the violation. All complaints filed with the board shall be privileged and held confidential pursuant to Iowa Code section 272C.6(4) by all board members, peer review committee members and staff. A person filing a complaint shall receive immunities in accordance with Iowa Code section 272C.8.

4.2(2) *Board-instigated complaints.* Upon presentation of evidence by a board member, the board's staff, or other state agency, the board may determine that a complaint should be opened and an investigation begun to determine if a licensee may have committed an act that is in violation of applicable law or rules.

[**ARC 3097C**, IAB 6/7/17, effective 7/12/17]

193D—4.3(544B,17A) Peer review committee. At any point during the complaint procedure or the investigatory procedure and prior to determining whether probable cause exists that a violation has occurred, the board may appoint a peer review committee to assist the board in reaching its decision by conducting an investigation(s) of the complaint.

4.3(1) *Makeup of the peer review committee.* The committee shall consist of one or more professional landscape architects who are selected for their knowledge and experience in the particular aspect of landscape architecture involved in the complaint. The following are ineligible for membership:

a. Members of the board.

b. Close relatives of the alleged violator(s) or complainant.

c. Individuals employed by the same firm or governmental unit as the alleged violator or complainant.

4.3(2) *Authority.* The committee's investigation shall be limited to interviewing of complainants, the alleged violator, individuals with knowledge of the alleged violation, and individuals with knowledge of the alleged violator's reputation in the community. The committee may not hire legal counsel, investigators, secretarial help or any other assistants without written authorization from the board.

4.3(3) *Compensation.* Committee members may receive per diem compensation equal to that received by board members for performing board duties. Committee members may be paid reasonable and necessary expenses that are incurred for travel, meals and lodging while performing committee duties within a budget limitation established by the board.

193D—4.4(544B,272C) Investigation report of complaints.

4.4(1) *Board consideration of report to determine further action.* Upon completion of the investigation, the investigator(s) shall prepare for the board's consideration a report containing the

position or defense of the licensee so the board may determine what further action is necessary. The board may:

a. Order the matter be further investigated.

b. Allow the licensee who is the subject of the complaint an opportunity to appear before the designated discipline committee for an informal discussion regarding the circumstances of the alleged violation.

c. Determine there is no probable cause to believe that a violation has occurred and close the case.

d. Determine there is probable cause to believe that a violation has occurred.

4.4(2) *Informal discussion.*

a. An informal discussion is intended to provide a licensee an opportunity to share the licensee's account of a complaint in an informal setting before the board determines whether probable cause exists to initiate a disciplinary proceeding. A licensee is not required to attend an informal discussion. Because disciplinary investigations are confidential, the licensee may not bring other persons to an informal discussion, but licensees may be represented by legal counsel.

b. Unless disqualification is waived by the licensee, board members or staff who personally investigate a disciplinary complaint are disqualified from making decisions or assisting the decision makers at a later formal hearing. Because board members generally rely upon investigators, peer review committees, or expert consultants to conduct investigations, the issue rarely arises. An informal discussion, however, is a form of investigation because it is conducted in a question-and-answer format. In order to preserve the ability of all board members to participate in board decision making and to receive the advice of staff, a licensee who desires to attend an informal discussion must therefore waive the right to seek disqualification of a board member or staff based solely on the board member's or staff's participation in an informal discussion. A licensee would not waive the right to seek disqualification on any other ground. By electing to attend an informal discussion, a licensee accordingly agrees that participating board members or staff are not disqualified from acting as a presiding officer in a later contested case proceeding or from advising the decision maker.

c. Because an informal discussion constitutes a part of the board's investigation of a pending disciplinary case, the facts discussed at the informal discussion may be considered by the board in the event the matter proceeds to a contested case hearing and those facts are independently introduced into evidence.

[**ARC 3097C**, IAB 6/7/17, effective 7/12/17]

193D—4.5(544B,272C) Dispensation. The board shall make findings of fact and conclusions of law and may take one or more of the following actions:

1. Dismiss the charges.
2. Revoke the professional landscape architect's license.
3. Suspend the professional landscape architect's license as authorized by law.
4. Impose civil penalties, the amount of which shall be set at the discretion of the board but shall not exceed $1000. Civil penalties may be imposed for any of the disciplinary violations of Iowa Code section 544B.15 and Iowa Code sections 272C.9(2), 272C.9(3), and 272C.10, and these rules or for repeated offenses.
5. Impose a period of probation, either with or without conditions.
6. Require reexamination, using one or more parts of the examination given to professional landscape architectural licensee candidates.
7. Require additional professional education, reeducation, or continuing education.
8. Issue a citation or warning.
9. Issue a consent order.
10. Accept voluntary surrender of license. Voluntary surrender of a license is considered a disciplinary action.

[**ARC 3097C**, IAB 6/7/17, effective 7/12/17]

These rules are intended to implement Iowa Code chapters 17A, 544B and 272C.

[Filed 11/9/78, Notice 10/4/78—published 11/29/78, effective 1/3/79]

[Filed 2/18/88, Notice 12/16/87—published 3/9/88, effective 4/13/88]
[Filed without Notice 2/18/88—published 3/9/88, effective 4/13/88]
[Filed 10/16/95, Notice 8/2/95—published 11/8/95, effective 12/13/95]
[Filed 4/5/96, Notice 1/3/96—published 4/24/96, effective 5/29/96]
[Filed 5/19/97, Notice 4/9/97—published 6/18/97, effective 7/23/97]
[Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]
[Filed 7/24/03, Notice 5/14/03—published 8/20/03, effective 9/24/03]
[Filed ARC 3097C (Notice ARC 2941C, IAB 2/15/17), IAB 6/7/17, effective 7/12/17]
[Filed ARC 5571C (Notice ARC 5430C, IAB 2/10/21), IAB 4/21/21, effective 5/26/21]

INTERIOR DESIGN EXAMINING BOARD[193G]

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CHAPTER 1
DESCRIPTION OF ORGANIZATION

193G—1.1(544C,17A) Definitions. As used in these rules, the following definitions of words and terms shall apply:

"Board" means the interior design examining board.

"Bureau" means the professional licensing and regulation bureau of the division of banking of the department of commerce.

"Interior design" means the design of interior spaces including the preparation of documents relating to space planning, finish materials, furnishings, fixtures, and equipment, and the preparation of documents relating to the interior construction that does not affect the mechanical or structural systems of a building. "Interior design" does not include services that constitute the practice of architecture or professional engineering.

"NCIDQ" means the National Council for Interior Design Qualification.

"Registered interior designer" means a person who obtains a registration and engages in the practice of interior design under the authority of Iowa Code chapter 544C.

[**ARC 3024C**, IAB 4/12/17, effective 5/17/17]

193G—1.2(544C) Description.

1.2(1) The purpose of the board is to administer and enforce the provisions of Iowa Code chapter 544C, including issuing registration certificates and registration renewals; investigating violations and infractions of the interior design law; disciplining registrants; and seeking injunctive relief against unregistered persons who violate Iowa Code chapter 544C. To this end, the board has promulgated these rules to clarify the board's intent and procedures.

1.2(2) The primary mission of the board is to protect the public interest. All board rules shall be construed as fostering the guiding policies and principles described in Iowa Code chapter 544C. The board and its registrants shall strive at all times to protect the public interest by promoting the highest standards of interior design.

1.2(3) All official communications, including submissions and requests, should be addressed to the board at 200 East Grand Avenue, Suite 350, Des Moines, Iowa 50309.

[**ARC 3024C**, IAB 4/12/17, effective 5/17/17]

193G—1.3(544C,17A) Organization and duties. The board shall consist of seven members: five members who are interior designers registered under Iowa Code chapter 544C and two members who are not interior designers and who represent the general public. The board shall elect annually from its members a chairperson and a vice-chairperson. A quorum of the board shall be four members, and all final motions and actions must receive a majority vote. The board shall enforce the provisions of Iowa Code chapter 544C and shall maintain a roster of all registered interior designers in the state.

1.3(1) *Chairperson.* The chairperson shall, when present, preside at the meetings, appoint committees, and exercise all duties and powers of the chairperson.

1.3(2) *Vice-chairperson.* The vice-chairperson shall, in the absence or incapacity of the chairperson, exercise the duties and powers of the chairperson.

[**ARC 3024C**, IAB 4/12/17, effective 5/17/17; **ARC 5568C**, IAB 4/21/21, effective 5/26/21]

193G—1.4(544C,17A) Meetings. Calls for meetings shall be issued in accordance with Iowa Code section 21.4. The annual meeting of the board shall be the first meeting scheduled after April 30. At this meeting, the chairperson and vice-chairperson shall be elected. The chairperson and vice-chairperson shall serve one-year terms. The newly elected officers shall assume the duties of their respective offices at the conclusion of the meeting at which they are elected.

[**ARC 3024C**, IAB 4/12/17, effective 5/17/17]

193G—1.5(544C) Other meetings. In addition to the annual meeting and any subsequent meetings, the time and place of which may be fixed by vote of the board, a meeting may be called by the chairperson of the board or by joint call of a majority of its members.
[**ARC 3024C**, IAB 4/12/17, effective 5/17/17]

193G—1.6(544C,17A) Order of business. The chairperson or board administrator shall prepare an agenda listing all matters to be discussed at a meeting. A copy of the agenda shall be available to each member of the board.
[**ARC 3024C**, IAB 4/12/17, effective 5/17/17]

193G—1.7(544C) Administrative committees.

1.7(1) The board chairperson may appoint administrative committees of not less than two nor more than three members who shall be members of the board for the purpose of making recommendations on matters specified by the board.

1.7(2) An administrative committee may be appointed to make recommendations to the board concerning the board's responsibilities in regard to examinations, registrations, continuing education, professional conduct, discipline and other board matters.
[**ARC 3024C**, IAB 4/12/17, effective 5/17/17]

193G—1.8(544C,17A) Waivers.

1.8(1) Persons who wish to seek waivers from board rules should consult the uniform rules for the bureau at 193—Chapter 5.

1.8(2) In addition to the provisions of 193—Chapter 5, the following shall apply for interim rulings:

a. The board chairperson, or the vice-chairperson if the chairperson is not available, may rule on a petition for waiver when it would not be timely to wait for the next regularly scheduled board meeting for a ruling from the board.

b. The board administrator, upon receipt of a petition that meets all applicable criteria established in 193—Chapter 5, shall present the request to the board chairperson or vice-chairperson along with all pertinent information regarding established precedent for granting or denying such requests.

c. The chairperson or vice-chairperson shall reserve the right to hold an electronic meeting of the board, pursuant to Iowa Code section 21.8, when prior board precedent does not clearly resolve the request, input of the board is deemed required, and the practical result of waiting until the next regularly scheduled meeting would be a denial of the request due to timing issues.

d. A waiver report shall be placed on the agenda of the next regularly scheduled board meeting and recorded in the minutes of the meeting.

e. Subrule 1.8(2) on interim rulings does not apply if the waiver was filed in a contested case.
[**ARC 3024C**, IAB 4/12/17, effective 5/17/17; **ARC 5568C**, IAB 4/21/21, effective 5/26/21]

These rules are intended to implement Iowa Code chapters 17A, 21, 22, 252J, 261, 272C and 544C.

[Filed 9/21/06, Notice 8/16/06—published 10/11/06, effective 11/15/06]
[Filed ARC 3024C (Notice ARC 2797C, IAB 11/9/16), IAB 4/12/17, effective 5/17/17]
[Filed ARC 5568C (Notice ARC 5360C, IAB 12/30/20), IAB 4/21/21, effective 5/26/21]

CHAPTER 2
REGISTRATION

193G—2.1(544C) Certificate of registration. All applicants for registration must complete a board-approved application and satisfy the interior design education, practical training, examination, and fee requirements established by this rule.

2.1(1) *Education and practical training.* An applicant for registration shall meet or exceed one of the following interior design education/practical training requirements:

a. A baccalaureate degree from a four-year interior design program or a substantially equivalent program, and at least two years of acceptable full-time work experience in the performance of interior design services.

b. A certificate, degree or diploma from a three-year interior design program or a substantially equivalent program, and at least three years of acceptable full-time work experience in the performance of interior design services.

c. A certificate, degree or diploma from a two-year interior design program or a substantially equivalent program, and at least four years of acceptable full-time work experience in the performance of interior design services.

2.1(2) *Examination.* An applicant for registration shall verify successful completion of the NCIDQ examination, or its equivalent.

2.1(3) *Reciprocity.* The board may also grant registration by reciprocity. An applicant applying to the board for registration by reciprocity shall furnish satisfactory evidence that the applicant meets both of the following requirements:

a. Holds a valid registration or license issued by another registration authority recognized by the board where the qualifications for registration or licensure were substantially equivalent to those prescribed in this state on the date of original registration or licensure with the other registration authority. The applicant must obtain a letter of good standing or complete a form stating that the applicant is in good standing from all jurisdictional licensing boards with which the applicant holds an active registration. The letter or form must bear the seal of the jurisdictional licensing board.

b. Holds a current certificate number issued by the NCIDQ.

[**ARC 9480B**, IAB 5/4/11, effective 6/8/11; **ARC 1431C**, IAB 4/30/14, effective 6/4/14; **ARC 3025C**, IAB 4/12/17, effective 5/17/17]

193G—2.2(17A,272C,544C) Renewal of certificates of registration. Certificates of registration expire biennially on June 30. Certificates issued to registrants with last names beginning with A through K shall expire on June 30 of even-numbered years and certificates issued to registrants with last names beginning with L through Z shall expire on June 30 of odd-numbered years. However, a registration issued on or after May 1 but before June 30 will not expire until June 30 of the next renewal. For example, a license issued on May 17, 2020, would not expire until June 30, 2022. In order to maintain authorization to practice in Iowa, a registrant is required to renew the certificate of registration prior to June 1 of the year of expiration. However, the board will accept an otherwise sufficient renewal application which is untimely if the board receives the application and late fee of $25 within 30 days prior to the date of expiration. A registrant who fails to renew by the expiration date is not authorized to use the title of registered interior designer in Iowa until the certificate is reinstated as provided in rule 193G—2.3(544C,17A).

2.2(1) It is the policy of the board to send to each registrant at the registrant's last-known address a notice of the pending expiration date. Failure to receive this notice does not relieve the registrant of the responsibility to timely renew the certificate and pay the renewal fee.

2.2(2) If grounds exist to deny a timely and sufficient application to renew, the board shall send written notification to the applicant by restricted certified mail, return receipt requested. Grounds may exist to deny an application to renew if, for instance, the registrant failed to satisfy the continuing education provisions required as a condition for registration. If the basis for denial is a pending disciplinary action or disciplinary investigation that is reasonably expected to culminate in disciplinary action, the board shall proceed as provided in 193—Chapter 7. If the basis for denial is not related to a

pending or imminent disciplinary action, the applicant may contest the board's decision as provided in 193—subrule 7.40(1).

2.2(3) When a registrant appears to be in violation of mandatory continuing education requirements, the board may, in lieu of proceeding to a contested case hearing on the denial of a renewal application as provided in rule 193—7.40(546,272C), and after or in lieu of giving the licensee an opportunity to come into compliance under rule 193G—3.4(17A,544C), offer a registrant the opportunity to sign a consent order. While the terms of the consent order will be tailored to the specific circumstances at issue, the consent order will typically impose a penalty between $50 and $250, depending on the severity of the violation; establish deadlines for compliance; and require that the registrant complete hours equal to double the deficiency in addition to the required hours; and may impose additional educational requirements on the registrant. Any additional hours of continuing education completed in compliance with the consent order cannot again be claimed at the next renewal. The board will address subsequent offenses on a case-by-case basis. A registrant is free to accept or reject the offer. If the offer of settlement is accepted, the registrant will be issued a renewed certificate of registration and will be subject to disciplinary action if the terms of the consent order are not fulfilled. If the offer of settlement is rejected, the matter will be set for hearing, if timely requested by the registrant pursuant to 193—subrule 7.40(1).

2.2(4) A registrant who continues to use the title of registered interior designer in Iowa after the registration has expired may be subject to disciplinary action. Such unauthorized activity may also be grounds to deny a registrant's application for reinstatement.

2.2(5) Registrants shall notify the board within 30 days of any change of address or business.

[**ARC 3025C**, IAB 4/12/17, effective 5/17/17; **ARC 4011C**, IAB 9/26/18, effective 10/31/18; **ARC 5568C**, IAB 4/21/21, effective 5/26/21]

193G—2.3(544C,17A) Reinstatement of certificates of registration. An individual may reinstate a lapsed certificate of registration to active registration by doing the following:

1. Paying the current renewal fee;
2. Paying the reinstatement fee of $100;
3. Providing a written statement outlining the professional activities that the applicant performed in Iowa during the period of nonregistration. The statement shall include a list of all projects with which the applicant had involvement and shall explain the service provided by the applicant; and
4. Submitting documented evidence of completion of 10 continuing education hours, which should have been reported on the June 30 renewal date on which the applicant failed to renew, and 5 continuing education hours for each year or portion of a year of expired registration up to a maximum of 20 continuing education hours. All continuing education hours must be completed in health, safety, and welfare subjects; be acquired in structured educational activities; and be in compliance with requirements in 193G—Chapter 3. The continuing education hours used for reinstatement may not be used again at the next renewal and shall not have been earned more than four years prior to the date of the application to reinstate.

[**ARC 3025C**, IAB 4/12/17, effective 5/17/17; **ARC 4011C**, IAB 9/26/18, effective 10/31/18]

193G—2.4(544C) Applications.

2.4(1) The interior designer is responsible for verifying the accuracy of the information submitted on applications regardless of how the application is submitted or by whom it is submitted. For instance, if the office manager of an interior designer's firm submits an application for renewal on behalf of the interior designer and that information is incorrect, the interior designer will be held responsible for the information and may be subject to disciplinary action.

2.4(2) Persons applying for initial, renewal, or reciprocal registration shall submit an application on a form provided by the board and shall pay a registration fee of $275. Certificates issued to registrants with last names beginning with A through K shall expire on June 30 of even-numbered years, and certificates issued to registrants with last names beginning with L through Z shall expire on June 30 of odd-numbered years. An applicant applying for initial, reciprocal, or reinstatement registration within 12 months from the applicant's required renewal date shall pay half of the required fee. An applicant applying for initial,

reciprocal, or reinstatement registration more than 12 months from the applicant's required renewal date shall pay the full registration fee.

2.4(3) Fee schedule.

Type of fee	Amount
Initial registration fee	$275
Reciprocal registration fee	$275
Formal wall certificate	$50
Renewal	$275
Late renewal fee	$25
Reinstatement of lapsed registration	$100
License predetermination fee	$25

All fees are nonrefundable.

[**ARC 3025C**, IAB 4/12/17, effective 5/17/17; **ARC 4011C**, IAB 9/26/18, effective 10/31/18; **ARC 5568C**, IAB 4/21/21, effective 5/26/21]

These rules are intended to implement Iowa Code chapter 544C.

[Filed 9/21/06, Notice 8/16/06—published 10/11/06, effective 11/15/06]
[Filed ARC 9480B (Notice ARC 9347B, IAB 2/9/11), IAB 5/4/11, effective 6/8/11]
[Filed ARC 1431C (Notice ARC 1298C, IAB 2/5/14), IAB 4/30/14, effective 6/4/14]
[Filed ARC 3025C (Notice ARC 2796C, IAB 11/9/16), IAB 4/12/17, effective 5/17/17]
[Filed ARC 4011C (Notice ARC 3841C, IAB 6/20/18), IAB 9/26/18, effective 10/31/18]
[Filed ARC 5568C (Notice ARC 5360C, IAB 12/30/20), IAB 4/21/21, effective 5/26/21]

CHAPTER 3
CONTINUING EDUCATION

193G—3.1(17A,272C,544C) Definitions. As used in these rules, the following definitions shall apply:

"Contact hour" means one 60-minute clock hour of educational activity of which at least 50 minutes is devoted to instructional content. Where other units of credit are stated for an educational experience (e.g., "CEUs"), they shall be credited in terms of actual contact hours.

"Distance education" means any education process based on the geographical separation of student and instructor.

"Health, safety and welfare subjects" or *"HSW subjects"* means subjects that relate to the planning and designing of spaces and elements to minimize the risk of injury to persons or property. Such subjects include compliance with applicable building and safety codes, the planning and designing of spaces and elements that optimize over time the physically and mentally healthful use of those spaces and elements, and the planning and designing of spaces and elements that are durable, maintainable, cost-effective, environmentally conscientious and conservative of resources; that function properly in all relevant respects; that encourage access, functional independence and use by all relevant populations; that encourage user satisfaction, including aesthetic appeal; that promote a sense of user confidence and peace of mind; that integrate effectively with the surrounding environment; and that, in other similar ways, enhance the health, safety and well-being of the public.

"Structured activity" means a method of interior design-related learning led by a qualified individual and conducted or sponsored by a professional organization, technical organization, industry source or accredited college or university taught in person or through distance education.

[**ARC 3025C**, IAB 4/12/17, effective 5/17/17; **ARC 4011C**, IAB 9/26/18, effective 10/31/18]

193G—3.2(17A,272C,544C) Continuing education requirements.

3.2(1) Hours required. Each registrant shall complete a minimum of 10 contact hours in acceptable health, safety and welfare subjects for continuing education. All hours shall be in structured activity programs and must be acquired during the renewal period. Carryover hours from a previous renewal are not allowed.

3.2(2) Continuing education hours need not be acquired in this state, provided that the registrant can demonstrate that the program meets the definition of structured activity as defined in this chapter.

3.2(3) A registered interior designer who holds a registration in Iowa for less than 12 months from the date of initial registration shall not be required to report continuing education at the first registration renewal. A registered interior designer who holds a registration in Iowa for 12 months or more, but less than 24 months from the date of initial registration, shall be required to report 5 contact hours of HSW subjects in a structured activity, earned in the preceding 12 months, at the first registration renewal.

3.2(4) Sources of continuing education. Credit may not be claimed for any activity required as part of a registered interior designer's routine professional responsibilities. Structured activities include:

a. Completion of any program or course sponsored by a professional or technical organization or industry source.

b. Instruction of a course, seminar, lecture, presentation, workshop or similar formal educational program. Credit shall be allowed at a maximum of 3 preparation hours for each class hour spent for actual presentation, valid for the initial presentation only. College and university faculty may not claim contact or preparation credit for teaching regular curriculum courses.

c. Research that is formally presented to the profession or public. Credit shall be allowed at a maximum of 4 contact hours per reporting period and shall be valid for the initial presentation only.

d. Completion of college or university credit courses dealing with interior design-related subjects. Each semester hour shall equal 15 contact hours. A quarter hour shall equal 10 contact hours.

3.2(5) Approved continuing education. The board does not preapprove continuing education activities or courses; however, acceptable HSW subjects that enhance the health, safety, and well-being of the public include the following topics:

a. Life safety, ADA, and other building and safety codes, standards and administrative regulations governing the practice of interior design.

b. Safety and security.

c. Physical and mental health issues.

d. Topics that relate to human physiology, perception, anthropometrics, ergonomics, psychology, sociology, ecology and cultural factors.

e. Energy efficiency.

f. Environmental issues.

g. Accessibility and universal design.

h. Materials and methods.

i. Building systems.

j. Statutes and rules relating to interior design regulation.

k. Professional ethics.

l. Legal aspects of professional practice.

m. Construction documents and services.

n. Project administration.

[**ARC 3025C**, IAB 4/12/17, effective 5/17/17; **ARC 4011C**, IAB 9/26/18, effective 10/31/18; **ARC 5568C**, IAB 4/21/21, effective 5/26/21]

193G—3.3(17A,272C,544C) Controls and reporting.

3.3(1) An applicant for registration renewal may be requested to provide, in such manner and at such time as prescribed by the board, a signed statement, under penalty of perjury, on forms provided by the board, setting forth the continuing education in which the registrant has participated.

a. When an applicant is requested to provide a listing of the continuing education completed for structured activities, the information shall include:

(1) School, firm or organization conducting the course.

(2) Location of course.

(3) Title of course or description of content.

(4) Principal instructor.

(5) Dates attended.

(6) Hours claimed.

b. Reserved.

3.3(2) The board may verify information submitted by registrants. If an application for renewal is not approved, the applicant will be so notified and may be granted a period of time by the board in which to correct the deficiencies noted. Any discrepancy between the number of CEUs reported and the number of CEUs actually supported by documentation may result in a disciplinary review. If, after the disciplinary review, the board disallows any CEUs, or the registrant has failed to complete the required CEUs, the interior designer shall have 60 days from notification by the board to either provide further evidence of having completed the CEUs disallowed or remedy the discrepancy by completing the required number of CEUs (provided that such CEUs shall not again be used for the next renewal). An extension of time may be granted on an individual basis and must be requested by the registrant within 30 days of notification by the board. If the registrant fails to comply with the requirements of this subrule, the registrant may be subject to disciplinary action. If the board finds, after proper notice and hearing, that the interior designer willfully disregarded these requirements or falsified documentation of required CEUs, the interior designer may be subject to disciplinary action.

3.3(3) Primary responsibility for documenting the requirements rests with the registrant, and evidence to support fulfillment of those requirements must be retained for a period of five years subsequent to submission of the report claiming the credit. Satisfaction of the requirements, including retention of attendance records and written outlines, may be accomplished as follows:

a. For courses taken for scholastic credit at accredited universities and colleges, evidence of satisfactory completion of the course is sufficient; for noncredit courses taken, a statement of the hours of attendance, signed by the instructor, must be obtained by the registrant.

b. For correspondence courses and formal independent study courses, written evidence or a certificate of completion from the sponsor or course provider shall be obtained by the registrant.

c. In all other instances, the registrant must maintain a record of the information listed in paragraph 3.3(1)*"a"* and a copy of the course outline prepared by the course sponsor.

3.3(4) The registrant is responsible for maintaining verification of claimed credit for a minimum of five years subsequent to submission of the report to the board office. Acceptable verification may be presented with a course completion certificate or a college transcript.
[**ARC 3025C**, IAB 4/12/17, effective 5/17/17; **ARC 5568C**, IAB 4/21/21, effective 5/26/21]

193G—3.4(17A,544C) Hearings. If the board disallows any continuing education hours, the registrant shall have 60 days from notice of such disallowance to either provide further evidence of having completed the continuing education hours disallowed or remedy the disallowance by completing the required number of continuing education hours (provided that such continuing education hours shall not again be used for the next renewal). In the event of denial, in whole or in part, of any application for approval of credit for continuing education activity, the registrant shall have the right, within 20 days after the date of notification of the denial by mail, to request a hearing by the board. The hearing shall be held within 60 days after receipt of the request for the hearing. The decision of the board shall be final. If the board finds, after proper notice and hearing, that the registrant willfully disregarded the continuing education requirements set forth in this chapter or falsified documentation of the required continuing education hours, the registrant may be subject to disciplinary action.
[**ARC 3025C**, IAB 4/12/17, effective 5/17/17]

193G—3.5(17A,544C) Exemptions.

3.5(1) As provided in Iowa Code section 272C.2(4), a registered interior designer shall be deemed to have complied with the continuing education requirements set forth in this chapter if during the continuing education compliance period the registrant:

a. Has served honorably on active duty in the military service; or

b. Is a resident of another state or district having a continuing education requirement for registered interior design and has complied with all requirements of that state or district for practice therein; or

c. Is a government employee working as a registered interior designer outside the United States.

3.5(2) The board shall have authority to make exceptions for reasons of individual hardship, including health (certified by a medical doctor) or other good cause. See 193—Chapter 5.
[**ARC 3025C**, IAB 4/12/17, effective 5/17/17]

193G—3.6(17A,544C) Grounds for denial of registration renewal. Failure of a registrant to complete the continuing education requirements as set forth in this chapter, or failure to file a report of completed continuing education, or failure to submit a written request for waiver or exemption shall be grounds for the board to deny renewal of the registration.
[**ARC 3025C**, IAB 4/12/17, effective 5/17/17]

These rules are intended to implement Iowa Code chapter 544C.

[Filed 9/7/07, Notice 7/18/07—published 9/26/07, effective 10/31/07]
[Filed ARC 3025C (Notice ARC 2796C, IAB 11/9/16), IAB 4/12/17, effective 5/17/17]
[Filed ARC 4011C (Notice ARC 3841C, IAB 6/20/18), IAB 9/26/18, effective 10/31/18]
[Filed ARC 5568C (Notice ARC 5360C, IAB 12/30/20), IAB 4/21/21, effective 5/26/21]

CHAPTER 1
ORGANIZATION AND ADMINISTRATION
[Prior to 1/9/91, City Development Board[220] Ch 1]

263—1.1(368) Description. The primary function of the city development board is to supervise city development actions, including annexations, consolidations, discontinuances, incorporations and severances for the state of Iowa, pursuant to the provisions of Iowa Code chapter 368. The board shall receive annexation moratorium agreements filed by cities and accept involuntary petitions and voluntary applications for incorporation, consolidation, discontinuance and boundary adjustment of a city; review these submissions for compliance with statutory and rule requirements; and approve, deny, or dismiss or conduct or initiate further action on each submission. The board shall also accept and act upon petitions for rule making and declaratory orders, pursuant to Iowa Code sections 17A.7 and 17A.9. To this end, the board has adopted these rules, which shall be applicable to all proceedings and transactions of the board, to clarify the board's intent and applicable procedures.

This rule is intended to implement Iowa Code section 368.10.

263—1.2(368) Office of the board. All official communications, including submissions and requests, should be addressed to City Development Board, Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315.
[Editorial change: IAC Supplement 4/21/21]

263—1.3(368) Membership and quorum requirements. The board is made up of five members appointed by the governor pursuant to Iowa Code section 368.9. The board shall annually elect from its members a chairperson and vice-chairperson at the first regular meeting of the calendar year. A quorum of the board shall be three members, and a quorum must be present in order for the board to take action upon formal motions.

263—1.4(368) Meetings. The board shall conduct regular meetings at least every other month at the offices of the Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315, or at such other location as the board may designate.

The chairperson or the chairperson's designee shall prepare an agenda for each meeting listing matters to be addressed. Copies of the agenda shall be posted at the Iowa economic development authority at least 24 hours prior to each meeting and shall be made available to all interested persons upon request.

Meetings of the board shall be conducted and minutes maintained in compliance with Iowa Code chapter 21.
[Editorial change: IAC Supplement 4/21/21]

These rules are intended to implement Iowa Code sections 368.10 and 17A.3(1).

[Filed 8/16/73, amended 9/12/73, 11/13/74]
[Filed 10/29/75, Notice 7/14/75—published 11/17/75, effective 12/22/75]
[Filed 7/5/77, Notice 5/18/77—published 7/27/77, effective 8/31/77]
[Filed 2/16/78, Notice 1/11/78—published 3/8/78, effective 4/12/78]
[Filed emergency 3/2/79—published 3/21/79, effective 3/2/79]
[Filed 12/19/90, Notice 10/17/90—published 1/9/91, effective 2/13/91]
[Filed 11/20/02, Notice 7/10/02—published 12/11/02, effective 1/15/03]
[Editorial change: IAC Supplement 4/21/21]

CHAPTER 2
AGENCY PROCEDURE FOR RULE MAKING

The city development board hereby adopts the agency procedure for rule making segment of the Uniform Rules on Agency Procedure which are printed in the first volume of the Iowa Administrative Code, with the following amendments:

263—2.3(17A) Public rule-making docket.

2.3(2) *Anticipated rule making.* In lieu of the words "(commission, board, council, director)", insert "city development board".

263—2.4(17A) Notice of proposed rule making.

2.4(3) *Copies of notices.* In lieu of the words "(specify time period)", insert "one year".

263—2.5(17A) Public participation.

2.5(1) *Written comments.* In lieu of the words "(identify office and address)", insert "City Development Board, Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315".

2.5(5) *Accessibility.* In lieu of the words "(designate office and phone number)", insert "the city development board at (515)348-6200".
[Editorial change: IAC Supplement 4/21/21]

263—2.6(17A) Regulatory analysis.

2.6(2) *Mailing list.* In lieu of the words "(designate office)", insert "City Development Board, Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315".
[Editorial change: IAC Supplement 4/21/21]

263—2.11(17A) Concise statement of reasons.

2.11(1) *General.* In lieu of the words "(specify the office and address)", insert "City Development Board, Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315".
[Editorial change: IAC Supplement 4/21/21]

263—2.13(17A) Agency rule-making record.

2.13(2) *Contents.* In lieu of the words "(agency head)", insert "city development board".

These rules are intended to implement Iowa Code chapter 17A.

[Filed 11/20/02, Notice 7/10/02—published 12/11/02, effective 1/15/03]
[Editorial change: IAC Supplement 4/21/21]

CHAPTER 3
PETITIONS FOR RULE MAKING

The city development board hereby adopts, with the following exceptions and amendments, rules of the Governor's Task Force on Uniform Rules on Agency Procedure relating to petitions for rule making which are printed in the first volume of the Iowa Administrative Code.

263—3.1(17A) Petition for rule making. In lieu of the words "(designate office)", insert "City Development Board, Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315".

In lieu of the words "(AGENCY NAME)" as the caption of the petition form, insert "BEFORE THE CITY DEVELOPMENT BOARD".

[Editorial change: IAC Supplement 4/21/21]

263—3.3(17A) Inquiries. In lieu of the words "(designate official by full title and address)", insert "City Development Board, Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315".

[Editorial change: IAC Supplement 4/21/21]

These rules are intended to implement Iowa Code section 17A.7.

[Filed 11/20/02, Notice 7/10/02—published 12/11/02, effective 1/15/03]

[Editorial change: IAC Supplement 4/21/21]

CHAPTER 4
DECLARATORY ORDERS

The city development board hereby adopts the declaratory orders segment of the Uniform Rules on Agency Procedure which are printed in the first volume of the Iowa Administrative Code, with the following amendments:

263—4.1(17A) Petition for declaratory order. In lieu of the words "(designate agency)", insert "city development board". In lieu of the words "(designate office)", insert "City Development Board, Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315".

In lieu of the words "(AGENCY NAME)" as the caption on the petition form, insert "BEFORE THE CITY DEVELOPMENT BOARD".
[Editorial change: IAC Supplement 4/21/21]

263—4.2(17A) Notice of petition. In lieu of the words "___ days (15 or less)", insert "15 days".

263—4.3(17A) Intervention.

4.3(1) In lieu of the words "___ days", insert "15 days".

263—4.5(17A) Inquiries. In lieu of the words "(designate official by full title and address)", insert "City Development Board, Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315".
[Editorial change: IAC Supplement 4/21/21]

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

[Filed 11/20/02, Notice 7/10/02—published 12/11/02, effective 1/15/03]
[Editorial change: IAC Supplement 4/21/21]

CHAPTER 5
FAIR INFORMATION PRACTICES

[Prior to 1/9/91, City Development Board[220] Ch 6]
[Prior to 12/11/02, see 263—Ch 6]

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

263—5.1(17A,22) Definitions. As used in this chapter:

"Agency." In lieu of the words "(official or body issuing these rules)", insert "city development board".

263—5.3(17A,22) Requests for access to records.

5.3(1) *Location of record.* In lieu of the words "(insert agency head)", insert "city development board". In lieu of the words "(insert agency name and address)", insert "City Development Board, Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315".

5.3(2) *Office hours.* In lieu of the words "(insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)", insert "8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays".

5.3(7) *Fees.*

c. *Supervisory fee.* In lieu of the words "(specify time period)", insert "one-half hour".

[Editorial change: IAC Supplement 4/21/21]

263—5.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records. In lieu of the words "(designate office)", insert the words "City Development Board, Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315".

[Editorial change: IAC Supplement 4/21/21]

These rules are intended to implement Iowa Code chapter 22.

[Filed emergency 9/2/88—published 9/21/88, effective 9/2/88]
[Filed 12/19/90, Notice 10/17/90—published 1/9/91, effective 2/13/91]
[Filed 11/20/02, Notice 7/10/02—published 12/11/02, effective 1/15/03]
[Editorial change: IAC Supplement 4/21/21]

STATE PUBLIC DEFENDER[493]

Created within the Department of Inspections and Appeals[481] by Iowa Code section 13B.2

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CHAPTER 6
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493—6.1(13B,17A) Applicability. This chapter outlines a uniform process for the granting of waivers from rules adopted by the state public defender. The intent of this chapter is to allow persons to seek exceptions to the application of rules issued by the state public defender.
[**ARC 5574C**, IAB 4/21/21, effective 5/26/21]

493—6.2(13B,17A) Interpretive rules. This chapter shall not apply to rules that merely define the meaning of a statute or other provision of law or precedent if the state public defender does not possess delegated authority to bind the courts to any extent with its definition.

493—6.3(13B,17A) Compliance with statute. The state public defender shall not grant a petition for waiver from a rule unless a statute or other provision of law has delegated authority to the state public defender sufficient to justify that action and the waiver is consistent with the statute or other provision of law. No waiver may be granted from a requirement that is imposed by statute, unless the statute itself specifically authorizes that action. Any waiver must be consistent with statute.
[**ARC 5574C**, IAB 4/21/21, effective 5/26/21]

493—6.4(13B,17A) Criteria for waiver. At the sole discretion of the state public defender, the state public defender may issue an order, in response to a completed petition, granting a waiver from a rule adopted by the state public defender, in whole or in part, as applied to the circumstances of a specified person or a specific and narrowly drawn class of persons if the state public defender finds based on clear and convincing evidence that:

1. The application of the rule to the petitioner would pose an undue hardship on the person or class of persons for whom the waiver is requested;
2. The waiver from the requirements of a rule in the specific case would not prejudice the substantial legal rights of any person;
3. The provisions of a rule subject to a petition for a waiver are not specifically mandated by statute or another provision of law; and
4. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

[**ARC 5574C**, IAB 4/21/21, effective 5/26/21]

493—6.5(13B,17A) Filing of petition. A petition for a waiver must be submitted in writing to the State Public Defender, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0087. If the petition relates to a pending contested case, the petition shall also be filed in the contested case proceeding.
[**ARC 5574C**, IAB 4/21/21, effective 5/26/21]

493—6.6(13B,17A) Content of petition. A petition for waiver shall include the following information where applicable and known to the requester:

1. The name, address, and telephone number of the entity or person for whom a waiver is being requested and the case number of any related contested case.
2. A description and citation of the specific rule from which a waiver is requested.
3. The specific waiver requested, including the precise scope and operative period that the waiver will extend.
4. The relevant facts that the petitioner believes would justify a waiver. This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver.
5. A history of any prior contacts between the state public defender and the petitioner relating to the regulated activity, representation or other assigned function of the state public defender that would be affected by the proposed waiver, including a description of each regulated activity, representation or other assigned function of the state public defender, any notices of violation, contested case hearings,

or investigative reports relating to the regulated activity, representation or other assigned function of the state public defender within the last five years.

6. Any information known to the requester regarding the state public defender's treatment of similar cases.

7. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver.

8. The name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.

9. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

10. Signed releases of information authorizing persons with knowledge regarding the request to furnish the state public defender with information relevant to the waiver.

[**ARC 5574C**, IAB 4/21/21, effective 5/26/21]

493—6.7(13B,17A) Additional information. Prior to issuing an order granting or denying a waiver, the state public defender may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the state public defender may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the state public defender or state public defender's designee.

[**ARC 5574C**, IAB 4/21/21, effective 5/26/21]

493—6.8(13B,17A) Notice. The state public defender shall acknowledge a petition upon receipt. The state public defender shall ensure that, within 30 days of the receipt of the petition, notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law. In addition, the state public defender may give notice to other persons. To accomplish this notice provision, the state public defender may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the state public defender attesting that notice has been provided.

493—6.9(13B,17A) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver of a rule filed within a contested case and shall otherwise apply to agency proceedings for a waiver only when the state public defender so provides by rule or order or is required to do so by statute.

[**ARC 5574C**, IAB 4/21/21, effective 5/26/21]

493—6.10(13B,17A) Ruling. An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative period of the waiver if one is issued.

6.10(1) *State public defender discretion.* The decision on whether the circumstances justify the granting of a waiver shall be made at the discretion of the state public defender upon consideration of all relevant factors.

6.10(2) *Burden of persuasion.* The petitioner has the burden of persuasion when a petition is filed for a waiver from a state public defender rule. The standard of proof is clear and convincing evidence.

6.10(3) *Special waiver rules not precluded.* This chapter shall not preclude the state public defender from granting waivers in other contexts or on the basis of other standards if a statute authorizes the state public defender to do so and the state public defender deems it appropriate to do so.

6.10(4) *Administrative deadlines.* When the rule from which a waiver is sought establishes administrative deadlines, the state public defender shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all persons similarly situated.

6.10(5) *Conditions.* The state public defender may condition the granting of the waiver on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means and in compliance with the following provisions:

a. Each petition for a waiver shall be evaluated by the state public defender based on the unique, individual circumstances set out in the petition;

b. A waiver, if granted, shall be drafted by the state public defender so as to provide the narrowest exception possible to the provisions of the rule;

c. The state public defender may place on a waiver a condition that the state public defender finds desirable to protect the public health, safety, and welfare;

d. A waiver shall not be permanent, unless the petitioner can show that a temporary waiver would be impracticable; and

e. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the state public defender, a waiver may be renewed if the state public defender finds that all of the factors set out in rule 493—6.4(13B,17A) remain valid.

6.10(6) *Time for ruling.* The state public defender shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the state public defender has the discretion to wait until the contested case is resolved before entering an order on the petition for waiver.

6.10(7) *When deemed denied.* Failure of the state public defender to grant or deny a petition within the required time period shall be deemed a denial of that petition by the state public defender.

6.10(8) *Service of order.* Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

[**ARC 5574C**, IAB 4/21/21, effective 5/26/21]

493—6.11(13B,17A) Public availability. Subject to the provisions of Iowa Code section 17A.3(1)*"e,"* the state public defender shall maintain a record of all orders granting or denying waivers under this chapter. All final rulings in response to requests for waivers shall be indexed and available to members of the public at the state public defender's office.

[**ARC 5574C**, IAB 4/21/21, effective 5/26/21]

493—6.12(13B,17A) Voiding or cancellation. A waiver is void if the material facts upon which the request is based are not true or if material facts have been withheld. The state public defender may at any time cancel a waiver upon appropriate notice and hearing if the state public defender finds that the facts as stated in the request are not true, material facts have been withheld, the alternative means of compliance provided in the waiver have failed to achieve the objectives of the statute, or the requester has failed to comply with the conditions of the order.

[**ARC 5574C**, IAB 4/21/21, effective 5/26/21]

493—6.13(13B,17A) Violations. Violation of conditions in the waiver approval is the equivalent of violation of the particular rule for which the waiver is granted and is subject to the same remedies or penalties.

[**ARC 5574C**, IAB 4/21/21, effective 5/26/21]

493—6.14(13B,17A) Defense. After the state public defender issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

[**ARC 5574C**, IAB 4/21/21, effective 5/26/21]

493—6.15(13B,17A) Appeals. Any request for an appeal from a decision granting or denying a waiver shall be in accordance with the procedures provided in Iowa Code chapter 17A and state public defender rules. An appeal shall be taken within 30 days of the issuance of the ruling in response to the request unless a contrary time is provided by rule or statute.

[**ARC 5574C**, IAB 4/21/21, effective 5/26/21]

493—6.16(13B,17A) Sample petition for waiver.

BEFORE THE STATE PUBLIC DEFENDER

Petition by (insert name of petitioner) for the waiver of (insert rule citation) relating to (insert the subject matter).	}	No. _____ PETITION FOR WAIVER

Include the following information in the petition for waiver where applicable and known:

1. Provide the petitioner's (the person who is asking for the waiver) name, address and telephone number.

2. Describe and cite the specific rule from which a waiver is requested.

3. Describe the specific waiver requested; include the exact scope and time period that the waiver will extend.

4. Explain the important facts that the petitioner believes justify the waiver. Include in your explanation (a) why application of the rule would pose an undue hardship to the petitioner; (b) why granting the waiver would not prejudice the substantial legal rights of any person; (c) state whether the provisions of a rule subject to this petition are specifically mandated by statute or another provision of law; and (d) state whether public health, safety or welfare will be affected if the requested waiver is granted.

5. Provide history of prior contacts between the state public defender and the petitioner relating to the regulated activity, license, audit, investigation, inspection or representation that would be affected by the waiver. In that history, include a description of each affected regulated activity, license, appeal, hearing, audit, investigation, inspection, representation or other assigned function of the state public defender, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, license, appeal, hearing, audit, investigation, inspection, representation or other assigned function of the state public defender within the last five years.

6. Provide information known to the petitioner regarding the state public defender's treatment of similar cases.

7. Provide the name, address and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver.

8. Provide the name, address and telephone number of any person or entity that would be adversely affected or disadvantaged by the granting of the waiver.

9. Provide signed releases of information authorizing persons with knowledge regarding the request to furnish the state public defender with information relevant to the waiver.

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

_____ _____

Petitioner's signature Date

[**ARC 5574C**, IAB 4/21/21, effective 5/26/21]

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

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

[Filed ARC 5574C (Notice ARC 5342C, IAB 12/30/20), IAB 4/21/21, effective 5/26/21]

CHAPTER 11
ATTORNEY FEE CONTRACTS

493—11.1(13B) Scope. This chapter sets forth the rules for private attorneys entering into contracts for indigent defense legal services with the state public defender. See 493—Chapter 7 for definitions of terms used in this chapter.

493—11.2(13B) Contracts. An attorney may enter into a contract with the state public defender for the provision of legal services to indigent persons.

11.2(1) *Eligibility.* To be eligible to contract with the state public defender, an attorney must be licensed to practice law in the state of Iowa and must meet the minimum qualification requirements for contracting as set forth in rule 493—11.3(13B) for the types of cases for which the attorney is contracting.

11.2(2) *Contract copy.* A copy of an original contract is available from the Office of the State Public Defender, Lucas State Office Building, Des Moines, Iowa 50319-0087, by telephoning (515)242-6158, or on the web at spd.iowa.gov.

11.2(3) *Notice of contract opportunities.* The state public defender will give notice to attorneys of the availability of contracts for indigent defense legal services in a manner reasonably calculated to make attorneys aware of the availability of the contracts.

11.2(4) *Contract types.* Unless the attorney and state public defender agree in writing to a contract covering a different type of case, the contract shall cover one or more of the following categories of case types:

a. Juvenile cases, including juvenile petitions on appeal;

b. Appellate cases, including direct appeals of criminal cases, appeals from postconviction relief proceedings, and any other case for which counsel is statutorily authorized to be paid from the indigent defense fund at the trial level;

c. Postconviction relief cases at the trial level;

d. Class A and B felony cases at the trial level;

e. Class C and D felony cases at the trial level, and Class A felony cases in which another attorney who meets the minimum requirements for such cases is also appointed as the lead counsel;

f. Misdemeanor cases, probation and parole revocation cases, contempt proceedings, and any other adult criminal or civil cases for which counsel is statutorily authorized to be paid from the indigent defense fund at the trial level.

11.2(5) *Written approval required.* A contract can only be in force and effect when a contract acceptance form is signed by the contracting attorney and approved by the state public defender. The approved contract is only effective for those types of cases and those counties requested by the attorney and approved by the state public defender in writing on the acceptance and approval form, renewal form, or a subsequent written amendment. Nevertheless, a contract covering appellate cases is effective for all 99 counties.

11.2(6) *Independent contractor.* The contracting attorney shall be an independent contractor and shall not be an agent or employee of the state of Iowa. The attorney shall exercise the attorney's best independent professional judgment on behalf of clients to whom the attorney is assigned.

11.2(7) *Notification to clerks.* On a monthly basis, the state public defender shall notify the clerks of court in each county of those attorneys who have an approved contract for each type of case in each respective county.

11.2(8) *Contract terms.* A contract between the state public defender and an attorney shall cover, but is not limited to, the following subjects:

a. The types of cases in which the attorney is to provide services;

b. The counties in which the attorney is to provide services;

c. The term of the contract and the responsibility of the attorney for provision of services in cases undertaken pursuant to the contract;

d. Identification of the attorney who will perform legal representation under the contract;

e. A prohibition against assignment of the obligations undertaken pursuant to the contract and a description of the manner in which temporary substitute counsel may be utilized;

f. The qualifications of the contracting attorney to undertake legal representation pursuant to the contract;

g. A description of the compensation to be paid and the manner of payment;

h. A description of any expenses which may be provided under the contract;

i. A description of the record-keeping and reporting requirements under the contract;

j. A description of the manner in which the contract may be terminated;

k. A description of the manner of disposition of ongoing obligations following termination of the contract.

11.2(9) *Compensation.* Unless the contract provides for a different rate or manner of payment, the attorney shall be compensated as set forth in rule 493—12.4(13B,815).

11.2(10) *Contract form.* Unless the attorney and state public defender agree in writing to vary the terms of the contract between them, the terms contained in the Indigent Defense Legal Services Contract No. 493-14 shall constitute the agreement between the parties for the provision of legal services.

11.2(11) *No guarantee of appointments.* An attorney under contract with the state public defender is not guaranteed any minimum number of court appointments. The process by which attorneys under contract with the state public defender are appointed to specific cases is governed by Iowa Code chapters 814 and 815. The state public defender shall retain sole authority to determine the length of each contract or contract renewal.

[**ARC 9293B**, IAB 12/29/10, effective 12/7/10; **ARC 9447B**, IAB 4/6/11, effective 5/11/11; **ARC 1514C**, IAB 6/25/14, effective 7/30/14]

493—11.3(13B) Attorney minimum qualifications. To be eligible to contract with the state public defender for a type of case after January 1, 2015, the attorney must meet the minimum qualification requirements established by this rule for the particular type of case. Prior to contracting with the state public defender, an attorney shall certify the attorney's compliance with these requirements and, prior to renewal of the contract, shall certify compliance with any ongoing requirements. Satisfying these minimum requirements does not guarantee an attorney a contract with the state public defender. The state public defender retains the discretion to deny or terminate contracts if the state public defender determines that such action is in the best interests of the state.

11.3(1) *Juvenile cases.* To be eligible to contract to represent indigent persons in juvenile cases, including juvenile petitions on appeal, an attorney must be in compliance with Rule 8.36 of the Iowa Rules of Juvenile Procedure, regardless of whether the attorney seeks to represent parents or children or serve as guardian ad litem in juvenile court. An attorney contracting to represent indigent persons in juvenile cases must:

a. Participate in three hours of continuing legal education related to juvenile court proceedings prior to contracting with the state public defender; and

b. Continue to participate in three hours of continuing legal education related to juvenile court proceedings each year.

The state public defender shall review juvenile contract renewals and may apply juvenile-related continuing legal education hours in the same manner as criminal-related continuing legal education hours.

11.3(2) *Appellate cases.* To be eligible to contract to represent indigent persons in appellate cases, including direct appeals of criminal cases, appeals from postconviction relief proceedings, and appeals from any other case for which counsel is statutorily authorized to be paid from the indigent defense fund at the trial level except in cases where the attorney is statutorily appointed for purposes of the appeal, an attorney must:

a. Participate in the basic criminal appeals training sponsored by the state public defender within one year of entering into the contract, unless the attorney has already handled a criminal appeal in Iowa state court; and

b. Participate in three hours of continuing legal education related to criminal law each calendar year in which the attorney has an active indigent defense contract.

11.3(3) *Postconviction relief cases.* To be eligible to contract to represent indigent persons in postconviction relief cases at the trial level, an attorney must:

a. Have practiced criminal law or served as a judicial law clerk for two years or more in any state or federal court;

b. Participate in five hours of continuing legal education related to criminal law each calendar year in which the attorney has an active indigent defense contract and in the year prior to entering into the contract;

c. Participate in a postconviction relief basic training sponsored by the state public defender prior to entering into the contract, unless the attorney has previously handled at least three postconviction relief proceedings to completion; and

d. Provide the names of at least three judges or magistrates who can discuss the qualifications and effectiveness of the attorney to represent indigent persons in postconviction relief cases.

An attorney who has not met all the requirements may provide the state public defender additional detail regarding the attorney's experience and qualifications and the circumstances preventing the attorney from meeting all the requirements, and may be approved for contracting by the state public defender at the state public defender's sole discretion.

11.3(4) *Class A felonies.* To be eligible to contract to represent indigent persons in Class A felony cases at the trial level, an attorney must:

a. Have practiced criminal law for four years or more in any state or federal court;

b. Have tried at least five criminal jury trials involving indictable offenses to completion either as lead counsel or as a pro bono second attorney in a criminal jury trial if the service as pro bono second attorney is approved in advance for credit under this rule by the state public defender;

c. Participate in five hours of continuing legal education related to criminal law each calendar year in which the attorney has an active indigent defense contract and in the year prior to entering into the contract; and

d. Provide the names of at least three judges or magistrates who can discuss the qualifications and effectiveness of the attorney to represent indigent persons in Class A felony cases.

If an attorney satisfies the requirements for Class B felonies or Class C and Class D felonies, the attorney may contract to serve as the second attorney representing an indigent person in a Class A felony in a case where the first appointed attorney meets these requirements. An attorney who does not meet all the requirements may provide the state public defender additional detail regarding the attorney's experience and qualifications and the circumstances preventing the attorney from meeting all the requirements and may be approved for contracting by the state public defender at the state public defender's sole discretion.

11.3(5) *Class B felonies.* To be eligible to contract to represent indigent persons in Class B felony cases at the trial level, an attorney must:

a. Have practiced criminal law for three years or more in any state or federal court;

b. Have tried at least three criminal jury trials involving indictable offenses to completion either as lead counsel or as a pro bono second attorney in a criminal jury trial if the service as pro bono second attorney is approved in advance for credit under this rule by the state public defender;

c. Participate in five hours of continuing legal education related to criminal law each calendar year in which the attorney has an active indigent defense contract and in the year prior to entering into the contract; and

d. Provide the names of at least three judges or magistrates who can discuss the qualifications and effectiveness of the attorney to represent indigent persons in Class B felony cases.

An attorney who has not met all requirements may provide the state public defender additional detail regarding the attorney's experience and qualifications and the circumstances preventing the attorney from meeting all the requirements and may be approved for contracting by the state public defender at the state public defender's sole discretion.

11.3(6) *Class C and D felonies.* To be eligible to contract to represent indigent persons in Class C and Class D felony cases at the trial level, an attorney must:

a. Have practiced criminal law for two years or more in any state or federal court;

b. Have tried at least one criminal jury trial to completion either as lead counsel or as a pro bono second attorney in a criminal jury trial if the service as pro bono second attorney is approved in advance for credit under this rule by the state public defender;

c. Participate in five hours of continuing legal education related to criminal law each calendar year in which the attorney has an active indigent defense contract and in the year prior to entering into the contract; and

d. Provide the names of at least three judges or magistrates who can discuss the qualifications and effectiveness of the attorney to represent indigent persons in Class C and Class D felony cases.

An attorney who has not met all requirements may provide the state public defender additional detail regarding the attorney's experience and qualifications and the circumstances preventing the attorney from meeting all the requirements and may be approved for contracting by the state public defender at the state public defender's sole discretion.

11.3(7) *Misdemeanor and other cases.* To be eligible to contract to represent indigent persons in misdemeanor cases, probation and parole revocation cases, contempt proceedings, and any other adult criminal or civil cases for which counsel is statutorily authorized to be paid from the indigent defense fund at the trial level, an attorney must:

a. Participate in the basic criminal defense training sponsored by the state public defender within one year of entering into the contract, unless the attorney already has an active indigent defense contract or has practiced criminal law for more than two years; and

b. Participate in three hours of continuing legal education related to criminal law each calendar year in which the attorney has an active indigent defense contract.

However, an attorney who has a contract to handle any felony offense may accept appointments in misdemeanor cases, probation and parole revocation cases, and contempt cases for which counsel is statutorily authorized to be paid from the indigent defense fund at the trial level, but the attorney with the contract to handle the felony offense will not be added to the list disseminated to the clerks of court to handle misdemeanor cases, probation and parole cases, or contempt cases unless the attorney has secured an amendment to the attorney's contract to handle those types of cases.

11.3(8) *Amended charges.* An attorney who is appointed to a case that is initially within the scope of the attorney's contract but is subsequently amended to contain more serious charges that are outside the scope of the attorney's contract shall request that the court authorize the attorney's withdrawal from the case and appoint an attorney with a contract that covers the amended charges in the county in which the action was pending unless the court determines that no such attorney with an applicable contract is available or the state public defender consents to the continued representation by the original attorney.

[**ARC 1514C**, IAB 6/25/14, effective 7/30/14; **ARC 2378C**, IAB 2/3/16, effective 3/9/16; **ARC 5574C**, IAB 4/21/21, effective 5/26/21]

493—11.4(13B) Contract approval or denial.

11.4(1) The state public defender or a person designated by the state public defender may confer with judges, attorneys and others with knowledge of a potential contracting attorney's competence, effectiveness, trustworthiness, compliance with the minimum qualification requirements set forth in rule 493—11.3(13B), and ability to provide services to eligible individuals and may conduct such additional investigation as deemed warranted in the sole discretion of the state public defender. The information received may be taken into consideration in determining whether it would be in the best interests of the state to enter into an initial or renewal contract with the potential contracting attorney.

11.4(2) The state public defender or a person designated by the state public defender may hold discussions with, or otherwise obtain information from, a potential contracting attorney to determine the attorney's qualifications and ability to perform the conditions of an initial or renewal contract.

11.4(3) The state public defender or a person designated by the state public defender may hold discussions with, or otherwise obtain information from, a potential contracting attorney to establish under

an initial or renewal contract the types of cases the contracting attorney will handle and the geographic area in which the cases will be handled.

11.4(4) The state public defender may decline to award an initial or renewal contract to a proposed contracting attorney if the state public defender determines that the contract would not be in the best interests of the state, as described in rule 493—11.8(13B). The state public defender may limit the contract to specific types of cases, a specified geographic area, or both. The state public defender shall give written notice of this action to the attorney. The attorney may seek reconsideration of this decision in the manner prescribed in rule 493—11.9(13B).

11.4(5) Nothing contained in this rule shall obligate the state public defender to enter into an initial or renewal contract if the state public defender determines that it is not in the best interests of the state to enter into such contract.

[**ARC 1514C**, IAB 6/25/14, effective 7/30/14]

493—11.5(13B) Contract elements. Rescinded **ARC 1514C**, IAB 6/25/14, effective 7/30/14.

493—11.6(13B) Contract renewal. Prior to renewal of any contract, the state public defender may contact judges, attorneys, court personnel, and others to determine if any existing contract is being properly fulfilled and may conduct such additional investigation as is described in rule 493—11.4(13B). If the state public defender has determined that a contract renewal is in the best interests of the state, the state public defender may offer a new contract to the contracting attorney. The contracting attorney may accept the new contract by signing the contract renewal and returning it to the state public defender prior to the date that the existing contract expires. If the contracting attorney does not sign and return the contract renewal, the contract shall terminate on its expiration date without regard to whether the contracting attorney receives any further notice. If a contracting attorney is not offered a contract renewal, the state public defender shall give the contracting attorney written notice of this action. The attorney may seek reconsideration of this decision in the manner prescribed in rule 493—11.9(13B).

[**ARC 1514C**, IAB 6/25/14, effective 7/30/14]

493—11.7(13B) Termination.

11.7(1) *Termination at will.* Either the state public defender or the contracting attorney may terminate a contract upon 30 days' advance written notice to the other party for any reason or no reason. Such termination may affect the entire contract, or may relate solely to a particular county or geographical area, or particular type of case.

11.7(2) *Termination for cause.*

a. License suspension or revocation. A contract for indigent defense shall automatically terminate without notice upon the suspension or revocation of the attorney's license to practice law in the state of Iowa.

b. Default. The state public defender may issue a notice of default based on any of the grounds described in rule 493—11.8(13B). A notice of default shall state the grounds of default and, if feasible, request that the contracting attorney remedy the default within 10 days of the date of the notice. If the events triggering the notice of default continue to be evidenced more than 10 days beyond the date of written notice, the state public defender may immediately terminate the contract without further notice by issuing a notice of termination. An attorney may seek reconsideration of the state public defender's decision to terminate a contract based on the attorney's default in the manner described in rule 493—11.9(13B).

c. Improper billing practices. The state public defender may notify the attorney that the state public defender is considering the exercise of the state public defender's contract right to terminate the contract for improper billing practices. The notification shall explain the basis for the state public defender's concern and provide the attorney at least 14 days to provide a response. After consideration of the response, the state public defender may terminate the contract for improper billing practices if the state public defender determines that the attorney has engaged in a pattern of willful, intentional, reckless, or negligent submission of false, abusive, or unreasonably excessive fee claims. An attorney

may seek reconsideration of the state public defender's decision to terminate a contract for improper billing practices in the manner described in rule 493—11.9(13B).

11.7(3) *Termination by mutual consent.* Upon the mutual consent, confirmed in writing, of the state public defender and the contracting attorney, the contract may be terminated on less than 30 days' notice. Such termination may affect the entire contract or may relate solely to a particular county or geographical area or to a particular type of case.

[**ARC 1514C**, IAB 6/25/14, effective 7/30/14; **ARC 2378C**, IAB 2/3/16, effective 3/9/16]

493—11.8(13B) Grounds to deny or terminate a contract. In determining whether the award, renewal, or termination of a contract is in the best interests of the state, the state public defender may take into consideration factors such as, but not limited to, the following:

1. The attorney's eligibility for contracting pursuant to rule 493—11.2(13B) for the type of case in which the attorney is to provide services or the attorney's failure to comply with such requirements;
2. The attorney's compliance with the terms of an existing or prior contract to represent indigent persons;
3. Any form of dishonesty or deception directed to judicial officials, the state public defender, indigent persons, other clients, or any other person in the practice of law;
4. Unprofessional or unethical conduct, or other act or omission that is or may be detrimental or harmful to indigent representation;
5. An attorney's failure to attend, or untimely attendance at, hearings, depositions, or other case-related proceedings;
6. An attorney's failure to abide by a court order, applicable statutes or administrative rules governing indigent representation, or local or state rules of procedure applicable to the cases in which the attorney has been appointed;
7. Repetitive, willful, deceptive, unexplained or uncorrected errors in claims for fees;
8. Disciplinary action against a legal or other professional license or conviction of a crime in any jurisdiction when the disciplinary action or conviction implicates an attorney's honesty, trustworthiness, or competence to practice law, or is otherwise related to the practice of indigent defense;
9. Use of alcohol or controlled substances during court proceedings or in a manner impairing competent performance;
10. Judicial orders or rulings finding that an attorney engaged in untruthful, incompetent, unprofessional, or unethical behavior in the practice of indigent defense, submission of fee claims, or otherwise in the practice of law; or
11. Any other behavior implicating an attorney's competence, effectiveness, or trustworthiness in the practice of indigent defense.

[**ARC 1514C**, IAB 6/25/14, effective 7/30/14]

493—11.9(13B,17A) Reconsideration.

11.9(1) *Written notice.* A request for reconsideration is perfected by giving written notice of the request for reconsideration to the state public defender within ten business days of the date of mailing of the notice of denial of an initial or renewal contract or the notice of termination. A request for reconsideration must be in writing and must specify the factual or legal errors the attorney contends were made by the state public defender. The attorney may provide such additional information, explanation or documentation as the attorney believes would be relevant to the reconsideration decision. The request for reconsideration is deemed made on the date of the United States Postal Service nonmetered postmark or the date of personal service on the state public defender.

11.9(2) *Exhaustion of administrative remedies.* A request for reconsideration of the state public defender's decision to deny or terminate a contract is an administrative prerequisite to seeking any form of judicial review pursuant to Iowa Code chapter 17A.

11.9(3) *Informal conference.* Upon receipt of a request for reconsideration, the state public defender or a person designated by the state public defender may schedule an informal conference with the attorney if in the state public defender's judgment such a conference may foster resolution of the dispute. To the extent that the participation of the state public defender or a person designated by the state public defender

in an informal conference could be considered personal investigation as that term is used in Iowa Code section 17A.17, an attorney agreeing to participate in an informal conference waives the right to seek to disqualify the state public defender or a person designated by the state public defender from acting as presiding officer or advising the presiding officer in a subsequent contested case proceeding based solely on the ground of personal investigation during an informal conference. The attorney does not waive the right to raise any other type of disqualification.

11.9(4) *Reconsideration decision.* The state public defender shall issue a written reconsideration decision which may uphold, reverse, or modify the initial decision to deny or terminate a contract. The reconsideration decision is final agency action, unless an attorney timely requests a contested case hearing pursuant to rule 493—11.10(13B,17A).

[**ARC 2378C**, IAB 2/3/16, effective 3/9/16]

493—11.10(13B,17A) Contested case hearing.

11.10(1) Written request for contested case hearing. An attorney who is aggrieved by a reconsideration decision and who desires to contest the factual basis for the reconsideration decision shall request a contested case hearing within 10 days of the date the reconsideration decision is mailed. The request for contested case hearing shall identify the fact issues in dispute and any other claimed error, and shall state the manner in which the state public defender is alleged to have relied upon erroneous facts.

11.10(2) Procedures. The request for contested case hearing is deemed made on the date of the United States Postal Service nonmetered postmark or the date of personal service on the state public defender. A contested case hearing shall be conducted pursuant to the procedures set forth in 481 IAC Chapter 10.

11.10(3) A timely request for contested case hearing is an administrative prerequisite to seeking any form of judicial review pursuant to Iowa Code chapter 17A.

11.10(4) Presiding officer. The state public defender or a person designated by the state public defender may preside over the contested case hearing and issue a final decision, or the state public defender may request that the hearing be conducted by an administrative law judge from the department of inspections and appeals who shall issue a proposed decision subject to review by or appeal to the state public defender. If the notice of hearing does not identify an administrative law judge as the presiding officer, an attorney may file a written request that an administrative law judge serve as the presiding officer at hearing. Such request must be filed within 20 days after service of the notice of hearing by certified mail, return receipt requested, to the attorney's last-known address. The state public defender may deny the request only upon a finding that one or more of the following apply:

a. There is a compelling need to expedite issuance of a final decision.

b. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

c. Funds are unavailable to pay the costs of an administrative law judge and possible resulting interagency appeal.

d. The request was not timely made.

e. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.

493—11.11(13B,17A) Judicial review.

11.11(1) The final decision by the state public defender to deny an attorney's request to enter into an initial or renewal contract for indigent representation, to terminate such a contract for cause following issuance of a notice of default, or to terminate such contract for improper billing practices is reviewable pursuant to Iowa Code chapter 17A.

11.11(2) Nothing in this rule shall prevent the informal resolution of a decision to deny or terminate an initial or renewal contract through mutually agreeable settlement at any stage of the proceeding.

[**ARC 1514C**, IAB 6/25/14, effective 7/30/14]

These rules are intended to implement Iowa Code chapter 13B.

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

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

[Filed 1/31/02, Notice 12/26/01—published 2/20/02, effective 4/1/02]
[Filed emergency 6/4/04—published 6/23/04, effective 7/1/04]
[Filed 11/3/04, Notice 6/23/04—published 11/24/04, effective 12/29/04][1]
[Filed 11/14/07, Notice 10/10/07—published 12/5/07, effective 1/9/08]
[Filed Emergency ARC 8090B, IAB 9/9/09, effective 9/15/09]
[Filed ARC 8372B (Notice ARC 8091B, IAB 9/9/09), IAB 12/16/09, effective 1/20/10]
[Filed Emergency ARC 9293B, IAB 12/29/10, effective 12/7/10]
[Filed ARC 9447B (Notice ARC 9294B, IAB 12/29/10), IAB 4/6/11, effective 5/11/11]
[Filed ARC 1514C (Notice ARC 1438C, IAB 4/30/14), IAB 6/25/14, effective 7/30/14]
[Filed ARC 2378C (Notice ARC 2233C, IAB 11/11/15), IAB 2/3/16, effective 3/9/16]
[Filed ARC 5574C (Notice ARC 5342C, IAB 12/30/20), IAB 4/21/21, effective 5/26/21]

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

CHAPTER 1
ORGANIZATION AND GENERAL ADMINISTRATION

497—1.1(23) Board description.

1.1(1) The Iowa public information board is established by Iowa Code chapter 23 and consists of nine members, including a chairperson.

1.1(2) The term "board" shall mean the Iowa public information board.

1.1(3) Board members are appointed by the governor for staggered terms of four years and are subject to confirmation by the senate. No more than three members appointed shall be representatives from the media, including newspapers, and no more than three members appointed shall be representatives of cities, counties, and other political subdivisions of the state.

1.1(4) On an annual basis at the board's first meeting on or after July 1, the members shall elect a chairperson and vice chair. The board shall also employ a person who shall be an attorney admitted to practice law before the courts of Iowa to serve as the executive director of the board. The chairperson and vice chair may be reelected or elected to a different office. If the chairperson is absent, the vice chair shall act as chairperson.

1.1(5) Vacancies on the board are filled in the same manner as regular appointments. Appointees who fill vacancies serve for the balance of the term.

1.1(6) The board shall meet at least quarterly and at the call of the chairperson.

1.1(7) Five board members constitute a quorum for conducting board business.

1.1(8) The board is available to assist in achieving compliance with open meetings and public records laws in alternative ways. Information is available on the board's website at ipib.iowa.gov. The members of governmental bodies and the public may call the board for informal answers to questions during office hours from 8 a.m. to 4:30 p.m. on Monday through Friday at (515)725-1781. Written guidance about compliance with the open meetings and public records laws may be provided by advisory opinions (see rules 497—1.2(23) and 497—1.3(23)) or by declaratory orders (see rules 497—3.1(17A) to 497—3.8(17A)). In addition, complaints may be filed alleging violations of open meetings or public records laws under rule 497—2.1(23).

This rule is intended to implement Iowa Code chapter 23.

[**ARC 0741C**, IAB 5/15/13, effective 7/1/13; **ARC 1091C**, IAB 10/16/13, effective 11/20/13; **ARC 2271C**, IAB 12/9/15, effective 1/13/16]

497—1.2(23) Requirements for requesting board advisory opinions.

1.2(1) *Jurisdiction.* The board will only accept requests for and issue advisory opinions pertaining to Iowa Code chapters 21 and 22, or rules adopted thereunder. The board shall not have jurisdiction over the judicial or legislative branches of state government or any entity, officer, or employee of those branches, or over the governor or the office of the governor.

1.2(2) *Who may request an advisory opinion.* Any person may request a board advisory opinion construing or applying Iowa Code chapters 21, 22, and 23. An authorized agent may seek an opinion on behalf of any person. The board will not issue an opinion to an unauthorized third party. The board may on its own motion issue opinions without receiving a formal request. The board may issue declaratory orders with the force of law pursuant to Iowa Code section 17A.9.

1.2(3) *Form of request.* The request for an advisory opinion shall pose specific legal questions and should describe any specific facts relating to the questions posed. Requests shall be sent to the board as provided in subrule 1.3(1).

This rule is intended to implement Iowa Code section 23.6.

[**ARC 0741C**, IAB 5/15/13, effective 7/1/13; **ARC 2088C**, IAB 8/5/15, effective 9/9/15; **ARC 4101C**, IAB 10/24/18, effective 11/28/18]

497—1.3(23) Processing of advisory opinion requests.

1.3(1) Requests for board advisory opinions may be mailed to the Iowa Public Information Board, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319. Requests may also be submitted by fax to (515)725-1789 or by email to ipib@iowa.gov.

1.3(2) After receiving an opinion request, the board's executive director shall cause to be prepared a draft opinion for board review. If the same or similar issue has been addressed in an opinion of a court, or in an attorney general's opinion, or in another prior advisory opinion, the executive director may respond to the requester by sending a copy of the prior opinion. Upon an affirmative vote of at least five members, the executive director shall issue a board advisory opinion on behalf of the board. Advice contained in a board opinion rendered to a government official or a lawful custodian of a public record, if followed, constitutes a defense for the government official or lawful custodian before the board to a subsequent complaint that is based on the same facts and circumstances. Board staff may also provide written advice on routine matters. However, such advice is not an advisory opinion of the board.

1.3(3) A person who receives a board advisory opinion may, within 30 days after the issuance of the opinion, request modification or reconsideration of the opinion. A request for modification or reconsideration shall be deemed denied unless the board acts upon the request within 60 days of receipt of the request. The board may take up modification or reconsideration of an advisory opinion on its own motion within 30 days after the issuance of an opinion. The board aspires to issue an opinion within 30 days after a formal request is made.

1.3(4) Board advisory opinions are open records and shall be made available at the board office and via the board's website at ipib.iowa.gov.

1.3(5) Nothing in this rule precludes a person who has received a board opinion or advice from petitioning for a declaratory order pursuant to Iowa Code section 17A.9. The board may refuse to issue a declaratory order to a person who has previously received a board opinion on the same question, unless the requester demonstrates a significant change in circumstances from those in the board opinion.

1.3(6) On an annual basis, the board shall review the advisory opinions issued for that year and determine which opinions should be adopted into rule pursuant to the procedures in Iowa Code chapter 17A.

This rule is intended to implement Iowa Code section 23.6.

[**ARC 0741C**, IAB 5/15/13, effective 7/1/13; **ARC 1091C**, IAB 10/16/13, effective 11/20/13; **ARC 2088C**, IAB 8/5/15, effective 9/9/15; **ARC 5569C**, IAB 4/21/21, effective 5/26/21]

497—1.4(23) Conflict of interest.

1.4(1) *Definition.* "Conflict of interest" means that a board member, an employee of the board, a board member's immediate family, or an immediate family member of an employee of the board has a significant personal, financial, or employment relationship with: a person who has requested an advisory opinion; a person who has petitioned for a declaratory order; a complainant; or a government employee or official or a governmental body that would be directly impacted by an advisory opinion, a declaratory order, or a complaint. For purposes of this rule, "immediate family" means the same as "immediate family members" in Iowa Code section 68B.2(11).

1.4(2) *Procedures.* As soon as a member of the board or an employee of the board becomes aware of a conflict of interest, the member or employee of the board shall follow these procedures:

a. If the conflict is known before a meeting, the member or employee of the board shall fully disclose the interest to the board at the board's next meeting.

b. If the conflict is discovered during a meeting, the member or employee of the board shall orally inform the board of the nature of the conflict as soon as the conflict is discovered.

c. The board member or employee of the board who has the conflict shall not participate in discussion or vote on any advisory opinion, declaratory order, or complaint. An announced conflict shall be reported in the board's minutes and the minutes shall reflect the matters on which the board member or employee of the board abstained from participating.

1.4(3) *State code of ethics.* Board members and employees of the board shall comply with the state code of ethics found in Iowa Code chapter 68B and in the corresponding administrative rules adopted by the Iowa ethics and campaign disclosure board.

[**ARC 0741C**, IAB 5/15/13, effective 7/1/13; **ARC 2090C**, IAB 8/5/15, effective 9/9/15; **ARC 2536C**, IAB 5/11/16, effective 6/15/16]

This rule is intended to implement Iowa Code sections 23.6 and 68B.2A.

[Filed ARC 0741C (Notice ARC 0644C, IAB 3/20/13), IAB 5/15/13, effective 7/1/13]

[Filed Without Notice ARC 1091C, IAB 10/16/13, effective 11/20/13]

[Filed ARC 2090C (Notice ARC 2013C, IAB 5/27/15), IAB 8/5/15, effective 9/9/15]
[Filed ARC 2088C (Notice ARC 2012C, IAB 5/27/15), IAB 8/5/15, effective 9/9/15]
[Filed ARC 2271C (Notice ARC 2093C, IAB 8/5/15), IAB 12/9/15, effective 1/13/16]
[Filed ARC 2536C (Notice ARC 2364C, IAB 1/20/16), IAB 5/11/16, effective 6/15/16]
[Filed ARC 4101C (Notice ARC 3808C, IAB 5/23/18), IAB 10/24/18, effective 11/28/18]
[Filed ARC 5569C (Notice ARC 5377C, IAB 1/13/21), IAB 4/21/21, effective 5/26/21]

LAW ENFORCEMENT ACADEMY[501]

[Prior to 1971 IDR, see Dept. of Public Safety]
[Prior to 3/11/87, Law Enforcement Academy[550]]

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CHAPTER 1
ORGANIZATION AND ADMINISTRATION

[Appeared as rules 3.1, 4.1, 5.1 and ch 6 prior to 4/10/85]
[Prior to 3/11/87, Law Enforcement Academy[550] Ch 1]

501—1.1(80B) Definitions. In regards to the definitions as used in the rules of the law enforcement academy the following definitions apply, unless the context otherwise requires:

"Academy" refers to the Iowa law enforcement academy.

"Academy council" means the Iowa law enforcement academy council.

"Act" means the Iowa Administrative Procedure Act.

"Applicant" means all individuals seeking an entry level position as a law enforcement officer. This shall not include individuals who are being promoted within a department.

"Certificate" means the document issued to a law enforcement officer when documentation has established compliance with the minimum hiring standards and successful completion of the training requirements.

"Certification" means the issuing of a certificate to a law enforcement officer upon documentation that the officer has been employed and trained in compliance with the established minimum standards.

"Change in status" means leaving an agency for any reason, including termination, voluntary resignation, demotion, promotion, suspension, or any other change in position or title.

"Contested case" means a proceeding in which the legal rights of a party to continue to be certified as a law enforcement officer in the state of Iowa are determined by the council or its designee after an opportunity for an evidentiary hearing.

"Continuing education" means training approved by the Iowa law enforcement academy which is obtained by a certified Iowa law enforcement emergency care provider to maintain, improve, or expand relevant skills and knowledge and to satisfy renewal of certification requirements.

"Convicted" or *"conviction"* means a finding of guilt, a plea of guilty, a deferred judgment, a deferred or suspended sentence, and an adjudication of delinquency as a juvenile.

"Council" refers to the Iowa law enforcement academy council.

"Director" refers to the director of the Iowa law enforcement academy.

"Employing agency" means any state, county, or municipal government or governmental body that employs law enforcement officers.

"Facilities approval application form" means the form prepared by the Iowa law enforcement academy council to be utilized in an application for approval of a regional law enforcement training facility.

"Facility" means a jail as defined in 201—Chapter 50 or a temporary holding facility as defined in 201—Chapter 51.

"Felony" means a criminal offense classified as a felony in the jurisdiction in which it was committed.

"Final selection process" means that process by which the final applicant for a law enforcement position is selected. This process requires, minimally, that the person to be hired shall have successfully completed the mandated psychological testing.

"General jailer instructors" will be those instructing in subjects clearly related to the operation of a jail.

"Good cause" means termination of employment for any of the following reasons:

1. *Gross negligence:* Where the officer's act or failure to act creates a danger or risk to persons, property, or to the efficient operation of the department, recognizable as a gross deviation from the standard of care that a reasonable officer would observe in a similar circumstance.

2. *Insubordination:* A refusal by an employee to comply with a rule or order where the rule or order was reasonably related to the orderly, efficient, or safe operation of the employer's business and where the employee's refusal to comply with the rule or order constitutes breach of duties.

3. *Incompetence or gross misconduct:* In determining what constitutes "incompetence or gross misconduct," the council may take into account sources as practices generally followed in the profession,

current teaching at law enforcement training facilities and technical reports and literature relevant to the field of law enforcement.

"Guest lecturer" is a person who, by reason of position or experience, can make a worthwhile contribution to a training program. The instructor will normally be experienced in a specialized area and the instruction limited to the area of the instructor's experience. While the regional training facility may avail themselves of the instructor's services on repeated occasions, the use will not be of such frequency as to reasonably infer the instructor is a member of the permanent regional instructional staff.

"Initial certification" means the law enforcement certification granted to a law enforcement officer by the Iowa law enforcement academy council pursuant to 501—3.1(80B), 3.8(80B), or 3.9(80B), Iowa Administrative Code.

"Iowa law enforcement emergency care provider" or *"ILEECP"* means an individual who is certified by the academy as an Iowa peace officer, who has successfully completed an emergency medical care provider curriculum approved by the academy, and who is currently certified by the academy as an emergency medical care provider.

"Iowa law enforcement training program" means the law enforcement academy or a law enforcement training program approved by the council to conduct ILEECP emergency medical care training.

"Jail" means any place administered by the county sheriff and designed to hold inmates for as long as lawfully required but not to exceed one year pursuant to Iowa Code chapters 356 and 356A.

"Jail administrator" means the sheriff, sheriff's designee, or the executive head of any agency operating a jail.

"Jailer" means any person involved in the booking or supervision of inmates or detainees and meeting the requirements of rules 201—50.10(356,356A) and 50.11(356,356A) or 201—51.8(356,356A) and 51.9(356,356A).

"Jailer training program" means a jailer in-service or basic training program.

"Law enforcement experience" means experience gained by a law enforcement officer whose primary job function is the enforcement of criminal laws and the prevention and detection of crime.

"Law enforcement officer" means an officer appointed by the director of the department of natural resources; an officer appointed by the director of the Iowa law enforcement academy and sworn in for the purposes of training; a member of a police force or other agency or department of the state, county, or city regularly employed as such and who is responsible for the prevention and detection of crime and the enforcement of the criminal laws of this state; and all individuals, as determined by the council, who by the nature of their duties may be required to perform the duties of a peace officer.

"Nonstate agency" means all other agencies that are not state agencies.

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

"Person" means any individual, corporation or association covered by the Act other than an agency.

"Pleadings" means a protest, motion, answer, reply or other document filed in a contested case proceeding.

"Presiding officer" means an administrative law judge employed by the Iowa department of inspections and appeals or the full council or a three-member panel of the council.

"Professional jailer instructors" will be those instructing subjects in the area of the law, human relations, medicine, and other areas requiring specialized academic training or experience. Final decision as to whether an instructor is in the general or professional area rests with the academy.

"Proposed decision" means the presiding officer's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the full council did not preside.

"Recognized expert" is a person who, by reason of position or experience, can make a worthwhile contribution to a training program. Normally the recognized expert will be experienced in a specialized area and instruction will be limited to the area of experience. (See subrule 9.2(2))

"Recommendation" means a request by an employing agency asking the council to revoke the certification of a past or present law enforcement officer.

"Regional facility director" means the administrative head or responsible official of the approved regional law enforcement training facility.

"Regional training facility" means an approved regional law enforcement training facility.

"Regular law enforcement officer" means those full-time or part-time officers who are subject to the Iowa law enforcement academy hiring, training, and certification requirements.

"Reserve peace officer" means a volunteer, nonregular, sworn member of a law enforcement agency who serves with or without compensation, has regular police powers while functioning as a law enforcement agency's representative, and participates on a regular basis in the law enforcement agency's activities including crime prevention and control, preservation of the peace, and enforcement of law.

"Respondent" means any individual who is charged in a complaint with violating the criteria of professional practices or the criteria of competent performance.

"Revocation" means the process by which the council withdraws an individual's certification. A person remains under revocation until the time it can be demonstrated to the council that the grounds for revocation no longer exist and the officer's certification is reinstated.

"Salvage vehicle theft examination" means a salvage vehicle theft examination conducted by a law enforcement officer pursuant to Iowa Code section 321.52(4)*"c."*

"Salvage vehicle theft examiner" means a law enforcement officer certified by the Iowa law enforcement academy to conduct vehicle theft examinations pursuant to Iowa Code section 321.52(4)*"c."*

"Serious misconduct" means improper or illegal actions taken by a law enforcement officer in connection with the officer's official duties including but not limited to a conviction for a felony, fabrication of evidence, repeated use of excessive force, acceptance of a bribe, or the commission of fraud.

"State agency" means any department or division of state government which derives its primary funding from the state treasury.

"Student" means any individual enrolled in a training program and participating in the didactic or psychomotor portions.

"Temporary holding facility" means secure holding rooms or cells administered by a law enforcement agency where detainees may be held for a limited period of time, not to exceed 24 hours, and a reasonable time thereafter to arrange for transportation to an appropriate facility.

"Training program director" means the official responsible for a jailer training program.

"Weapon" shall mean any firearm, striking instrument or chemical agent authorized for use as a weapon by the hiring authority.

Unless otherwise specifically stated, the terms used in these rules promulgated by the council shall have the meaning defined by this chapter.

This rule is intended to implement Iowa Code sections 80B.3, 80B.11, 80B.13, 80D.7 and 321.52.

[**ARC 3997C**, IAB 9/12/18, effective 10/17/18; **ARC 5006C**, IAB 3/25/20, effective 4/29/20; **ARC 5572C**, IAB 4/21/21, effective 5/26/21]

501—1.2(80B) Council established. The council and the academy were created by an Act of the Sixty-second General Assembly, now cited as Iowa Code chapter 80B. The general purposes for which the council and academy were established are:

1. To maximize training opportunities for law enforcement officers.
2. To coordinate training and to set standards for the law enforcement service, all of which are imperative to upgrading law enforcement to a professional status.

This rule is intended to implement Iowa Code section 80B.6.

501—1.3(80B) Administration. The administration of the Act creating the council and academy is vested in the office of the governor.

This rule is intended to implement Iowa Code section 80B.5.

501—1.4(80B) Council membership. The selection, appointment, and approval of members to the council are made as provided for in Iowa Code section 80B.6.

This rule is intended to implement Iowa Code section 80B.6.

501—1.5(80B) Council officers. The council shall select from its membership a chairperson and a vice chairperson each of whom shall serve for a term of one year and who may be reelected.

This rule is intended to implement Iowa Code section 80B.7.

501—1.6(80B) Meetings. The council shall meet as least once each quarter of each year and shall hold special meetings when called by the chairperson or, in the absence of the chairperson, by the vice chairperson, or by the chairperson upon written request of six members of the council.

1.6(1) *Order of business.* The meetings of the council shall be presided over by the chairperson or vice chairperson. Unless otherwise stipulated in these rules, Robert's Rules of Order are to be followed in conducting the business of the council.

1.6(2) *Open meetings.* All meetings are open to the public in accordance with the open meetings law, Iowa Code chapter 21. Members of the public may be recognized at the discretion of the chairperson.

1.6(3) *Notice, minutes and agenda.*

a. The director shall cause advance public notice of the time and place of each meeting in accordance with Iowa Code section 21.4.

b. The director shall cause minutes of all council meetings to be kept showing the time and place, the members present, and the action taken at each meeting. The minutes will constitute the official record of all actions by the council. Minutes of each meeting will be prepared and distributed to members of the council.

c. At least one week prior to the date of a regular meeting, the director shall prepare a tentative agenda for the next meeting of the council and shall cause the distribution of the tentative agenda to the council. At least one week prior to a regular meeting, a council member may submit an item to be included on the agenda. This agenda shall also list the date, time and place of the meeting.

1.6(4) *Quorum and majority vote.* A quorum shall consist of two-thirds of the currently appointed voting members of the council. Action of the council must be approved by a simple majority of the voting members present.

1.6(5) *Information available.* All records, minutes, manuals and other information pertaining to council action shall be kept at the academy. The information shall be open for inspection to the public during normal working hours.

1.6(6) *Place of meetings.* Meetings will normally be held at the Academy, Camp Dodge, Johnston, Iowa but may be held at a different location as determined by the council.

This rule is intended to implement Iowa Code section 80B.9.

[**ARC 5006C**, IAB 3/25/20, effective 4/29/20]

501—1.7(80B) Address of council. All submissions to or requests of the council shall be made through the office of the Director, Iowa Law Enforcement Academy, P.O. Box 130, Camp Dodge, Johnston, Iowa 50131.

This rule is intended to implement Iowa Code section 80B.9.

501—1.8(80B) Emergency action. In the event of an emergency requiring prompt action by the council, the director may, with the approval of the chairperson, telephonically poll members of the council concerning the needed action. The vote of each member should be recorded and the agreement of a majority of voting members shall constitute official action by the council. Such action must be ratified at the next scheduled meeting of the council and the minutes reflect the nature of the emergency.

This rule is intended to implement Iowa Code section 80B.13(2).

501—1.9(80B) Authority of council—operational standards. The authority of the council shall be as set forth in Iowa Code section 80B.13. The director shall, subject to the review of the council, promulgate operational standards relative to the operation of the academy.

This rule is intended to implement Iowa Code section 80B.13.

501—1.10(80B) Budget submitted to comptroller. The director, with the approval of the council, shall submit to the state comptroller, annually and in such form as required by Iowa Code chapter 8, estimates of its expenditure requirements. Estimates shall include the costs of administration, maintenance, and operation, and the cost of any proposed capital improvements or additional programs.

This rule is intended to implement Iowa Code section 80B.14.

501—1.11(17A,80B) Petition for rule making. Any person or agency may file a petition for rule making with the Academy Council at the Iowa Law Enforcement Academy, Camp Dodge, P.O. Box 130, Johnston, Iowa 50131-0130.

1.11(1) *The petition.* A petition is deemed filed when it is received by the academy. The academy must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the academy with an extra copy for this purpose. The petition must be typewritten, or legibly handwritten in ink, and must substantially conform to the following form:

IOWA LAW ENFORCEMENT ACADEMY COUNCIL

Petition by (Name of Petitioner) for the (adoption, amendment or repeal) of rules relating to (state subject matter).	))))	PETITION FOR RULE MAKING

The petition must provide the following information:

1. A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.
2. A citation to any law deemed relevant to the academy council's authority to take the action urged or to the desirability of that action.
3. A brief summary of petitioner's arguments in support of the action urged in the petition.
4. A brief summary of any data supporting the action urged in the petition.
5. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the proposed action which is the subject of the petition.
6. Any request by petitioner for a meeting provided for by subrule 1.11(4).

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

The academy council may deny a petition because it does not substantially conform to the required form.

1.11(2) *Briefs.* The petitioner may attach a brief to the petition in support of the action urged in the petition. The academy council or the academy staff may request a brief from the petitioner or from any other person concerning the substance of the petition.

1.11(3) *Inquiries.* Inquiries concerning the status of a petition for rule making may be made to the Academy Director, Iowa Law Enforcement Academy Council, Camp Dodge, P.O. Box 130, Johnston, Iowa 50131-0130.

1.11(4) *Academy council consideration.* Upon request by petitioner in the petition, the academy director must schedule a brief and informal meeting between the petitioner and the academy council, a member of the academy council, or a member of the staff of the academy to discuss the petition.

The academy council or a member of the academy staff may request the petitioner to submit additional information or argument concerning the petition. Comments may also be solicited from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the academy council by any person.

Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the academy council must, in writing, deny the petition and notify the petitioner of its action and the specific grounds for the denial, or grant the petition and notify the petitioner that it has instituted rule-making proceedings on the subject of the petition. The petitioner shall be deemed notified of the denial or grant of the petition on the date when the academy council mails or delivers the required notification to the petitioner.

Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the academy council's rejection of the petition.

This rule is intended to implement Iowa Code section 17A.7.

[Filed 5/26/78, Notice 4/19/78—published 6/14/78, effective 7/19/78]
[Filed 2/5/81, Notice 10/1/80—published 3/4/81, effective 7/9/81]
[Filed emergency after Notice 5/18/84, Notice 2/1/84—published 6/6/84, effective 6/1/84]
[Filed 3/18/85, Notice 1/2/85—published 4/10/85, effective 5/15/85]
[Filed 6/11/85, Notice 1/16/85—published 7/3/85, effective 8/7/85]
[Filed emergency 11/1/85—published 11/20/85, effective 11/1/85]
[Filed emergency 7/1/86—published 7/30/86, effective 7/1/86]
[Filed 2/20/87, Notice 10/22/86—published 3/11/87, effective 4/21/87]
[Filed 11/17/88, Notice 9/7/88—published 12/14/88, effective 1/18/89]
[Filed emergency 7/31/89—published 8/23/89, effective 7/31/89]
[Filed 10/19/89, Notice 8/23/89—published 11/15/89, effective 12/20/89]
[Filed 4/12/90, Notice 2/21/90—published 5/2/90, effective 6/6/90]
[Filed 7/13/90, Notice 5/2/90—published 8/8/90, effective 9/12/90]
[Filed 9/14/90, Notice 6/27/90—published 10/3/90, effective 11/7/90]
[Filed emergency 3/24/93—published 4/14/93, effective 3/24/93]
[Filed 3/24/93, Notice 12/9/92—published 4/14/93, effective 7/14/93]
[Filed emergency 12/27/95—published 1/17/96, effective 12/27/95]
[Filed 12/21/00, Notice 11/15/00—published 1/10/01, effective 2/14/01]
[Filed 8/26/04, Notice 6/9/04—published 9/15/04, effective 10/20/04]
[Filed ARC 3997C (Notice ARC 3809C, IAB 5/23/18), IAB 9/12/18, effective 10/17/18]
[Filed ARC 5006C (Notice ARC 4866C, IAB 1/15/20), IAB 3/25/20, effective 4/29/20]
[Filed ARC 5572C (Notice ARC 5402C, IAB 1/27/21), IAB 4/21/21, effective 5/26/21]

CHAPTER 2
MINIMUM STANDARDS FOR IOWA LAW ENFORCEMENT OFFICERS

[Appeared as Ch 1 prior to 4/10/85]
[Prior to 3/11/87, Law Enforcement Academy[550] Ch 2]

501—2.1(80B) General requirements for law enforcement officers. In no case shall any person hereafter be selected or appointed as a law enforcement officer unless the person:

2.1(1) Is a citizen of the United States and a resident of Iowa or intends to become a resident upon being employed; provided that the state residency requirement under this subrule shall not apply to employees of a city or county that has adopted an ordinance to allow employees of the city or county to reside in another state and shall not apply to an employee of a city or county that later repeals such an ordinance if the employee resides in another state at the time of the repeal. A city or county that has adopted an ordinance to allow the employees of the city or county to reside in another state shall provide a current copy of the ordinance to the Iowa law enforcement academy. Railway special agents who are approved by the commissioner of public safety as special agents of the department shall be exempt from the Iowa residency requirement.

2.1(2) Is 18 years of age at the time of appointment.

2.1(3) Has a valid driver's or chauffeur's license issued by the state of Iowa. Railway special agents who are approved by the commissioner of public safety as special agents of the department and officers who are allowed to reside in an adjacent state shall be required to possess a valid driver's or chauffeur's license of the state of residence of the officer.

2.1(4) Is not addicted to drugs or alcohol.

2.1(5) Is of good moral character as determined by a thorough background investigation including a fingerprint search conducted on local, state and national fingerprint files and has not been convicted of a felony or a crime involving moral turpitude. "Moral turpitude" is defined as an act of baseness, vileness, or depravity in the private and social duties which a person owes to another person or to society in general, contrary to the accepted and customary rule of right and duty between person and person. Moral turpitude is conduct that is contrary to justice, honesty or good morals.

a. The following nonexclusive list of acts has been found by the Iowa law enforcement academy council to involve moral turpitude:

(1) Any felony. As used in this section, the word "felony" means any offense punishable in the jurisdiction where it occurred by imprisonment for a term exceeding one year, but does not include any offense, other than an offense involving a firearm or explosive, classified as a misdemeanor under the laws of the state and punishable by a term of imprisonment of two years or less.

(2) A misdemeanor crime of domestic violence as defined by Iowa Code section 724.26(2)*"c,"* or other offenses of domestic violence.

(3) An adjudication of delinquency as a juvenile based on conduct that would constitute a felony if committed by an adult.

(4) Assault or harassment.

(5) Stalking.

(6) Any offense in which a weapon was used in the commission.

(7) Income tax evasion.

(8) Perjury or its subornation.

(9) Theft, aggravated theft, fraudulent practices, robbery or burglary.

(10) Any sex crime or crime listed in Iowa Code chapter 709.

(11) Conspiracy or solicitation to commit a crime listed in this rule.

(12) Defrauding the government.

(13) Delivering, manufacturing or possessing with the intent to deliver or manufacture a controlled substance.

(14) Convictions by any other state or by the federal government under statutes substantially corresponding to the crimes listed in this rule.

(15) Any crime as an adult that resulted in the requirement of being listed on a sex offender registry.

(16) An adjudication of delinquency as a juvenile based on conduct that would constitute a crime as an adult that resulted in the requirement of being listed on a sex offender registry.

b. In determining whether to grant a waiver of subrule 2.1(5) under rule 501—16.3(17A,80B), the council shall consider in its analysis of numbered paragraph "4" of rule 501—16.3(17A,80B):

(1) The nature and seriousness of the crime;

(2) The time elapsed since the crime was committed;

(3) The degree of rehabilitation which has taken place since the crime was committed;

(4) The likelihood that the person will commit the same crime again;

(5) The number of criminal convictions; and

(6) Such additional factors as may in a particular case demonstrate mitigating circumstances or heightened risk to public safety.

2.1(6) Has successfully passed a physical test adopted by the Iowa law enforcement academy.

2.1(7) Is not by reason of conscience or belief opposed to the use of force, when necessary to fulfill that person's duties.

2.1(8) Is a high school graduate with a diploma, or possesses a GED equivalency certificate.

2.1(9) Has an uncorrected vision of not less than 20/100 in both eyes, corrected to 20/20. Has color vision consistent with the occupational demands of law enforcement. Passing any of the following color vision tests indicates that the applicant has color vision abilities consistent with the occupational demands of law enforcement:

Pseudoisochromatic plates tests such as but not limited to: Tokyo Medical College, Ishihara, Standard Pseudoisochromatic Plates, Dvorine, American Optical HRR Plates, American Optical.

Panel tests such as:
Farnsworth Dichotomous D-15 Test or any other test designed and documented to identify extreme anomalous trichromatic, dichromatic or monochromatic color vision.

Individuals with extreme anomalous trichromatism or monochromasy color vision, as determined through testing, are not eligible to be hired as law enforcement officers in the state of Iowa.

2.1(10) Meets hearing standards as outlined below.

a. The person shall have normal hearing in each ear. Hearing is considered normal when, tested by an audiometer, hearing sensitivity thresholds are within 25dB measured at 500Hz, 1000Hz, 2000Hz and 3000Hz averaged together.

b. If the person does not have normal hearing as described above and any of the following (as recommended by the American Academy of Otolaryngology) conditions exist, a medical specialist's evaluation (otologic evaluation) is required in order for the candidate to be considered for hire:

(1) Average hearing level at 500Hz, 1000Hz, 2000Hz, and 3000Hz greater than 25dB, in either ear.

(2) Difference in average hearing level between the better and poorer ear of:

1. More than 15dB at 500Hz, 1000Hz, and 2000Hz, or

2. More than 30dB at 3000Hz, 4000Hz, and 6000Hz.

(3) History of ear pain; drainage; dizziness; severe persistent tinnitus; sudden, fluctuating, or rapidly progressive hearing loss; or a feeling of fullness or discomfort in one or both ears within the preceding 12 months.

(4) Cerumen accumulation sufficient to completely obstruct the view of the tympanic membrane or a foreign body in the ear canal.

(5) Use of a hearing aid.

c. Functional hearing evaluation required. Issues of reversibility and prognosis should be addressed during the otologic evaluation. The evaluation should consist of directional speech comprehension in noise and speech comprehension in quiet using the High Intensity Noise Test (HINT) or other tests that meet the performance characteristics as outlined in paragraph *"d."* Candidates who perform more poorly than the fifth percentile of the normal hearing group under any of the three background noise conditions (noise in front, right, or left) are not eligible for hire. Candidates with quiet thresholds greater than 28dB(A) on the HINT or other tests that meet the performance characteristics as outlined in paragraph *"d"* are not eligible for hire.

d. Required performance testing characteristics include the following:

(1) Testing is available in both headphone and sound field versions.

(2) The testing has an adequate normal hearing control group.

(3) The testing is capable of spatial separation between the speech and the noise source.

(4) The testing uses adaptive testing techniques.

(5) The testing uses a stationary background noise with the same average level across frequencies as the speech.

e. Use of a hearing aid. A candidate who uses a hearing aid(s) should be administered the HINT or other tests that meet the performance characteristics as outlined in paragraph *"d"* to assess speech comprehension ability in noise and quiet. Both tests must be administered by sound field methods rather than headphones. An aided audiogram can be reviewed to evaluate sound detection ability.

Before functional testing, the examining physician must ensure that the aid(s) has been worn regularly for at least one month, since it takes some practice before an individual obtains the maximum benefit from the hearing aid(s). Furthermore, the examining physician should obtain all records from the audiologist who dispensed the hearing aid(s). The records must include documentation of the fitting program and other hearing aid settings, which are used on a regular basis by the candidate. This information shall be reviewed by the certified audiologist performing the testing procedure to verify that the settings have not been intentionally altered.

The following protocol must be used. No modifications to the candidate's hearing aid program or settings should be made prior to or during the performance of this protocol.

(1) Evaluate whether the hearing aid(s) is working properly. The electroacoustic response characteristics of each hearing aid worn by the candidate should be measured in an appropriate acoustic coupler and test chamber according to ANSI specifications (ANSI 1992 and 1996). The response of the hearing aid(s) should be measured at the four designated input levels with a broadband test signal, as specified in the specifications. All measurements should be printed and retained in the candidate's records. If the hearing aid(s) is not in proper working condition, no further testing should be performed at that time. The candidate may elect to have the hearing aid(s) repaired or replaced and may return to repeat the protocol. In this event, the entire protocol, including measurements of the electroacoustic response characteristics of the hearing aid(s), should be repeated with the new or repaired hearing aid(s). Hearing aid sales, repairs, and replacements should be from an independent provider other than the provider of the functional assessment services.

(2) Review the candidate's regular fitting program and settings. The fitting program and settings should be equivalent to those measured according to subparagraph (1). If they are not equivalent, no further testing should be performed at that time.

(3) Determine whether the functional gain is both physiologic and appropriate for the candidate's hearing loss. Unaided and aided binaural sound field thresholds should be measured at 250Hz, 500Hz, 1000Hz, 2000Hz, 3000Hz, 4000Hz, and 6000Hz, using warble tone stimuli presented from a loudspeaker positioned 1 meter in front of the candidate at 0 degrees azimuth. If the functional gain is not physiologic and appropriate, then no further testing should be performed at that time.

(4) Perform aided sound field HINT or other approved testing in noise and quiet. Compare the results to the site-specific normal values for sound field noise front, noise right, and noise left conditions. If the measured thresholds are better than the fifth percentile under all three conditions, then the noise testing shall be repeated with the background noise fixed at 80dB(A). The same normative values used with the standard background noise levels may be used to assign percentile scores to these results.

The examining physician may use the evaluation algorithm described in Hearing Guidelines—Abnormal Audiogram, with one exception. Many present-day hearing aids employ methods of sound processing that vary as a function of the background noise level, and it is necessary to measure aided sound field HINT thresholds through a range of background noise levels. Therefore, candidates who use hearing aid(s) should be functionally normal both under standard HINT background noise levels (i.e., 65dB) and at levels that are commonly encountered in the field (80dB).

The candidate has met the required hiring standards if the candidate has demonstrated acceptable functional ability when wearing a hearing aid(s) and wears a hearing aid(s) when assigned to field duty.

2.1(11) Is examined by a licensed physician or surgeon and meets the physical requirements necessary to fulfill the responsibilities of a law enforcement officer.

2.1(12) Has not been previously decertified in another jurisdiction.

2.1(13) Has not committed any act that could result in decertification under 501—Chapter 6.

[**ARC 2960C**, IAB 3/1/17, effective 4/5/17; **ARC 5006C**, IAB 3/25/20, effective 4/29/20; **ARC 5572C**, IAB 4/21/21, effective 5/26/21]

501—2.2(80B) Mandatory psychological testing and administrative procedures. In no case shall any person be selected or appointed as a law enforcement officer unless that person has performed satisfactorily in preemployment cognitive or personality tests, or both, prescribed by the Iowa law enforcement academy.

2.2(1) *Required cognitive test.*

a. Entry-level applicants for all law enforcement positions in the state of Iowa shall take the Stanard & Associates' National Police Officer Selection Test (POST).

b. The minimum satisfactory score to be eligible for employment is 70 percent on each of the four sections of this examination. Agencies and civil service commissions may require a higher satisfactory score than 70 percent on each or any of the sections of the test.

2.2(2) *Required personality test.*

a. The Minnesota Multiphasic Personality Inventory 2 (MMPI-2) test shall be taken by all applicants in the final selection process for a law enforcement position.

b. The prescribed personality test for an applicant in the final selection process shall be administered, scored and interpreted by the academy or by an individual who has been approved by the academy. The prescribed personality test for an applicant in the final selection process shall be evaluated by the Iowa law enforcement academy. These tests shall be evaluated and test results and evaluations shall be forwarded to a law enforcement agency for selection purposes only by the Iowa law enforcement academy upon proper waiver by the applicant.

2.2(3) *Test administration.*

a. Test results may be forwarded by the academy to a law enforcement agency for selection purposes only upon proper waiver by the applicant.

b. The Iowa law enforcement academy shall have prescheduled testing dates each fiscal year. Nonscheduled testing dates may also be provided.

c. The administration of the Stanard & Associates' National Police Officer Selection Test (POST) and the Minnesota Multiphasic Personality Inventory 2 (MMPI-2) shall be in accordance with directions of the Iowa law enforcement academy.

2.2(4) *Cognitive test.* Rescinded IAB 3/25/20, effective 4/29/20.

2.2(5) *Personality tests.*

a. Those law enforcement agencies which choose to administer, score, or interpret the MMPI-2 without using the academy's testing services shall forward to the academy psychological testing information on any individual hired within 14 days of the date hired. Such information shall include, but not be limited to, all scores from MMPI-2 scales used in the evaluation, the MMPI-2 answer sheet, and any resulting reports.

b. The Minnesota Multiphasic Personality Inventory 2 (MMPI-2) test may be administered to applicants who are not in the final selection process.

2.2(6) *Cost of tests.* The academy will establish and post fee schedules for costs of administering and evaluating the psychological and cognitive test or tests mandated by the academy for agencies who choose to utilize academy testing services.

The cost of the POST test shall be paid by the agencies for which testing is conducted to Stanard & Associates in accordance with the fee schedule approved by and posted at the Iowa law enforcement academy.

2.2(7) *Availability of tests scores.*

a. Forwarding of cognitive test results. Individual cognitive test scores of cognitive tests purchased through the Iowa law enforcement academy shall be provided by the Iowa law enforcement

academy to prospective employing agencies upon request and proper waiver by the applicant for a minimal handling fee.

b. Forwarding of Minnesota Multiphasic Personality Inventory 2 (MMPI-2) test results. The evaluation by the Iowa law enforcement academy of Minnesota Multiphasic Personality Inventory 2 tests will be available to any prospective employing agency upon request and proper waiver by the applicant for a minimal handling fee.

c. Certified law enforcement officers. Law enforcement officers certified through training by the Iowa law enforcement academy are not required to take a cognitive test but may be required to do so at the discretion of the employing agency.

d. Rescinded IAB 9/22/99, effective 10/27/99.

e. Individual POST test scores shall be forwarded by Stanard & Associates to prospective employing agencies upon request and payment of a fee in accordance with the fee schedule approved by and posted at the Iowa law enforcement academy.

f. Individual POST test scores must be postmarked and forwarded to Stanard & Associates within one business day of the date of the examination.

g. Only scores forwarded to Stanard & Associates will be recognized as valid and become part of the Iowa database.

2.2(8) *Tests are valid for specific period.*

a. The Iowa law enforcement academy evaluations of the Minnesota Multiphasic Personality Inventory 2 may only be used for 12 months to comply with these testing rules. Any applicant who has not been hired or placed upon a civil service certified list within 12 months of taking the Minnesota Multiphasic Personality Inventory 2 test must retake the examination and, before the applicant is hired, the results of the examination must be considered by the hiring authority.

b. Rescinded IAB 9/22/99, effective 10/27/99.

c. At its discretion the employing agency may elect to require an applicant to retake any Iowa law enforcement academy required psychological test as well as any other tests that it may deem necessary in its selection process.

d. POST test scores shall be valid for a period of one year from the date of the examination. An applicant who has not been hired or placed upon a civil service certified list within one year of taking this test must retake and successfully pass the examination before being hired. A person may retest on the same version of the POST examination once within a 12-month period, with a minimum required delay of 90 days before the retest. No delay in retesting is required when a person is given an alternate version of the POST examination.

e. The employing law enforcement agency or appropriate civil service commission retains the exclusive right to decide whether an individual shall be allowed to retest or take an alternate version of the POST examination as provided by these rules.

2.2(9) *Construction.* Nothing in these rules should be construed to preclude a Civil Service Commission or employing agency from requiring an applicant for a law enforcement position to take tests other than those mandated by these rules so long as the applicant in the final selection process has complied with these rules. These rules shall not be construed as altering or changing the current authority of a Civil Service Commission.

[**ARC 5006C**, IAB 3/25/20, effective 4/29/20]

501—2.3(80B) Officers moving from agency to agency.

2.3(1) A certified Iowa peace officer who has previously met all the requirements of rule 501—2.1(80B) and who intends to move employment from one Iowa law enforcement agency to another Iowa law enforcement agency, or who intends to be employed as a certified peace officer by more than one Iowa law enforcement agency simultaneously, shall:

a. Undergo a psychological examination as provided in rule 501—2.2(80B) of this chapter, and

b. Be of good moral character as determined by a thorough background investigation by the hiring agency, including, but not limited to, a fingerprint search conducted by the Iowa division of criminal investigation and Federal Bureau of Investigation. If the results of the fingerprint file checks cannot

reasonably be obtained prior to the time of appointment, the hiring shall be considered conditional until such time as the results are received and reviewed by the appointing agency.

2.3(2) Except as otherwise specified, the provisions of rule 501—2.1(80B) of this chapter do not need to be reverified upon the movement of employment from one Iowa law enforcement agency to another Iowa law enforcement agency or upon being employed by more than one Iowa law enforcement agency simultaneously if the certified Iowa peace officer met all of the requirements of rule 501—2.1(80B) when the officer was initially hired as an Iowa peace officer and if, without a break of not more than 180 days from law enforcement service, the officer is hired by another Iowa law enforcement agency.

2.3(3) A certified Iowa peace officer who has previously met all the requirements of rule 501—2.1(80B) and who intends to work at the Iowa law enforcement academy shall meet the requirements as outlined in this chapter effective October 20, 2004. Certified Iowa peace officers who are working at the Iowa law enforcement academy before October 20, 2004, may be considered regular peace officers in an active sworn status, and the requirements outlined in 2.3(1) and 2.3(2) shall be waived.

501—2.4(80B) Officers in agencies under intergovernmental agreements. The provisions of rule 501—2.1(80B) do not need to be reverified by officers when jurisdictions enter into an intergovernmental agreement under the provisions of Iowa Code chapter 28E for the sharing of law enforcement services by those jurisdictions and officers if the execution, filing and recording of the agreement conform to the requirements of Iowa law and a certified copy is provided to the director of the academy; however, this does not apply to the establishment of a unified law enforcement district as defined in Iowa Code section 28E.21, wherein a new legal entity or political subdivision is established.

501—2.5(80B) Higher standards not prohibited. While no person can be selected, hired or appointed as an Iowa law enforcement officer who does not meet minimum requirements, agencies are not limited or restricted in establishing additional standards.

These rules are intended to implement Iowa Code sections 80B.11 and 80B.11B.

[Filed 12/12/68; amended 12/8/70]
[Filed 12/30/75, Notice 8/11/75—published 1/26/76, effective 3/1/76]
[Filed 3/3/76, Notice 1/26/76—published 3/22/76, effective 4/26/76]
[Filed 2/5/81, Notice 10/1/80—published 3/4/81, effective 7/1/81]
[Filed 9/29/82, Notice 3/31/82—published 10/13/82, effective 11/17/82]
[Filed emergency after Notice 5/18/84, Notice 2/1/84—published 6/6/84, effective 6/1/84]
[Filed emergency 12/26/84—published 1/16/85, effective 1/1/85]
[Filed 3/18/85, Notice 1/2/85—published 4/10/85, effective 5/15/85]
[Filed 6/11/85, Notice 1/16/85—published 7/3/85, effective 8/7/85]
[Filed emergency 6/19/86—published 7/16/86, effective 6/19/86]
[Filed emergency 7/1/86—published 7/30/86, effective 7/1/86]
[Filed 2/20/87, Notice 10/22/86—published 3/11/87, effective 4/21/87]◊
[Filed 8/17/87, Notice 3/11/87—published 9/9/87, effective 10/14/87]
[Filed emergency 12/1/87—published 12/16/87, effective 12/1/87]
[Filed 7/13/90, Notice 4/4/90—published 8/8/90, effective 9/12/90]
[Filed 11/28/90, Notice 9/5/90—published 12/26/90, effective 1/30/91]
[Filed emergency 11/25/92—published 12/23/92, effective 11/25/92]
[Filed emergency 3/24/93—published 4/14/93, effective 3/24/93]
[Filed 7/22/94, Notice 5/11/94—published 8/17/94, effective 9/21/94]
[Filed emergency 10/28/94—published 11/23/94, effective 11/1/94]
[Filed emergency 4/21/95—published 5/10/95, effective 4/21/95]
[Filed emergency 8/28/96 after Notice 7/17/96—published 9/25/96, effective 9/1/96]
[Filed 9/1/99, Notice 7/14/99—published 9/22/99, effective 10/27/99]
[Filed 8/26/04, Notice 6/9/04—published 9/15/04, effective 10/20/04]
[Filed 1/13/06, Notice 10/26/05—published 2/1/06, effective 3/8/06]

[Filed ARC 2960C (Notice ARC 2850C, IAB 12/7/16), IAB 3/1/17, effective 4/5/17]
[Filed ARC 5006C (Notice ARC 4866C, IAB 1/15/20), IAB 3/25/20, effective 4/29/20]
[Filed ARC 5572C (Notice ARC 5402C, IAB 1/27/21), IAB 4/21/21, effective 5/26/21]

◊ Two or more ARCs

CHAPTER 3
CERTIFICATION OF LAW ENFORCEMENT OFFICERS

[Appeared as Ch 1 prior to 4/10/85]
[Prior to 3/11/87, Law Enforcement Academy[550] Ch 3]

501—3.1(80B) Certification through training required for all law enforcement officers.

3.1(1) All law enforcement officers must be certified through the successful completion of training at an approved law enforcement training facility in order to remain eligible for employment. As a condition precedent to enrollment in a certifying training program, the Iowa law enforcement academy must be provided with verification by the enrollee's hiring agency that the minimum standards for Iowa law enforcement officers have been met as provided in rule 501—2.1(80B), except for a person elected or appointed as sheriff who may choose to be exempted from the requirement of subrule 2.1(6), and may determine not to participate in physical training and who shall then be eligible only for certification as provided in subrule 3.1(2). Officers must be certified within one year of their employment, except sheriffs who must be certified within one year of taking office. (See rule 501—3.8(80B) for certification by testing requirements.)

3.1(2) A person elected or appointed sheriff who otherwise successfully completes a basic training course except for the physical training requirements, as provided by Iowa Code section 331.651(1), shall be granted certification limited to and valid only for the position of sheriff of the county in which the person was elected or appointed.

3.1(3) The academy council may, at the council's discretion, extend the one-year time period in which an officer must become certified for up to 180 days after a showing of "undue hardship" by the officer or the officer's hiring agency. To be considered for an extension of the one-year certification period, the person or agency requesting the extension must initiate the request in writing, not less than 10 days prior to the council meeting at which it is to be discussed, and then make a presentation to the council at the next regularly scheduled meeting of the council. Extensions shall not be liberally granted and shall only be granted after a showing that all other alternatives to an extension have been considered and rejected.

3.1(4) In accordance with Iowa Code section 80B.17, the one-year time period in which an officer must become certified is automatically extended for up to 180 days for an officer who is enrolled in training within 12 months of initial appointment. For purposes of this subrule, "enrolled" means physically present in and currently attending a basic certification training class.

3.1(5) The time period within which a person must achieve certification as a law enforcement officer in the state of Iowa as specified in rule 501—3.1(80B) shall commence on the day a person is first employed as a regular law enforcement officer in the state of Iowa. Any subsequent changes in a law enforcement officer's employment status, including transfers to a different employing agency, shall not toll or otherwise extend the certification period.

3.1(6) Should a person employed as a law enforcement officer fail to achieve certification within the time period or any extensions allowed by rule 501—3.1(80B), that person shall not be eligible for employment as and shall not serve as a regular or a reserve law enforcement officer in the state of Iowa for a period of not less than one year from the date the time period in which to achieve certification specified in rule 501—3.1(80B) expired, or from the date that the person was last employed as a regular law enforcement officer in the state of Iowa, whichever comes first.

501—3.2(80B) Law enforcement status forms furnished to academy. Within ten days of any of the following occurrences, the academy will be so advised by use of prescribed forms:

1. Any hiring of personnel.
2. Change of status of existing personnel (e.g., promotions).
3. Satisfactory completion of all law enforcement training not sponsored by the academy.
4. Accrual of college credits.
5. Any termination of employment of a law enforcement officer or appointment as a reserve peace officer. The notification must state whether the law enforcement officer or reserve peace officer was discharged or removed for serious misconduct or whether the officer left, voluntarily quit, or was laid

off when disciplinary investigation or action was imminent or pending which could have resulted in the officer being discharged or removed for serious misconduct. Upon request by the council, the employing agency shall provide any additional information or documentation about the officer including confidential records or information under Iowa Code section 22.7 or other applicable law to the council.
[**ARC 5572C**, IAB 4/21/21, effective 5/26/21]

501—3.3(80B) Standard certifying courses for approved law enforcement facilities. The standard certifying courses of study at an approved law enforcement training facility are:

1. The long course, consisting of 620 hours to be completed within a 25-week period; and
2. The short course, consisting of 400 hours to be completed within a 20-week period.

[**ARC 5006C**, IAB 3/25/20, effective 4/29/20]

501—3.4(80B) Qualifications for attendance at short course. In order to be eligible for enrollment in the certification through the short course, the individual officer must possess at least one of the following qualifications:

3.4(1) Have satisfactorily completed a two-year or four-year police science or criminal justice program of which at least 20 credit hours were dedicated to police science or criminal justice coursework at an accredited educational institution and documentation furnished to the academy.

3.4(2) Have satisfactorily completed law enforcement training in another state commensurate with basic training required in Iowa, and be able to provide verification of same.

This rule is intended to implement Iowa Code section 80B.11.
[**ARC 5006C**, IAB 3/25/20, effective 4/29/20]

501—3.5(80B) Curriculum for long course.

3.5(1) *Program administration* . . . . . 24 hours

a. Duty assignments.
b. Examinations.
c. Family day.
d. Graduation.
e. Registration/orientation.
f. Student advisor meeting.

3.5(2) *Patrol procedures* . . . . . 55 hours

a. Active shooter response training.
b. Alcohol licensee compliance.
c. Animal control procedures.
d. Basic incident command (IS-100 and IS-700).
e. Felony calls in progress (includes building searches).
f. Fire calls.
g. Gangs.
h. Hazardous materials.
i. Iowa system communication including NCIC (National Crime Information Center).
j. Meth lab safety.
k. Observation and perception.
l. Patrol techniques and beat assignments.
m. Radar enforcement.
n. Radio communications.
o. Terrorism awareness.
p. Traffic direction.
q. Traffic law enforcement.
r. Weather preparedness.

3.5(3) *Tactical skills* . . . . . 188 hours

a. Chemical spray.
b. Defensive tactics.

c. Expandable baton training.
d. Firearms (including 6 hours of night fire).
e. Firearms training simulator.
f. Risk management.
g. Vehicle operations.
h. Vehicle stops (including 2 hours of night vehicle stops).

3.5(4) *Life skills* . . . . . 123 hours

a. Below 100.
b. Bloodborne pathogens.
c. Blue courage.
d. Crisis intervention training.
e. Critical incident stress management.
f. Federal color of law (aspects of use of force).
g. Iowa law enforcement emergency care provider (minimum of 32 hours of classroom).
h. Mental health emergencies.
i. Physical training.
j. Special needs population.
k. Stress management.
l. Survival awareness.

3.5(5) *Investigation.* . . . . . 112 hours

a. Bombing and arson.
b. Burglary.
c. Card fraud.
d. Collision investigation.
e. Crime scene search and recording.
f. Death investigation.
g. Document fraud.
h. Domestic abuse investigation (including 4 hours of practical).
i. Financial crimes.
j. Fingerprinting.
k. Forensic science and the DCI laboratory.
l. Hate crimes.
m. Human trafficking.
n. Insurance fraud.
o. Iowa lottery security.
p. Iowa missing persons.
q. Mandatory reporting of child and dependent adult abuse.
r. Narcotics investigation.
s. OWI enforcement (includes chemical testing, evidentiary breath testing device training and drug recognition for street officers).
t. Photography.
u. Sexual abuse investigation.
v. Stalking.
w. Standardized field sobriety testing.
x. Street intoxication.
y. Vehicle theft.

3.5(6) *Legal topics* . . . . . 67 hours

a. Civil liability.
b. Confessions and admissions.
c. Criminal law.
d. Juvenile law.
e. Law of arrest.

f. Motor vehicle law.
g. Narcotics law.
h. OWI legal.
i. Peace officer and management rights.
j. Procedural due process.
k. Rules of evidence.
l. Search and seizure.
m. Use of force.

3.5(7) *Communication skills* . . . . . 36 hours
a. Deaf culture.
b. Death notification.
c. Interviews and interrogations.
d. Moot court.
e. Report writing and investigative note-taking.
f. Social media.
g. Testifying in court.
h. Verbal defense and influence.

3.5(8) *Foundations of American policing* . . . . . 15 hours
a. Community relations.
b. Court organization.
c. Cultural competency.
d. Discretion.
e. Ethics and professionalism.
f. Jail operations/corrections/civil process.
g. Race relations.
h. Unbiased policing.

TOTAL HOURS: 620

This rule is intended to implement Iowa Code section 80B.11.

[**ARC 5006C**, IAB 3/25/20, effective 4/29/20]

501—3.6(80B) Curriculum for short course.

3.6(1) *Program administration* . . . . . 16 hours
a. Examinations.
b. Graduation.
c. Registration/orientation.

3.6(2) *Patrol procedures* . . . . . 35 hours
a. Active shooter response training.
b. Basic incident command.
c. Felony calls in progress (includes building searches).
d. Gangs.
e. Hazardous materials.
f. Iowa system communication including NCIC.
g. Meth labs.
h. Radar enforcement.
i. Radio communications.
j. Traffic direction.

3.6(3) *Tactical skills* . . . . . 128 hours
a. Chemical spray.
b. Defensive tactics.
c. Expandable baton training.
d. Firearms (including 6 hours of night fire).
e. Vehicle operations.

f. Vehicle stops (including 2 hours of night vehicle stops).

3.6(4) *Life skills* . . . . . 73 hours

a. Below 100.

b. Bloodborne pathogens.

c. Blue courage.

d. Crisis intervention training.

e. Iowa law enforcement emergency care provider (minimum of 32 hours of classroom).

f. Mental health.

g. Physical training.

3.6(5) *Investigation* . . . . . 56 hours

a. Collision investigation.

b. Crime scene search and recording.

c. Card fraud.

d. Death investigation.

e. Domestic abuse investigation (including 2 hours of practical).

f. Fingerprinting.

g. Human trafficking.

h. Iowa lottery security.

i. Mandatory reporting.

j. Narcotics investigation.

k. OWI enforcement (includes chemical testing, evidentiary breath testing device training and drug recognition for street officers).

l. Photography.

m. Sexual abuse investigation.

3.6(6) *Legal topics* . . . . . 57 hours

a. Confessions and admissions.

b. Criminal law.

c. Juvenile law.

d. Law of arrest.

e. Motor vehicle law.

f. Narcotics law.

g. OWI legal.

h. Rules of evidence.

i. Search and seizure.

j. Use of force.

3.6(7) *Communication skills* . . . . . 29 hours

a. Interviews and interrogations.

b. Report writing and investigative note-taking.

c. Testifying in court.

d. Verbal defense and influence.

3.6(8) *Foundations of American policing* . . . . . 6 hours

a. Cultural competency.

b. Ethics and professionalism.

c. Unbiased policing.

TOTAL HOURS: 400

This rule is intended to implement Iowa Code section 80B.11.

[**ARC 5006C**, IAB 3/25/20, effective 4/29/20]

501—3.7(80B) Special certification. The director of the academy, subject to the approval of the council may develop special certifying training courses in consideration of the varying factors and special requirements of certain law enforcement agencies.

501—3.8(80B) Certification through examination. Law enforcement officers who have been certified in another state may, upon application to the director with council approval, take a competency test or tests to gain Iowa law enforcement officer certification. Successful completion of the required test or tests will result in certification by the council. The test or tests will be prepared and administered by the academy or its designee, and the passing score will be determined by the academy. The required test or tests will be based upon the officer's prior law enforcement training and experience as follows:

3.8(1) *Five or more years of law enforcement experience.* Officers with more than five years of full-time law enforcement experience will be required to pass a test or tests which will primarily measure the officer's knowledge of Iowa laws. The test or tests will include, but need not be limited to, such topics as criminal law, motor vehicle law, juvenile law, law of arrest, law of search and seizure, and law regarding the use of force.

3.8(2) *Less than five years of law enforcement experience.* Officers with less than five years of full-time law enforcement experience will be required to pass a comprehensive test or tests which will focus on all phases of law enforcement. The test or tests will include, but need not to be limited to, such topics as criminal law, juvenile law, motor vehicle law, law of arrest, law of search and seizure, law regarding the use of force, confessions and admissions, crime prevention, community relations, minority relations, crime scene investigation, vehicle stops, and rules of evidence.

3.8(3) *Tabulating previous law enforcement experience.* In tabulating whether an officer has met the law enforcement experience requirement, no credit will be given for experience received from the officer's current employment.

3.8(4) *Criteria to be eligible to certify through examination.* The following will be prerequisites for certification through examination:

a. Successful completion of a minimum 160-hour certifying basic law enforcement training school in another state, which certification has not been withdrawn by the certifying state.

b. Firing a verified score of 80 percent or greater with the officer's service handgun since the individual's appointment as an Iowa law enforcement officer, and which course of fire was prescribed by the academy and administered by the Iowa law enforcement academy or its designee.

c. Possession of a current Iowa law enforcement emergency care provider (ILEECP) card or another appropriate certification recognized by the Iowa law enforcement academy.

d. Submission of a preliminary application for certification through examination to the council. A preliminary application for certification shall adhere to the requirements set out in Iowa Code section 80B.11F, as well as any additional requirements set out by the Iowa law enforcement academy.

3.8(5) *Application and testing periods.* Application for certification through examination shall be made within 120 days of the applicant's hiring date, unless a determination is made by the academy council that this time period should be extended for "good cause." Failure to make timely application for certification through examination may result in the applicant's being required to attend an academy certifying school.

3.8(6) *Retesting requirements.* Failure to successfully complete this examination will require retesting within 60 days in the areas failed. If any area is failed a second time, it will be necessary for the individual to attend and satisfactorily complete training at the academy covering those areas of deficiency. Successful completion of the training will result in law enforcement officer certification by the academy council.

3.8(7) *One year's absence from law enforcement shall require training.* An officer who has not served as a regular law enforcement officer during the 12-month period preceding the officer's hiring date will be required to attend a certifying school.

[**ARC 5572C**, IAB 4/21/21, effective 5/26/21]

501—3.9(80B) Special certification through examination. This rule is promulgated by the academy in compliance with 1996 Iowa Acts, chapter 1201. Persons having successfully completed the Federal Bureau of Investigation National Academy, having corrected Snellen vision in both eyes of 20/20 or better, and having been employed on or before January 1, 1996, as chief of police of a city in the state of Iowa with a population of 20,000 or more may, upon application to the director with council approval,

take a competency test or tests to gain Iowa law enforcement officer certification. Successful completion of the required test or tests will result in certification by the council. The test or tests will be prepared and administered by the academy and the passing score will be determined by the academy. Persons eligible under this rule who successfully complete the long form examination shall be granted certification limited to and valid only for the position for which the person was hired.

3.9(1) *Criteria.* The following will be prerequisites for special certification through examination under this rule:

a. Firing a verified score of 80 percent or greater with the officer's service handgun which course of fire was prescribed and administered by the Iowa law enforcement academy.

b. The applicant must possess or obtain current Iowa law enforcement emergency care provider (ILEECP) certification or current emergency medical care provider certification issued by the Iowa department of public health and approved by the academy, and current course completion in cardiopulmonary resuscitation, AED and foreign body airway obstruction for all age groups according to national standards, with documentation furnished to the academy.

3.9(2) *Application and testing periods.* Application shall be made within 120 days of the effective date of this rule. Failure to make timely application will result in the applicant's being required to attend an academy certifying school.

3.9(3) *Retesting requirements.* Failure to successfully complete the examination will require retesting within 60 days in the areas failed. If any area is failed a second time, the applicant will be required to attend and satisfactorily complete training at the academy covering those areas of deficiency. Successful completion of the training will result in law enforcement officer certification by the academy council.

[**ARC 3997C**, IAB 9/12/18, effective 10/17/18]

501—3.10(80B) More extensive certifying course curricula not prohibited. While no law enforcement training facility will be approved by the Iowa law enforcement academy council which does not meet the minimum requirements of these certifying course curricula, this in no way limits or restricts any law enforcement training facility in instituting a certifying course curriculum that surpasses the curriculum established pursuant to Iowa Code chapter 80B.

This rule is intended to implement Iowa Code chapter 80B.

501—3.11(80B) Time frame—tolled. The time frame requirements for completion of any mandatory training are tolled during the period a law enforcement officer is called to active military service.

501—3.12(80B) Training of an individual who intends to become certified as a law enforcement officer.

3.12(1) An individual who has not yet been hired or started employment as an Iowa sworn peace officer may apply for attendance at the Iowa law enforcement academy (ILEA) or, if qualified as provided for in subrule 3.4(1), at a short course of study at an approved law enforcement training program if such individual is sponsored by an Iowa law enforcement agency.

a. The individual must submit an application packet approved and provided by the Iowa law enforcement academy at least 30 days in advance of the course of study that the person wants to attend if the hiring standards are conducted by a sponsoring agency and at least 60 days in advance of the course of study that the person wants to attend if the hiring standards are conducted by ILEA. An administrative fee, to be established by the academy, shall accompany the application packet.

b. The sponsoring Iowa law enforcement agency must certify that the agency intends to hire within the next 18 months or has hired the individual as a law enforcement officer.

c. The fees to attend the Iowa law enforcement academy will be collected as follows:

(1) 25 percent at the time position in class is reserved. (This fee is nonrefundable.)

(2) 25 percent on first day of the academy class.

(3) The remaining amount to reach full payment of all ILEA training fees must be received by the end of the fourth week or the individual will be dismissed from the academy.

d. The fees to attend a short course of study at an approved law enforcement training program will be collected as determined by that entity.

3.12(2) Hiring standards. An individual who files an application under subrule 3.12(1) must meet all hiring standards as established by the academy in rules 501—2.1(80B) and 501—2.2(80B).

a. The sponsoring law enforcement agency may conduct required testing including medical/psychological/cognitive examinations, thorough background investigation and other matters as required by rules 501—2.1(80B) and 501—2.2(80B). The sponsoring law enforcement agency that conducts the required testing must certify that all hiring standards have been met and submit proof of the same as required by Iowa law enforcement academy administrative rules and on forms provided by the academy.

b. The academy shall conduct the required testing including medical/psychological/cognitive examinations, thorough background investigation and other matters as required by rules 501—2.1(80B) and 501—2.2(80B) if the sponsoring agency has not done so. The academy will establish fees for conducting the hiring standards requirements, including the background check, to be paid by the individual filing the application. The fees must be paid before the testing occurs.

3.12(3) Application for a short course of study at an approved law enforcement training program. An individual applying for attendance at a short course of study at an approved law enforcement training program shall submit proof of successful completion of a two-year or four-year police science or criminal justice program at an accredited educational institution in this state as approved by the academy. The proof must include a letter from the registrar certifying the person's graduation and a certified transcript of courses taken and grades received. The proof must be submitted 30 days in advance of the course of study that the person wants to attend.

3.12(4) Permission to attend. An individual shall not be granted permission to attend an approved law enforcement training program if such acceptance would result in the nonacceptance of another qualifying applicant who is a law enforcement officer.

3.12(5) Certification. The academy will not grant certification until an individual is employed by an Iowa law enforcement agency and has met required hiring standards and successfully completed certification testing.

a. The following hiring standards must be reverified if the individual is not hired by an Iowa law enforcement agency during the first 12 months following completion of the course of study.

(1) The Iowa law enforcement academy evaluations of the Minnesota Multiphasic Personality Inventory (MMPI) may be used for only 12 months to comply with this rule. Any individual who has not been hired or placed upon a civil service certified list within the first 12 months following completion of the course of study must retake the MMPI and, before the individual is certified, the results of the MMPI must be approved by the hiring authority.

(2) Standard & Associates' National Police Officer Selection Test (POST) test scores shall be valid for a period of 12 months from the date of completion of the course of study. An individual who has not been hired or placed upon a civil service certified list within 12 months must retake and successfully pass the examination before being certified.

(3) The individual must be examined by a licensed physician or surgeon and meet the physical requirements necessary to fulfill the responsibilities of a law enforcement officer.

(4) The individual must successfully pass a physical test adopted by the Iowa law enforcement academy.

b. An individual may be certified in the following areas only after being employed by an Iowa law enforcement agency:

(1) Iowa Law Enforcement Emergency Care Provider.

(2) Implied consent.

(3) Standardized field sobriety testing.

(4) Firearms qualification with the hiring agency's weapon and ammunition.

Certification will be awarded in the above areas if the individual is employed by an Iowa law enforcement agency within the first 12 months following completion of the basic training course of study and when the following requirements are met. All individuals, once employed by an Iowa law

enforcement agency, must undergo testing in the firearms qualifications with the hiring agency's weapon and ammunition at the direction of an instructor certified in firearms by the Iowa law enforcement academy. Documentation of this testing and scores must be submitted to the Iowa law enforcement academy. The individual will be certified upon successful completion of the firearms qualification and review of the testing results completed during training at the Iowa law enforcement academy or at a short course of study at an approved law enforcement training program.

If the individual is not employed within a 12-month period after completing basic training at the Iowa law enforcement academy or at a short course of study at an approved law enforcement training program, the individual will be required to retake the required training for Iowa Law Enforcement Emergency Care Provider, implied consent, and standardized field sobriety testing. Successful completion and documentation of this training must be submitted to the Iowa law enforcement academy before certification can be granted.

3.12(6) Employment within 18 months. The individual must be employed by an Iowa law enforcement agency within 18 months of completion of the course of study in order to receive certification. An individual shall not be certified under rule 501—3.12(80B) if the individual is not employed by an Iowa law enforcement agency within 18 months of completion of the course of study.

This rule is intended to implement 2003 Iowa Acts, Senate Files 352 and 453.

These rules are intended to implement Iowa Code chapter 80B.

[Filed 7/22/69]
[Filed 2/5/81, Notice 10/l/80—published 3/4/81, effective 7/l/81]
[Filed emergency after Notice 5/18/84, Notice 2/l/84—published 6/6/84, effective 6/l/84]
[Filed 3/18/85, Notice 1/2/85—published 4/10/85, effective 5/15/85]
[Filed 2/20/87, Notice 10/22/86—published 3/11/87, effective 4/21/87]
[Filed 1/5/89, Notice 11/16/88—published 1/25/89, effective 3/l/89[1]]
[Filed 5/12/89, Notice 12/14/88—published 5/31/89, effective 7/5/89]
[Filed 7/13/90, Notice 5/2/90—published 8/8/90, effective 9/12/90]
[Filed emergency 3/5/91—published 4/3/91, effective 3/5/91]
[Filed 9/13/91, Notice 8/7/91—published 10/2/91, effective 11/6/91]
[Filed 3/18/93, Notice 12/9/92—published 4/14/93, effective 5/19/93]
[Filed 3/18/93, Notice 1/20/93—published 4/14/93, effective 6/30/93[2]]
[Filed emergency 9/22/93—published 10/13/93, effective 9/22/93]
[Filed 6/15/95, Notice 4/12/95—published 7/5/95, effective 8/9/95]
[Filed emergency 6/20/95—published 7/5/95, effective 6/20/95]
Filed emergency 1/10/97 after Notice 12/4/96—published 1/29/97, effective 1/10/97]
[Filed 3/17/99, Notice 2/10/99—published 4/7/99, effective 5/12/99]
[Filed 9/14/01, Notice 8/8/01—published 10/3/01, effective 11/7/01]
[Filed emergency 6/16/03—published 7/9/03, effective 7/1/03]
[Filed 10/24/03, Notice 7/9/03—published 11/12/03, effective 12/17/03]
[Filed 1/20/06, Notice 10/26/05—published 2/15/06, effective 3/22/06]
[Filed ARC 3997C (Notice ARC 3809C, IAB 5/23/18), IAB 9/12/18, effective 10/17/18]
[Filed ARC 5006C (Notice ARC 4866C, IAB 1/15/20), IAB 3/25/20, effective 4/29/20]
[Filed ARC 5572C (Notice ARC 5402C, IAB 1/27/21), IAB 4/21/21, effective 5/26/21]

[1] Effective date of 3/l/89 for rescission of 3.4(1) delayed 70 days by the Administrative Rules Review Committee.

[2] Effective date delayed until the adjournment of the 1994 Session of the General Assembly pursuant to Iowa Code section 17A.8(9) by the Administrative Rules Review Committee at its meeting held May 12, 1993.

CHAPTER 6
DECERTIFICATION

[Ch 6 re Organization and Administration transferred to Ch 1, 4/10/85 IAC]
[Prior to 3/11/87, Law Enforcement Academy[550] Ch 6]

501—6.1(80B) Scope of rules. The rules contained in this chapter pertaining to practices and procedures are designed to implement the requirements of Iowa Code chapters 80B and 17A. These rules shall govern the practice, procedures, and conduct of contested case proceedings held in the revocation of a law enforcement officer's certification.
[**ARC 5006C**, IAB 3/25/20, effective 4/29/20]

501—6.2(80B,80D) Grounds for revocation.

6.2(1) *Mandatory revocation.* The council shall revoke a law enforcement officer's certification or a reserve peace officer's certification upon a finding that the law enforcement officer or reserve peace officer has done any of the following:

a. The law enforcement officer or reserve peace officer pled guilty to or was convicted of a felony;

b. The law enforcement officer or reserve peace officer manufactured, sold, or conspired to manufacture or sell an illegal drug other than an authorized act in connection with official duties;

c. The law enforcement officer or reserve peace officer pled guilty to or was convicted of a crime constituting a misdemeanor crime of domestic violence or other domestic abuse including other offenses or lesser included offenses stemming from domestic abuse;

d. The law enforcement officer or reserve peace officer pled guilty to or was convicted of any offense classified as a tier I, tier II, or tier III sex offense in Iowa Code chapter 692A;

e. The law enforcement officer or reserve peace officer was discharged for serious misconduct, as defined by Iowa Code section 80B.13A(1)*"b,"* from employment as a law enforcement officer;

f. The law enforcement officer or reserve peace officer left, voluntarily quit, or was laid off when disciplinary investigation or action was imminent or pending which could have resulted in the law enforcement officer being discharged or the reserve officer being removed for serious misconduct, if the council determined that the officer engaged in serious misconduct;

g. The law enforcement officer or reserve peace officer was convicted or pled guilty to any offense under prior laws of this state or another jurisdiction, or any offense under prior law that was prosecuted in a federal, military, or foreign court, that is comparable to an offense listed in paragraphs 6.2(1)*"a"* to *"d."*

6.2(2) *Discretionary revocation.* The director or the director's designee shall have the authority to conduct a preliminary inquiry and shall have the authority to determine which matters shall be referred to the council for consideration. The council, at its discretion, may revoke or suspend a law enforcement officer's or a reserve peace officer's certification under any of the following circumstances:

a. The law enforcement officer or reserve peace officer has been discharged for "good cause" from employment as a law enforcement officer or from appointment as a reserve peace officer.

b. The law enforcement officer or reserve peace officer leaves, voluntarily quits, or the officer's position is eliminated when disciplinary action was imminent or pending which could have resulted in the law enforcement officer being discharged or the reserve peace officer being removed for "good cause."

c. The law enforcement officer's or reserve peace officer's current or former employing agency recommends to the council that revocation or suspension would be appropriate with regard to a current or former employee. A recommendation by the law enforcement officer's or reserve peace officer's current or former employing agency must be in writing and set forth the reasons why the action is being recommended, the findings of the employing agency concerning the matter, the action taken by the employing agency, and that the action by the agency is final. Upon such a recommendation, the law enforcement officer's or reserve peace officer's current or former employing agency shall provide the Iowa law enforcement academy the following materials within ten days of the recommendation:

(1) The law enforcement officer's or reserve peace officer's personnel file;

(2) The employing agency's internal investigative file;

(3) Any other materials the employing agency used in the determination to make its recommendation.

d. The law enforcement officer or reserve peace officer is recommended for revocation or suspension by the attorney general to the council pursuant to Iowa Code section 13.12.

e. The law enforcement officer or reserve peace officer:

(1) Makes, tenders, or certifies to a material false statement in a document prescribed by the academy or otherwise provided for or authorized by these rules, or in any other document intended to induce the academy or the council to take or withhold action.

(2) Falsifies or makes misrepresentations on an employment application submitted to any Iowa law enforcement agency or any other public document required to be completed by the officer.

(3) Testifies falsely in any court of law or administrative hearing about a material issue with the intent to deceive.

(4) Commits any act of moral turpitude as defined in 501—subrule 2.1(5). A copy of the record of conviction of or plea of guilty to a crime of moral turpitude shall be conclusive evidence; however, a conviction or plea of guilty is not required.

(5) Uses or possesses an illegal substance other than in connection with official duties.

(6) Fails to comply with the requirements of 501—Chapters 8 and 10 relative to in-service training.

(7) Is decertified in any other state where the law enforcement officer or reserve peace officer may be certified.

f. The law enforcement officer has failed to reimburse the employing agency for costs incurred by that agency, including fees paid to the academy, clothing vendor costs, meal costs, uniform/equipment costs, and the officer's salary paid during the academy if the officer leaves that agency and is employed by another law enforcement agency within a period of four years following completion of the certification training, under the following conditions:

(1) A written agreement or contract of employment must be entered into by the officer and the employing agency contemporaneously with the date of employment. The agreement shall specifically provide for the reimbursement to the employing agency by the officer of the costs of training incurred by the employing agency, including fees paid to the Iowa law enforcement academy, clothing vendor costs, meal costs, uniform/equipment costs, and the officer's salary paid during the academy. The agreement must:

1. Specify the amount of reimbursement that the officer agrees to pay;

2. Set forth the time period within which this reimbursement will be made, which shall be on a declining scale similar to the provisions of Iowa Code section 384.15(7);

3. Contain a statement that if reimbursement is not made in accordance with the agreement, the officer understands that the employing agency may at its option seek the officer's decertification as an Iowa law enforcement officer; and

4. Contain a provision to the effect that the agreement or contract of employment is for bona fide employment of the officer and not for the purpose of achieving certification for the officer by way of "sponsorship" through the academy.

(2) A recommendation for decertification must be verified under oath by the administrator of the employing agency with which the officer contracted under this rule. The recommendation for decertification must contain the following information:

1. Have attached a copy of the agreement referred to in subparagraph 6.2(2)*"f"*(1) above;

2. Include an order of judgment from a small claims or civil court;

3. State that the officer has not made reimbursement to the employing agency as provided in the agreement, and clearly describe the nature of the default;

4. List an accounting of all payments made by the officer to the employing agency under the agreement, and specify the balance due;

5. State that written notice of the default or judgment has been given to the officer, that the officer has been provided opportunity to correct the default, and that there remains no reasonable alternative to decertification;

6. Specifically recommend that the council commence proceedings to decertify the officer, and state that the employing agency will do all things necessary to cooperate in this effort; and

7. Set out the last-known address of the officer, the officer's telephone number, and the officer's last-known place of employment.

(3) The recommendation for decertification must be submitted to the academy not more than one year after the date of the officer's default, unless the council, upon written application and for good cause shown, grants further time in which to submit the recommendation.

[**ARC 5006C**, IAB 3/25/20, effective 4/29/20; **ARC 5572C**, IAB 4/21/21, effective 5/26/21]

501—6.3(80B,17A) Service and filing of pleadings and other papers.

6.3(1) *Computation of time and filing of documents.* The computation of time and filing of documents shall be in compliance with Iowa Code section 4.1(34).

6.3(2) *Service—when required.* Except where otherwise provided by law, every document filed in a contested case proceeding shall be served upon each of the parties of record to the proceeding, simultaneously with its filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

6.3(3) *Service—how made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

6.3(4) *Filing—when required.* After the notice of hearing, all documents in a contested case proceeding shall be filed with the council at Iowa Law Enforcement Academy, Camp Dodge, Johnston, Iowa 50131. All documents that are required to be served upon a party shall be filed simultaneously with the council and, if the presiding officer is not the council, at a location designated by the presiding officer.

6.3(5) *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the council, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

6.3(6) *Proof of mailing.* Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

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

(Date) (Signature)

[**ARC 5006C**, IAB 3/25/20, effective 4/29/20]

501—6.4(80B,17A) Prehearing procedures.

6.4(1) *Council subpoenas.* Prior to the commencement of a contested case, the council may exercise the authority to subpoena books, papers, and records and shall have all other subpoena powers conferred upon it by law.

6.4(2) *Commencement of contested case proceedings.* Contested case proceedings shall be commenced by the delivery of a notice by the council or its designee requiring the affected law enforcement officer to appear and show cause as to why certification to be a law enforcement officer in the state of Iowa should not be revoked or suspended. Notice may be given in the same manner as the service of original notice as provided in the Iowa Rules of Civil Procedure; by certified restricted mail, return receipt requested; by signed acknowledgment accepting service; or, when service cannot be accomplished using the aforementioned methods, notice of hearing shall be published once each week for three consecutive weeks in a newspaper of general circulation, published or circulated in the

county of last-known residence of the affected law enforcement officer. The first notice of hearing shall be published at least 30 days prior to the scheduled hearing.

The notice shall include:

a. A statement of the time, place and nature of the hearing;

b. A statement of the legal authority and jurisdiction under which the hearing is held;

c. A reference to the particular sections of the statutes and rules involved;

d. A short and plain statement of the grounds for revocation or suspension and relevant facts;

e. Reference to the procedural rules governing conduct of the contested case proceeding; and

f. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer.

Notice may also be sent in the manner aforementioned or by ordinary mail to any other interested party. After the delivery of the notice commencing the contested case proceedings, the presiding officer may allow further response of pleadings by the party as, in the presiding officer's discretion, is deemed necessary and appropriate.

6.4(3) *Discovery.* The following discovery procedures available in the Iowa Rules of Civil Procedure are available to the parties: depositions upon oral examination or written questions; written interrogatories; production of documents, electronically stored information, and things; and requests for admission. Unless lengthened or shortened by the presiding officer, the time frames for discovery in the specific Iowa Rules of Civil Procedure govern those specific procedures.

a. Iowa Rules of Civil Procedure 1.701 through 1.717 regarding depositions shall apply to any depositions taken in a contested case proceeding. Any party taking a deposition in a contested case shall be responsible for any deposition costs, unless otherwise specified or allocated in an order. Deposition costs include, but are not limited to, reimbursement for mileage of the deponent, costs of a certified shorthand reporter, and expert witness fees, as applicable.

b. Iowa Rule of Civil Procedure 1.509 shall apply to any interrogatories propounded in a contested case proceeding.

c. Iowa Rule of Civil Procedure 1.512 shall apply to any requests for production of documents, electronically stored information, and things in a contested case proceeding.

d. Iowa Rule of Civil Procedure 1.510 shall apply to any requests for admission in a contested case proceeding. Iowa Rule of Civil Procedure 1.511 regarding the effect of an admission shall apply in contested case proceedings.

e. The mandatory disclosure and discovery conference requirements in Iowa Rules of Civil Procedure 1.500 and 1.507 do not apply to contested case proceedings. However, upon application by a party, the presiding officer may order the parties to comply with these procedures unless doing so would unreasonably complicate the proceedings or impose an undue hardship.

f. Iowa Rule of Civil Procedure 1.508 shall apply to discovery of any experts identified by a party to a contested case proceeding.

g. A party may file a motion to compel or other motion related to discovery in accordance with this subrule. Any motion filed with the presiding officer relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is lengthened or shortened by the presiding officer. The presiding officer may rule on the basis of the written motion and any response or may order argument on the motion.

h. Evidence obtained in such discovery may be used in contested case proceedings if the evidence would otherwise be admissible in the contested case proceedings.

6.4(4) *Presiding officer subpoenas.* The presiding officer may issue subpoenas to a party on request, as permitted by law, compelling the attendance of witnesses and the production of books, papers, records or other real evidence.

6.4(5) *Motions.* No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

a. Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the agency or the presiding officer.

b. The presiding officer may schedule oral arguments on any motion.

c. Motions pertaining to the hearing, including motions for summary judgment, must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the agency or an order of the presiding officer.

6.4(6) *Prehearing conference.* The presiding officer, upon its own motion or upon the written request of one of the parties, may, in the presiding officer's discretion and upon written notice, direct the parties to appear at a specified time and place before the presiding officer for a prehearing conference to consider:

a. The possibility or desirability of waiving any provision of these rules relating to contested case proceedings by written stipulation representing an informed mutual consent.

b. A necessity or desirability of setting a new date for hearing.

c. The simplification of issues.

d. The necessity or desirability of amending the pleadings for purposes of clarification, amplification or limitation.

e. The possibility of agreeing to the admission of facts, documents or records not substantially controverted, to avoid unnecessary introduction of proof.

f. The procedure at the hearing.

g. Limiting the number of witnesses.

h. The names and identification of witnesses and the facts each party will attempt to prove at the hearing.

i. Other matters as may aid in, expedite or simplify the disposition of the proceeding.

Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange witness and exhibit lists in advance of a prehearing conference.

[**ARC 5006C**, IAB 3/25/20, effective 4/29/20]

501—6.5(80B,17A) Presiding officer.

6.5(1) The presiding officer assigned to render a proposed decision will be an administrative law judge employed by the Iowa department of inspections and appeals. However, the council in its discretion may elect to preside over a case in lieu of an administrative law judge.

6.5(2) Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the Iowa department of inspections and appeals must file a written request within 20 days after service of a notice of hearing which identifies or describes the presiding officer as the council.

6.5(3) The council may deny the request only upon a finding that one or more of the following apply:

a. Neither the council nor any officer of the council under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.

b. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

c. An administrative law judge is unavailable to hear the case within a reasonable time.

d. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

e. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.

f. Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal.

g. The request was not timely filed.

h. The request is not consistent with a specified statute.

6.5(4) The council shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed. If the ruling is contingent upon the availability of an administrative law judge, the parties shall be notified at least ten days prior to hearing if a qualified administrative law judge will not be available.

6.5(5) Unless otherwise provided by law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the council. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

6.5(6) Unless otherwise provided by law, the council, when reviewing a proposed decision upon intra-agency appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

[**ARC 5006C**, IAB 3/25/20, effective 4/29/20]

501—6.6(80B,17A) Disqualification.

6.6(1) A presiding officer or council member shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

a. Has a personal bias or prejudice concerning a party or a representative of a party;

b. Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;

c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;

d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;

e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;

f. Has a spouse or relative within the third degree of relationship that:

(1) Is a party to the case, or an officer, director or trustee of a party;

(2) Is a lawyer in the case;

(3) Is known to have an interest that could be substantially affected by the outcome of the case; or

(4) Is likely to be a material witness in the case; or

g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

6.6(2) The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other agency functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17 and subrules 6.6(3) and 6.11(9).

6.6(3) In a situation where a presiding officer or council member knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

6.6(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 6.6(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If the presiding officer determines that disqualification is appropriate, the presiding officer or council member shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 501—6.12(80B,17A) and seek a stay under rule 501—6.16(80B,17A).

[**ARC 5006C**, IAB 3/25/20, effective 4/29/20]

501—6.7(80B,17A) Continuances. A party has no automatic right to a continuance or delay of the council's hearing procedure or schedule. However, a party may request a continuance of the presiding

officer prior to the date set for hearing. The presiding officer shall have the power to grant continuances. Within seven days of the date set for hearing, no continuances shall be granted except for extraordinary, extenuating or emergency circumstances.
[**ARC 5006C**, IAB 3/25/20, effective 4/29/20]

501—6.8(80B,17A) Hearing procedures.

6.8(1) Contested case proceeding. Unless the parties to a contested case proceeding have by written stipulation representing an informed mutual consent waived the provisions of the Act relating to the proceedings, contested case proceedings shall be initiated and culminate in an evidentiary hearing open to the public. Parties shall have been notified of the date and place of the hearing at least 30 days prior thereto.

a. Evidentiary hearings before the council shall be held at the council's principal office, Iowa Law Enforcement Academy, Camp Dodge, Johnston, Iowa, except that a case may be assigned for hearing elsewhere when deemed necessary to afford a party an opportunity to appear at the hearing with as little inconvenience and expense as practicable.

b. Evidentiary hearings before an administrative law judge shall be held at an appropriate location designated by the department of inspections and appeals.

6.8(2) Conduct of the proceedings.

a. The presiding officer presides at the hearing and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings. If the presiding officer is the council or a panel thereof, an administrative law judge from the Iowa department of inspections and appeals may be designated to assist the council in conducting proceedings under this chapter. An administrative law judge so designated may rule upon motions and other procedural matters and assist the council in conducting the hearings.

b. Evidentiary proceedings shall be oral and open to the public and shall be recorded either by mechanical means or by certified shorthand reporters. Parties requesting that the hearing be recorded by certified shorthand reporters shall bear the appropriate costs. The record of the oral proceedings or the transcription thereof shall be filed with and maintained by the council for at least five years from the date of the decision.

6.8(3) All objections shall be timely made and stated on the record.

6.8(4) Legal representation.

a. The law enforcement officer has a right to participate in all hearings or prehearing conferences and may be represented by an attorney or another person authorized by law. If the law enforcement officer is not represented by anyone qualified by these rules to make an appearance, the presiding officer shall explain to the law enforcement officer the rules of practice and procedure and generally conduct a hearing in a less formal manner than that used when a law enforcement officer has a representative qualified to appear. It should be the purpose of the presiding officer to assist any law enforcement officer who appears without a representative to the extent necessary to allow a fair presentation of evidence, testimony and arguments on the issues.

b. The office of the attorney general or an attorney designated by the director shall be responsible for prosecuting contested case proceedings under this chapter. The assistant attorney general or other designated attorney assigned to prosecute the contested case shall not represent the council in that case but shall represent the public interest.

6.8(5) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in argument.

6.8(6) Witnesses may be sequestered during the hearing.

6.8(7) The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;

b. The parties shall be given an opportunity to present opening statements;

c. Parties shall present their cases in the sequence determined by the presiding officer;

d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;

e. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

[**ARC 5006C**, IAB 3/25/20, effective 4/29/20]

501—6.9(80B,17A) Evidence.

6.9(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

6.9(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

6.9(3) Evidence in the proceeding shall be confined to the issues concerning allegations raised on the face of petition for decertification as to which the parties received notice prior to the hearing.

6.9(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties. All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

6.9(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

6.9(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

[**ARC 5006C**, IAB 3/25/20, effective 4/29/20]

501—6.10(80B,17A) Default.

6.10(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

6.10(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

6.10(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 501—6.14(80B,17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

6.10(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

6.10(5) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

6.10(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

6.10(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 501—6.12(80B,17A).

6.10(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

6.10(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues (but, unless the defaulting party has appeared, it cannot exceed the relief demanded).

6.10(10) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 501—6.16(80B,17A).

[**ARC 5006C**, IAB 3/25/20, effective 4/29/20]

501—6.11(80B,17A) Ex parte communication.

6.11(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the council or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating, prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

6.11(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

6.11(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

6.11(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 501—6.3(80B,17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

6.11(5) Council members acting as presiding officers may communicate with each other without notice or opportunity for parties to participate.

6.11(6) The director or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 6.11(1).

6.11(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 501—6.7(80B,17A).

6.11(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer

determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order (or disclosed). If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

6.11(9) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

6.11(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the department. Violation of ex parte communication prohibitions by department personnel shall be reported to (agency to designate person to whom violations should be reported) for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

[**ARC 5006C**, IAB 3/25/20, effective 4/29/20]

501—6.12(80B,17A) Interlocutory appeals. Upon written request of a party or on its own motion, the council may review an interlocutory order of the presiding officer. In determining whether to do so, the council shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the council at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

[**ARC 5006C**, IAB 3/25/20, effective 4/29/20]

501—6.13(80B,17A) Final decision.

6.13(1) When the council presides over the reception of evidence at the hearing, its decision is a final decision.

6.13(2) When the council does not preside over the reception of evidence at the hearing, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of the council without further proceedings unless there is an appeal to, or review on motion of, the council within the time provided in rule 501—6.14(80B,17A).

6.13(3) Final decisions shall be served on the affected law enforcement officer using one of the following methods: the same manner as the service of original notice as provided in the Iowa Rules of Civil Procedure; by certified restricted mail, return receipt requested; by signed acknowledgment accepting service; or, when service cannot be accomplished using the aforementioned methods, notice of hearing shall be published once each week for three consecutive weeks in a newspaper of general circulation, published or circulated in the county of last-known residence of the affected law enforcement officer. If the officer is represented by an attorney, the final decision shall be mailed to the attorney. The attorney may waive the requirement to serve the affected law enforcement officer through a written acknowledgment that the attorney is accepting service on behalf of the client.

[**ARC 5006C**, IAB 3/25/20, effective 4/29/20]

501—6.14(80B,17A) Appeals and review.

6.14(1) *Appeal by party.* Any adversely affected party may appeal a proposed decision to the council within 30 days after issuance of the proposed decision.

6.14(2) *Review.* The council may initiate review of a proposed decision on its own motion at any time within 30 days following the issuance of such a decision.

6.14(3) *Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with the council. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

a. The parties initiating the appeal;

b. The proposed decision or order appealed from;

c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;

d. The relief sought; and

e. The grounds for relief.

6.14(4) *Requests to present additional evidence.* A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The council may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

6.14(5) *Scheduling.* The council shall issue a schedule for consideration of the appeal.

6.14(6) *Briefs and arguments.* Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs. The council may resolve the appeal on the briefs or provide an opportunity for oral argument. The council may shorten or extend the briefing period as appropriate.

[**ARC 5006C**, IAB 3/25/20, effective 4/29/20]

501—6.15(80B,17A) Application for rehearing.

6.15(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

6.15(2) *Content of application.* The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the council decision on the existing record and whether, on the basis of the grounds enumerated in subrule 6.14(4), the applicant requests an opportunity to submit additional evidence.

6.15(3) *Time of filing.* The application shall be filed with the council within 20 days after issuance of the final decision.

6.15(4) *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the council shall serve copies on all parties.

6.15(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the council grants the application within 20 days after its filing.

[**ARC 5006C**, IAB 3/25/20, effective 4/29/20]

501—6.16(80B,17A) Stays of council actions.

6.16(1) *When available.*

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

b. Any party to a contested case proceeding may petition the council for a stay or other temporary remedies pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.

6.16(2) *When granted.* In determining whether to grant a stay, the director or presiding officer shall consider the factors listed in Iowa Code section 17A.19(5).

6.16(3) *Vacation.* A stay may be vacated by the issuing authority upon application of the council or any other party.

[**ARC 5006C**, IAB 3/25/20, effective 4/29/20]

501—6.17(80B,17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

[**ARC 5006C**, IAB 3/25/20, effective 4/29/20]

501—6.18(80B,17A) Reinstatement. Any person whose certification has been suspended may apply to the board for reinstatement in accordance with the terms and conditions of the order of suspension and this rule. Any person whose certification has been revoked is not eligible for reinstatement.

6.18(1) All proceedings for reinstatement shall be initiated by the law enforcement officer or reserve peace officer, who shall file with the academy council an application for reinstatement. Such application shall be docketed in the original case in which the certification was suspended. All proceedings upon the application for reinstatement shall be subject to the same rules of procedure as other cases before the academy council.

6.18(2) An application for reinstatement shall allege facts which, if established, will be sufficient to enable the academy council to determine that the basis for the suspension of the law enforcement officer's or reserve peace officer's certification no longer exists and that it will be in the public interest for the certification to be reinstated. The burden of proof to establish such facts shall be on the law enforcement officer or reserve peace officer seeking reinstatement.

6.18(3) An order denying or granting reinstatement shall be based upon a decision which incorporates findings of fact and conclusions of law.

[**ARC 5006C**, IAB 3/25/20, effective 4/29/20]

These rules are intended to implement Iowa Code chapters 17A and 80B.

[Filed 3/18/85, Notice 1/2/85—published 4/10/85, effective 5/15/85]
[Filed emergency 6/27/85—published 7/17/85, effective 6/27/85]
[Filed 2/20/87, Notice 10/22/86—published 3/11/87, effective 4/21/87]
[Filed 7/23/97, Notice 6/18/97—published 8/13/97, effective 9/17/97]
[Filed 12/21/00, Notice 11/15/00—published 1/10/01, effective 2/14/01]
[Filed 8/10/07, Notice 7/4/07—published 8/29/07, effective 10/3/07]
[Filed ARC 5006C (Notice ARC 4866C, IAB 1/15/20), IAB 3/25/20, effective 4/29/20]
[Filed ARC 5572C (Notice ARC 5402C, IAB 1/27/21), IAB 4/21/21, effective 5/26/21]

CHAPTER 8
MANDATORY IN-SERVICE TRAINING REQUIREMENTS

501—8.1(80B) Minimum in-service training requirements. All regular law enforcement officers shall meet the following mandatory minimum in-service training requirements.

8.1(1) *Firearms training.* A regular law enforcement officer must qualify with all duty firearms annually on a course of fire using targets approved by the Iowa law enforcement academy and must successfully fire a minimum score as established by the Iowa law enforcement academy. This subrule applies to only those law enforcement officers who are authorized to carry firearms by the officers' employing agency.

8.1(2) *CPR training.* A regular law enforcement officer shall maintain current course completion in cardiopulmonary resuscitation, AED and Foreign Body Airway Obstruction for all age groups according to national standards recognized by the Iowa law enforcement academy.

8.1(3) *General training.* In addition to the requirements of subrules 8.1(1) and 8.1(2), a regular law enforcement officer must receive a minimum of 12 hours per year, or 36 hours every three years, of law enforcement related in-service training. Whether training is law enforcement related shall be determined by the employing agency administrator.

8.1(4) *Mental health training.* In addition to the requirements of subrules 8.1(1), 8.1(2) and 8.1(3), a regular law enforcement officer must receive mental health in-service training from a course of study approved by the Iowa law enforcement academy.

a. *Initial in-service training.* Effective September 25, 2013, each regular law enforcement officer shall complete within one year a minimum of 4 hours of mental health training from a course of study approved by the Iowa law enforcement academy council. Successful completion of Mental Health First Aid or Crisis Intervention (Memphis Model or similar model) training after January 1, 2011, shall satisfy the initial requirement.

b. *Annual in-service training.* Effective September 25, 2013, each regular law enforcement officer shall complete a minimum of 1 hour per year, or 4 hours every four years, of mental health training from a course of study approved by the Iowa law enforcement academy council. This annual in-service training is separate from and in addition to any other in-service training requirements set forth in this chapter, including the initial in-service mental health training required in paragraph 8.1(4)*"a."*

8.1(5) *Mandatory reporter training.*

a. Pursuant to Iowa Code sections 232.69(1)*"b"*(11) and 232.69(3)*"b,"* a peace officer shall complete at least two hours of additional child abuse identification and reporting training every three years. If the peace officer completes at least one hour of additional child abuse identification and reporting training prior to the three-year expiration period, the peace officer shall be deemed in compliance with the training requirements of this rule for an additional three years.

b. Pursuant to Iowa Code sections 235B.3(2)*"b"* and 235B.16(5)*"b,"* a peace officer shall complete at least two hours of additional dependent adult abuse identification and reporting training every three years. If the peace officer completes at least one hour of additional dependent adult abuse identification and reporting training prior to the three-year expiration period, the peace officer shall be deemed in compliance with the training requirements of this rule for an additional three years.

c. The elected or appointed official designated as the head of the agency employing the regular law enforcement officer shall ensure compliance with the training requirements of this subrule. The core training curriculum relating to the identification and reporting of child abuse or dependent adult abuse shall be developed and provided by the department of human services.

d. A child abuse or dependent adult abuse training certificate relating to the identification and reporting of child abuse or dependent adult abuse issued prior to July 1, 2019, remains effective and continues in effect as issued for the five-year period following its issuance.

8.1(6) *De-escalation training.* In addition to the requirements of subrules 8.1(1) to 8.1(5), a regular law enforcement officer must receive a minimum of 4 hours per year of training that includes all of the following topics:

a. An emphasis on law enforcement officer understanding and respect for diverse communities and the importance of effective, noncombative methods of carrying out law enforcement activities in a diverse community.

b. Instruction on diverse communities in order to foster mutual respect and cooperation between law enforcement and members of all diverse communities.

c. An examination of the patterns, practices, and protocols that cause biased law enforcement actions, and the tools to prevent such actions.

d. An examination and identification of key indices and perspectives that make up differences among residents in a local community.

e. Instruction on implicit bias and consideration of the negative impact of bias, whether intentional or implicit, on effective law enforcement, including examination of how historical perceptions of profiling have harmed community relations.

f. Instruction on the perspectives of diverse local constituency groups from experts on particular cultural and law enforcement-community relations issues in a local area.

g. A presentation of the history and the role of the civil rights movement and the impact on law enforcement.

h. Instruction on de-escalation techniques, including verbal and physical tactics to minimize the need for the use of force and nonlethal methods of applying force.

[**ARC 0962C**, IAB 8/21/13, effective 9/25/13; **ARC 5006C**, IAB 3/25/20, effective 4/29/20; **ARC 5572C**, IAB 4/21/21, effective 5/26/21]

501—8.2(80B) Instructors.

8.2(1) A peace officer instructor who instructs in a law enforcement related training area, as determined by the law enforcement agency administrator, may receive hour-for-hour credit towards the in-service training requirement for the subject taught, plus the corresponding hours for preparation of the subject, not to exceed the credit obtained for the actual number of hours taught. An instructor in a 12-month period may receive credit for up to 12 hours of instruction for each subject taught.

8.2(2) A peace officer instructor may receive in-service training credit for the same subject taught only once every three years.

8.2(3) In-service training programs, specialized classes, or other courses of instruction that are not Iowa law enforcement academy instructor certifying schools, may be developed and instructed by any individual deemed qualified by the law enforcement agency administrator.

501—8.3(80B) Agency responsibilities regarding in-service training.

8.3(1) It is the responsibility of the law enforcement agency administrator to ensure that in-service training records are regularly kept and maintained. The law enforcement administrator shall also see that these records are made available for inspection upon request by the Iowa law enforcement academy or its designee.

8.3(2) In-service training records shall include the following data:

a. The subject matter of the training.

b. The instructor of the training.

c. The individual who took the training.

d. The number of credit hours received from the training.

e. The location where the training took place.

f. The scores, if any, achieved by the officer to show proficiency in or understanding of the subject matter.

8.3(3) It shall be the responsibility of the law enforcement agency administrators to ensure that all regular law enforcement officers under their direction receive the minimum hours of in-service training required by these rules.

501—8.4(80B) In-service training requirements for former regular law enforcement officers who return to law enforcement.

8.4(1) Any individual who leaves and then returns to an Iowa law enforcement officer position must receive, within one year of the individual's hiring date, in-service training as follows:

Period Outside of Iowa Law Enforcement	In-Service Training Required
6 months to 12 months	12 hours
more than 12 months to 24 months	24 hours
more than 24 months to 36 months	36 hours
more than 36 months	60 hours

8.4(2) A regular law enforcement officer must possess, or obtain within the first year of employment, CPR certification and firearms qualification as designated by the Iowa law enforcement academy, in addition to the other in-service training requirements of these rules.

8.4(3) With the approval of the law enforcement agency administrator, college credits earned during the period of required training which relate directly to law enforcement may be used to satisfy the in-service training requirement. Credit will be given on the basis of ten hours of in-service training credit for each acceptable college credit earned.

8.4(4) For currently certified officers the required three-year in-service training period will begin on the anniversary date of receipt of the initial certification which follows the effective date of the rule.

8.4(5) For officers who are not certified on the effective date of this rule, and for officers hired after the effective date of this rule, the required in-service training period will begin on the first anniversary date of their initial certification.

501—8.5(80B) Time frame—tolled. The time frame requirements for completion of any mandatory training are tolled during the period a law enforcement officer is called to active military service.

These rules are intended to implement Iowa Code section 80B.11.

[Filed 11/17/88, Notice 9/7/88—published 12/14/88, effective 1/18/89]
[Filed emergency 3/5/91—published 4/3/91, effective 3/5/91]
[Filed 1/20/06, Notice 10/26/05—published 2/15/06, effective 3/22/06]
[Filed ARC 0962C (Notice ARC 0782C, IAB 6/12/13), IAB 8/21/13, effective 9/25/13]
[Filed ARC 5006C (Notice ARC 4866C, IAB 1/15/20), IAB 3/25/20, effective 4/29/20]
[Filed ARC 5572C (Notice ARC 5402C, IAB 1/27/21), IAB 4/21/21, effective 5/26/21]

CHAPTER 10
RESERVE PEACE OFFICERS

DIVISION I
RESERVE PEACE OFFICER WEAPONS CERTIFICATION

501—10.1(80D) Weapons certification.

10.1(1) Reserve officers must receive council certification in the use of weapons the hiring authority expects and authorizes them to carry. Weapons training is not required with any weapons the reserve officers are not authorized to carry.

10.1(2) Individuals who have been certified through training by the Iowa law enforcement academy as regular officers may be certified to carry weapons as reserve officers without repeating the required reserve officer's weapons training under the following conditions:

a. The academy certification through training was acquired through a school in which firearms training was required; and

(1) The individual is serving as a regular officer for another department at the time of appointment as a reserve officer, or

(2) The individual has served as a regular officer within the two years immediately preceding appointment as a reserve officer.

b. Verification must also be provided to the council that the officer has fired a qualifying score of 80 percent or higher on a firearm course using targets approved by the academy within the past 12 months. This verification must be provided by an academy-trained and -certified firearms instructor.

10.1(3) Application for weapons certification.

a. Application for weapons certification must be made in writing to the council on forms provided by the academy.

b. Verification must be received by the council that a fingerprint check has been made with the Federal Bureau of Investigation and the division of criminal investigation of the Iowa department of public safety and that the applicant has not been convicted or adjudicated of any offense listed in 501—paragraph 2.1(5)*"a."* Fingerprint check responses from these agencies must be dated not more than one year prior to the date of the receipt by the academy of the application to the council for certification.

c. Council certification will be granted only where weapons proficiency is documented.

d. Interim certification to carry weapons may be granted by the chairperson of the council if all requirements for certification have been met by the reserve officer and certified by the appointing authority. All interim certifications to carry weapons shall then be brought before the council at the next regularly scheduled meeting in order that the council can approve or reject the reserve officer's certification to carry weapons.

[**ARC 0962C**, IAB 8/21/13, effective 9/25/13; **ARC 5006C**, IAB 3/25/20, effective 4/29/20]

501—10.2(80D) Instructors for required weapons training. Firearms, striking instruments and chemical weapons training must be provided by an Iowa law enforcement academy-certified instructor before a reserve officer can be certified to carry weapons.

501—10.3(80D) Reserve officers and regular officers weapons training requirements identical. Reserve officer weapons training requirements are the same as those required of regular law enforcement officers during their basic training.

501—10.4(80D) Standards for certification. An applicant for certification to carry weapons as a reserve peace officer must be of good moral character and not have been convicted or adjudicated of any offense listed in 501—paragraph 2.1(5)*"a."*

[**ARC 5006C**, IAB 3/25/20, effective 4/29/20]

501—10.5(80D) Annual qualification. All reserve peace officers who are certified to carry firearms must qualify with all duty firearms annually on a course of fire using targets approved by the Iowa

law enforcement academy under the supervision of an academy-certified firearms instructor and must successfully fire a minimum score as established by the academy.
[**ARC 0962C**, IAB 8/21/13, effective 9/25/13]

501—10.6(80D) Agency responsibilities for record keeping.

10.6(1) It is the responsibility of the law enforcement agency administrator to ensure that training records are regularly kept and maintained. The law enforcement administrator shall make these records available for inspection upon request by the Iowa law enforcement academy or its designee.

10.6(2) Training records shall include the following data:

a. The date of the training.

b. The subject matter of the training.

c. The instructor of the training.

d. The individual who took the training.

e. The length of time of the training.

f. The location where the training took place.

g. Qualifying range scores and the scores, if any, achieved by the officer to show proficiency in or understanding of the subject matter.

501—10.7(80D) Officers transferring from one agency to another. A reserve peace officer who has been certified by the Iowa law enforcement academy council to carry weapons and who transfers from one Iowa law enforcement agency to another as a reserve officer without more than a 180-day break in service (affiliation) will not be required to undergo weapons certification training anew, provided that a completed application to carry weapons as a reserve officer for the new agency in compliance with Iowa Code section 80D.7 is filed with the academy within 180 days of the date of transfer. If firearms certification is requested, the application must show that the officer has fired qualifying rounds under the supervision of an ILEA-certified firearms instructor within 30 days of the date of application. The application shall further state that all training records for the officer have been transcripted to the new agency.

501—10.8(80D) Reserve peace officers serving more than one agency. A reserve peace officer who serves more than one Iowa law enforcement agency at the same time must be certified by the Iowa law enforcement academy council to carry weapons for each agency that the reserve officer serves in compliance with Iowa Code section 80D.7. It is not necessary for the officer to complete weapons training for each such agency, but all agencies shall maintain duplicate training records for the officer.

501—10.9(80D) Timeliness of training. Training in support of an application to the Iowa law enforcement academy council to carry weapons as a reserve peace officer shall have been accomplished not more than one year prior to the date of the receipt by the academy of the application to the council for certification. Failure to file the application within one year of the date of training shall require the officer to undergo weapons training anew.

501—10.10(80D) CPR certification required. Reserve peace officers shall maintain current course completion in cardiopulmonary resuscitation, AED and foreign body airway obstruction for all age groups according to national standards recognized by the Iowa law enforcement academy.
[**ARC 3997C**, IAB 9/12/18, effective 10/17/18]

501—10.11 to **10.99** Reserved.

These rules are intended to implement Iowa Code sections 80D.3 and 80D.7.

DIVISION II
RESERVE PEACE OFFICER PERSONAL STANDARDS

501—10.100(80D) General requirements for reserve peace officers. In no case shall any person hereafter be selected or appointed as a reserve peace officer unless the person:

10.100(1) Is a citizen of the United States and a resident of Iowa or intends to become a resident of Iowa upon appointment as a reserve peace officer; provided that the state residency requirement under this subrule shall not apply to employees of a city or county that has adopted an ordinance to allow the employees of the city or county to reside in another state and shall not apply to an employee of a city or county that later repeals such an ordinance if the employee resides in another state at the time of the repeal. A city or county that has adopted an ordinance to allow the employees of the city or county to reside in another state shall provide a current copy of the ordinance to the Iowa law enforcement academy.

10.100(2) Is 18 years of age at the time of selection or appointment.

10.100(3) Has a valid driver's or chauffeur's license issued by the state of Iowa. Reserve peace officers who are allowed to reside in an adjacent state shall be required to possess a valid driver's or chauffeur's license of the state of residence of the officer.

10.100(4) Is not addicted to drugs or alcohol.

10.100(5) Is of good moral character as determined by a thorough background investigation including a fingerprint search conducted on local, state and national fingerprint files, and has not been convicted or adjudicated of any offense listed in 501—paragraph 2.1(5)*"a."*

10.100(6) Is not by reason of conscience or belief opposed to the use of force when necessary to fulfill the person's duties.

10.100(7) Is a high school graduate with a diploma, or possesses a GED equivalency certificate.

10.100(8) Has an uncorrected vision of not less than 20/100 in both eyes, corrected to 20/20.

The applicant shall have color vision consistent with the occupational demands of law enforcement. An applicant's passing any of the following color vision tests indicates that the applicant has color vision abilities consistent with the occupational demands of law enforcement:

a. Pseudoisochromatic plates tests such as but not limited to: Tokyo Medical College, Ishihara, Standard Pseudoisochromatic Plates, Dvorine, American Optical HHR Plates, American Optical.

b. Panels tests such as Farnsworth Dichotomous D-15 Test or any other test designed and documented to identify extreme anomalous trichromatic, dichromatic or monochromatic color vision.

An individual with extreme anomalous trichromatism or monochromasy color vision, as determined through testing, is not eligible to serve as a reserve peace officer in the state of Iowa.

10.100(9) Has hearing corrected to normal hearing standards. Hearing is considered normal when, tested by an audiometer, hearing sensitivity thresholds are within 25dB measured at 1000Hz, 2000Hz and 3000Hz averaged together. Hearing tests conducted within 12 months before appointment or selection may be used. A person who performs policing duties alone and without the direct supervision of a certified regular law enforcement officer who is physically present with the reserve peace officer at all times must have normal hearing in each ear. Policing duties include but are not limited to responding to calls, making traffic stops, and patrolling the jurisdiction.

10.100(10) Is examined by a licensed physician or surgeon and meets the physical requirements as defined by the law enforcement agency necessary to fulfill the responsibilities of the reserve peace officer position being filled.

[**ARC 2960C**, IAB 3/1/17, effective 4/5/17; **ARC 5006C**, IAB 3/25/20, effective 4/29/20]

501—10.101(80D) Reserve peace officers moving from agency to agency.

10.101(1) A reserve peace officer who has previously met all the requirements of rule 501—10.100(80D) and who intends to move reserve peace officer status from one Iowa law enforcement agency to another Iowa law enforcement agency, or who intends to be a reserve peace officer for more than one Iowa law enforcement agency simultaneously, shall be of good moral character as determined by a thorough background investigation by the law enforcement agency, including, but not limited to, a fingerprint search conducted by the Iowa division of criminal investigation and the Federal Bureau of Investigation. If the results of the fingerprint file checks cannot reasonably be obtained prior to the time of appointment, the appointment shall be considered conditional until such time as the results are received and reviewed by the appointing agency.

10.101(2) Except as otherwise specified, the provisions of rule 501—10.100(80D) do not need to be reverified upon the movement of reserve peace officer status from one Iowa law enforcement agency to another Iowa law enforcement agency or upon the reserve peace officer's being appointed as a reserve peace officer by more than one Iowa law enforcement agency simultaneously, if the reserve peace officer met all of the requirements of rule 501—10.100(80D) when the person was initially appointed as a reserve peace officer and if, without a break of not more than 180 days from law enforcement service, the person is appointed as a reserve peace officer by another Iowa law enforcement agency.

501—10.102(80D) Active law enforcement officer moving to reserve peace officer status.

10.102(1) An active law enforcement officer who has previously met all the requirements of rule 501—2.1(80B) and who intends to move to reserve peace officer status, or who intends to be a reserve peace officer for more than one Iowa law enforcement agency simultaneously, or who intends to be a reserve peace officer for an Iowa law enforcement agency while also working as an active law enforcement officer shall be of good moral character as determined by a thorough background investigation by the law enforcement agency, including, but not limited to, a fingerprint search conducted by the Iowa division of criminal investigation and the Federal Bureau of Investigation. If the results of the fingerprint file checks cannot reasonably be obtained prior to the time of appointment, the appointment shall be considered conditional until such time as the results are received and reviewed by the appointing agency.

10.102(2) Except as otherwise specified, the provisions of rule 501—10.100(80D) do not need to be verified upon the movement of active law enforcement officer status to reserve peace officer status or upon the officer's being appointed as a reserve peace officer by more than one Iowa law enforcement agency simultaneously, or upon the officer's being appointed as a reserve peace officer by one Iowa law enforcement agency while serving in active law enforcement status for another agency if the peace officer met all of the requirements of rule 501—2.1(80B) when the person was initially appointed as a peace officer and if, without a break of not more than 180 days from law enforcement service, the person is appointed as a reserve peace officer by another Iowa law enforcement agency.

501—10.103(80D) Reserve peace officers in agencies under intergovernmental agreements. When jurisdictions enter into an intergovernmental agreement under the provisions of Iowa Code chapter 28E for the sharing of law enforcement services by those jurisdictions and sharing of reserve peace officers, the compliance of reserve peace officers with rule 501—10.100(80D) does not need to be reverified if the execution, filing and recording of the intergovernmental agreement conform to the requirements of Iowa law and a certified copy of the agreement is provided to the director of the academy. However, this exception from reverification does not apply to the establishment of a unified law enforcement district as defined in Iowa Code section 28E.21, wherein a new legal entity or political subdivision is established.

501—10.104(80D) Higher standards not prohibited. A person who does not meet minimum standards shall not be selected or appointed as an Iowa reserve peace officer. Agencies are not limited or restricted in establishing additional standards.

501—10.105(80D) Reserve peace officers appointed before enactment of these rules. These rules apply only to reserve peace officers appointed on or after June 2, 2004.

501—10.106 to **10.199** Reserved.

DIVISION III
RESERVE PEACE OFFICER
STANDARDIZED TRAINING AND CERTIFICATION

501—10.200(80D) Certification through training required for all reserve peace officers.

10.200(1) Each person appointed to serve as a reserve peace officer after July 1, 2007, shall satisfactorily complete a minimum training course established by the academy consisting of 80 hours of

training and 40 hours of supervised time. Training for individuals appointed as reserve peace officers shall be provided by instructors in a community college or other facility, including a law enforcement agency, selected by the individual and approved by the law enforcement agency and the academy. Reserve peace officers must be certified within 18 months from the date of their appointment.

10.200(2) The academy council may, at the council's discretion, extend the 18-month time period in which a reserve peace officer must become certified for up to 180 days after a showing of "undue hardship" by the reserve peace officer or the reserve peace officer's appointing agency. To be considered for an extension of the 18-month certification period, the person or agency requesting the extension must initiate the request in writing not less than 10 days prior to the council meeting at which the extension request is to be discussed and must also make a presentation to the council at the next regularly scheduled meeting of the council. An extension shall not be liberally granted and shall only be granted after a showing that all other alternatives to an extension have been considered and rejected.

10.200(3) The time period within which a person must achieve certification as a reserve peace officer in the state of Iowa shall commence on the day a person is first appointed as a reserve peace officer in the state of Iowa. Any subsequent changes in a reserve peace officer's appointment status, including transfers to a different appointing agency, shall not toll or otherwise extend the certification period. Those reserve peace officers appointed after July 1, 2007, but before October 3, 2007, shall have 18 months after October 3, 2007, to complete the training and supervision requirements.

10.200(4) Should a person appointed as a reserve peace officer fail to achieve certification within the time period or under any extension allowed by this rule, that person shall not be eligible for appointment as a reserve peace officer and shall not serve as a reserve peace officer in the state of Iowa for a period of not less than one year from the date the time period in which to achieve certification expired, or from the date that the person was last appointed as a reserve peace officer in the state of Iowa, whichever comes first.

501—10.201(80D) Training modules. Six modules consisting of 12 to 16 hours of required training topics per module will be developed by the academy. The training modules will include curriculum and training materials for each topic consisting of learning objectives, a lesson plan, training aids such as presentation tools, handouts, and sample tests. Curriculum and training materials will be provided by the academy to those agencies with academy-approved instructors. Training modules will be updated no less than every three years.

501—10.202(80D) Completion of training modules. The agency providing the training shall notify the academy when a training module is completed. The reserve peace officer completing the training module will be given an academy-developed test covering the completed module. The reserve peace officer completing the training module must pass the test with a score of 70 percent or better. The reserve peace officer may take the test a second time if the first test score is below 70 percent and the appointing law enforcement agency approves the second test. The reserve peace officer must then retake the training in the area failed if the second test score is below 70 percent before taking the test a third time if the appointing law enforcement agency approves the third test. Failure of the test the third time will result in the individual's not being eligible for certification for a period of one year following the date of the third test failure.

501—10.203(80D) Supervised time. Supervised time is defined as direct supervision by a regular certified law enforcement officer of the reserve peace officer while performing activities consistent with the reserve peace officer's duties, such as ride-along time, jail time, or other assigned duties.

501—10.204(80D) Certification. Upon satisfactory completion of training and supervised time required by the academy, the individual shall be certified by the academy as an Iowa reserve peace officer and shall be issued a certificate by the academy.

501—10.205(80D) Time frame—tolled. The time frame requirements for completion of any mandatory training are tolled during the period a reserve peace officer is called to active military service.

501—10.206(80D) Minimum in-service training requirements. All certified reserve peace officers shall meet the following mandatory minimum in-service training requirements.

10.206(1) *Firearms training.* A certified reserve peace officer who is authorized to carry firearms must qualify with all duty firearms annually on a course of fire using targets approved by the Iowa law enforcement academy and must successfully fire a minimum score as established by the Iowa law enforcement academy. This subrule applies only to those reserve peace officers who are authorized to carry firearms by the officers' appointing agency.

10.206(2) *General training.* In addition to the firearms training and CPR training requirements, a certified reserve peace officer must receive a minimum of 12 hours per year, or 36 hours every three years, of law enforcement-related in-service training. Whether training is law enforcement-related shall be determined by the employing agency administrator.

10.206(3) *Agency responsibility.* It is the responsibility of the law enforcement agency administrator to ensure that in-service training records are regularly kept and maintained. The law enforcement administrator shall also ensure that these records are made available for inspection upon request by the Iowa law enforcement academy or its designee.

a. In-service training records shall include the following:

(1) The subject matter of the training;

(2) The name of the instructor of the training;

(3) The name of the individual who took the training;

(4) The number of credit hours received from the training;

(5) The location where the training took place; and

(6) The scores, if any, achieved by the reserve peace officer to show proficiency in or understanding of the subject matter.

b. It shall be the responsibility of law enforcement agency administrators to ensure that all certified reserve peace officers under their direction receive the minimum hours of in-service training required by these rules.

10.206(4) *Mental health training.* In addition to the requirements of subrules 10.206(1) and 10.206(2), a certified reserve peace officer must receive mental health in-service training from a course of study approved by the Iowa law enforcement academy.

a. *Initial in-service training.* Effective September 25, 2013, each certified reserve peace officer shall complete within one year a minimum of 4 hours of mental health training from a course of study approved by the Iowa law enforcement academy council. Successful completion of Mental Health First Aid or Crisis Intervention (Memphis Model or similar model) training after January 1, 2011, shall satisfy the initial requirement.

b. *Annual in-service training.* Effective September 25, 2013, each certified reserve peace officer shall complete a minimum of 1 hour per year, or 4 hours every four years, of mental health training from a course of study approved by the Iowa law enforcement academy council. This annual in-service training is separate from and in addition to any other in-service training requirements set forth in this chapter, including the initial in-service mental health training required in paragraph 10.206(4)*"a."*

10.206(5) *De-escalation training.* In addition to the requirements of subrules 10.206(1), 10.206(2) and 10.206(4), a certified reserve peace officer must receive a minimum of 4 hours per year of training that includes all of the following topics:

a. An emphasis on law enforcement officer understanding and respect for diverse communities and the importance of effective, noncombative methods of carrying out law enforcement activities in a diverse community.

b. Instruction on diverse communities in order to foster mutual respect and cooperation between law enforcement and members of all diverse communities.

c. An examination of the patterns, practices, and protocols that cause biased law enforcement actions, and the tools to prevent such actions.

d. An examination and identification of key indices and perspectives that make up differences among residents in a local community.

e. Instruction on implicit bias and consideration of the negative impact of bias, whether intentional or implicit, on effective law enforcement, including examination of how historical perceptions of profiling have harmed community relations.

f. Instruction on the perspectives of diverse local constituency groups from experts on particular cultural and law enforcement-community relations issues in a local area.

g. A presentation of the history and the role of the civil rights movement and the impact on law enforcement.

h. Instruction on de-escalation techniques, including verbal and physical tactics to minimize the need for the use of force and nonlethal methods of applying force.

[**ARC 0962C**, IAB 8/21/13, effective 9/25/13; **ARC 5572C**, IAB 4/21/21, effective 5/26/21]

501—10.207(80D) Training and in-service training requirements for regular law enforcement officers who become certified reserve peace officers.

10.207(1) An active certified regular law enforcement officer who also serves as a reserve peace officer or a certified regular law enforcement officer who retires or leaves active regular law enforcement and returns within 180 days to an Iowa law enforcement agency as a reserve peace officer needs no further training.

10.207(2) Any individual who leaves an Iowa law enforcement officer position and becomes a certified reserve peace officer shall receive in-service training within one year of the individual's appointment date as follows:

Period Outside of Iowa Law Enforcement	In-Service Training Required
6 months to 12 months	12 hours
More than 12 months to 24 months	24 hours
More than 24 months to 36 months	36 hours
More than 36 months	60 hours

The subject matter of this training will be determined and approved by the law enforcement agency.

501—10.208(80D) Reserve peace officers appointed prior to July 1, 2007—obtaining state certification.

10.208(1) A reserve peace officer enrolled in an approved minimum course of training prior to July 1, 2007, shall obtain state certification by July 1, 2012. The state certification may be obtained through certification by examination. Reserve peace officers who have received training prior to July 1, 2007, may, upon application to and approval from the director, take a competency test or tests to gain Iowa reserve peace officer certification. Successful completion of the required test or tests will result in certification by the council. The test or tests and study material shall be prepared and administered by the academy. The individual must pass the test or tests with a score of 70 percent or better. Individuals will be allowed to take the test or tests a second time in the areas with scores below 70 percent within 60 days and with the approval of the appointing law enforcement agency. The individual must pass the test or tests upon retake with a score of 70 percent or better. Failure to score 70 percent or better the second time will require the individual, with approval of the appointing law enforcement agency, to take the 80-hour module training established by the academy.

10.208(2) Criteria to be eligible to certify through examination. The following is required for certification through examination: successful completion of a minimum 150-hour certifying reserve peace officer training program.

10.208(3) Current reserve peace officers choosing not to be state certified by examination or by module training established by the academy will continue to hold agency certification only and will not be recognized as reserve peace officers after July 1, 2012.

10.208(4) If a reserve peace officer appointed prior to July 1, 2007, with agency certification only transfers to another agency, the reserve peace officer will be considered a new reserve peace officer and will be subject to the 18-month training requirements for state certification.

501—10.209(80D) Instructors for approved reserve peace officer training program.

10.209(1) All reserve peace officer instructors will be designated as general, specialist, or legal instructors. General law enforcement instructors will be those instructing in subjects that are clearly law enforcement in nature and as designated by the academy. Specialist law enforcement instructors are those persons who have attended specialized schools and possess considerable experience in the subject to be taught as designated by the academy. Legal instructors are those persons with a juris doctor degree instructing in the area of criminal law.

10.209(2) Request for instructional certification. All instructors requesting certification must submit this request to the academy council on an application form that can be obtained from the Iowa law enforcement academy.

10.209(3) Granting or revocation of instructor certification.

a. Instructor certification will be issued for a period of three years. Instructor certification may be renewed for a three-year period if the instructor has instructed in a reserve peace officer training program during the three-year time period; the reserve peace officer training coordinator or administrator for the agency recommends renewal of the instructor certification; the individual remains in good standing; and required certification in the specialty areas is in force and valid at the time of application.

b. Instructor certification may be revoked in writing when, in the opinion of the academy or in the opinion of the administrator of the appointing law enforcement agency or other agency requesting certification, that certification should be revoked. In the event of denial of recertification or revocation of certification, the certificate holder may file a written notice of appeal to the academy council within 30 days of notification of the action. The appeal notice should be addressed to Director, Iowa Law Enforcement Academy, Camp Dodge, P.O. Box 130, Johnston, Iowa 50131. A hearing on the matter will be held by the academy council as soon as possible after receipt of the notice of appeal.

501—10.210(80D) Minimum qualifications for certification of general instructor. The minimum qualifications for certification of a general instructor include the following: a regular, nonprobationary Iowa certified sworn peace officer (active, inactive, or retired in good standing) with documented experience in the subject area to be instructed and endorsement by the chief, sheriff, or agency administrator of a law enforcement agency or other agency approved by the council as to the person's qualifications to instruct. Good standing is determined by the endorser and by the academy. A person who has been dismissed for good cause from previous employment, who left during an internal affairs investigation that would have resulted in dismissal for good cause, or who is currently involved in the decertification process shall not be considered in good standing.

501—10.211(80D) Minimum qualifications for certification of specialist instructor. The minimum qualifications for certification of a specialist instructor include the following.

10.211(1) The individual must have successfully completed a specialty course in the area to be instructed when required. The individual must have successfully met all requirements of the issuing agency granting the certification as an instructor in the specialty area requiring instructor certification. The specialty areas requiring certification include force management (ILEA), defensive tactics (ILEA), precision driving (ILEA), Hazmat awareness, blood-borne pathogens, and mandatory reporting. Certification from the issuing agency must be in force and valid at the time of application in order for the individual to be considered as a specialist instructor.

10.211(2) An instructor of the role of emergency communications must have completed the 40-hour basic telecommunication training approved by the academy or have been employed as a telecommunication specialist since July 1998.

10.211(3) An instructor of juvenile law must be a juvenile probation officer or department of human services social worker or be listed under "legal instructor."

10.211(4) An instructor of weather preparedness must have experience with the National Weather Service or be listed as a general instructor as defined above.

10.211(5) An instructor of current drug trends/investigations will be qualified by training and experience in drug investigations such as serving on a drug task force, attending DNE/DEA 40-hour training, or attending DRE training.

501—10.212(80D) Minimum qualifications for certification of legal instructor. The minimum qualifications for certification of a legal instructor include the following: The individual must have a juris doctor degree and be licensed to practice law in Iowa.

These rules are intended to implement Iowa Code sections 80D.1A, 80D.3, 80D.4 and 2007 Iowa Acts, Senate File 110.

[Filed 4/12/90, Notice 2/21/90—published 5/2/90, effective 6/6/90]
[Filed 5/10/94, Notice 3/16/94—published 6/8/94, effective 7/13/94]
[Filed 2/16/96, Notice 1/17/96—published 3/13/96, effective 4/17/96]
[Filed 5/29/97, Notice 3/26/97—published 6/18/97, effective 7/23/97]
[Filed 4/9/04, Notice 11/26/03—published 4/28/04, effective 6/2/04]
[Filed 1/20/06, Notice 10/26/05—published 2/15/06, effective 3/22/06]
[Filed 8/10/07, Notice 7/4/07—published 8/29/07, effective 10/3/07]
[Filed ARC 0962C (Notice ARC 0782C, IAB 6/12/13), IAB 8/21/13, effective 9/25/13]
[Filed ARC 2960C (Notice ARC 2850C, IAB 12/7/16), IAB 3/1/17, effective 4/5/17]
[Filed ARC 3997C (Notice ARC 3809C, IAB 5/23/18), IAB 9/12/18, effective 10/17/18]
[Filed ARC 5006C (Notice ARC 4866C, IAB 1/15/20), IAB 3/25/20, effective 4/29/20]
[Filed ARC 5572C (Notice ARC 5402C, IAB 1/27/21), IAB 4/21/21, effective 5/26/21]

CHAPTER 14
IOWA LAW ENFORCEMENT EMERGENCY CARE PROVIDER

501—14.1(80B) Authority of Iowa law enforcement emergency care provider. An Iowa law enforcement emergency care provider may perform skills identified in the Iowa law enforcement emergency care provider curriculum approved by the council.
[**ARC 5572C**, IAB 4/21/21, effective 5/26/21]

501—14.2(80B) Iowa law enforcement emergency care providers—certification, renewal standards and procedures, and fees.

14.2(1) *Application and examination.*

a. Applicants shall complete an ILEECP student registration form at the beginning of the course. ILEECP student registration forms are provided by the academy.

b. Upon satisfactory completion of the course and all training program requirements, including successful completion of the state certifying practical examination, the student shall be recommended by the training program to take the state certification written examinations. State certification must be obtained to perform appropriate skills.

c. The practical examination shall be administered by the training program using the standards and forms provided by the academy.

d. To be eligible to take the practical examination, the student shall first pass the written examination.

e. When a student's ILEECP registration is referred to the academy for investigation, the student shall not be certified until approved by the council.

f. The certifying written examinations shall be administered at times and places determined by the academy.

g. No oral certification examinations shall be permitted; however, candidates may be eligible for appropriate accommodations.

h. A student who fails the practical certification examination shall have two additional opportunities to attain a passing score. The student may repeat the failed examination on the same day as determined by the training program. A student who fails a practical station for the third time shall be required to repeat the entire course in order to be eligible for certification.

i. A student who fails to attain the appropriate overall score on the written certification examination shall have two additional opportunities to complete the entire examination and attain a passing score. Required overall passing score is 70 percent.

j. All examination attempts shall be completed within one year of the initial course completion date. If a student is unable to complete the testing within one year due to medical reasons, an extension may be granted upon submission of a signed statement from a physician and approval by the council.

k. Examination scores shall be confidential except that they may be released to the training program that provided the training or released in a manner that does not permit the identification of a student.

14.2(2) *Renewal of certification.*

a. A certificate shall be valid for two years from issuance unless specified otherwise on the certificate or unless sooner suspended or revoked.

b. All continuing education requirements shall be completed during the certification period prior to the certificate's expiration date. Failure to complete the continuing education requirements prior to the expiration date shall result in an expired certification.

c. The application for renewal of certification shall be submitted to the academy within the 90 days prior to the expiration date. Failure to submit a renewal application to the academy within the 90 days prior to the expiration date (based upon the postmark date) shall cause the current certification to expire. Iowa law enforcement emergency care providers shall not function on an expired certification.

d. An individual who has not completed the required continuing education during the certification period and is seeking to reinstate an expired certificate shall complete a refresher course approved by the academy and pass the practical and written certification examinations.

e. If an individual is unable to complete the required continuing education during the certification period due to an illness or injury, an extension of certification may be issued upon submission of a signed statement from a physician and approval by the council.

14.2(3) *Renewal standards.* To be eligible for renewal, the certificate holder shall:

a. Have signed and submitted an application for renewal of certification, provided by the academy, within the 90 days prior to the certificate's expiration date.

b. Have a current CPR course completion card or a signed and dated statement from a recognized CPR instructor that documents current course completion in CPR and AED.

c. Have completed four continuing education hours during the certification period including a minimum of one hour in each of the following topics:

(1) Infectious diseases;

(2) Trauma emergencies;

(3) Medical emergencies.

d. Maintain a file containing documentation of continuing education hours accrued during each certification period and retain this file for four years from the end of each certification period.

[**ARC 5572C**, IAB 4/21/21, effective 5/26/21]

501—14.3(80B) Iowa law enforcement training programs.

14.3(1) The training program shall use the course curricula approved by the council for an Iowa law enforcement emergency care provider and shall include, as a minimum, the following course components:

a. Twenty-four hours of classroom instruction;

b. Practical and written examinations.

14.3(2) An individual currently certified by the department of public health or the national registry as a first responder, emergency medical care provider, emergency medical responder, emergency medical technician, emergency medical technician-basic, emergency medical technician-intermediate, emergency medical technician-paramedic, critical care paramedic, or other similar credential may request Iowa law enforcement emergency care provider certification. Such a request must be made in writing to the academy with documentation of credentials as an Iowa peace officer.

[**ARC 5572C**, IAB 4/21/21, effective 5/26/21]

These rules are intended to implement Iowa Code chapter 80B.

[Filed ARC 5572C (Notice ARC 5402C, IAB 1/27/21), IAB 4/21/21, effective 5/26/21]

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CHAPTER 89
MISSING PERSONS
[Prior to 11/22/06, see 661—Ch 19]

661—89.1 to **89.99** Reserved.

DIVISION I
MISSING PERSON INFORMATION CLEARINGHOUSE

661—89.100(694) Missing person information clearinghouse. The missing person information clearinghouse is established in the division of criminal investigation. The clearinghouse provides a program for compiling, coordinating, and disseminating information, in order to locate missing persons through public awareness and cooperation, and to educate law enforcement officers and the general public about the issues related to missing persons.

661—89.101(694) Administration of missing person information clearinghouse. The division of criminal investigation administers the missing person information clearinghouse, and all questions, comments, or requests for, or submission of, information should be directed to the clearinghouse at the division of criminal investigation. Inquiries by mail should be addressed to: Missing Person Information Clearinghouse, Division of Criminal Investigation, Iowa Department of Public Safety, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319. Inquiries by electronic mail should be addressed to mpicinfo@dps.state.ia.us.
[Editorial change: IAC Supplement 6/17/09]

661—89.102(694) Definitions. The following definitions apply to rules 661—89.100(694) through 661—89.107(694).

"Approved" means having met the criteria set forth by the department of public safety.

"Clearinghouse" means the missing person information clearinghouse in the division of criminal investigation, Iowa department of public safety.

"Commissioner" means the commissioner of the Iowa department of public safety or the commissioner's authorized designee.

"Department" means the Iowa department of public safety.

"Missing person" means an individual having temporary or permanent residence in Iowa, or who is believed to be in Iowa, whose location has not been determined, who has been reported as missing to a law enforcement agency, and who:

1. Is physically or mentally disabled.
2. Is missing under circumstances indicating that the missing person may be in danger.
3. Is missing under circumstances indicating that the missing person's disappearance was not voluntary.
4. Is under the age of 21.

"Missing person report" means a report filed by a law enforcement agency or a private individual with the clearinghouse on a missing person report form.

"Missing person report form" means a form designated by the department of public safety for use by private citizens and law enforcement agencies to report missing person information to the missing person information clearinghouse. Law enforcement agencies may use forms other than the form designated by the department of public safety to submit missing person information to the clearinghouse, provided that all of the information requested on the designated form is provided.

"Prevention and education materials" means those materials that are designed to aid in the prevention of child abduction and to address risks of the exploitation of missing children and that are used in conjunction with a prevention and education program.

"Prevention and education programs" means those programs which have as their primary purpose the prevention of child abduction and of the exploitation of missing children.

"Programs and materials registry" or *"registry"* means a list of prevention and education materials and programs approved by the department.

661—89.103(694) Program information.

89.103(1) A toll-free telephone line (1-800-346-5507) is available 24 hours a day, seven days a week, to collect and disseminate information concerning missing persons in Iowa.

89.103(2) Current information on Iowa missing persons, including photographs when available, is available on the website of the clearinghouse.

89.103(3) After filing a complaint of a missing person with a law enforcement agency, the person filing the complaint may submit information to the clearinghouse on a missing person report form, which may be obtained from the clearinghouse or any law enforcement agency.

89.103(4) After a missing person complaint has been filed with a law enforcement agency, any person may submit information on a missing person report form to the clearinghouse.

661—89.104(694) Prevention and education programs and materials.

89.104(1) The clearinghouse shall maintain a registry of approved prevention and education programs and materials regarding missing and runaway children.

89.104(2) Any person or group wishing to submit prevention and education programs and materials for approval and inclusion in the registry may contact the clearinghouse in order to request information on submitting prevention and education programs and materials for approval.

89.104(3) The clearinghouse shall consider prevention and education programs and materials submitted for approval only upon receipt by the clearinghouse of all specified materials. The person or group submitting prevention and education programs or materials to the clearinghouse shall be notified of approval or rejection of the programs or materials on the registry. No prevention and education programs or materials shall be represented as having been approved by the clearinghouse or the department unless they have been approved and placed on the registry.

89.104(4) The following criteria shall govern approval of education and prevention materials and programs by the department:

a. A prevention or education program must contain all elements deemed necessary to adequately cover the subject matter.

b. Prevention and education programs and materials shall not contain any elements determined to be offensive or pornographic or which sensationalize the problem of missing persons.

c. Prevention and education programs and materials shall meet standards established by the department.

d. Prevention and education programs and materials which have been approved by the National Center for Missing and Exploited Children are deemed to be approved by the department.

89.104(5) Modifications to approved programs or materials shall be submitted to the clearinghouse for review and approval and shall not be represented as approved by the clearinghouse until such approval has been received.

89.104(6) Prevention or education programs or materials may be rejected for inclusion in the registry of approved prevention and education programs and materials if it is determined that materials utilized or content of the program is other than that which was submitted to the clearinghouse for approval, or if it is determined, based on current knowledge, that information provided in prevention and education programs and materials that have been approved previously is outdated or misleading.

89.104(7) Prevention or education programs or materials for which approval has been withdrawn by the clearinghouse shall be removed from the registry. The person or group that submitted the withdrawn program or material for consideration and approval shall be notified, if practicable.

89.104(8) If prevention or education programs or materials submitted to the clearinghouse are rejected for inclusion in the registry, or if the programs or materials previously approved are removed from the registry, the person or group that submitted the programs or materials to the clearinghouse may appeal the rejection or removal to the commissioner within 30 days of the date on which the clearinghouse notified the person or group of the rejection or withdrawal. A proceeding arising

from this rule shall be a contested case and shall be subject to rules 661—10.301(17A) through 661—10.332(17A).

89.104(9) Any individual or group may contact the clearinghouse regarding prevention and education programs and materials to ascertain if a specific program or material is on the registry.

89.104(10) Any individual may file a complaint with the clearinghouse regarding prevention and education programs and materials on the registry. Complaints shall be directed to the clearinghouse in writing.

661—89.105(694) Release of information. Prevention and education materials and program information filed with the clearinghouse for review are open records. Information received by the department that pertains to a missing person, other than criminal investigative data, shall be open records unless deemed confidential pursuant to Iowa Code chapter 22, 692 or 694, or other provision of law.

661—89.106(694) Dissemination.

89.106(1) The clearinghouse shall distribute missing person information that contains the names, photographs, descriptions, and information related to the events surrounding the disappearance of missing persons through publication on the Missing Person Information Clearinghouse website. The law enforcement agency or person to contact if a missing person is located and the names of all located missing persons will be included in the information shown on the website.

NOTE: The website of the missing person information clearinghouse is www.iowaonline.state.ia.us/mpic.

89.106(2) Each week the clearinghouse shall produce, update, and publish public service announcements on the clearinghouse website. A media outlet may request to receive the weekly public service announcement by electronic mail by subscribing to the electronic mail notification service available through the department website.

661—89.107(694) Training. The department shall develop training programs for law enforcement personnel and the general public.

89.107(1) Training for local law enforcement personnel shall include missing person reporting and legal procedures, tracking of missing persons, unidentified bodies, and criteria and procedures for AMBER alerts.

89.107(2) Training for the general public shall include information to assist in the prevention of child exploitation and kidnapping.

These rules are intended to implement Iowa Code section 694.10.

661—89.108 to **89.199** Reserved.

DIVISION II
AMBER ALERT PROGRAM

661—89.200(694) AMBER alert program. The AMBER alert program is a cooperative effort of the department of public safety, the department of transportation, the lottery authority, the Iowa association of broadcasters, the Iowa state association of sheriffs and deputies, local law enforcement agencies, and the national weather service.

661—89.201(694) Criteria. An AMBER alert shall be issued by Iowa state patrol communications upon receipt of a request from a law enforcement agency, provided that the following criteria for issuance of an AMBER alert are met:

1. Law enforcement has confirmed that a person has been abducted, and an entry has been made into the Iowa On-line Articles and Warrants (I.O.W.A.) System identifying the person as missing.
2. The person who has been abducted is under the age of 18.

3. Law enforcement believes the circumstances surrounding the abduction indicate that the child is in danger of serious bodily injury or death.

4. There is enough descriptive information about the child, abductor, or suspect's vehicle to believe that an immediate broadcast alert will help.

The criteria should be interpreted broadly so as to protect the safety of the abducted child and to maintain the integrity of the AMBER alert program and criteria.

661—89.202(694) Activation procedures.

89.202(1) An Iowa AMBER alert shall be issued by Iowa state patrol communications upon receipt of a request from a participating law enforcement agency, provided that the criteria established in rule 661—89.201(694) are met.

89.202(2) In order to initiate an Iowa AMBER alert, a law enforcement agency shall submit by facsimile transmission a completed copy of the "State of Iowa AMBER Alert Notification Plan Facsimile Transmission Packet" to the Des Moines station of Iowa state patrol communications. If transmission to the Des Moines station is not feasible, transmission may be made to the Cedar Rapids station of Iowa state patrol communications.

89.202(3) Upon receipt by Iowa state patrol communications of a completed facsimile transmission packet and if the AMBER alert criteria established in rule 661—89.201(694) are met, an AMBER alert shall be transmitted via the Emergency Alert System (EAS) to Iowa broadcasters.

89.202(4) After initiation of an AMBER alert, additional information may be submitted by the participating law enforcement agency by facsimile transmission, electronic mail, or telephone.

89.202(5) After initiation of an AMBER alert, available information shall be posted on the Iowa AMBER alert website.

NOTE: The website of the Iowa AMBER alert program is at www.iowaamberalert.org.

89.202(6) The communications officer of the Iowa state patrol may direct the issuance of an Iowa AMBER alert, upon receiving a request to do so from another state in which an AMBER alert has been issued, provided that there is evidence that the abductor may be traveling with the abducted child to or through Iowa.

89.202(7) An Iowa AMBER alert shall terminate if the child who was abducted is located or if five hours have elapsed since the initiation of the alert. An alert may be renewed.

89.202(8) If an Iowa AMBER alert is requested and if the circumstances indicate that a person is missing, the information shall be transmitted promptly to the Iowa missing person information clearinghouse.

661—89.203(694) Alternative alert if criteria are not satisfied. If an AMBER alert has been requested and the criteria established in rule 661—89.201(694) are not satisfied, the department may issue a missing person alert or a missing child alert.

These rules are intended to implement Iowa Code chapter 694.

661—89.204 to **89.299** Reserved

DIVISION III
BLUE ALERT PROGRAM

661—89.300(80H) Blue alert program. This chapter implements the Iowa blue alert program as a cooperative effort between the department and local law enforcement agencies to aid in the search for a suspect of a crime involving the death or serious injury of a peace officer in the line of duty or a peace officer who is missing while in the line of duty under circumstances warranting concern for the peace officer's safety.

[**ARC 5591C**, IAB 4/21/21, effective 5/26/21]

661—89.301(80H) Definitions. The definitions in Iowa Code section 80H.1 are adopted and incorporated herein. In addition:

"In the line of duty" or *"on duty"* means the peace officer is working within the scope of a peace officer, or there is evidence the death or serious injury of the peace officer or the fact the peace officer is missing is related to the peace officer's actions within the scope of a law enforcement officer.

"Serious injury" means any of the following:

1. Disabling mental illness;
2. Bodily injury which does any of the following:

- Creates a substantial risk of death;
- Causes serious permanent disfigurement; or
- Causes protracted loss or impairment of the function of any bodily member or organ.

[**ARC 5591C**, IAB 4/21/21, effective 5/26/21]

661—89.302(80H) Criteria for alert for officer injury or death. A blue alert shall be issued by Iowa state patrol communications upon receipt of a request from a law enforcement agency, provided that the following criteria for issuance of a blue alert are met:

1. A peace officer has suffered death or serious injury in the line of duty;
2. A law enforcement agency believes that the suspect has not been apprehended;
3. A law enforcement agency believes that the suspect may be a serious threat to the public;
4. Sufficient descriptive information is available to disseminate to the public that could assist in locating the suspect.

[**ARC 5591C**, IAB 4/21/21, effective 5/26/21]

661—89.303(80H) Criteria for alert for missing officer. A blue alert shall be issued by department communications upon receipt of a request from a law enforcement agency, provided that the following criteria for issuance of a blue alert are met:

1. A peace officer is missing while in the line of duty under circumstances warranting concern for the peace officer's safety;
2. Sufficient descriptive information is available to disseminate to the public that could assist in locating the missing peace officer.

[**ARC 5591C**, IAB 4/21/21, effective 5/26/21]

661—89.304(80H) Alternative alert if criteria are not satisfied. If a blue alert has been requested and the criteria established in rules 661—89.302(80H) and 661—89.303(80H) are not satisfied, the department may broadcast identifying information of the suspect, issue a missing person alert, or both.

[**ARC 5591C**, IAB 4/21/21, effective 5/26/21]

661—89.305(80H) Activation procedures.

89.305(1) An Iowa blue alert shall be issued by department communications upon receipt of a request from a participating law enforcement agency, provided the criteria established in rules 661—89.302(80H) and 661—89.303(80H) are met.

89.305(2) In order to initiate an Iowa blue alert, a law enforcement agency shall submit by facsimile transmission a completed copy of the "State of Iowa Blue Alert Notification Plan Facsimile Transmission Packet" to the Des Moines station of department communications. If transmission to the Des Moines station is not feasible, transmission may be made to the Cedar Rapids department communications.

89.305(3) Upon establishment of the blue alert criteria established in Iowa Code section 80H.3 and rules 661—89.302(80H) and 661—89.303(80H), the department shall transmit a blue alert through the emergency alert system to Iowa broadcasters.

89.305(4) Upon the transmission of a blue alert, the department shall post the alert on its website, accessible by the public.

NOTE: The website of the department is dps.iowa.gov.

89.305(5) After an initial blue alert transmission, additional information may be submitted by the participating law enforcement agency by facsimile transmission, electronic mail, or telephonic means.

89.305(6) The bureau chief of the department communications bureau may direct the transmission of an Iowa blue alert upon request from another state, provided that there is evidence the suspect may be present in Iowa.

89.305(7) The blue alert transmission may be directed to a specific geographic location within the state if the department communications bureau determines that the nature of the event makes it probable that the suspect or peace officer did not leave a certain geographic location of the state.
[**ARC 5591C**, IAB 4/21/21, effective 5/26/21]

661—89.306(80H) Information made public. The department communications bureau shall not release any information about the identity of a peace officer in a case involving the death or serious injury of the peace officer who is the subject of a blue alert.

If a blue alert is issued because a peace officer is missing while on duty, the department communications bureau shall defer to the investigating law enforcement agency about the nature and limits of the officer information to be made public.
[**ARC 5591C**, IAB 4/21/21, effective 5/26/21]

661—89.307(80H) Termination procedures.

89.307(1) A blue alert shall terminate if any of the following occur:

a. The suspect or peace officer is located;

b. The department determines that the blue alert is no longer an effective tool for locating the suspect or peace officer;

c. Five hours have elapsed since the transmission of the blue alert unless otherwise renewed.

89.307(2) Law enforcement agencies shall notify the department immediately upon taking a suspect into custody or upon locating the missing peace officer.
[**ARC 5591C**, IAB 4/21/21, effective 5/26/21]

These rules are intended to implement Iowa Code chapter 80H.

[Filed emergency 6/28/85—published 7/17/85, effective 7/1/85]
[Filed 1/10/86, Notice 7/17/85—published 1/29/86, effective 3/6/86]
[Filed 4/1/88, Notice 9/23/87—published 4/20/88, effective 5/25/88]
[Filed 4/13/90, Notice 12/13/89—published 5/2/90, effective 6/10/90]
[Filed 11/2/06, Notice 9/27/06—published 11/22/06, effective 1/1/07]
[Editorial change: IAC Supplement 6/17/09]
[Filed ARC 5591C (Notice ARC 5440C, IAB 2/24/21), IAB 4/21/21, effective 5/26/21]

REVENUE DEPARTMENT[701]

Created by 1986 Iowa Acts, chapter 1245.

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[Prior to 12/17/86, Revenue Department[730]]

701—42.1(257,422) School district surtax. Iowa law provides for the implementation of an income surtax for increasing local school district budgets. The surtax must be approved by the voters of a school district in a special election or by a resolution of the board of directors of a school district. The surtax rate is determined by the department of management on the basis of the revenue to be raised by the surtax for the particular school district with the surtax.

The school district surtax is imposed on the income tax liabilities of all taxpayers residing in the school district on the last day of the taxpayers' tax years. For purposes of the school district surtax, income tax liability is the tax computed under Iowa Code section 422.5, less the nonrefundable credits against computed tax which are authorized in Iowa Code chapter 422, division II.

In a situation where an individual is residing in a school district with a surtax and the individual dies during the tax year, the individual will be considered to be subject to the surtax, since the individual was residing in the school district on the last day of the individual's tax year.

An individual serving in the Armed Forces of the United States who maintains permanent residence in an Iowa school district with a surtax is subject to the surtax regardless of whether the individual is physically residing in the school district on the last day of the tax year.

A person who is present in the school district on the last day of the tax year on a temporary basis due to annual leave or in transit between duty stations is not subject to the surtax.

This rule is intended to implement Iowa Code sections 257.21, 257.29, and 422.15.
[**ARC 8702B**, IAB 4/21/10, effective 5/26/10]

701—42.2(422D) Emergency medical services income surtax. Effective July 1, 1992, a county board of supervisors may offer for voter approval a local option income surtax, an ad valorem property tax, or a combination of the two taxes to generate revenues for emergency medical services. However, this rule pertains only to the local option income surtax for emergency medical services. If a majority of those voting in the election approve the emergency medical services income surtax, the income surtax will be imposed for tax years beginning on or after January 1 of the fiscal year in which the election is held. Thus, if an election is held in the 2007-2008 fiscal year (July 1, 2007, through June 30, 2008) and the income surtax is approved in the election, the income surtax will be imposed on 2008 returns for individuals filing on a calendar-year basis. In the case of individuals filing on a fiscal-year basis, the income surtax will be imposed on returns for tax years beginning in the 2008 fiscal year. If an emergency medical services income surtax is imposed for a county, it can be imposed only for a maximum period of five years. When the emergency medical income surtax is repealed because the five-year imposition has expired, the income surtax is repealed as of December 31 for tax years beginning on or after that date.

42.2(1) *The rate of the income surtax imposed for emergency medical services.* After the income surtax is approved by an election of county voters, the board of supervisors will set the rate of tax to be imposed, which can be expressed in tenths of 1 percent or hundredths of 1 percent but cannot exceed 1 percent. In addition, because the cumulative total of the percents of income surtax imposed on any taxpayer in the county cannot exceed 20 percent, the rate of an emergency medical services income surtax may be limited, if a school district income surtax has been approved previously by a school district in the county and the surtax rate exceeds 19 percent. Therefore, assuming that a school district in the county had previously approved an income surtax rate of 19.4 percent, the medical emergency income surtax rate would be limited to six-tenths of 1 percent. If a school district income surtax and emergency medical income surtax are approved on or about the same date and the cumulative total of the income surtaxes is greater than 20 percent, the income surtax approved on the earlier of the two dates will be allowed at the rate approved and the second income surtax approved will be limited accordingly so that the cumulative rate will not exceed 20 percent. If a school district income surtax and an emergency medical income surtax are approved on the same date with a proposed cumulative rate that exceeds 20 percent, each of the surtaxes will be reduced equally so that the cumulative surtax rate will not exceed 20 percent. Assuming that a school district in a particular county approves an income surtax of 20 percent

on November 4, 2008, and an emergency medical income surtax of 1 percent is approved on the same date, both surtaxes will be reduced by five-tenths of 1 percent so that the cumulative rate of the two income surtaxes does not exceed 20 percent. The department of management can provide information about any income surtaxes that have been approved for the school districts in the county.

42.2(2) *Imposing the emergency medical income surtax.* The emergency medical income surtax will be imposed on the state income tax liability on each individual residing in the county at the end of the individual's tax year, whether the individual's tax year ends at the end of the calendar year or fiscal year. For purposes of the emergency medical income surtax, an individual's income tax liability is the aggregate of the state income taxes determined in Iowa Code section 422.5 less the nonrefundable credits against computed income tax which are authorized in Iowa Code chapter 422, division II.

42.2(3) *Administering the emergency medical income surtax.* The director of revenue shall administer the emergency medical income surtax in the same way as other state individual tax laws are administered. All powers and requirements related to administering the state income tax law apply to the administration of the emergency medical income surtax including, but not limited to, the provisions of Iowa Code sections 422.4, 422.20 to 422.31, 422.68, 422.70, and 422.72 to 422.75. The county board of supervisors and county officials shall confer with the director for assistance in drafting the ordinance imposing the emergency medical income surtax. Certified copies of the ordinance shall be filed with the department of revenue and the department of management within 30 days after the emergency medical income surtax is approved.

42.2(4) *Accounting for the emergency medical income surtax and paying the surtax.* The department shall account for the emergency medical income surtax and any interest and penalties on the surtax so that there is a separate accounting for each county where the income surtax is imposed. The accounting shall be applicable to those individual income tax returns filed on or before November 1 of the calendar year following the tax year for which the tax is imposed. The emergency medical income surtax and any penalties and interest should be credited to a "local income surtax fund" established in the office of the state treasurer. On or before December 15 of the year after the tax year, the director of revenue shall certify to the state treasurer the income surtax and any interest and penalties collected from returns filed on or before November 1.

This rule is intended to implement Iowa Code chapter 422D.

[**ARC 8702B**, IAB 4/21/10, effective 5/26/10]

701—42.3(422) Exemption credits.

42.3(1) A single person shall deduct from the computed tax a personal exemption credit of $40. A single person is defined in 701—subrule 39.4(1).

42.3(2) A married person living with husband or wife at the close of the taxable year, or living with husband or wife at the time of the death of that spouse during the taxable year, shall, if a joint return is filed, deduct from the computed tax a personal exemption of $80. Where such spouse files a separate return, each spouse is entitled to deduct from the computed tax a personal exemption of $40. The personal exemption may not be divided between the spouses in any other proportion.

42.3(3) A taxpayer shall deduct from computed tax an exemption of $40 for each dependent. "Dependent" has the same meaning as provided by the Internal Revenue Code, and the same dependents shall be claimed for Iowa income tax purposes as the taxpayer is entitled to claim for federal income tax purposes. If each spouse furnished 50 percent of the support, the spouses must elect between them which spouse is to be entitled to claim the dependent. The dividing of dependent credits applies only to the number of dependents and not to the credit amount for a particular dependent.

42.3(4) A head of household as defined in 701—subrule 39.4(7) is allowed a personal exemption credit of $80.

42.3(5) A taxpayer who is 65 years of age on or before the first day following the end of the tax year is allowed an additional personal exemption credit of $20 in addition to any other credits allowed by this rule.

42.3(6) A taxpayer who is blind, as defined in Iowa Code section 422.12(1)*"e,"* is allowed a personal exemption credit of $20 in addition to any other credits allowed by this rule.

42.3(7) A nonresident taxpayer or a part-year resident taxpayer will be allowed to deduct personal exemption credits as if the nonresident taxpayer or part-year taxpayer was a resident for the entire year.

This rule is intended to implement Iowa Code section 422.12.

[**ARC 8702B**, IAB 4/21/10, effective 5/26/10]

701—42.4(422) Tuition and textbook credit for expenses incurred for dependents attending grades kindergarten through 12 in Iowa. Effective for tax years beginning on or after January 1, 1998, taxpayers who pay tuition and textbook expenses of dependents who attend grades kindergarten through 12 in an Iowa school may receive a tax credit of 25 percent of up to $1,000 of qualifying expenses for each dependent attending an elementary or secondary school located in Iowa. In order for the taxpayer to qualify for the tax credit for tuition and textbooks, the elementary school or secondary school that the dependent is attending must meet the standards for accreditation of public and nonpublic schools in Iowa provided in Iowa Code section 256.11. In addition, the school the dependent is attending must not be operated for profit and must adhere to the provisions of the United States Civil Rights Act of 1964, and the provisions of Iowa Code chapter 216, which is known as the Iowa civil rights Act of 1965. The following definitions and criteria apply to the determination of the tax credit for amounts paid by the taxpayer for tuition and textbooks for a dependent attending an elementary or secondary school in Iowa:

42.4(1) *Tuition.* For purposes of the tuition and textbook tax credit, "tuition" means any charge made by an elementary or secondary school for the expense of personnel, buildings, equipment and materials other than textbooks, and other expenses of elementary or secondary schools which relate to the teaching of only those subjects that are legally and commonly taught in public elementary or secondary schools in Iowa. "Tuition" includes charges by a qualified school for summer school classes or for private instruction of a child who is physically unable to attend classes at the site of the elementary or secondary school.

"Tuition" does not include charges or fees which relate to the teaching of religious tenets, doctrines, or worship in cases where the purpose of the teaching is to inculcate the religious tenets, doctrines, or worship. In addition, "tuition" does not include amounts paid to an individual or other entity for private instruction of a dependent who attends an elementary or secondary school in Iowa. Amounts paid to a school for meals, lodging, or clothing for a dependent do not qualify for the tax credit for tuition.

Amounts paid to an individual or organization for home schooling of a dependent or the teaching of a dependent outside of an elementary or secondary school may not be claimed for purposes of the tuition and textbook tax credit.

42.4(2) *Textbooks.* For purposes of the tuition and textbook tax credit, "textbooks" means books and other instructional materials used in elementary and secondary schools in Iowa to teach only those subjects legally and commonly taught in public elementary and secondary schools in Iowa. "Textbooks" includes fees or charges by the elementary or secondary school for required supplies or materials for classes in art, home economics, shop or similar courses. "Textbooks" also includes books and materials used for extracurricular activities, such as sporting events, musical events, dramatic events, speech activities, driver's education, or programs of a similar nature.

"Textbooks" does not include amounts paid for books or other instructional materials used in the teaching of religious tenets, doctrines, or worship, in cases where the purpose of the teaching is to inculcate the religious tenets, doctrine, or worship. "Textbooks" also does not include amounts paid for books or other instructional materials used in teaching a dependent subjects in the home or outside of an elementary or secondary school.

42.4(3) *Extracurricular activities.* For purposes of the tuition and textbook tax credit, amounts paid for dependents to participate in or to attend extracurricular activities may be claimed as part of the tuition and textbook tax credit. "Extracurricular activities" includes sporting events, musical events, dramatic events, speech activities, driver's education if provided at a school, and programs of a similar nature.

a. The following are specific examples of expenditures related to a dependent's participation in or attendance at extracurricular activities that may qualify for the tuition and textbook tax credit:

(1) Fees for participation in school sports activities.

(2) Fees for field trips.

(3) Rental fees for instruments for school bands or orchestras but not rental fees in rent-to-own contracts.

(4) Driver's education fees, if paid to a school.

(5) Cost of activity tickets or admission tickets to school sporting, music and dramatic events.

(6) Fees for events such as homecoming, winter formal, prom, or similar events.

(7) Rental of costumes for school plays.

(8) Purchase of costumes for school plays if the costumes are not suitable for street wear.

(9) Purchase of track shoes, football shoes, or other athletic shoes with cleats, spikes, or other features that are not suitable for street wear.

(10) Costs of tickets or other admission fees to attend banquets or buffets for school academic or athletic awards.

(11) Trumpet grease, woodwind reeds, guitar picks, violin strings and similar types of items for maintenance of instruments used in school bands or orchestras.

(12) Band booster club or athletic booster club dues, but only if dues are for the dependent attending the school and not the parent or adult.

(13) Rental of formal gown or tuxedo for school dance or other school event.

(14) Dues paid to school clubs or school-sponsored organizations such as chess club, photography club, debate club, or similar organizations.

(15) Amounts paid for music that will be used in school music programs, including vocal music programs.

(16) Fees paid for general materials for shop class, agriculture class, home economics class, or auto repair class and general fees for equivalent classes.

(17) Fees for a dependent's bus trips to attend school if paid to the school.

b. The following are specific examples of expenditures related to a dependent's participation in or attendance at extracurricular activities that will not qualify for the tuition and textbook credit.

(1) Purchase of a musical instrument used in a school band or orchestra.

(2) Purchase of basketball shoes or other athletic shoes that are readily adaptable to street wear.

(3) Amounts paid for special testing such as SAT or PSAT, and for Iowa talent search tests.

(4) Payments for senior trips, band trips, and other overnight school activity trips which involve payment for meals and lodging.

(5) Fees paid to K-12 schools for courses for college credit.

(6) Amounts paid for T-shirts, sweatshirts and similar clothing that is appropriate for street wear.

(7) Amounts paid for special programs at universities and colleges for high school students.

(8) Payment for private instrumental lessons, voice lessons or similar lessons.

(9) Amounts paid for a school yearbook, annual or class ring.

(10) Fees for special materials paid for shop class, agriculture class, auto repair class, home economics class and similar classes. For purposes of this paragraph, "special materials" means materials used for personal projects of the dependents, such as materials to make furniture for personal use, automobile parts for family automobiles and other materials for projects for personal or family benefit.

42.4(4) *Claiming the credit.* The credit can only be claimed by the spouse who claims the dependent credit on the Iowa tax return as described in subrule 42.3(3). For example, for divorced or separated parents, only the spouse who claims the dependent credit on the Iowa return can claim the tuition and textbook credit for tuition and textbook expenses for that dependent.

In cases where married taxpayers file separately on a combined return form, the tuition and textbook credit shall be allocated between the spouses in the ratio in which the dependent credit was claimed between the spouses.

EXAMPLE: A married couple has two dependent children and claimed a tuition and textbook credit of $500 related to both children on their 2011 Iowa return. The taxpayers filed separately on a combined Iowa return form for 2011. One spouse claimed both of the dependent credits on the Iowa return. The $500 tuition and textbook credit will be claimed by the spouse who claimed the dependent credits on the Iowa return.

EXAMPLE: A married couple has three dependent children and claimed a tuition and textbook credit of $600 related to all three children on their 2011 Iowa return. The taxpayers filed separately on a combined Iowa return form for 2011. One spouse claimed one dependent credit, and the other spouse claimed two dependent credits on the Iowa return. The spouse who claimed one dependent credit will claim $200 of the tuition and textbook credit, while the spouse who claimed two dependent credits will claim $400 of the tuition and textbook credit.

This rule is intended to implement Iowa Code section 422.12.

[**ARC 8702B**, IAB 4/21/10, effective 5/26/10; **ARC 9820B**, IAB 11/2/11, effective 12/7/11]

701—42.5(422) Nonresident and part-year resident credit. For tax years beginning on or after January 1, 1982, an individual who is a nonresident of Iowa for the entire tax year, or an individual who is an Iowa resident for a portion of the tax year, is allowed a credit against the individual's Iowa income tax liability for the Iowa income tax on the portion of the individual's income which was earned outside Iowa while the person was a nonresident of Iowa. This credit is computed on Schedule IA 126, which is included in the Iowa individual income tax booklet. The following subrules clarify how the nonresident and part-year resident credit is computed for nonresidents of Iowa and taxpayers who are part-year residents of Iowa during the tax year.

42.5(1) *Nonresident/part-year resident credit for nonresidents of Iowa.* A nonresident of Iowa shall complete the Iowa individual return in the same way an Iowa resident completes the form by reporting the individual's total net income, including income earned outside Iowa, on the front of the IA 1040 return form. A nonresident individual is allowed the same deduction for federal income tax and the same itemized deductions as an Iowa resident taxpayer with identical deductions for these expenditures. Thus, a nonresident with a taxable income of $40,000 would have the same initial Iowa income tax liability as a resident taxpayer with a taxable income of $40,000 before the nonresident/part-year resident credit is computed.

The nonresident/part-year resident credit is computed on Schedule IA 126. The lines referred to in this subrule are from Schedule IA 126 and Form IA 1040 for the 2008 tax year. Similar lines on the schedule and form may apply for subsequent tax years. The individual's Iowa source net income from lines 1 through 25 of the schedule is totaled on line 26 of the schedule. If the nonresident's Iowa source net income is less than $1,000, the taxpayer is not subject to Iowa income tax and is not required to file an Iowa income tax return for the tax year. However, if the Iowa source net income amount is $1,000 or more, the Iowa source net income is then divided by the person's all source net income on line 27 of Schedule IA 126 to determine the percentage of the Iowa net income to all source net income. This Iowa income percentage, which is rounded to the nearest tenth of a percent, is inserted on line 28 of the schedule, and this percentage is then subtracted from 100 percent to arrive at the nonresident/part-year resident credit percentage or the percentage of the individual's total income which was earned outside Iowa. The nonresident/part-year resident credit percentage is entered on line 29 of Schedule IA 126. The Iowa income tax on total income from line 43 of the IA 1040 is entered on line 30 of Schedule IA 126. The total of nonrefundable credits from line 49 of the IA 1040 is then shown on line 31 of Schedule IA 126. The amount on line 31 is subtracted from the amount on line 30, which results in the Iowa total tax after nonrefundable credits, which is entered on line 32. This Iowa tax-after-credits amount is multiplied by the nonresident/part-year resident credit percentage from line 29 to compute the nonresident/part-year resident credit. The amount of the credit is inserted on line 33 of Schedule IA 126 and on line 51 of the IA 1040.

EXAMPLE A. A single resident of Nebraska had Iowa source net income of $15,000 in 2008 from wages earned from employment in Iowa. The rest of this person's income was attributable to sources outside Iowa. This nonresident of Iowa had an all source net income of $40,000 and a taxable income of $30,000 due to a federal tax deduction of $7,000 and itemized deductions of $3,000. The Iowa income percentage is computed by dividing the Iowa source net income of $15,000 by the taxpayer's all source net income of $40,000, which results in a percentage of 37.5. This percentage is subtracted from 100 percent which leaves a nonresident/part-year resident credit percentage of 62.5.

The Iowa tax from line 43 of the IA 1040 is $1,508. The total nonrefundable credit from line 49 is $40, which leaves a tax amount of $1,468 when the credit is subtracted from $1,508. When $1,468 is multiplied by the nonresident/part-year resident credit percentage of 62.5, a nonresident credit of $918 is computed which is entered on line 33 of Schedule IA 126 as well as on line 51 of the IA 1040 for 2008.

EXAMPLE B. A California resident, who was married, had $20,000 of Iowa source income in 2008 from an Iowa farm. This individual had an additional $80,000 in income that was attributable to sources outside Iowa, but the individual's spouse had no income. The taxpayers had paid $18,000 in federal income tax in 2008 and had itemized deductions of $12,000 in 2008.

The taxpayers' taxable income on their joint Iowa return was $70,000. The taxpayers had an Iowa income tax liability of $4,583 after application of the personal exemption credits of $80. The taxpayers had an Iowa source income of $20,000 and an all source net income of $100,000. Therefore, the Iowa income percentage was 20. Subtracting the Iowa income percentage of 20 percent from 100 percent leaves a nonresident/part-year resident credit percentage of 80.

When the Iowa income tax liability of $4,583 is multiplied by 80 percent, this results in a nonresident/part-year resident credit of $3,666. This credit amount is entered on line 33 of the Schedule IA 126 and on line 51 of Form IA 1040.

42.5(2) *Nonresident/part-year resident credit for part-year residents of Iowa.* An individual who is a resident of Iowa for part of the tax year shall complete the front of the IA 1040 income tax return form as a resident taxpayer by showing the taxpayer's total income, including income earned outside Iowa, on the front of the IA 1040 return form. A part-year resident of Iowa is allowed the same federal tax deduction and itemized deductions as a resident taxpayer who has paid the same amount of federal income tax and has paid for the same deductions that can be claimed on Schedule A in the tax year. Therefore, a part-year resident would have the same initial Iowa income tax liability as an Iowa resident with the same taxable income before computation of the nonresident/part-year resident credit.

The nonresident/part-year resident credit for a part-year resident is computed on Schedule IA 126. The lines referred to in this subrule are from the IA 1040 income tax return form and the Schedule IA 126 for 2008. Similar lines may apply for tax years after 2008. The individual's Iowa source income is totaled on line 26 of Schedule IA 126 and includes all the individual's income received while the taxpayer was a resident of Iowa and all the Iowa source income received during the period of the tax year when the individual was a resident of a state other than Iowa. Iowa source income includes, but is not limited to, wages earned in Iowa while a resident of another state as well as income from Iowa farms and other Iowa businesses that was earned during the portion of the year that the taxpayer was a nonresident of Iowa. In the case of interest from a part-year resident's account at an Iowa financial institution, only interest earned during the period of the individual's Iowa residence is Iowa source income unless the account is for an Iowa business. If the part-year resident's account at a financial institution is for an Iowa business, all interest earned in the year by the part-year resident from the account is taxable to Iowa.

Income earned outside Iowa by the part-year resident during the portion of the year the individual was an Iowa resident is taxable to Iowa and is part of the individual's Iowa source income. To compute the nonresident/part-year resident credit for a part-year resident, the taxpayer's Iowa source income on Schedule IA 126 is totaled. If the Iowa source income is less than $1,000, the taxpayer is not subject to Iowa income tax and is not required to file an Iowa return. If the Iowa source income is $1,000 or more, it is divided by the taxpayer's all source net income on line 27 of Schedule IA 126. The percentage computed by this procedure is the Iowa income percentage and is entered on line 28 of the Schedule IA 126. The Iowa income percentage, which is rounded to the nearest tenth of a percent, is then subtracted from 100 percent to arrive at the nonresident/part-year resident credit percentage, which is entered on line 29 of Schedule IA 126. The Iowa tax from line 43 of the IA 1040 is then shown on line 30 of Schedule IA 126. The total of the Iowa nonrefundable credits from line 49 of the IA 1040 is entered on line 31 of Schedule IA 126 and is subtracted from the Iowa tax amount on line 30. The tax-after-credits amount on line 32 is next multiplied by the nonresident/part-year resident credit percentage from line 28. The amount calculated from this procedure is the nonresident/part-year resident credit, which is shown on line 33 of Schedule IA 126 and on line 51 of Form IA 1040.

EXAMPLE A. A single individual was a resident of Nebraska for the first half of 2008 and moved to Iowa on July 1, 2008, to accept a job in Des Moines. This individual earned $20,000 from wages, $200 from interest, and $4,000 from a ranch in Nebraska from January 1, 2008, through June 30, 2008. In the last half of 2008, this person had wages of $30,000, interest income of $300, and $4,000 from the Nebraska ranch. This part-year resident had federal income tax paid in 2008 of $11,000 and had itemized deductions of $3,000.

The part-year resident's all source net income was $58,500 and the Iowa source net income was $34,300, which includes the Iowa wages, the Nebraska ranch income of $4,000 earned during the individual's period of Iowa residence, as well as the interest income of $300 earned during that time of the tax year. The Iowa taxable income for the part-year resident for 2008 was $44,500, which included the federal income tax deduction of $11,000 and itemized deductions of $3,000. The individual's Iowa income percentage was 58.6 which was determined by dividing the Iowa source income of $34,300 by the all source income of $58,500. Subtracting the Iowa income percentage of 58.6 from 100 percent results in a nonresident/part-year resident credit percentage of 41.4. The Iowa tax on total income was $2,529 which was reduced to $2,489 after subtraction of the personal exemption credit of $40.

When $2,489 is multiplied by the nonresident/part-year resident percentage of 41.4, a nonresident/part-year resident credit of $1,030 is computed for this part-year resident.

EXAMPLE B. A single individual moved from Minnesota to Iowa on July 1, 2008. This person had received $5,000 in income from an Iowa farm in March of the tax year and another $10,000 from this farm in September of 2008. This person had $10,000 in wages from employment in Minnesota in the first half of the year and another $15,000 in wages from employment in Iowa in the last half of 2008. This person had $2,000 in interest from a Minnesota bank in the first half of the year and $2,000 in interest from an Iowa bank in the last six months of 2008. This taxpayer had $8,000 in federal income tax withheld from wages in 2008 and claimed the standard deduction on both the Iowa and federal income tax returns.

The part-year resident's all source income was $44,000 and the Iowa source income was $32,000 which consisted of $15,000 in wages, $2,000 in interest income, and $15,000 in income from the Iowa farm. Since the farm was in Iowa, the farm income received in the first half of 2008 was taxable to Iowa as well as the farm income received while the individual was an Iowa resident. The individual's Iowa taxable income was $34,250 which was computed after subtracting the federal income tax deduction of $8,000 and a standard deduction of $1,750. The taxpayer's Iowa income tax liability was $1,757 after subtraction of a personal exemption credit of $40.

The taxpayer's Iowa income percentage was 72.7 which was computed by dividing the Iowa source income of $32,000 by the all source income of $44,000. The nonresident/part-year resident credit percentage was 27.3 which was arrived at by subtracting the Iowa income percentage of 72.7 from 100 percent. The taxpayer's nonresident/part-year resident credit is $480. This was determined by multiplying the Iowa income tax liability after personal exemption credit amount of $1,757 by the nonresident/part-year resident percentage of 27.3.

This rule is intended to implement Iowa Code section 422.5.

[**ARC 8702B**, IAB 4/21/10, effective 5/26/10; **ARC 1665C**, IAB 10/15/14, effective 11/19/14]

701—42.6(422) Out-of-state tax credits.

42.6(1) *General rule.* Iowa residents are allowed an out-of-state tax credit for taxes paid to another state or foreign country on income which is also reported on the taxpayer's Iowa return. The out-of-state tax credit is allowable only if the taxpayer files an Iowa resident income tax return.

If the Iowa resident is a partner, shareholder, member, or beneficiary of a partnership, S corporation, limited liability company, or trust which files a composite income tax return in another state on behalf of the partners, shareholders, members or beneficiaries, the out-of-state tax credit will be allowed for the Iowa resident. The Iowa resident must provide a schedule of the resident's share of the income tax paid to another state on a composite basis, and the out-of-state tax credit is limited based upon the calculation set forth in subrule 42.6(2).

However, if the partnership, S corporation, limited liability company or trust is directly subject to tax in another state and the tax is not directly imposed on the resident taxpayer, then the out-of-state tax credit is not allowed for the Iowa resident on the tax directly imposed on the partnership, S corporation, limited liability company, or trust. For example, if another state does not recognize the S corporation election for state purposes and a corporation income tax is imposed directly on the S corporation, then the out-of-state tax credit is not allowed for the Iowa resident shareholder on the corporation income tax paid to the other state.

42.6(2) *Limitation of out-of-state tax credit.* If an Iowa resident taxpayer pays income tax to another state or foreign country on any of the taxpayer's income, the taxpayer is entitled to a net tax credit; that is, the taxpayer may deduct from the taxpayer's Iowa net tax (not from gross income) the amount of income tax actually paid to the other state or country, provided the amount deducted as a credit does not exceed the amount of Iowa net income tax on the same income which was taxed by the other state or foreign country.

42.6(3) *Computation of tax credit.*

a. The limitation on the tax credit must be computed according to the following formula: Gross income taxed by another state or foreign country that is also taxed by Iowa shall be divided by the total gross income of the Iowa resident taxpayer. This quotient, multiplied by the net Iowa tax as determined on the total gross income of the taxpayer as if entirely earned in Iowa, shall be the maximum tax credit against the Iowa net tax. This quotient shall be computed as a percentage rounded to the nearest tenth of a percent. However, if the income tax paid to the other state or foreign country on the gross income taxed by the other state or foreign country is less than the maximum tax credit against the Iowa tax, the out-of-state credit allowed against the Iowa tax may not exceed the income tax paid to the other state or foreign country. The income tax paid to the other state or foreign country is the net state or foreign income tax actually paid for the tax year on the income taxed by the other state or foreign country and not the state or foreign income tax paid during the tax year, such as state income tax or foreign income tax withheld from the income taxed by the other state or foreign country.

b. Out-of-state tax credit examples. An individual who is an Iowa resident for the entire tax year can claim an out-of-state tax credit against the person's Iowa income tax liability for any income tax paid to another state or foreign country for the tax year on any gross income received by the individual for the year which was derived from sources outside of Iowa to the extent this gross income is also subject to Iowa income tax.

However, in the case of an individual who is a part-year resident of Iowa for the tax year, that individual can only claim an out-of-state tax credit against the person's Iowa income tax liability for income tax paid to another state or foreign country on gross income derived from sources outside of Iowa during the period of the tax year that the individual was an Iowa resident and only to the extent this gross income derived from sources outside of Iowa was also subject to Iowa income tax.

The taxpayer's out-of-state credit is computed on Schedule IA 130 which is to be filed with the taxpayer's Iowa individual income tax return. The taxpayer's income tax return or other document of the other state or foreign country supporting the income tax paid to the other state or foreign country shall be filed with the individual's Iowa income tax return to support the out-of-state tax credit claimed.

EXAMPLE 1. Gene Miller was an Iowa resident for the entire year 2008. Mr. Miller lived in Council Bluffs and worked the entire year for a company in Omaha, Nebraska. Mr. Miller had wages of $30,000 and Nebraska income tax withheld of $1,000. He also had income of $10,000 from rental of an Iowa farm and another $10,000 in interest income from a personal savings account in an Iowa bank. The amount of Mr. Miller's gross income that was taxed by Nebraska (the other state or foreign country) was $30,000. His total gross income in 2008 was $50,000. Thus, 60 percent of his income was earned in Nebraska. Mr. Miller's Iowa tax on line 54 of Form IA 1040 was $917, which resulted in a potential out-of-state credit of 60 percent of the Iowa tax or $550 because 60 percent of Mr. Miller's income was earned outside Iowa and was taxed by Nebraska. However, Mr. Miller's income tax liability on the Nebraska income tax return was only $500. Thus, the out-of-state tax credit allowed was $500, because that was less than the potential out-of-state tax credit of $550.

EXAMPLE 2. Ben Smith was a part-year Iowa resident in 2008. He resided in Missouri for the first six months of the year until he moved to Keokuk, Iowa, on July 1. Mr. Smith was employed in Missouri for the entire year and had wages of $30,000 and had Missouri income tax liability of $1,000. Half of Mr. Smith's wages or $15,000 of the wages was earned during the time Mr. Smith was an Iowa resident. Mr. Smith also had $10,000 in farm rental income from farmland located in Iowa. The amount of gross income taxed by Missouri while Mr. Smith was an Iowa resident was $15,000. Mr. Smith's gross income earned while an Iowa resident for the year was $25,000. Thus, 60 percent of the gross income was earned in the other state while Mr. Smith was an Iowa resident. Mr. Smith's Iowa income tax on line 54 of the IA 1040 was $1,292. This resulted in a potential out-of-state credit of $775 because 60 percent of the gross income was earned in Missouri during the period Mr. Smith was an Iowa resident. However, since 50 percent of the income earned in Missouri was earned while Mr. Smith was a resident of Iowa and the Missouri income tax liability for the year was $1,000, the out-of-state credit was $500 or 50 percent of the Missouri income tax liability. The out-of-state credit allowed was $500, because this was less than the Iowa income tax of $775 that was applicable to the gross income earned in Missouri during the period Mr. Smith was an Iowa resident.

42.6(4) *Proof of claim for tax credit.* The credit may be deducted from Iowa net income tax if written proof of such payment to another state or foreign country is furnished to the department. The department will accept any one of the following as proof of such payment:

a. A photocopy, or other similar reproduction, of either:

(1) The receipt issued by the other state or foreign country for payment of the tax, or

(2) The canceled check (both sides) with which the tax was paid to the other state or foreign country together with a statement of the amount and kind (whether wages, salaries, property or business) of total income on which such tax was paid.

b. A copy of the income tax return filed with the other state or foreign country which has been certified by the tax authority of that state or foreign country and showing thereon that the income tax assessed has been paid to them.

This rule is intended to implement Iowa Code section 422.8.

[**ARC 8702B**, IAB 4/21/10, effective 5/26/10; **ARC 1665C**, IAB 10/15/14, effective 11/19/14]

701—42.7(422) Out-of-state tax credit for minimum tax.

42.7(1) *General rule.* Iowa residents are allowed an out-of-state tax credit for minimum taxes or income taxes paid to another state or foreign country on preference items derived from sources outside of Iowa. Part-year residents who pay minimum tax to another state or foreign country on preference items derived from sources outside Iowa will be allowed an out-of-state tax credit only to the extent that the minimum tax paid to the other state or foreign country relates to preference items that occurred during the period the taxpayer was an Iowa resident. Taxpayers who were nonresidents of Iowa for the entire tax year are not eligible for an out-of-state tax credit on their Iowa returns for minimum taxes paid to another state or foreign country on preference items.

If the Iowa resident is a partner, shareholder, member, or beneficiary of a partnership, S corporation, limited liability company, or trust which files a composite income tax return and pays minimum tax in another state on behalf of the partners, shareholders, members or beneficiaries, the out-of-state tax credit will be allowed for the Iowa resident. The Iowa resident must provide a schedule of the resident's share of the minimum tax paid to another state on a composite basis, and the out-of-state tax credit is limited based upon the calculation set forth in subrule 42.7(2).

However, if the partnership, S corporation, limited liability company, or trust is directly subject to minimum tax in another state and the minimum tax is not directly imposed on the resident taxpayer, then the out-of-state tax credit is not allowed for the Iowa resident on the minimum tax directly imposed on the partnership, S corporation, limited liability company, or trust. For example, if another state does not recognize the S corporation election for state tax purposes and a corporation income tax is imposed directly on the S corporation which includes minimum tax, then the out-of-state tax credit is not allowed for the Iowa resident shareholder on the corporation income tax, including minimum tax, paid to the other state.

42.7(2) *Limitation of out-of-state tax credit for minimum tax.* The limitation on the out-of-state tax credit for minimum tax is that the credit shall not exceed the Iowa minimum tax that would have been computed on the same preference items which were taxed by the other state or foreign country. The limitation may be determined according to the following formula: The total of preference items earned outside of Iowa and taxed by another state or foreign country shall be divided by the total of preference items of the resident taxpayer. This quotient, multiplied by the state minimum tax on the total of preference items as if entirely earned in Iowa, shall be the maximum credit against the Iowa minimum tax. However, if the minimum tax imposed by the other state or foreign country is less than the minimum tax computed under the limitation formula, the out-of-state credit for minimum tax will not exceed the minimum tax imposed by the other state or foreign country.

No out-of-state credit will be allowed on the Iowa return for minimum tax paid to another state or foreign country to the extent that the minimum tax of the other state or foreign country is imposed on items of tax preference not subject to the Iowa minimum tax. In addition, no out-of-state credit will be allowed for minimum tax paid to another state or foreign country of capital gains or losses from distressed sales which are excluded from the Iowa minimum tax. Capital gains or losses from distressed sales are described in rule 701—40.27(422).

42.7(3) *Proof of claim for out-of-state tax credit for minimum tax.* The out-of-state credit for minimum tax may be claimed on the return of a taxpayer if proof of payment of minimum tax to the state or foreign country is included with the return. Documents needed for proof of payment are a photocopy of the minimum tax form of the state or country to which minimum tax was paid as well as instructions from the minimum tax form or other information which specifies how the minimum tax is imposed and what preference items are subject to the minimum tax of that state or foreign country.

In the case of audit by the department of a taxpayer claiming an out-of-state tax credit for minimum tax paid, the department may require additional proof of payment of the out-of-state tax credit. The department will accept any of the following documents as verification of payment of the minimum tax:

a. A photocopy, or other similar reproduction, of either:

(1) The receipt issued by the other state or foreign country for payment of the tax, including the minimum tax, or

(2) The canceled check (both sides) which was used for payment of the minimum tax to the other state or foreign country.

b. A copy of the return filed with the other state or foreign country which has been certified by the tax authority of that state or foreign country and which shows that the income tax, including the minimum tax, has been paid.

This rule is intended to implement Iowa Code section 422.8.

[**ARC 8702B**, IAB 4/21/10, effective 5/26/10]

701—42.8(422) Withholding and estimated tax credits. An employee from whose wages tax is withheld shall claim credit for the tax withheld on the employee's income tax return for the year during which the tax was withheld. Credit will be allowed only if a copy of the withholding statement is attached to the return. Taxpayers who have made estimated income tax payments shall claim credit for the estimated tax paid for the taxable year.

This rule is intended to implement Iowa Code section 422.16.

[**ARC 8702B**, IAB 4/21/10, effective 5/26/10]

701—42.9(422) Motor fuel credit. An individual, partnership, limited liability company, or S corporation may elect to receive an income tax credit in lieu of the motor fuel tax refund provided by Iowa Code chapter 452A. An individual, partnership, limited liability company, or S corporation which holds a motor fuel tax refund permit under Iowa Code section 452A.18 when it makes this election must cancel the permit within 30 days after the first day of the tax year. However, if the refund permit is not canceled within this period, the permit becomes invalid at the time the election to receive an income tax credit is made. The election will continue for subsequent tax years unless a new motor fuel tax refund permit is obtained.

The motor fuel income tax credit must be the amount of Iowa motor fuel tax paid on qualifying fuel purchases as determined by Iowa Code chapter 452A and Iowa Code section 422.110 less any state sales tax as determined by 701—subrule 231.2(2). The credit must be claimed on the tax return covering the tax year in which the motor fuel tax was paid. If the motor fuel credit results in an overpayment of income tax, the overpayment may be refunded or may be credited to income tax due in the subsequent tax year.

The motor fuel tax credits for fuel taxes paid by partnerships, limited liability companies, and S corporations are not claimed on returns filed for the partnerships, limited liability companies, and S corporations. Instead, the pro rata shares of the motor fuel tax credits are allocated to the partners, members, and shareholders in the same ratio as incomes are allocated to the partners, members, and shareholders. A schedule must be attached to the individual's returns showing the distribution of gallons and the amount of credit claimed by each partner, member, or shareholder.

The partnership, limited liability company, or S corporation must attach to its return a schedule showing the allocation to each partner, member, or shareholder of the motor fuel purchased by the partnership, limited liability company, or S corporation which qualifies for the credit.

This rule is intended to implement Iowa Code sections 422.110 and 422.111.

[**ARC 8702B**, IAB 4/21/10, effective 5/26/10]

701—42.10(422) Alternative minimum tax credit for minimum tax paid in a prior tax year. Minimum tax paid in prior tax years commencing with tax years beginning on or after January 1, 1987, by a taxpayer can be claimed as a tax credit against the taxpayer's regular income tax liability in a subsequent tax year. Therefore, 1988 is the first tax year that the minimum tax credit is available, and the credit is based on the minimum tax paid by the taxpayer for 1987. The minimum tax credit may only be used against regular income tax for a tax year to the extent that the regular tax is greater than the minimum tax for the tax year. If the minimum tax credit is not used against the regular tax for a tax year, the remaining credit is carried over to the following tax year to be applied against the regular income tax liability for that period. The minimum tax credit is computed on Form IA 8801.

42.10(1) *Examples of computation of the minimum tax credit and carryover of the credit.*

EXAMPLE 1. The taxpayers reported $5,000 of minimum tax for 2007. For 2008, the taxpayers reported regular tax of $8,000, and the minimum tax liability is $6,000. The minimum tax credit is $2,000 for 2008 because, although the taxpayers had an $8,000 regular tax liability, the credit is allowed only to the extent that the regular tax exceeds the minimum tax. Since only $2,000 of the carryover credit from 2007 was used, there is a $3,000 minimum tax carryover credit to 2009.

EXAMPLE 2. The taxpayers reported $2,500 of minimum tax for 2007. For 2008, the taxpayers reported regular tax of $8,000, and the minimum tax liability is $5,000. The minimum tax credit is $2,500 for 2008 because, although the regular tax exceeded the minimum tax by $3,000, the credit is allowed only to the extent of minimum tax paid for prior tax years. There is no minimum tax carryover credit to 2009.

42.10(2) *Minimum tax credit for nonresidents and part-year residents.* Nonresident and part-year resident taxpayers who paid Iowa minimum tax in tax years beginning on or after January 1, 1987, are eligible for the minimum tax credit to the extent that the minimum tax they paid was attributable to tax preferences and adjustments. Therefore, if a nonresident or part-year resident taxpayer had Iowa source tax preferences or adjustments, then all the minimum tax that was paid would qualify for the minimum tax credit.

The minimum tax credit for a tax year as computed above applies to the regular income tax liability less the nonresident part-year credit to the extent this regular tax amount exceeds the minimum tax for the tax year. To the extent the credit is not used, the credit can be carried over to the next tax year.

This rule is intended to implement Iowa Code section 422.11B.

[**ARC 8702B**, IAB 4/21/10, effective 5/26/10; **ARC 2829C**, IAB 11/23/16, effective 1/1/17]

701—42.11(15,422) Research activities credit. The taxes imposed on individual income shall be reduced by a state tax credit for increasing research activities in this state. For individual income tax,

the requirements of the research activities credit are described in Iowa Code section 422.10. This rule explains terms not defined in the statute and procedures for claiming the credit.

42.11(1) *Definitions.*

"Accountant" means a person authorized under Iowa Code chapter 542 to engage in the practice of public accounting in Iowa as defined in Iowa Code section 542.3(23) or authorized to engage in such practice in another state under a similar law of another state.

"Architect" means a person licensed under Iowa Code chapter 544A or a similar law of another state.

"Aviation and aerospace" means the design, development or production of aircraft, rockets, missiles, spacecraft and other machinery and equipment that operate in aerospace.

"Collection agency" means a person primarily engaged in the business of collecting debt, including but not limited to consumer debt collection subject to the provisions of the federal Fair Debt Collections Practices Act in 15 U.S.C. §1692 et seq., the Iowa debt collection practices Act in Iowa Code sections 537.7101 through 537.7103, or other similar state law.

"Finance or investment company" means a person primarily engaged in finance or investment activities broadly consisting of the holding, depositing, or management of a customer's money or assets for investment purposes, or the provision of loans or other similar financing or credit to customers. "Finance or investment company" includes but is not limited to a person organized or licensed under Iowa Code chapter 524, 533, or 533D or other similar state or federal law, or an investment company as defined in 15 U.S.C. §80a-3.

"Life sciences" means the sciences concerned with the study of living organisms, including agriscience, biology, botany, zoology, microbiology, physiology, biochemistry, and related subjects.

"Manufacturing" means the same as defined in 2018 Iowa Acts, Senate File 2417, section 183.

"Publisher" means a person whose primary business is the publishing of books, periodicals, newspapers, music, or other works for sale in any format.

"Real estate company" means a person licensed under Iowa Code chapter 543B or otherwise primarily engaged in acts constituting dealing in real estate as described in Iowa Code section 543B.6.

"Retailer" means a person that primarily engages in sales of personal property as defined in 2018 Iowa Acts, Senate File 2417, section 158, or services directly to an ultimate consumer. A business that primarily makes sales for resale is not a retailer.

"Software engineering" means the detailed study of the design, development, operation, and maintenance of software.

"Transportation company" means a person whose primary business is the transportation of persons or property from one place to another.

"Wholesaler" means a person that primarily engages in buying large quantities of goods and reselling them in smaller quantities to retailers or other merchants who in turn sell those goods to the ultimate consumer.

42.11(2) *Requirement that the business claim and be allowed the federal credit.* To claim this credit, a taxpayer's business must claim and be allowed a research credit for such qualified research expenses under Section 41 of the Internal Revenue Code for the same taxable year as the taxpayer's business is claiming the credit.

a. Being "allowed" the federal credit. For purposes of this subrule, a federal credit is "allowed" if the taxpayer meets all requirements to claim the credit under Section 41 of the Internal Revenue Code and any applicable federal regulation and Internal Revenue Service guidance and such credit has not been disallowed by the Internal Revenue Service.

b. Applicability of requirement to pass-throughs. If the individual received the Iowa credit through a pass-through entity, the pass-through entity that conducted the research must have claimed and been allowed the federal credit in order for the individual to claim the Iowa credit.

c. Impact of federal audit. If the Internal Revenue Service audits or otherwise reviews the return and disallows the credit, the taxpayer shall file an amended Iowa return along with supporting schedules, including an amended federal return or a copy of the federal revenue agent's report and notification of final federal adjustments, to add back the Iowa credit to the extent not previously disallowed by the department.

d. Authority of the department. Nothing in this subrule shall limit the department's authority to review, examine, audit, or otherwise challenge an Iowa tax credit claim under Iowa Code section 422.10, regardless of inaction, a settlement, or a determination by the Internal Revenue Service under Section 41 of the Internal Revenue Code.

42.11(3) *Calculating the credit.* For information on how the credit is calculated, see Iowa Code section 422.10.

42.11(4) *Claiming the tax credit.*

a. Forms. The credit must be claimed on the forms provided on the department's website and must include all information required by the forms.

b. Allocation to the individual owners of an entity or beneficiaries of an estate or trust. An individual may claim a research activities credit incurred by a partnership, S corporation, limited liability company, estate, or trust electing to have the income of the business entity taxed to the individual. The amount claimed by an individual from the business entity shall be based upon the pro rata share of the individual's earnings from a partnership, S corporation, estate or trust.

c. Refundability. Any research credit in excess of the individual's tax liability, less the nonrefundable credits authorized in Iowa Code chapter 422, division II, may be refunded to the individual or may be credited to the individual's tax liability for the following tax year.

d. Transferability. Tax credit certificates shall not be transferred to any other person.

e. Enterprise zone claimants. The enterprise zone program was repealed on July 1, 2014. However, any supplemental research activities credit earned by businesses pursuant to Iowa Code section 15.335 and approved under the enterprise zone program prior to July 1, 2014, remains valid and can be claimed on tax returns filed after July 1, 2014.

This rule is intended to implement Iowa Code sections 15.335 and 422.10 as amended by 2018 Iowa Acts, Senate File 2417.

[**ARC 8702B**, IAB 4/21/10, effective 5/26/10; **ARC 9104B**, IAB 9/22/10, effective 10/27/10; **ARC 9820B**, IAB 11/2/11, effective 12/7/11; **ARC 0337C**, IAB 9/19/12, effective 10/24/12; **ARC 1101C**, IAB 10/16/13, effective 11/20/13; **ARC 1545C**, IAB 7/23/14, effective 8/27/14; **ARC 1744C**, IAB 11/26/14, effective 12/31/14; **ARC 4143C**, IAB 11/21/18, effective 12/26/18]

701—42.12(422) New jobs credit. A tax credit is available to an individual who has entered into an agreement under Iowa Code chapter 260E and has increased employment by at least 10 percent.

42.12(1) *Definitions.*

a. The term "new jobs" means those jobs directly resulting from a project covered by an agreement authorized by Iowa Code chapter 260E (Iowa industrial new jobs training Act) but does not include jobs of recalled workers or replacement jobs or other jobs that formerly existed in the industry in this state.

b. The term "jobs directly related to new jobs" means those jobs which directly support the new jobs but do not include in-state employees transferred to a position which would be considered to be a job directly related to new jobs unless the transferred employee's vacant position is filled by a new employee. The burden of proof that a job is directly related to new jobs is on the taxpayer.

EXAMPLE A. A taxpayer who has entered into a chapter 260E agreement to train new employees for a new product line, transfers an in-state employee to be foreman of the new product line but does not fill the transferred employee's position. The new foreman's position would not be considered a job directly related to new jobs even though it directly supports the new jobs because the transferred employee's old position was not refilled.

EXAMPLE B. A taxpayer who has entered into a chapter 260E agreement to train new employees for a new product line transfers an in-state employee to be foreman of the new product line and fills the transferred employee's position with a new employee. The new foreman's position would be considered a job directly related to new jobs because it directly supports the new jobs and the transferred employee's old position was filled by a new employee.

c. The term "taxable wages" means those wages upon which an employer is required to contribute to the state unemployment fund as defined in Iowa Code subsection 96.19(37) for the year in which the taxpayer elects to take the new jobs tax credit. For fiscal year taxpayers, "taxable wages" shall not be greater than the maximum wage upon which an employer is required to contribute to the state unemployment fund for the calendar year in which the taxpayer's fiscal year begins.

d. The term "agreement" means an agreement entered into under Iowa Code chapter 260E after July 1, 1985, an amendment to that agreement, or an amendment to an agreement entered into before July 1, 1985, if the amendment sets forth the base employment level as of the date of the amendment. The term "agreement" also includes a preliminary agreement entered into under Iowa Code chapter 260E provided the preliminary agreement contains all the elements of a contract and includes the necessary elements and commitments relating to training programs and new jobs.

e. The term "base employment level" means the number of full-time jobs an industry employs at a plant site which is covered by an agreement under Iowa Code chapter 260E on the date of the agreement.

f. The term "project" means a training arrangement which is the subject of an agreement entered into under Iowa Code chapter 260E.

g. The term "industry" means a business engaged in interstate or intrastate commerce for the purpose of manufacturing, processing, or assembling products, conducting research and development, or providing services in interstate commerce, but excludes retail, health, and professional services. "Industry" does not include a business which closes or substantially reduces its operations in one area of the state and relocates substantially the same operation in another area of the state. "Industry" is a business engaged in the above-listed activities rather than the generic definition encompassing all businesses in the state engaged in the same activities. For example, in the meat-packing business, an industry is considered to be a single corporate entity or operating division, rather than the entire meat-packing business in the state.

h. The term "new employees" means the same as new jobs or jobs directly related to new jobs.

i. The term "full-time job" means any of the following:

(1) An employment position requiring an average work week of 35 or more hours;

(2) An employment position for which compensation is paid on a salaried full-time basis without regard to hours worked; or

(3) An aggregation of any number of part-time or job-sharing employment positions which equal one full-time employment position. For purposes of this subrule, each part-time or job-sharing employment position shall be categorized with regard to the average number of hours worked each week as one-quarter, half, three-quarters, or full-time position, as set forth in the following table:

Average Number of Weekly Hours	**Category**
More than 0 but less than 15	¼
15 or more but less than 25	½
25 or more but less than 35	¾
35 or more	1 (full-time)

42.12(2) *How to compute the credit.* The credit is 6 percent of the taxable wages paid to employees in new jobs or jobs directly related to new jobs for the taxable year in which the taxpayer elects to take the credit.

EXAMPLE 1. A taxpayer enters into an agreement to increase employment by 20 new employees which is greater than 10 percent of the taxpayer's base employment level of 100 employees. In year one of the agreement, the taxpayer hires 20 new employees but elects not to take the credit in that year. In year two of the agreement, only 18 of the new employees hired in year one are still employed and the taxpayer elects to take the credit. The credit would be 6 percent of the taxable wages of the 18 remaining new employees. In year three of the agreement, the taxpayer hires two additional new employees under the agreement to replace the two employees that left in year two and elects to take the credit. The credit would be 6 percent of the taxable wages paid to the two replacement employees. In year four of the agreement, three of the employees for which a credit had been taken left employment and three additional employees were hired. No credit is available for these employees. A credit can only be taken one time for each new job or job directly related to a new job.

EXAMPLE 2. A taxpayer operating two plants in Iowa enters into a chapter 260E agreement to train new employees for a new product line at one of the taxpayer's plants. The base employment level on the date of the agreement at plant A is 300 and at plant B is 100. Under the agreement, 20 new employees

will be trained for plant B which is greater than a 10 percent increase of the base employment level for plant B. In the year in which the taxpayer elects to take the credit, the employment level at plant A is 290 and at plant B is 120. The credit would be 6 percent of the wages of 10 new employees at plant B as 10 new jobs were created by the industry in the state. A credit for the remaining 10 employees can be taken if the employment level at plant A increases back to 300 during the period of time that the credit can be taken.

42.12(3) *When the credit can be taken.* The taxpayer may elect to take the credit in any tax year which either begins or ends during the period beginning with the date of the agreement and ending with the date by which the project is to be completed under the agreement. However, the taxpayer may not take the credit until the base employment level has been exceeded by at least 10 percent.

EXAMPLE: A taxpayer enters into an agreement to increase employment from a base employment level of 200 employees to 225 employees. In year one of the agreement, the taxpayer hires 20 new employees which is a 10 percent increase over the base employment level but elects not to take the credit. In year two of the agreement, two of the new employees leave employment. The taxpayer elects to take the credit which would be 6 percent of the taxable wages of the 18 employees currently employed. In year three, the taxpayer hires 7 new employees and elects to take the credit. The credit would be 6 percent of the taxable wages of the 7 new employees.

A taxpayer may claim on the taxpayer's individual income tax return the pro rata share of the Iowa new jobs credit from a partnership, subchapter S corporation, estate or trust. The portion of the credit claimed by the individual shall be in the same ratio as the individual's pro rata share of the earnings of the partnership, subchapter S corporation, or estate or trust. All partners in a partnership, shareholders in a subchapter S corporation and beneficiaries in an estate or trust shall elect to take the Iowa new jobs credit the same year.

For tax years beginning prior to January 1, 2007, any Iowa new jobs credit in excess of the individual's tax liability less the credits authorized in Iowa Code sections 422.12 and 422.12B may be carried forward for ten years or until it is used, whichever is the earlier. For tax years beginning on or after January 1, 2007, any Iowa new jobs credit in excess of the individual's tax liability less the credits authorized in Iowa Code section 422.12 may be carried forward for ten years or until it is used, whichever is the earlier.

This rule is intended to implement Iowa Code section 422.11A.

[**ARC 8702B**, IAB 4/21/10, effective 5/26/10]

701—42.13(422) Earned income credit.

42.13(1) *Tax years beginning before January 1, 2007.* Effective for tax years beginning on or after January 1, 1990, an individual is allowed an Iowa earned income credit equal to a percentage of the earned income credit to which the taxpayer is entitled on the taxpayer's federal income tax return as authorized in Section 32 of the Internal Revenue Code. The Iowa earned income credit is nonrefundable; therefore, the credit may not exceed the remaining income tax liability of the taxpayer after the personal exemption credits and the other nonrefundable credits are deducted. The percentage of the earned income credit for tax years beginning in the 1990 calendar year is 5 percent. The percentage of the earned income credit for tax years beginning on or after January 1, 1991, is 6.5 percent.

For federal income tax purposes, the earned income credit is available for a low-income worker who maintains a household in the United States that is the principal place of abode of the worker and a child or children for more than one-half of the tax year or the worker must have provided a home for the entire tax year for a dependent parent. In addition, the worker must be (1) a married person who files a joint return and is entitled to a dependency exemption for a son or daughter, adopted child or stepchild; (2) a surviving spouse; or (3) an individual who qualifies as a head of household as described in Section 2(b) of the Internal Revenue Code. The federal earned income credit for a taxpayer is determined by computing the taxpayer's earned income on a worksheet provided in the federal income tax return instructions and determining the allowable credit from a table included in the instructions for the 1040 or 1040A. For purposes of the credit, a taxpayer's earned income includes wages, salaries, tips, or other compensation plus net income from self-employment.

In the case of married taxpayers who filed a joint federal return and who elected to file separate state returns or separately on the combined return form, the Iowa earned income credit is allocated between the spouses in the ratio that each spouse's earned income relates to the earned income of both spouses.

Nonresidents and part-year residents of Iowa are allowed the same earned income credits as resident taxpayers.

42.13(2) *Tax years beginning on or after January 1, 2007.* Effective for tax years beginning on or after January 1, 2007, but beginning before January 1, 2013, an individual is allowed an Iowa earned income credit equal to 7 percent of the earned income credit to which the taxpayer is entitled on the taxpayer's federal income tax return as authorized in Section 32 of the Internal Revenue Code. For tax years beginning on or after January 1, 2013, but beginning before January 1, 2014, an individual is allowed an Iowa earned income tax credit equal to 14 percent of the earned income credit to which the taxpayer is entitled on the taxpayer's federal income tax return as authorized in Section 32 of the Internal Revenue Code. For tax years beginning on or after January 1, 2014, an individual is allowed an Iowa earned income tax credit equal to 15 percent of the earned income credit to which the taxpayer is entitled on the taxpayer's federal income tax return as authorized in Section 32 of the Internal Revenue Code. The Iowa earned income credit is refundable; therefore, the credit may exceed the remaining income tax liability of the taxpayer after the personal exemption credits and other nonrefundable credits are deducted.

In the case of married taxpayers who filed a joint federal return and who elected to file separate state returns or separately on the combined return form, the Iowa earned income credit is allocated between the spouses in the ratio that each spouse's earned income relates to the earned income of both spouses.

Nonresidents or part-year residents of Iowa must determine the Iowa earned income tax credit in the ratio of their Iowa source net income to their total source net income. In addition, if nonresidents or part-year residents of Iowa are married and elect to file separate returns or separately on the combined return form, the Iowa earned income credit must be allocated between the spouses in the ratio of each spouse's Iowa source net income to the combined Iowa source net income.

EXAMPLE: A married couple lives in Omaha, Nebraska. One spouse worked in Iowa in 2007 and had wages and other income from Iowa sources of $12,000. That spouse had a federal adjusted gross income from all sources of $15,000. The other spouse had no Iowa source net income and had a federal adjusted gross income from all sources of $10,000. The taxpayers had a federal earned income credit of $2,800.

The federal earned income credit of $2,800 multiplied by 7 percent equals $196. The ratio of Iowa source net income of $12,000 divided by total source net income of $25,000 equals 48 percent. The Iowa earned income tax credit equals $196 multiplied by 48 percent, or $94.

This rule is intended to implement Iowa Code section 422.12B as amended by 2013 Iowa Acts, Senate File 295.

[**ARC 8702B**, IAB 4/21/10, effective 5/26/10; **ARC 1102C**, IAB 10/16/13, effective 11/20/13]

701—42.14(15) Investment tax credit—new jobs and income program and enterprise zone program.

42.14(1) *General rule.* An investment tax credit of up to 10 percent of the new investment which is directly related to new jobs created by the location or expansion of an eligible business is available for businesses approved by the economic development authority under the new jobs and income program and the enterprise zone program. The new jobs and income program was repealed on July 1, 2005, and has been replaced with the high quality job creation program. See rule 701—42.29(15) for information on the investment tax credit under the high quality job creation program. Any investment tax credit earned by businesses approved under the new jobs and income program prior to July 1, 2005, remains valid and can be claimed on tax returns filed after July 1, 2005. The credit is available for machinery and equipment or improvements to real property placed in service after May 1, 1994. The credit shall be taken in the year the qualifying asset is placed in service. The enterprise zone program was repealed on July 1, 2014. Any investment tax credit earned by businesses approved under the enterprise zone program prior to July 1, 2014, remains valid and can be claimed on tax returns filed after July 1, 2014. For business

applications received by the economic development authority on or after July 1, 1999, purchases of real property made in conjunction with the location or expansion of an eligible business, the cost of land and any buildings and structures located on the land will be considered to be new investment which is directly related to new jobs for purposes of determining the amount of new investment upon which an investment tax credit may be taken. For projects approved on or after July 1, 2005, under the enterprise zone program, the investment tax credit will be amortized over a five-year period, as described in subrule 42.29(2).

For eligible businesses approved by the Iowa department of economic development on or after March 17, 2004, certain lease payments made by eligible businesses to a third-party developer will be considered to be new investment for purposes of computing the investment tax credit. The eligible business shall enter into a lease agreement with the third-party developer for a minimum of ten years. The investment tax credit is based on the annual base rent paid to a third-party developer by the eligible business for a period not to exceed ten years. The total costs of the annual base rent payments for the ten-year period cannot exceed the cost of the land and the third-party developer's cost to build or renovate the building used by the eligible business. The annual base rent is defined as the total lease payment less taxes, insurance and operating and maintenance expenses.

Any credit in excess of the tax liability for the tax year may be carried forward seven years or until used, whichever is the earlier.

If the business is a partnership, S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount of the credit claimed by the individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

42.14(2) *Investment tax credit—value-added agricultural products or biotechnology-related processes.* For tax years beginning on or after July 1, 2001, an eligible business whose project primarily involves the production of value-added agricultural products may elect to receive a refund for all or a portion of an unused investment tax credit. For tax years beginning on or after July 1, 2001, but before July 1, 2003, an eligible business includes a cooperative described in Section 521 of the Internal Revenue Code which is not required to file an Iowa corporation income tax return and whose project primarily involves the production of ethanol. For tax years beginning on or after July 1, 2003, an eligible business includes a cooperative described in Section 521 of the Internal Revenue Code which is not required to file an Iowa corporation income tax return. For tax years ending on or after July 1, 2005, an eligible business approved under the enterprise zone program whose project primarily involves biotechnology-related processes may elect to receive a refund for all or a portion of an unused investment tax credit.

Eligible businesses shall apply to the Iowa department of economic development for tax credit certificates between May 1 and May 15 of each fiscal year through the fiscal year ending June 30, 2009. The election to receive a refund of all or a portion of an unused investment tax credit is no longer available beginning with the fiscal year ending June 30, 2010. Only those businesses that have completed projects before the May 1 filing date may apply for a tax credit certificate. The Iowa department of economic development will not issue tax credit certificates for more than $4 million during a fiscal year for this program and eligible businesses described in subrule 42.29(2). If applications are received for more than $4 million, the applicants shall receive certificates for a prorated amount.

The economic development authority will issue tax credit certificates within a reasonable period of time. Tax credit certificates are valid for the tax year following project completion. The tax credit certificate must be included with the tax return for the tax year during which the tax credit is claimed. The tax credit certificate shall not be transferred, except for a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return and whose project primarily involves the production of ethanol for tax years beginning on or after January 1, 2002, or for a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return for tax years beginning on or after July 1, 2003.

For value-added agricultural projects, for a cooperative that is not required to file an Iowa income tax return because it is exempt from federal income tax, the cooperative must submit a list of its members and the share of each member's interest in the cooperative. The Iowa department of economic development will issue a tax credit certificate to each member on the list.

See 701—subrule 52.10(4) for examples illustrating how this subrule is applied.

For tax years beginning on or after January 1, 2002, but before July 1, 2003, a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return and whose project primarily involves the production of ethanol may elect to transfer all or a portion of its tax credit to its members. For tax years beginning on or after July 1, 2003, a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return may elect to transfer all or a portion of its tax credit to its members. The amount of tax credit transferred and claimed by a member shall be based upon the pro rata share of the member's earnings in the cooperative. The economic development authority will issue a tax credit certificate to each member of the cooperative to whom the credit was transferred provided that tax credit certificates which total no more than $4 million are issued during a fiscal year. The tax credit certificate must be included with the tax return for the tax year during which the tax credit is claimed.

42.14(3) *Repayment of credits.* If an eligible business fails to maintain the requirements of the new jobs and income program or the enterprise zone program, the taxpayer may be required to repay all or a portion of the tax incentives taken on Iowa returns. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the tax credits may have expired, the department may proceed to collect the tax incentives forfeited by failure to maintain the requirements of the new jobs and income program or the enterprise zone program because this repayment is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability. Details on the calculation of the repayment can be found in 261—subrule 187.5(4) of the administrative rules of the economic development authority. If the business is a partnership, limited liability company, S corporation, estate or trust where the income of the taxpayer is taxed to the individual owner(s) of the business, the department may proceed to collect the tax incentives against the partners, members, shareholders or beneficiaries to whom the tax incentives were passed through. See Decision of the Administrative Law Judge in *Damien & Colette Trebilcock, et al.,* Docket No. 11DORF 042-044, June 11, 2012.

If the eligible business, within five years of purchase, sells, disposes of, razes, or otherwise renders unusable all or a part of the land, buildings, or other existing structures for which a tax credit was claimed under this rule, the income tax liability of the eligible business for the year in which all or part of the property is sold, disposed of, razed, or otherwise rendered unusable shall be increased by one of the following amounts:

a. One hundred percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within one full year after being placed in service.

b. Eighty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within two full years after being placed in service.

c. Sixty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within three full years after being placed in service.

d. Forty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within four full years after being placed in service.

e. Twenty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within five full years after being placed in service.

This rule is intended to implement Iowa Code section 15.333 as amended by 2010 Iowa Acts, Senate File 2380.

[**ARC 8702B**, IAB 4/21/10, effective 5/26/10; **ARC 9104B**, IAB 9/22/10, effective 10/27/10; **ARC 1744C**, IAB 11/26/14, effective 12/31/14]

701—42.15(422) Child and dependent care credit. Effective for tax years beginning on or after January 1, 1990, there is a child and dependent care credit which is refundable to the extent the amount of the credit exceeds the taxpayer's income tax liability less other applicable income tax credits.

42.15(1) *Computation of the Iowa child and dependent care credit.* The Iowa child and dependent care credit is computed as a percentage of the child and dependent care credit which is allowed for federal income tax purposes under Section 21 of the Internal Revenue Code. For taxpayers whose federal child and dependent care credit is limited to their federal tax liability, the Iowa credit shall be computed based on the lesser amount for tax years beginning on or after January 1, 2012, but before January 1, 2015. For tax years beginning on or after January 1, 2015, the Iowa credit is computed without regard to whether or not the federal credit was limited to the taxpayer's federal tax liability. In addition, for tax years beginning on or after January 1, 2015, the Iowa credit will be allowed even if the taxpayer's adjusted gross income is below $0. The credit is computed so that taxpayers with lower adjusted gross incomes (net incomes in tax years beginning on or after January 1, 1991) are allowed higher percentages of their federal child care credit than taxpayers with higher adjusted gross incomes (net incomes). The following is a schedule showing the percentages of federal child and dependent care credits allowed on the taxpayers' Iowa returns on the basis of the federal adjusted gross incomes (or net incomes) of the taxpayers for tax years beginning on or after January 1, 1993.

*Federal Adjusted Gross Income (Net Income for Tax Years Beginning on or after January 1, 1993)	Percentage of Federal Child and Dependent Care Credit Allowed for 1993 through 2005 Iowa Returns	Percentage of Federal Credit Allowed for 2006 and Later Tax Years
Less than $10,000	75%	75%
$10,000 or more but less than $20,000	65%	65%
$20,000 or more but less than $25,000	55%	55%
$25,000 or more but less than $35,000	50%	50%
$35,000 or more but less than $40,000	40%	40%
$40,000 or more but less than $45,000	No Credit	30%
$45,000 or more	No Credit	No Credit

*Note that in the case of married taxpayers who have filed joint federal returns and elect to file separate returns or separately on the combined return form, the taxpayers must determine the child and dependent care credit by the schedule provided in this rule on the basis of the combined federal adjusted gross income of the taxpayers or their combined net income for tax years beginning on or after January 1, 1991. The credit determined from the schedule must be allocated between the married taxpayers in the proportion that each spouse's federal adjusted gross income relates to the combined federal adjusted gross income of the taxpayers or in the proportion that each spouse's net income relates to the combined net income of the taxpayers in the case of tax years beginning on or after January 1, 1991.

42.15(2) *Examples of computation of the Iowa child and dependent care credit.* The following are examples of computation of the child and dependent care credit and the allocation of the credit between spouses in situations where married taxpayers have filed joint federal returns and are filing separate Iowa returns or separately on the combined return form. For tax years beginning on or after January 1, 1991, the taxpayers' net incomes are used to compute the Iowa child and dependent care credit and allocate the credit between spouses in situations where the taxpayers file separate Iowa returns or separately on the combined return form.

EXAMPLE A. A married couple has filed a joint federal return on which they showed a federal adjusted gross income of $40,000 or a combined net income of $40,000 on their state return for the tax year beginning January 1, 2007. Both spouses were employed. They had a federal child and dependent care credit of $600 which related to expenses incurred for care of their two small children. One of the spouses had a federal adjusted gross income of $30,000 or a net income of $30,000 and the second spouse had a federal adjusted gross income of $10,000 or a net income of $10,000.

The taxpayers' Iowa child and dependent care credit was $180 since they were entitled to an Iowa child and dependent care credit of 30 percent of their federal credit of $600. If the taxpayers elect to file separate Iowa returns, the $180 credit would be allocated between the spouses on the basis of each spouse's net income to the combined net income of both spouses as shown below:

$$\$180 \times \frac{\$30{,}000}{\$40{,}000} = \$135$$ child and dependent care credit for spouse with $30,000 net income for 2007

$$\$180 \times \frac{\$10{,}000}{\$40{,}000} = \$45$$ child and dependent care credit for spouse with $10,000 net income for 2007

EXAMPLE B. A married couple filed a joint federal return for 2007 and filed their 2007 Iowa return using the married filing separately on the combined return form filing status. Both spouses were employed. They had a federal child and dependent care credit of $800 which related to expenses incurred for care of their children. One spouse had a net income of $25,000 and the other spouse had a net income of $12,500.

The taxpayers' Iowa child and dependent care credit was $320, since they were entitled to an Iowa credit of 40 percent of their federal credit of $800. The $320 credit is allocated between the spouses on the basis of each spouse's net income as it relates to the combined net income of both spouses as shown below:

$$\$320 \times \frac{\$25{,}000}{\$37{,}500} = \$213$$ child and dependent care credit for spouse with $25,000 net income for 2007

$$\$320 \times \frac{\$12{,}500}{\$37{,}500} = \$107$$ child and dependent care credit for spouse with $12,500 net income for 2007

42.15(3) *Computation of the Iowa child and dependent care credit for nonresidents and part-year residents.* Nonresidents and part-year residents who have incomes from Iowa sources in the tax year may claim child and dependent care credits on their Iowa returns. To compute the amount of child and dependent care credit that can be claimed on the Iowa return by a nonresident or part-year resident, the following formula shall be used:

$$\text{Federal child and dependent care credit} \times \text{Percentage of federal child and dependent credit allowed on Iowa return from table in subrule 42.15(1)} \times \frac{\text{*Iowa net income}}{\text{Federal adjusted gross income or all source net income}}$$

*Iowa net income for purposes of determining the child care credit that can be claimed on the Iowa return by a nonresident or part-year resident taxpayer is the total of the Iowa source incomes less the Iowa source adjustments to income on line 26 of the Form IA 126.

In cases where married taxpayers are nonresidents or part-year residents of Iowa and are filing separate Iowa returns or separately on the combined return form, the child and dependent care credit allowable on the Iowa return should be allocated between the spouses in the ratio of the Iowa net income of each spouse to the combined Iowa net income of the taxpayers.

42.15(4) *Example of computation of the Iowa child and dependent care credit for nonresidents and part-year residents.* The following is an example of the computation of the Iowa child and dependent care credit for nonresidents and part-year residents.

A married couple lives in Omaha, Nebraska. One of the spouses worked in Iowa and had wages and other income from Iowa sources or an Iowa net income of $15,000. That spouse had an all source net income of $18,000. The second spouse had an Iowa net income of $10,000 and an all source net income of $12,000. The taxpayers had a federal child and dependent care credit of $800 which related to expenses incurred for the care of their two young children. The taxpayers' Iowa child and dependent care credit is calculated below for the 2007 tax year:

Federal child and dependent care credit		Percentage of federal child and dependent credit allowed on Iowa return			$\times$	$\frac{\text{Iowa net income}}{\text{All source net income}}$		
$800	$\times$	50%	=	$400	$\times$	$\frac{\$25,000}{\$30,000}$	=	$333

The $333 credit is allocated between the spouses as shown below for the 2007 tax year:

$$\$333 \times \frac{\$10,000}{\$25,000} = \$133 \text{ for spouse with Iowa source net income of } \$10,000$$

$$\$333 \times \frac{\$15,000}{\$25,000} = \$200 \text{ for spouse with Iowa source net income of } \$15,000$$

This rule is intended to implement Iowa Code section 422.12C as amended by 2014 Iowa Acts, Senate File 2337.

[**ARC 8702B**, IAB 4/21/10, effective 5/26/10; **ARC 0337C**, IAB 9/19/12, effective 10/24/12; **ARC 1665C**, IAB 10/15/14, effective 11/19/14]

701—42.16(422) Franchise tax credit. For tax years beginning on or after January 1, 1997, a shareholder in a financial institution, as defined in Section 581 of the Internal Revenue Code, which has elected to have its income taxed directly to the shareholders may take a tax credit equal to the shareholder's pro rata share of the Iowa franchise tax paid by the financial institution.

For tax years beginning on or after July 1, 2004, a member of a financial institution organized as a limited liability company that is taxed as a partnership for federal income tax purposes which has elected to have its income taxed directly to its members may take a tax credit equal to the member's pro rata share of the Iowa franchise tax paid by the financial institution.

The credit must be computed by recomputing the amount of tax computed under Iowa Code section 422.5 by reducing the shareholder's or member's taxable income by the shareholder's or member's pro rata share of the items of income and expenses of the financial institution and subtracting the credits allowed in Iowa Code sections 422.12 and 422.12B for tax years beginning prior to January 1, 2007. The recomputed tax must be subtracted from the amount of tax computed under Iowa Code section 422.5 reduced by the credits allowed in Iowa Code sections 422.12 and 422.12B for tax years beginning prior to January 1, 2007. For tax years beginning on or after January 1, 2007, only the credits allowed in Iowa Code section 422.12 are reduced in computing the franchise tax credit.

The resulting amount, not to exceed the shareholder's or member's pro rata share of the franchise tax paid by the financial institution, is the amount of tax credit allowed the shareholder or member.

This rule is intended to implement Iowa Code section 422.11.

[**ARC 8702B**, IAB 4/21/10, effective 5/26/10]

701—42.17(15E) Eligible housing business tax credit. An individual who qualifies as an eligible housing business may receive a tax credit of up to 10 percent of the new investment which is directly related to the building or rehabilitating of homes in an enterprise zone. The enterprise zone program was repealed on July 1, 2014, and the eligible housing business tax credit has been replaced with the workforce housing tax incentives program. See rule 701—42.53(15) for information on the tax incentives provided under the workforce housing tax incentives program. Any investment tax credit earned by businesses approved under the enterprise zone program prior to July 1, 2014, remains valid and can be claimed on tax returns filed after July 1, 2014. The tax credit may be taken on the tax return for the tax year in which the home is ready for occupancy.

An eligible housing business is one which meets the criteria in 2014 Iowa Code section 15E.193B.

42.17(1) *Computation of credit.* New investment which is directly related to the building or rehabilitating of homes includes but is not limited to the following costs: land, surveying, architectural services, building permits, inspections, interest on a construction loan, building materials, roofing, plumbing materials, electrical materials, amounts paid to subcontractors for labor and materials provided, concrete, labor, landscaping, appliances normally provided with a new home, heating and cooling equipment, millwork, drywall and drywall materials, nails, bolts, screws, and floor coverings.

New investment does not include the machinery, equipment, or hand or power tools necessary to build or rehabilitate homes.

A taxpayer may claim on the taxpayer's individual income tax return the pro rata share of the Iowa eligible housing business tax credit from a partnership, S corporation, limited liability company, estate, or trust. The portion of the credit claimed by the individual shall be in the same ratio as the individual's pro rata share of the earnings of the partnership, S corporation, limited liability company, or estate or trust, except for projects beginning on or after July 1, 2005, which used low-income housing tax credits authorized under Section 42 of the Internal Revenue Code to assist in the financing of the housing development. For these projects, the partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder.

For tax years beginning prior to January 1, 2007, any Iowa eligible housing business tax credit in excess of the individual's tax liability, less the credits authorized in Iowa Code sections 422.12 and 422.12B, may be carried forward for seven years or until it is used, whichever is the earlier. For tax years beginning on or after January 1, 2007, any Iowa eligible housing business tax credit in excess of the individual's tax liability less the credits authorized in Iowa Code section 422.12 may be carried forward for seven years or until it is used, whichever is the earlier.

If the eligible housing business fails to maintain the requirements of 2014 Iowa Code section 15E.193B, the taxpayer, in order to be an eligible housing business, may be required to repay all or a part of the tax incentives the taxpayer received. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the income tax credit may have expired, the department may proceed to collect the tax incentives forfeited by failure to maintain the requirements of 2014 Iowa Code section 15E.193B. This repayment is required because it is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability. Details on the calculation of the repayment can be found in 261—subrule 187.5(4) of the administrative rules of the economic development authority. If the business is a partnership, limited liability company, S corporation, estate or trust where the income of the taxpayer is taxed to the individual owner(s) of the business, the department may proceed to collect the tax incentives against the partners, members, shareholders or beneficiaries to whom the tax incentives were passed through. See Decision of the Administrative Law Judge in *Damien & Colette Trebilcock, et al.,* Docket No. 11DORF 042-044, June 11, 2012.

Prior to January 1, 2001, the tax credit cannot exceed 10 percent of $120,000 for each home or individual unit in a multiple dwelling unit building. Effective January 1, 2001, the tax credit cannot exceed 10 percent of $140,000 for each home or individual unit in a multiple dwelling unit building.

Effective for tax periods beginning on or after January 1, 2003, the taxpayer must receive a tax credit certificate from the economic development authority to claim the eligible housing business tax credit. The tax credit certificate shall include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the date the project was completed, the amount of the eligible housing business tax credit and the tax year for which the credit may be claimed. In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 42.17(2). The tax credit certificate must be included with the income tax return for the tax period in which the home is ready for occupancy. The administrative rules for the eligible housing business tax credit for the economic development authority may be found under 261—Chapter 59.

42.17(2) *Transfer of the eligible housing business tax credit.* For tax periods beginning on or after January 1, 2003, the eligible housing business tax credit certificates may be transferred to any person or entity if low-income housing tax credits authorized under Section 42 of the Internal Revenue Code are

used to assist in the financing of the housing development. In addition, the eligible housing business tax credit certificates may be transferred to any person or entity for projects beginning on or after July 1, 2005, if the housing development is located in a brownfield site as defined in Iowa Code section 15.291, or if the housing development is located in a blighted area as defined in Iowa Code section 403.17. No more than $3 million of tax credits for housing developments located in brownfield sites or blighted areas may be transferred in a calendar year, with no more than $1.5 million being transferred for any one eligible housing business in a calendar year.

The excess of the $3 million limitation of tax credits eligible for transfer in the 2013 and 2014 calendar years for housing developments located in brownfield sites or blighted areas cannot be claimed by a transferee prior to January 1, 2016. The eligible housing business must have notified the economic development authority in writing before July 1, 2014, of the business's intent to transfer any tax credits for housing developments located in brownfield sites or blighted areas. If a tax credit certificate is issued by the economic development authority for a housing development approved prior to July 1, 2014, that is located in a brownfield site or blighted area, the tax credit can still be claimed by the eligible business, but the tax credit cannot be transferred by the eligible business if the economic development authority was not notified prior to July 1, 2014.

EXAMPLE 1: A housing development located in a brownfield site was completed in December 2013 and was issued a tax credit certificate totaling $250,000. The $3 million calendar cap for transferred tax credits for brownfield sites and blighted areas has already been reached for the 2013 and 2014 tax years. The $250,000 tax credit is going to be transferred to Bill Smith, and the economic development authority was notified of the transfer prior to July 1, 2014. Once a replacement tax credit certificate has been issued, Mr. Smith cannot file an amended Iowa individual income tax return for the 2013 tax year until January 1, 2016, to claim the $250,000 tax credit.

EXAMPLE 2: A housing development located in a blighted area was completed in May 2014 and was issued a tax credit certificate totaling $150,000. The $3 million calendar cap for transferred tax credits for brownfield sites and blighted areas has already been reached for the 2014 tax year. The $150,000 tax credit is going to be transferred to Greg Rogers, and the economic development authority was notified of the transfer prior to July 1, 2014. Once a replacement tax credit certificate has been issued, Mr. Rogers cannot file an amended Iowa individual income tax return for the 2014 tax year until January 1, 2016, to claim the $150,000 tax credit.

Within 90 days of transfer of the tax credit certificate for transfers prior to July 1, 2006, the transferee must submit the transferred tax credit certificate to the economic development authority, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. For transfers on or after July 1, 2006, the transferee must submit the transferred tax credit certificate to the department of revenue. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee for transfers prior to July 1, 2006, the economic development authority will issue a replacement tax credit certificate to the transferee. For transfers on or after July 1, 2006, the department of revenue will issue the replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members or shareholders and information on how the housing business tax credit should be divided among the partners, members or shareholders. The transferee shall also provide the tax identification numbers and addresses of the partners, members or shareholders. The replacement tax credit certificate must contain the same information that was on the original certificate and must have the same expiration date as the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax period for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credits shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

This rule is intended to implement 2014 Iowa Code section 15E.193B.

[**ARC 8702B**, IAB 4/21/10, effective 5/26/10; **ARC 1744C**, IAB 11/26/14, effective 12/31/14]

701—42.18(422) Assistive device tax credit. Effective for tax years beginning on or after January 1, 2000, a taxpayer that is a small business that purchases, rents, or modifies an assistive device or makes workplace modifications for an individual with a disability who is employed or will be employed by the taxpayer may qualify for an assistive device tax credit, subject to the availability of the credit. The assistive device credit is equal to 50 percent of the first $5,000 paid during the tax year by the small business for the purchase, rental, or modification of an assistive device or for making workplace modifications. Any credit in excess of the tax liability may be refunded or applied to the taxpayer's tax liability for the following tax year. If the taxpayer elects to take the assistive device tax credit, the taxpayer shall not deduct for Iowa income tax purposes any amount of the cost of an assistive device or workplace modification that is deductible for federal income tax purposes. A small business will not be eligible for the assistive device credit if the device is provided for an owner of the small business unless the owner is a bona fide employee of the small business.

42.18(1) *Submitting applications for the credit.* A small business that wishes to receive the assistive device tax credit must submit an application for the credit to the Iowa department of economic development and provide other information and documents requested by the Iowa department of economic development. If the taxpayer meets the criteria for qualification for the credit, the Iowa department of economic development will issue the taxpayer a certificate of entitlement for the credit. However, the aggregate amount of assistive device tax credits that may be granted by the Iowa department of economic development to all small businesses during a fiscal year cannot exceed $500,000. The certificate of entitlement for the assistive device credit shall include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the estimated amount of the tax credit, the date on which the taxpayer's application was approved, the date when it is anticipated that the assistive device project will be completed and a space on the application where the taxpayer shall enter the date that the assistive device project was completed. The certificate of entitlement will not be considered to be valid for purposes of claiming the assistive device credit on the taxpayer's Iowa income tax return until the taxpayer has completed the assistive device project and has entered the completion date on the certificate of entitlement form. The tax year of the small business in which the assistive device project is completed is the tax year for which the assistive device credit may be claimed. For example, in a case where taxpayer A received a certificate of entitlement for an assistive device credit on September 15, 2007, and completed the assistive device workplace modification project on January 15, 2008, taxpayer A could claim the assistive device credit on taxpayer A's 2008 Iowa return, assuming that taxpayer A is filing returns on a calendar-year basis.

The department of revenue will not allow the assistive device credit on a taxpayer's return if the certificate of entitlement or a legible copy of the certificate is not included with the taxpayer's income tax return. If the taxpayer has been granted a certificate of entitlement and the taxpayer is a partnership, limited liability company, S corporation, estate, or trust, where the income of the taxpayer is taxed to the individual owner(s) of the business entity, the taxpayer must provide a copy of the certificate to each of the owners with a statement showing how the credit is to be allocated among the individual owners of the business entity. An individual owner shall include a copy of the certificate of entitlement and the statement of allocation of the assistive device credit with the individual's state income tax return.

42.18(2) *Definitions.* The following definitions are applicable to this rule:

"Assistive device" means any item, piece of equipment, or product system which is used to increase, maintain, or improve the functional capabilities of an individual with a disability in the workplace or on the job. "Assistive device" does not mean any medical device, surgical device, or organ implanted or transplanted into or attached directly to an individual. "Assistive device" does not include any device for which a certificate of title is issued by the state department of transportation, but does include any item, piece of equipment, or product system otherwise meeting the definition of "assistive device" that is incorporated, attached, or included as a modification in or to such a device issued a certificate of title.

"Business entity" means partnership, limited liability company, S corporation, estate, or trust, where the income of the business is taxed to each of the individual owners of the business, whether the individual owner is a partner, member, shareholder, or beneficiary.

"Disability" means the same as defined in Iowa Code section 15.102. Therefore, "disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of the individual, a record of physical or mental impairment that substantially limits one or more of the major life activities of the individual, or being regarded as an individual with a physical or mental impairment that substantially limits one or more of the major life activities of the individual. "Disability" does not include any of the following:

1. Homosexuality or bisexuality.
2. Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders, or other sexual behavior disorders.
3. Compulsive gambling, kleptomania, or pyromania.
4. Psychoactive substance abuse disorders resulting from current illegal use of drugs.
5. Alcoholism.

"Employee" means an individual who is employed by the small business and who meets the criteria in Treasury Regulation § 31.3401(c)-1(b), which is the definition of an employee for federal income tax withholding purposes. An individual who receives self-employment income from the small business shall not be considered an employee of the small business for purposes of this rule.

"Small business" means that the business either had gross receipts in the tax year before the current tax year of $3 million or less or employed not more than 14 full-time employees during the tax year prior to the current tax year.

"Workplace modifications" means physical alterations to the office, factory, or other work environment where the disabled employee is working or will work.

42.18(3) *Allocation of assistive tax credit to owners of a business entity.* If the taxpayer that was entitled to an assistive device credit is a business entity, the business entity shall allocate the allowable credit to each of the individual owners of the entity on the basis of each owner's pro rata share of the earnings of the entity to the total earnings of the entity. Therefore, if a partnership has an assistive device credit of $2,500 for a tax year and one partner of the partnership receives 25 percent of the earnings of the partnership, that partner would receive an assistive device credit for the tax year of $625 or 25 percent of the total assistive device credit of the partnership.

42.18(4) *Repeal of credit.* The assistive device credit is repealed on July 1, 2009.

This rule is intended to implement Iowa Code section 422.11E.

[**ARC 8702B**, IAB 4/21/10, effective 5/26/10; **ARC 1744C**, IAB 11/26/14, effective 12/31/14]

701—42.19(404A,422) Historic preservation and cultural and entertainment district tax credit for projects with Part 2 applications approved and tax credits reserved prior to July 1, 2014. A historic preservation and cultural and entertainment district tax credit, subject to the availability of the credit, may be claimed against a taxpayer's Iowa individual income tax liability for 25 percent of the qualified costs of rehabilitation of property to the extent the costs were incurred on or after July 1, 2000, for approved rehabilitation projects of eligible property in Iowa.

The general assembly has mandated that the department of cultural affairs and the department of revenue adopt rules to jointly administer Iowa Code chapter 404A. 2014 Iowa Acts, House File 2453, amended the historic preservation and cultural and entertainment district tax credit program effective July 1, 2014. The department of revenue's provisions for projects with tax credits reserved prior to July 1, 2014, are found in this rule. The department of revenue's provisions for projects with agreements entered into on or after July 1, 2014, are found in rule 701—42.54(404A,422). The department of cultural affairs' rules related to this program may be found at 223—Chapter 48. Division I of 223—Chapter 48 applies to projects with reservations approved prior to July 1, 2014. Division II of 223—Chapter 48 applies to projects with agreements entered into on or after July 1, 2014.

Notwithstanding anything contained herein to the contrary, the department of cultural affairs shall not reserve tax credits under 2013 Iowa Code chapter 404A as amended by 2013 Iowa Acts, chapter 112, section 1, for applicants that do not have an approved Part 2 application and a tax credit reservation on or before June 30, 2014. Projects with approved Part 2 applications and provisional tax credit reservations on or before June 30, 2014, shall be governed by 2013 Iowa Code chapter 404A as amended by 2013

Iowa Acts, chapter 112, section 1; by 223—Chapter 48, Division I; and by rule 701—42.19(404A,422). Projects for which Part 2 applications were approved and agreements entered into after June 30, 2014, shall be governed by 2014 Iowa Acts, House File 2453; by 223—Chapter 48, Division II; and by rule 701—42.54(404A,422).

42.19(1) *Eligible properties for the historic preservation and cultural and entertainment district tax credit.* The following types of property are eligible for the historic preservation and cultural and entertainment district tax credit:

a. Property verified as listed on the National Register of Historic Places or eligible for such listing.

b. Property designated as of historic significance to a district listed in the National Register of Historic Places or eligible for such designation.

c. Property or district designated a local landmark by a city or county ordinance.

d. Any barn constructed prior to 1937.

42.19(2) *Application and review process for the historic preservation and cultural and entertainment district tax credit.*

a. Taxpayers who want to claim an income tax credit for completing a historic preservation and cultural and entertainment district project must submit an application for approval of the project. The application forms for the historic preservation and cultural and entertainment district tax credit may be requested from the State Tax Credit Program Manager, State Historic Preservation Office, Department of Cultural Affairs, 600 E. Locust, Des Moines, Iowa 50319-0290. The telephone number for this office is (515)281-4137. Applications for the credit will be accepted by the state historic preservation office on or after July 1, 2000, until such time as all the available credits allocated for each fiscal year are encumbered.

b. Applicants for the historic preservation and cultural and entertainment district tax credit must include all information and documentation requested on the application forms for the credit in order for the application to be processed.

42.19(3) *Computation of the amount of the historic preservation and cultural and entertainment district tax credit.* The amount of the historic preservation and cultural and entertainment district tax credit is 25 percent of the qualified rehabilitation costs made to an eligible property in a project. Qualified rehabilitation costs are those rehabilitation costs approved by the state historic preservation office for a project for a particular taxpayer to the extent those rehabilitation costs are actually expended by that taxpayer.

a. In the case of commercial property, qualified rehabilitation costs must equal at least $50,000 or 50 percent of the assessed value of the property, excluding the value of the land, prior to rehabilitation, whichever is less. In the case of property other than commercial property, the qualified rehabilitation costs must equal at least $25,000 or 25 percent of the assessed value, excluding the value of the land, prior to the rehabilitation, whichever amount is less.

b. In computing the tax credit, the only costs which may be included are the qualified rehabilitation costs incurred commencing from the date on which the first qualified rehabilitation cost is incurred and ending with the end of the taxable year in which the property is placed in service. The rehabilitation period may include dates that precede approval of a project, provided that any qualified rehabilitation costs incurred prior to the date of approval of the project are qualified rehabilitation costs.

c. For purposes of the historic preservation and cultural and entertainment district tax credit, qualified rehabilitation costs include those costs properly included in the basis of the eligible property for income tax purposes. Costs treated as expenses and deducted in the year paid or incurred and amounts that are otherwise not added to the basis of the property for income tax purposes are not qualified rehabilitation costs. Amounts incurred for architectural and engineering fees, site survey fees, legal expenses, insurance premiums, development fees, and other construction-related costs are qualified rehabilitation costs to the extent they are added to the basis of the eligible property for tax purposes. Costs of sidewalks, parking lots, and landscaping do not constitute qualified rehabilitation costs. Any rehabilitation costs used in the computation of the historic preservation and cultural and entertainment district tax credit are not added to the basis of the property for Iowa income tax purposes if the rehabilitation costs were incurred in a tax year beginning on or after January 1, 2000, but prior

to January 1, 2001. Any rehabilitation costs incurred in a tax year beginning on or after January 1, 2001, are added to the basis of the rehabilitated property for income tax purposes except those rehabilitation expenses that are equal to the amount of the computed historic preservation and cultural and entertainment district tax credit for the tax year.

EXAMPLE: The basis of a commercial building in a historic district was $500,000, excluding the value of the land, before the rehabilitation project. During a project to rehabilitate this building, $600,000 in rehabilitation costs were expended to complete the project and $500,000 of those rehabilitation costs were qualified rehabilitation costs which were eligible for the historic preservation and cultural and entertainment district tax credit of $125,000. Therefore, the basis of the building for Iowa income tax purposes was $975,000, since the qualified rehabilitation costs of $125,000, which are equal to the amount of the historic preservation and cultural and entertainment district tax credit for the tax year, are not added to the basis of the rehabilitated property. The basis of the building for federal income tax purposes was $1,100,000. It should be noted that this example does not consider any possible reduced basis for the building for federal income tax purposes due to the rehabilitation investment credit provided in Section 47 of the Internal Revenue Code.

42.19(4) *Completion of the historic preservation and cultural and entertainment district project and claiming the historic preservation and cultural and entertainment district tax credit on the Iowa return.* After the taxpayer completes an authorized rehabilitation project, the taxpayer must be issued a certificate of completion of the project from the state historic preservation office of the department of cultural affairs. After verifying the taxpayer's eligibility for the historic preservation and cultural and entertainment district tax credit, the state historic preservation office shall issue a historic preservation and cultural and entertainment district tax credit certificate, which shall be included with the taxpayer's income tax return for the tax year in which the rehabilitation project is completed or the year the credit was reserved, whichever is later. For example, if a project was completed in 2008 and the credit was reserved for the state fiscal year ending June 30, 2010, the credit can be claimed on the 2009 calendar year return that is due on April 30, 2010. The tax credit certificate shall include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the address or location of the rehabilitation project, the date the project was completed, the year the tax credit was reserved and the amount of the historic preservation and cultural and entertainment district tax credit. In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee, the amount of the tax credit being transferred, and any consideration received in exchange for the tax credit, as provided in subrule 42.19(6). In addition, if the taxpayer is a partnership, limited liability company, estate or trust, where the tax credit is allocated to the owners or beneficiaries of the entity, a list of the owners or beneficiaries and the amount of credit allocated to each owner or beneficiary shall be provided with the certificate. The tax credit certificate shall be included with the income tax return for the period in which the project was completed.

For tax years ending on or after July 1, 2007, any historic preservation and cultural and entertainment district tax credit in excess of the taxpayer's tax liability is fully refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

42.19(5) *Allocation of historic preservation and cultural and entertainment district tax credits to the individual owners of the entity for tax credits reserved for fiscal years beginning on or after July 1, 2012.* For tax credits reserved for fiscal years beginning on or after July 1, 2012, the partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder. The credit does not have to be allocated based on the pro rata share of earnings of the partnership, limited liability company or S corporation.

42.19(6) *Transfer of the historic preservation and cultural and entertainment district tax credit.* For tax periods beginning on or after January 1, 2003, the historic preservation and cultural and entertainment district tax credit certificates may be transferred to any person or entity. A tax credit certificate of less than $1,000 shall not be transferable.

a. For transfers on or after July 1, 2006, the department of revenue will issue the replacement tax credit certificate to the transferee. Within 90 days of the transfer of the tax credit certificate, the

transferee must submit the transferred tax credit certificate to the department of revenue along with a statement containing the transferee's name, tax identification number and address, the denomination that each replacement tax credit certificate is to carry, the amount of all consideration provided in exchange for the tax credit and the names of recipients of any consideration provided in exchange for the tax credit. If a payment of money was any part of the consideration provided in exchange for the tax credit, the transferee shall list the amount of the payment of money in its statement to the department of revenue. If any part of the consideration provided in exchange for the tax credit included nonmonetary consideration, including but not limited to any promise, representation, performance, discharge of debt or nonmonetary rights or property, the tax credit transferee shall describe the nature of nonmonetary consideration and disclose any value the transferor and transferee assigned to the nonmonetary consideration. The tax credit transferee must indicate on its statement to the department of revenue if no consideration was provided in exchange for the tax credit. If the transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members or shareholders and information on how the historic preservation and cultural and entertainment district tax credit should be divided among the partners, members or shareholders. The transferee shall also provide the tax identification numbers and addresses of the partners, members or shareholders. The replacement tax credit certificate must contain the same information that was on the original certificate and must have the same expiration date as the original tax credit certificate.

b. The transferee may use the amount of the tax credit for any tax period for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

c. If the historic preservation and cultural and entertainment district tax credit of the transferee exceeds the tax liability shown on the transferee's return, the tax credit shall be fully refundable.

This rule is intended to implement Iowa Code chapter 404A as amended by 2013 Iowa Acts, Senate File 436, and Iowa Code section 422.11D.

[**ARC 8702B**, IAB 4/21/10, effective 5/26/10; **ARC 9104B**, IAB 9/22/10, effective 10/27/10; **ARC 9876B**, IAB 11/30/11, effective 1/4/12; **ARC 0398C**, IAB 10/17/12, effective 11/21/12; **ARC 1138C**, IAB 10/30/13, effective 12/4/13; **ARC 1968C**, IAB 4/15/15, effective 5/20/15]

701—42.20(422) Ethanol blended gasoline tax credit. Effective for tax years beginning on or after January 1, 2002, a retail gasoline dealer may claim an ethanol blended gasoline tax credit against that individual's individual income tax liability. The taxpayer must operate at least one retail motor fuel site at which more than 60 percent of the total gallons of gasoline sold and dispensed through one or more motor fuel pumps by the taxpayer in the tax year is ethanol blended gasoline. The tax credit shall be calculated separately for each retail motor fuel site operated by the taxpayer. The amount of the credit for each eligible retail motor fuel site is two and one-half cents multiplied by the total number of gallons of ethanol blended gasoline sold and dispensed through all motor fuel pumps located at that retail motor fuel site during the tax year in excess of 60 percent of all gasoline sold and dispensed through motor fuel pumps at that retail motor fuel site during the tax year.

For taxpayers having a fiscal year ending in 2002, the tax credit is available for each eligible retail motor fuel site based on the total number of gallons of ethanol blended gasoline sold and dispensed through all motor fuel pumps located at the taxpayer's retail motor fuel site from January 1, 2002, until the end of the taxpayer's fiscal year. Assuming a tax period that began on July 1, 2001, and ended on June 30, 2002, the taxpayer would be eligible for the tax credit based on the gallons of ethanol blended gasoline sold from January 1, 2002, through June 30, 2002. For taxpayers having a fiscal year ending in 2002, a claim for refund to claim the ethanol blended gasoline tax credit must be filed before October 1, 2003, even though the statute of limitations for refund set forth in 701—subrule 43.3(8) has not yet expired.

EXAMPLE 1: A taxpayer sold 100,000 gallons of gasoline at the taxpayer's retail motor fuel site during the tax year, 70,000 gallons of which was ethanol blended gasoline. The taxpayer is eligible for the credit since more than 60 percent of the total gallons sold was ethanol blended gasoline. The number

of gallons in excess of 60 percent of all gasoline sold is 70,000 less 60,000, or 10,000 gallons. Two and one-half cents multiplied by 10,000 equals a $250 credit available.

The credit may be calculated on Form IA 6478. The credit must be calculated separately for each retail motor fuel site operated by the taxpayer. Therefore, if the taxpayer operates more than one retail motor fuel site, it is possible that one retail motor fuel site may be eligible for the credit while another retail motor fuel site may not. The credit may be taken only for those retail motor fuel sites for which more than 60 percent of gasoline sales involves ethanol blended gasoline.

Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

Starting with the 2006 calendar tax year, a taxpayer may claim the ethanol blended gasoline tax credit even if the taxpayer also claims the E-85 gasoline promotion tax credit provided in rule 701—42.31(422) for the same tax year for the same ethanol gallons.

EXAMPLE 2: A taxpayer sold 200,000 gallons of gasoline at a retail motor fuel site in 2006, of which 160,000 gallons was ethanol blended gasoline. Of these 160,000 gallons, 1,000 gallons was E-85 gasoline. Taxpayer is entitled to claim the ethanol blended gasoline tax credit of two and one-half cents multiplied by 40,000 gallons, since this amount constitutes the gallons in excess of 60 percent of the total gasoline gallons sold. Taxpayer may also claim the E-85 gasoline promotion tax credit on the 1,000 gallons of E-85 gasoline sold.

42.20(1) *Definitions.* The following definitions are applicable to this rule:

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

"Gasoline" means any liquid product prepared, advertised, offered for sale or sold for use as, or commonly and commercially used as, motor fuel for use in a spark-ignition, internal combustion engine, and which meets the specifications provided in Iowa Code section 214A.2.

"Motor fuel pump" means a pump, meter, or similar commercial weighing and measuring device used to measure and dispense motor fuel for sale on a retail basis.

"Retail dealer" means a person engaged in the business of storing and dispensing motor fuel from a motor fuel pump for sale on a retail basis, regardless of whether the motor fuel pump is located at a retail motor fuel site including a permanent or mobile location.

"Retail motor fuel site" means a geographic location in Iowa where a retail dealer sells and dispenses motor fuel on a retail basis. For example, tank wagons are considered retail motor fuel sites.

"Sell" means to sell on a retail basis.

42.20(2) *Allocation of credit to owners of a business entity.* If the taxpayer that was entitled to the ethanol blended gasoline tax credit is a partnership, limited liability company, S corporation, estate, or trust, the business entity shall allocate the allowable credit to each of the individual owners of the entity on the basis of each owner's pro rata share of the earnings of the entity to the total earnings of the entity. Therefore, if a partnership has an ethanol blended gasoline tax credit of $3,000 and one partner of the partnership receives 25 percent of the earnings of the partnership, that partner would receive an ethanol blended gasoline tax credit for the tax year of $750 or 25 percent of the total ethanol blended gasoline tax credit of the partnership.

42.20(3) *Repeal of ethanol blended gasoline tax credit.* The ethanol blended gasoline tax credit is repealed on January 1, 2009. However, the tax credit is available for taxpayers whose fiscal year ends after December 31, 2008, for those ethanol gallons sold beginning on the first day of the taxpayer's fiscal year until December 31, 2008. The ethanol promotion tax credit described in rule 701—42.37(15,422) is available beginning January 1, 2009, for retail dealers of gasoline.

See 701—subrule 52.19(3) for an example illustrating how this subrule is applied.

This rule is intended to implement Iowa Code section 422.11C.

[**ARC 8702B**, IAB 4/21/10, effective 5/26/10]

701—42.21(15E) Eligible development business investment tax credit. Effective for tax years beginning on or after January 1, 2001, a business which qualifies as an eligible development business may receive a tax credit of up to 10 percent of the new investment which is directly related to the

construction, expansion or rehabilitation of building space to be used for manufacturing, processing, cold storage, distribution, or office facilities.

An eligible development business must be approved by the Iowa department of economic development prior to March 17, 2004, and meet the qualifications of Iowa Code section 15E.193C. Effective March 17, 2004, the eligible development business program is repealed.

New investment includes the purchase price of land and the cost of improvements made to real property. The tax credit may be claimed by an eligible development business in the tax year in which the construction, expansion or rehabilitation is completed.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until used, whichever is the earlier.

If the business is a partnership, S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

If the eligible development business fails to meet and maintain any one of the requirements to be an eligible business, the business shall be subject to repayment of all or a portion of the amount of tax incentives received. For example, if within five years of project completion the development business sells or leases any space to any retail business, the development business shall proportionally repay the value of the investment credit. The proportion of the investment credit that would be due for repayment by an eligible development business for selling or leasing space to a retail business would be determined by dividing the square footage of building space occupied by the retail business by the square footage of the total building space.

An eligible business which is not a development business and which operates in an enterprise zone cannot claim an investment tax credit if the property is owned, or was previously owned, by an approved development business that has already received an investment tax credit. An eligible business which is not a development business can claim an investment tax credit only on additional new improvements made to real property that was not included in the development business's approved application for the investment tax credit.

This rule is intended to implement Iowa Code section 15E.193C.

[**ARC 8702B**, IAB 4/21/10, effective 5/26/10]

701—42.22(15E,422) Venture capital credits.

42.22(1) *Investment tax credit for an equity investment in a qualifying business or community-based seed capital fund.*

a. Equity investments in a qualifying business or community-based seed capital fund before January 1, 2011. See rule 123—2.1(15E) for the discussion of the investment tax credit for an equity investment in a qualifying business or community-based seed capital fund, along with the issuance of tax credit certificates by the Iowa capital investment board, for equity investments made before January 1, 2011. For equity investments made in a qualifying business prior to January 1, 2004, only direct investments made by an individual are eligible for the investment tax credit. Individuals receiving income from a revocable trust's investment in a qualifying business are eligible for the investment tax credit for the portion of the revocable trust's equity investment in a qualifying business.

b. Equity investments in a qualifying business or community-based seed capital fund on or after January 1, 2011, and before July 2, 2015. For equity investments made on or after January 1, 2011, see 261—Chapter 115 for information regarding eligibility for qualifying businesses and community-based seed capital funds, applications for the investment tax credit for equity investments in a qualifying business or community-based seed capital fund, and the issuance of tax credit certificates by the economic development authority.

(1) Certificate issuance. The department of revenue will be notified by the economic development authority when the tax credit certificates are issued.

(2) Amount of the tax credit. The credit is equal to 20 percent of the taxpayer's equity investment in a qualifying business or community-based seed capital fund.

(3) Year in which the tax credit may be claimed. An investment shall be deemed to have been made on the same date as the date of acquisition of the equity interest as determined by the Internal Revenue Code. For investments made prior to January 1, 2014, a taxpayer shall not claim the tax credit prior to the third tax year following the tax year in which the investment is made. For investments made in qualifying businesses on or after January 1, 2014, the credit can be claimed in the year of the investment. However, for investments made in qualifying businesses during the 2014 calendar year, the credit cannot be redeemed prior to January 1, 2016. For example, if an individual taxpayer whose tax year ends on December 31, 2012, makes an equity investment during the 2012 calendar year, the individual taxpayer cannot claim the tax credit until the tax year ending December 31, 2015. However, if the taxpayer dies prior to redeeming the tax credit, the remaining tax credit may be redeemed on the decedent's final income tax return. For fiscal years beginning July 1, 2011, the amount of tax credits authorized cannot exceed $2 million. The tax credit certificate must be included with the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

(4) Carried over tax credits. If a tax credit is carried over and issued for the tax year immediately following the year in which the investment was made because the $2 million cap has been reached, the tax credit may be claimed by the taxpayer for the third tax year following the tax year for which the credit is issued. For example, if an individual taxpayer makes an equity investment in December 2012 and the $2 million cap for the fiscal year ending June 30, 2013, had already been reached, the tax credit will be issued for the tax year ending December 31, 2013, and cannot be redeemed until the tax year ending December 31, 2016.

(5) Limitations. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier. The tax credit cannot be carried back to a tax year prior to the tax year in which the taxpayer claims the tax credit. The tax credit is not transferable to any other taxpayer.

(6) Pro rata tax credit claims for certain business entities. For equity investments made in a community-based seed capital fund or equity investments made in a qualifying business on or after January 1, 2004, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

c. Equity investments in a qualifying business on or after July 2, 2015. For equity investments made on or after July 2, 2015, see 261—Chapter 115 for information regarding eligibility for qualifying businesses, applications for the investment tax credit for equity investments in a qualifying business, and the issuance of tax credit certificates by the economic development authority.

(1) Certificate issuance. The department of revenue will be notified by the economic development authority when the tax credit certificates are issued.

(2) Amount of the tax credit. For fiscal years beginning July 1, 2011, the amount of the tax credits authorized cannot exceed $2 million. The credit is equal to 25 percent of the taxpayer's equity investment in a qualifying business. In any one calendar year, the amount of tax credits issued for any one qualifying business shall not exceed $500,000. The maximum amount of tax credit that may be issued per calendar year to a natural person and the person's spouse or dependent shall not exceed $100,000 combined. For purposes of this paragraph, "dependent" has the same meaning as provided by the Internal Revenue Code.

(3) Year in which the tax credit may be claimed. A taxpayer shall not claim a tax credit prior to September 1, 2016. The tax credit certificate must be included with the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate. For purposes of this paragraph, an investment shall be deemed to have been made on the same date as the date of acquisition of the equity interest as determined by the Internal Revenue Code.

(4) Pro rata tax credit claims for certain business entities. An individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation,

limited liability company, or estate or trust. Any credits claimed by an individual are subject to the limitations provided in 42.22(1)*"c"*(2) above.

(5) Refundability. For a tax credit claimed against the taxes imposed in Iowa Code chapter 422, division II, any tax credit in excess of the tax liability is refundable. In lieu of claiming a refund, the taxpayer may elect to have the overpayment shown on the taxpayer's final completed return credited to the tax liability for the following tax year.

(6) Transfers and carryback of tax credits prohibited. The tax credit cannot be carried back to a tax year prior to the tax year in which the taxpayer claims the tax credit. The tax credit is not transferable to any other taxpayer.

42.22(2) *Investment tax credit for an equity investment in a venture capital fund.* See rule 123—3.1(15E) for the discussion of the investment tax credit for an equity investment in a venture capital fund, along with the issuance of tax credit certificates by the Iowa capital investment board. This credit is repealed for investments in venture capital funds made after July 1, 2010.

The department of revenue will be notified by the Iowa capital investment board when the tax credit certificates are issued. The tax credit certificate must be attached to the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier.

For equity investments made in a venture capital fund, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

42.22(3) *Contingent tax credit for investments in Iowa fund of funds.* See rule 123—4.1(15E) for the discussion of the contingent tax credit available for investments made in the Iowa fund of funds organized by the Iowa capital investment corporation. Tax credit certificates related to the contingent tax credits will be issued by the Iowa capital investment board.

The department of revenue will be notified by the Iowa capital investment board when these tax credit certificates are issued and, if applicable, when they are redeemed. If the tax credit certificate is redeemed, the certificate must be attached to the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

If the tax credit certificate is redeemed, any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until used, whichever is the earlier.

If the tax credit certificate is redeemed, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

42.22(4) *Innovation fund investment tax credit.* See 261—Chapter 116 for information regarding eligibility for an innovation fund, applications for the investment tax credit for investments in an innovation fund, and the issuance of tax credit certificates by the economic development authority.

The department of revenue will be notified by the economic development authority when the tax credit certificates are issued. The credit is equal to 20 percent of the taxpayer's equity investment in the form of cash in an innovation fund for tax years beginning and investments made on or after January 1, 2011, and before January 1, 2013. For tax years beginning and investments made on or after January 1, 2013, the taxpayer may claim a tax credit equal to 25 percent of the taxpayer's equity investment in the form of cash in an innovation fund. An investment shall be deemed to have been made on the same date as the date of acquisition of the equity interest as determined by the Internal Revenue Code. A taxpayer shall claim the tax credit for the tax year in which the investment is made. For fiscal years beginning July 1, 2011, the amount of tax credits authorized cannot exceed $8 million. No tax credit certificates will be issued prior to September 1, 2014. The tax credit certificate must be attached to the taxpayer's return for the tax year in which the investment was made as stated on the tax credit certificate.

If a tax credit is carried over and issued for the tax year immediately following the year in which the investment was made because the $8 million cap has been reached, the tax credit may be claimed by the taxpayer for the tax year following the tax year for which the credit is issued. For example, if an individual taxpayer makes an equity investment in December 2013 and the $8 million cap for the fiscal year ending June 30, 2014, had already been reached, the tax credit will be issued for the tax year ending December 31, 2014, and can be redeemed for the tax year ending December 31, 2014.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until depleted, whichever is the earlier. The tax credit cannot be carried back to a tax year prior to the tax year in which the taxpayer claims the tax credit.

The innovation fund tax credit certificate may be transferred once to any person or entity.

Within 90 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department will issue a replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company, S corporation, or estate or trust claiming the credit for individual or corporation income tax, the transferee shall provide a list of the partners, members, shareholders or beneficiaries and information on how the innovation fund tax credit should be divided among the partners, members, shareholders or beneficiaries. The transferee shall also provide the tax identification numbers and addresses of the partners, members, shareholders or beneficiaries. The replacement tax credit certificate must contain the same information as that on the original tax credit certificate and must have the same effective taxable year and the same expiration date as the original tax credit certificate. The replacement tax credit certificate may reflect a different tax type than the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax year for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit certificate shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit certificate shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

For equity investments made in an innovation fund, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

This rule is intended to implement Iowa Code sections 15E.51, 15E.52, 15E.66, 422.11F, and 422.11G and section 15E.43 as amended by 2015 Iowa Acts, chapter 138.

[**ARC 8702B**, IAB 4/21/10, effective 5/26/10; **ARC 9104B**, IAB 9/22/10, effective 10/27/10; **ARC 9966B**, IAB 1/11/12, effective 2/15/12; **ARC 1102C**, IAB 10/16/13, effective 11/20/13; **ARC 1665C**, IAB 10/15/14, effective 11/19/14; **ARC 2632C**, IAB 7/20/16, effective 8/24/16]

701—42.23(15) New capital investment program tax credits. Effective for tax periods beginning on or after January 1, 2003, a business which qualifies under the new capital investment program is eligible to receive tax credits. An eligible business under the new capital investment program must be approved by the Iowa department of economic development and meet the qualifications of 2003 Iowa Acts, chapter 125, section 4. The new capital investment program was repealed on July 1, 2005, and has been replaced with the high quality job creation program. See rule 701—42.29(15) for information on the tax credits available under the high quality job creation program. Any tax credits earned by businesses approved under the new capital investment program prior to July 1, 2005, remain valid and can be claimed on tax returns filed after July 1, 2005.

42.23(1) *Research activities credit.* A business approved under the new capital investment program is eligible for an additional research activities credit as described in 701—subrule 52.7(5). This credit for increasing research activities is in lieu of the research activities credit described in subrule 42.11(3).

42.23(2) *Investment tax credit.*

a. General rule. An eligible business can claim an investment tax credit equal to a percentage of the new investment directly related to new jobs created by the location or expansion of an eligible business. The percentage is equal to the amount provided in paragraph *"b."* New investment directly related to new jobs created by the location or expansion of an eligible business includes the following:

(1) The cost of machinery and equipment, as defined in Iowa Code section 427A.1(1), paragraphs *"e"* and *"j,"* purchased for use in the operation of the eligible business. The purchase price shall be depreciated in accordance with generally accepted accounting principles.

(2) The purchase price of real property and any buildings and structures located on the real property.

(3) The cost of improvements made to real property which is used in the operation of the eligible business.

For eligible businesses approved by the Iowa department of economic development on or after March 17, 2004, certain lease payments made by eligible businesses to a third-party developer will be considered to be new investment for purposes of computing the investment tax credit. The eligible business shall enter into a lease agreement with the third-party developer for a minimum of five years. The investment tax credit is based on the annual base rent paid to a third-party developer by the eligible business for a period not to exceed ten years. The total costs of the annual base rent payments for the ten-year period cannot exceed the cost of the land and the third-party developer's cost to build or renovate the building used by the eligible business. The annual base rent is defined as the total lease payment less taxes, insurance and operating and maintenance expenses.

Any credit in excess of the tax liability for the tax period may be carried forward seven years or until used, whichever is the earlier.

If the business is a partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, or estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount of the credit claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, or estate or trust.

b. Tax credit percentage. The amount of tax credit claimed shall be based on the number of high quality jobs created as determined by the Iowa department of economic development:

(1) If no high quality jobs are created but economic activity within Iowa is advanced, the eligible business may claim a tax credit of up to 1 percent of the new investment.

(2) If 1 to 5 high quality jobs are created, the eligible business may claim a tax credit of up to 2 percent of the new investment.

(3) If 6 to 10 high quality jobs are created, the eligible business may claim a tax credit of up to 3 percent of the new investment.

(4) If 11 to 15 high quality jobs are created, the eligible business may claim a tax credit of up to 4 percent of the new investment.

(5) If 16 or more high quality jobs are created, the eligible business may claim a tax credit of up to 5 percent of the new investment.

c. Investment tax credit—value-added agricultural products or biotechnology-related processes. An eligible business whose project primarily involves the production of value-added agricultural products or uses biotechnology-related processes may elect to receive a refund for all or a portion of an unused investment tax credit. An eligible business includes a cooperative described in Section 521 of the Internal Revenue Code whose project primarily involves the production of ethanol.

Eligible businesses that elect to receive a refund shall apply to the Iowa department of economic development for tax credit certificates between May 1 and May 15 of each fiscal year through the fiscal year ending June 30, 2009. The election to receive a refund of all or a portion of an unused investment tax credit is no longer available beginning with the fiscal year ending June 30, 2010. Only those businesses that have completed projects before the May 1 filing date may apply for a tax credit certificate. The Iowa department of economic development shall not issue tax credit certificates for more than $4 million during a fiscal year to eligible businesses for this program and eligible businesses described in subrule

42.14(2). If applications are received for more than $4 million, the applicants shall receive certificates for a prorated amount.

The economic development authority shall issue tax credit certificates within a reasonable period of time. Tax credit certificates are valid for the tax year following project completion. The tax credit certificate must be included with the tax return for the tax year during which the tax credit is claimed. The tax credit certificate shall not be transferred, except for a cooperative described in Section 521 of the Internal Revenue Code whose project primarily involves the production of ethanol, as provided in subrule 42.14(2). For value-added agricultural projects involving ethanol, the cooperative must submit a list of its members and the share of each member's interest in the cooperative. The economic development authority shall issue a tax credit certificate to each member on the list.

d. Repayment of benefits. If an eligible business fails to maintain the requirements of the new capital investment program, the taxpayer may be required to repay all or a portion of the tax incentives taken on Iowa returns. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the tax credits may have expired, the department may proceed to collect the tax incentives forfeited by failure to maintain the requirements of the new capital investment program. This repayment is required because it is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability. Details on the calculation of the repayment can be found in 261—subrule 187.5(4) of the administrative rules of the economic development authority. If the business is a partnership, limited liability company, S corporation, estate or trust where the income of the taxpayer is taxed to the individual owner(s) of the business, the department may proceed to collect the tax incentives against the partners, members, shareholders or beneficiaries to whom the tax incentives were passed through. See Decision of the Administrative Law Judge in *Damien & Colette Trebilcock, et al.,* Docket No. 11DORF 042-044, June 11, 2012.

An eligible business in the new capital investment program may also be required to repay all or a portion of the tax incentives received on Iowa returns if the eligible business experiences a layoff of employees in Iowa or closes any of its facilities in Iowa.

If, within five years of purchase, the eligible business sells, disposes of, razes, or otherwise renders unusable all or a part of the land, buildings, or other existing structures for which a tax credit was claimed under this subrule, the income tax liability of the eligible business shall be increased by one of the following amounts:

(1) One hundred percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within one full year after being placed in service.

(2) Eighty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within two full years after being placed in service.

(3) Sixty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within three full years after being placed in service.

(4) Forty percent of the tax credit claimed if the property ceases to be eligible for the tax credit within four full years after being placed in service.

(5) Twenty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within five full years after being placed in service.

This rule is intended to implement Iowa Code section 15.333 as amended by 2010 Iowa Acts, Senate File 2380, and sections 15.335 and 15.381 to 15.387.

[**ARC 8702B**, IAB 4/21/10, effective 5/26/10; **ARC 9104B**, IAB 9/22/10, effective 10/27/10; **ARC 1744C**, IAB 11/26/14, effective 12/31/14]

701—42.24(15E,422) Endow Iowa tax credit. Effective for tax years beginning on or after January 1, 2003, a taxpayer who makes an endowment gift to an endow Iowa qualified community foundation may qualify for an endow Iowa tax credit, subject to the availability of the credit. For tax years beginning on or after January 1, 2003, but before January 1, 2010, the credit is equal to 20 percent of a taxpayer's endowment gift to an endow Iowa qualified community foundation approved by the Iowa department of economic development. For tax years beginning on or after January 1, 2010, the credit is equal to 25 percent of a taxpayer's endowment gift to an endow Iowa qualified community foundation approved by

the Iowa department of economic development. For tax years beginning on or after January 1, 2010, a taxpayer cannot claim a deduction for charitable contributions under Section 170 of the Internal Revenue Code for the amount of the contribution for which the tax credit is claimed for Iowa tax purposes. The administrative rules for the endow Iowa tax credit for the Iowa department of economic development may be found under 261—Chapter 47.

The total amount of endow Iowa tax credits available is $2 million in the aggregate for the 2003 and 2004 calendar years. The total amount of endow Iowa tax credits is $2 million annually for the 2005-2007 calendar years, and $200,000 of these tax credits on an annual basis is reserved for endowment gifts of $30,000 or less. The maximum amount of tax credit granted to a single taxpayer shall not exceed $100,000 for the 2003-2007 calendar years. The total amount of endow Iowa tax credits annually for the 2008 and 2009 calendar years is $2 million plus a percentage of the tax imposed on the adjusted gross receipts from gambling games in accordance with Iowa Code section 99F.11(3). The total amount of endow Iowa tax credits annually for 2010 is $2.7 million plus a percentage of the tax imposed on the adjusted gross receipts from gambling games in accordance with Iowa Code section 99F.11(3). The total amount of endow Iowa tax credits annually for 2011 is $3.5 million plus a percentage of the tax imposed on the adjusted gross receipts from gambling games in accordance with Iowa Code section 99F.11(3). The maximum amount of tax credit granted to a single taxpayer shall not exceed 5 percent of the total endow Iowa tax credit amount authorized for 2008 and subsequent years. For the 2012 calendar year and subsequent calendar years, the total amount of endow Iowa tax credits is $6 million; the maximum amount of tax credit authorized to a single taxpayer is $300,000 ($6 million multiplied by 5 percent). The endow Iowa tax credit cannot be transferred to any other taxpayer.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier.

If a taxpayer is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code section 15E.305 as amended by 2013 Iowa Acts, House File 620, and section 422.11H.

[**ARC 8702B**, IAB 4/21/10, effective 5/26/10; **ARC 9104B**, IAB 9/22/10, effective 10/27/10; **ARC 9876B**, IAB 11/30/11, effective 1/4/12; **ARC 0398C**, IAB 10/17/12, effective 11/21/12; **ARC 1138C**, IAB 10/30/13, effective 12/4/13]

701—42.25(422) Soy-based cutting tool oil tax credit. Effective for tax periods ending after June 30, 2005, and beginning before January 1, 2007, a manufacturer may claim a soy-based cutting tool oil tax credit. A manufacturer, as defined in Iowa Code section 428.20, may claim the credit equal to the costs incurred during the tax year for the purchase and replacement costs relating to the transition from using nonsoy-based cutting tool oil to using soy-based cutting tool oil.

All of the following conditions must be met to qualify for the tax credit:

1. The costs must be incurred after June 30, 2005, and before January 1, 2007.
2. The costs must be incurred in the first 12 months of the transition from using nonsoy-based cutting tool oil to using soy-based cutting tool oil.
3. The soy-based cutting tool oil must contain at least 51 percent soy-based products.
4. The costs of the purchase and replacement must not exceed $2 per gallon of soy-based cutting tool oil used in the transition.
5. The number of gallons used in the transition cannot exceed 2,000 gallons.
6. The manufacturer shall not deduct for Iowa income tax purposes the costs incurred in the transition to using soy-based cutting tool oil which are deductible for federal tax purposes.

Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

If a taxpayer is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount

claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code section 422.11I.

[**ARC 8702B**, IAB 4/21/10, effective 5/26/10]

701—42.26(15I,422) Wage-benefits tax credit. Effective for tax years ending on or after June 9, 2006, a wage-benefits tax credit equal to a percentage of the annual wages and benefits paid for a qualified new job created by the location or expansion of the business in Iowa is available for qualified businesses.

42.26(1) *Definitions.* The following definitions are applicable to this rule:

"Average county wage" means the annualized average hourly wage calculated by the Iowa department of economic development using the most current four quarters of wage and employment information as provided in the Quarterly Covered Wage and Employment Data report provided by the department of workforce development. Agricultural/mining and governmental employment categories are deleted in compiling the wage information.

"Benefits" means all of the following:

1. Medical and dental insurance plans.
2. Pension and profit-sharing plans.
3. Child care services.
4. Life insurance coverage.
5. Vision insurance plan.
6. Disability coverage.

"Department" means the Iowa department of revenue.

"Full-time" means the equivalent of employment of one person:

1. For 8 hours per day for a five-day, 40-hour workweek for 52 weeks per year, including paid holidays, vacations, and other paid leave, or
2. The number of hours or days per week, including paid holidays, vacations, and other paid leave, currently established by schedule, custom or otherwise, as constituting a week of full-time work for the kind of service an individual performs for an employing unit.

"Grow Iowa values fund" means the grow Iowa values fund created in Iowa Code Supplement section 15G.108.

"Nonqualified new job" means any one of the following:

1. A job previously filled by the same employee in Iowa.
2. A job that was relocated from another location in Iowa.
3. A job that is created as a result of a consolidation, merger, or restructuring of a business entity if the job does not represent a new job in Iowa.

"Qualified new job" or *"job creation"* means a job that meets all of the following criteria:

1. Is a new full-time job that has not existed in the business in Iowa within the previous 12 months.
2. Is filled by a new employee for at least 12 months.
3. Is filled by a resident of the state of Iowa.
4. Is not created as a result of a change in ownership.
5. Was created on or after June 9, 2005.

"Retail business" means a business which sells its product directly to a consumer.

"Retained qualified new job" or *"job retention"* means the continued employment, after the first 12 months of employment, of the same employee in a qualified new job for another 12 months.

"Service business" means a business which is not engaged in the sale of tangible personal property, and which provides services to a local consumer market and does not have a significant proportion of its sales coming from outside Iowa.

42.26(2) *Calculation of credit.* A business which is not a retail or service business may claim the wage-benefits tax credit which is determined as follows:

a. If the annual wages and benefits for the qualified new job equal less than 130 percent of the average county wage, the credit is 0 percent of the annual wage and benefits paid.

b. If the annual wages and benefits for the qualified new job equal at least 130 percent but less than 160 percent of the average county wage, the credit is 5 percent of the annual wage and benefits paid for each qualified new job.

c. If the annual wages and benefits for the qualified new job equal at least 160 percent of the average county wage, the credit is 10 percent of the annual wage and benefits paid for each qualified new job.

If the business is a partnership, S corporation, limited liability company, or estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

42.26(3) *Application for the tax credit; tax credit certificate; amount of tax credit available.*

a. In order to claim the wage-benefits tax credit, the business must submit an application to the department along with information on the qualified new job or retained qualified new job. The application cannot be submitted until the end of the twelfth month after the qualified job was filled. For example, if the new job was created on June 9, 2005, the application cannot be submitted until June 9, 2006. The following information must be submitted in the application:

(1) Name, address and federal identification number of the business.

(2) A description of the activities of the business. If applicable, the proportion of the sales of the business which come from outside Iowa shall be included.

(3) The amount of wages and benefits paid to each employee for each new job for the previous 12 months.

(4) A computation of the amount of credit being requested.

(5) The address and state of residence of each new employee.

(6) The date that the qualified new job was filled.

(7) An indication of whether the job is a qualified new job or a retained qualified new job for which an application was filed for a previous year.

(8) The type of tax for which the credit will be applied.

(9) If the business is a partnership, S corporation, limited liability company, or estate or trust, a schedule of the partners, shareholders, members or beneficiaries. This schedule shall include the names, addresses and federal identification numbers of the partners, shareholders, members or beneficiaries, along with their percentage of the pro rata share of earnings of the partnership, S corporation, limited liability company, or estate or trust.

b. Upon receipt of the application, the department has 45 days either to approve or deny the application. If the department does not act on the application within 45 days, the application is deemed approved. If the department denies the application, the business may appeal the decision to the Iowa economic development board within 30 days of the notice of denial.

c. If the application is approved, or if the Iowa economic development board approves the application that was previously denied by the department, a tax credit certificate will be issued by the department to the business, subject to the availability of the amount of credits that may be issued. The tax credit certificate shall contain the name, address and tax identification number of the business (or individual, estate or trust, if applicable), the date of the qualified new job(s), the wage and benefits paid for each job(s) for the 12-month period, the amount of the credit, the tax period for which the credit may be applied, and the type of tax for which the credit will be applied.

d. The tax credit certificates that are issued in a fiscal year cannot exceed $10 million for the fiscal year ending June 30, 2007, and shall not exceed $4 million for the fiscal years ending June 30, 2008, through June 30, 2011. The tax credit certificates are issued on a first-come, first-served basis. Therefore, if tax credit certificates have already been issued for the $10 million limit for the fiscal year ending June 30, 2007, any applications for tax credit certificates received after the $10 million limit has been reached will be denied. Similarly, if tax credit certificates have already been issued for the $4 million limit for the fiscal years ending June 30, 2008, through June 30, 2011, any applications for tax credit certificates

received after the $4 million limit has been reached will be denied. If a business failed to receive all or a part of the tax credit due to the $10 million or $4 million limitation, the business may reapply for the tax credit for the retained new job for a subsequent tax period.

e. A business which qualifies for the tax credit for the fiscal year ending June 30, 2007, is eligible to receive the tax credit certificate for each of the fiscal years ending June 30, 2008, through June 30, 2011, subject to the $4 million limit for tax credits for the fiscal years ending June 30, 2008, through June 30, 2011, if the business retains the qualified new job during each of the fiscal years ending June 30, 2008, through June 30, 2011. The business must reapply by June 30 of each fiscal year for the tax credit, and the percentage of the wages and benefits allowed for the credit set forth in subrule 42.26(2) for the first year is applicable for each subsequent period. Preference will be given in issuing tax credit certificates for those businesses that retain qualified new jobs, and preference will be given in the order in which applications were filed for the fiscal year ending June 30, 2007. Therefore, those businesses which received the first $4 million of tax credits for the year ending June 30, 2007, in which the qualified jobs were created will automatically receive a tax credit for the fiscal years ending June 30, 2008, through June 30, 2011, as long as the qualified jobs are retained and an application is completed.

f. For the fiscal years ending June 30, 2008, through June 30, 2011, if credits become available because the jobs were not retained by businesses which received the first $4 million of credits for the year ending June 30, 2007, an application which was originally denied will be considered in the order in which the application was received for the fiscal year ending June 30, 2007.

EXAMPLE: Wage-benefits tax credits of $4 million are issued for the fiscal year ending June 30, 2007, relating to applications filed between July 1, 2006, and March 31, 2007. For the next fiscal year ending June 30, 2008, the same businesses that received the $4 million in wage-benefits tax credits filed applications totaling $3 million for the retained jobs for which the application for the prior year was filed on or before March 31, 2007. The first $3 million of the available $4 million will be allowed to these same businesses. The remaining $1 million that is still available for the fiscal year ending June 30, 2008, will be allowed for those retained jobs for which applications for the prior year were filed starting on April 1, 2007, until the remaining $1 million in tax credits is issued.

g. A business may apply in writing to the Iowa economic development board for a waiver of the average wage and benefit requirement. If a waiver is granted, the business must provide the department with the waiver and it must be attached to the application.

h. A business may receive other federal, state, and local incentives and tax credits in addition to the wage-benefits tax credit. However, a business that receives a wage-benefits tax credit cannot receive tax incentives under the high quality job creation program set forth in Iowa Code chapter 15 or moneys from the grow Iowa values fund.

42.26(4) *Examples.* The following noninclusive examples illustrate how this rule applies:

EXAMPLE 1: Business A operates a grocery store and hires five new employees, each of whom will earn wages and benefits in excess of 130 percent of the average county wage. Business A would not qualify for the wage-benefits tax credit because Business A is a retail business.

EXAMPLE 2: Business B operates an accounting firm and hires two new accountants, each of whom will earn wages and benefits in excess of 160 percent of the average county wage. The accounting firm provides services to clients wholly within Iowa. Business B would not qualify for the wage-benefits tax credit because it is a service business. The majority of its sales are generated from within the state of Iowa and thus Business B, because it is a service business, is not eligible for the credit.

EXAMPLE 3: Business C operates a software development business and hires two new programmers, each of whom will earn wages and benefits in excess of 160 percent of the average county wage. Over 50 percent of the customers of Business C are located outside Iowa. Business C would qualify for the wage-benefits tax credit because a majority of its sales are coming from outside the state, even though Business C is engaged in the performance of services.

EXAMPLE 4: Business D is a manufacturer that hires a new employee in Clayton County, Iowa, on July 8, 2005. The average county wage for Clayton County for the third quarter of 2005 is $11.86 per hour. If the average county wage per hour for Clayton County is $11.95 for the fourth quarter of 2005, $12.05 for the first quarter of 2006, and $12.14 for the second quarter of 2006, the annualized

average county wage for this 12-month period is $12.00 per hour. This wage equates to an average annual wage of $24,960 ($12.00 × 40 hours × 52 weeks). In order for Business D to qualify for the 5 percent wage-benefits tax credit, the new employee must receive wages and benefits totaling $32,448 (130 percent of $24,960) for the 12-month period from July 8, 2005, through July 7, 2006. In order for Business D to qualify for the 10 percent wage-benefits tax credit, the new employee must receive wages and benefits totaling $39,936 (160 percent of $24,960) for the 12-month period from July 8, 2005, through July 7, 2006.

EXAMPLE 5: Business E is a manufacturer that hires three new employees in Grundy County, Iowa, on July 1, 2005. If the average county wage for the 12-month period from July 1, 2005, through June 30, 2006, is $13.75 per hour in Grundy County, this wage equates to an average county wage of $28,600. The wages and benefits for each of these three new employees is $40,000 for the period from July 1, 2005, through June 30, 2006, which is 140 percent of the average county wage. Business E is entitled to a wage-benefits tax credit of $2,000 for each employee ($40,000 × 5 percent), for a total wage-benefits tax credit of $6,000. If Business E files on a calendar-year basis, the $6,000 wage-benefits tax credit can be claimed on the tax return for the period ending December 31, 2006.

EXAMPLE 6: Business F is a manufacturer that hires ten new employees on July 1, 2005, and qualifies for the wage-benefits tax credit because the wages and benefits paid exceed 130 percent of the average county wage. Business F receives a wage-benefits tax credit in July 2006 for these ten employees, which can be used on the tax return for the period ending December 31, 2006. On August 31, 2006, two of the employees leave the business and are replaced by two new employees. Business F is entitled to a wage-benefits tax credit for only eight employees in July 2007 because only eight employees continued employment for the subsequent 12 months in a job which meets the definition of a retained qualified new job. Business F cannot request a wage-benefits tax credit for the two employees hired on August 31, 2006. Business F cannot request the wage-benefits tax credit because these two full-time jobs existed in the business within the previous 12 months in Iowa, and these jobs do not meet the definition of a qualified new job or retained qualified new job.

EXAMPLE 7: Business G is a manufacturer that hires ten new employees on July 1, 2005, and qualifies for the wage-benefits tax credit because the wages and benefits paid exceed 130 percent of the average county wage. Business G receives a wage-benefits tax credit in July 2006 for these ten employees equal to 5 percent of the wages and benefits paid. On October 1, 2006, Business G hires an additional five employees, each of whom receives wages and benefits in excess of 130 percent of the average county wage. Business G can apply for the wage-benefits tax credit on October 1, 2007, for these five employees, since these employees have now been employed for 12 months. However, the credit may not be allowed if more than $4 million of retained job tax credits have been issued for the fiscal year ending June 30, 2008.

EXAMPLE 8: Assume the same facts as Example 6, except that the $10 million limit of tax credits has already been met for the fiscal year ending June 30, 2007, and Business F hired five new employees on August 31, 2006. Business F can apply for the wage-benefits tax credit for the three employees on August 31, 2007, a number which is above the ten full-time jobs originally created, but Business F may not receive the tax credit if more than $4 million of retained job tax credits have been issued for the fiscal year ending June 30, 2008.

EXAMPLE 9: Assume the same facts as Example 7, except that the ten employees hired on July 1, 2005, by Business G received wages and benefits equal to 155 percent of the average county wage, and the five employees hired on October 1, 2006, by Business G received wages equal to 161 percent of the average county wage. Business G can apply for the tax credit on October 1, 2007, equal to 10 percent of the wages and benefits paid for the employees hired on October 1, 2006. On July 1, 2007, Business G can reapply for the tax credit equal to 5 percent of the wages and benefits paid only for the ten employees originally hired on July 1, 2005, even if the wages and benefits for these ten employees exceed 160 percent of the average county wage for the period from July 1, 2006, through June 30, 2007.

42.26(5) *Repeal of the wage-benefits tax credit.* The wage-benefits tax credit is repealed effective July 1, 2008. However, the wage-benefits tax credit is still available through the fiscal year ending June

30, 2011, as provided in subrule 42.26(3), paragraphs *"d," "e,"* and *"f."* A business is not entitled to a wage-benefits tax credit for a qualified new job created on or after July 1, 2008.

This rule is intended to implement Iowa Code chapter 15I and section 422.11L.

[**ARC 8702B**, IAB 4/21/10, effective 5/26/10]

701—42.27(422,476B) Wind energy production tax credit. Effective for tax years beginning on or after July 1, 2006, an owner of a qualified wind energy production facility that has been approved by the Iowa utilities board may claim a wind energy production tax credit for qualified electricity sold by the owner or used for on-site consumption against a taxpayer's Iowa individual income tax liability. The administrative rules for the certification of eligibility for the wind energy production tax credit for the Iowa utilities board may be found in rule 199—15.18(476B).

42.27(1) *Application and review process for the wind energy production tax credit.* An owner of a wind energy production facility must be approved by the Iowa utilities board in order to qualify for the wind energy production tax credit. The facility must be an electrical production facility that produces electricity from wind, that is located in Iowa, and that is placed in service on or after July 1, 2005, but before July 1, 2012. For applications filed on or after March 1, 2008, a facility must consist of one or more wind turbines which have a combined nameplate generating capacity of at least 2 megawatts and no more than 30 megawatts. For applications filed on or after July 1, 2009, by a private college or university, community college, institution under the control of the state board of regents, public or accredited nonpublic elementary and secondary school, or public hospital as defined in Iowa Code section 249J.3, the facility must have a combined nameplate generating capacity of no less than ¾ of a megawatt.

The maximum amount of nameplate generating capacity for all qualified wind energy production facilities cannot exceed 50 megawatts. An owner shall not own more than two qualified facilities. A facility that is not operational within 18 months after issuance of the approval from the Iowa utilities board will no longer be considered a qualified facility. However, a facility that is not operational within 18 months due to the unavailability of necessary equipment shall be granted an additional 12 months to become operational.

An owner of the qualified facility must apply to the Iowa utilities board for the wind energy production tax credit. The application for the tax credit must be filed no later than 30 days after the close of the tax year for which the credit is applied. The information to be included in the application is set forth in 199—subrule 15.20(1).

42.27(2) *Computation of the credit.* The wind energy production credit equals one cent multiplied by the number of kilowatt-hours of qualified electricity sold or used for on-site consumption by the owner during the tax year. For the first tax year in which the credit is applied, the kilowatt-hours of qualified electricity sold may exceed 12 months.

EXAMPLE: A qualified facility was placed in service on April 1, 2006, and the taxpayer files on a calendar-year basis. The first year for which the credit can be claimed is the period ending December 31, 2007, since that is the first tax year that began on or after July 1, 2006. The credit for the 2007 tax year can include electricity sold between April 1, 2006, and December 31, 2007.

The credit is not allowed for any kilowatt-hours of electricity sold to a related person. The definition of "related person" uses the same criteria set forth in Section 45(e)(4) of the Internal Revenue Code relating to the federal renewable electricity production credit. Persons shall be treated as related to each other if such persons are treated as a single employer under Treasury Regulation § 1.52-1. In the case of a corporation that is a member of an affiliated group of corporations filing a federal consolidated return, such corporation shall be treated as selling electricity to an unrelated person if such electricity is sold to the person by another member of the affiliated group.

The utilities board will notify the department of the number of kilowatt-hours of electricity sold by the qualified facility or generated and used on site by the qualified facility during the tax year. The department will calculate the credit and issue a tax credit certificate to the owner. The tax credit certificate will include the taxpayer's name, address and federal identification number, the tax type for which the credit will be claimed, the amount of the credit and the tax year for which the credit may be claimed. In addition, the tax credit certificate will include a place for the name and tax identification number of a transferee

and the amount of the tax credit certificate, as provided in subrule 42.27(3). If the department refuses to issue the tax credit certificate, the taxpayer shall be notified in writing and the taxpayer will have 60 days from the date of denial to file a protest in accordance with rule 701—7.8(17A). The department will not issue a tax credit certificate if the facility is not operational within 18 months after approval was given by the utilities board, unless a 12-month extension is granted by the utilities board as provided in subrule 42.27(1).

If the taxpayer is a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, the tax credit certificate will be issued to the partners, members, shareholders or beneficiaries based on the partner's, member's, shareholder's or beneficiary's pro rata share of earnings of the partnership, limited liability company, S corporation, or estate or trust, except when the taxpayer is eligible to receive renewable electricity production tax credits authorized under Section 45 of the Internal Revenue Code. In cases where the taxpayer is eligible to receive renewable electricity production tax credits under Section 45 of the Internal Revenue Code, the partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder. In addition, if a taxpayer is a partnership, limited liability company, S corporation, or estate or trust that is eligible to receive renewable electricity production tax credits under Section 45 of the Internal Revenue Code, the taxpayer may distribute the tax credit to an equity holder or beneficiary as a liquidating distribution, or portion thereof, of an equity holder's interest in the partnership, limited liability company or S corporation, or the beneficiary's interest in the estate or trust.

The credit can be allowed for a ten-year period beginning on the date the qualified facility was originally placed in service. For example, if a facility was placed in service on April 1, 2006, the credit can be claimed for kilowatt-hours of electricity sold between April 1, 2006, and March 31, 2016.

To claim the tax credit, the taxpayer must include the tax credit certificate with the tax return for the tax year set forth on the certificate. Any tax credit in excess of the tax liability may be carried forward for seven years or until it is used, whichever is the earlier.

42.27(3) *Transfer of the wind energy production tax credit certificate.* The wind energy production tax credit certificate may be transferred to any person or entity.

Within 30 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department will issue a replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company, S corporation, or estate or trust claiming the credit for individual or corporation income tax, the transferee shall provide a list of the partners, members, shareholders or beneficiaries and information on how the wind energy production tax credit should be divided among the partners, members, shareholders or beneficiaries. The transferee shall also provide the tax identification numbers and addresses of the partners, members, shareholders or beneficiaries. The replacement tax credit certificate must contain the same information as that on the original tax credit certificate and must have the same effective taxable year and the same expiration date as the original tax credit certificate. The replacement tax credit certificate may reflect a different tax type than the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax year for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit certificate shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit certificate shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

This rule is intended to implement Iowa Code section 422.11J and Iowa Code chapter 476B as amended by 2011 Iowa Acts, House File 672.

[**ARC 8702B**, IAB 4/21/10, effective 5/26/10; **ARC 9876B**, IAB 11/30/11, effective 1/4/12; **ARC 0251C**, IAB 8/8/12, effective 9/12/12; **ARC 1744C**, IAB 11/26/14, effective 12/31/14]

701—42.28(422,476C) Renewable energy tax credit. Effective for tax years beginning on or after July 1, 2006, a purchaser or producer of renewable energy whose facility has been approved by the Iowa utilities board may claim a renewable energy tax credit for qualified renewable energy against a taxpayer's Iowa individual income tax liability.

42.28(1) *Eligible facility application process.*

a. Eligible facility application process, generally. A producer or purchaser of a renewable energy facility must be approved as an eligible renewable energy facility by the Iowa utilities board in order to qualify for the renewable energy tax credit. The eligible renewable energy facility can be a wind energy conversion facility, biogas recovery facility, biomass conversion facility, methane gas recovery facility, solar energy conversion facility or refuse conversion facility. The facility must be located in Iowa and placed in service on or after July 1, 2005, and before January 1, 2018. The administrative rules for the certification of eligibility for the renewable energy tax credit for the Iowa utilities board may be found in rule 199—15.19(476C).

b. Limitations on maximum energy production and nameplate generating capacity. The maximum amount of nameplate generating capacity of all wind energy conversion facilities cannot exceed 363 megawatts. For tax years beginning prior to January 1, 2015, the maximum amount of energy production capacity for biogas recovery facilities, biomass conversion facilities, methane gas recovery facilities, solar energy conversion facilities and refuse conversion facilities cannot exceed a combined output of 53 megawatts of nameplate generating capacity and 167 billion British thermal units of heat for a commercial purpose. For tax years beginning on or after January 1, 2015, the maximum amount of energy production for biogas recovery facilities, biomass conversion facilities, methane gas recovery facilities, solar energy conversion facilities and refuse conversion facilities cannot exceed a combined output of 63 megawatts of nameplate generating capacity and, annually, 167 billion British thermal units of heat for a commercial purpose. A facility that is not operational within 30 months after issuance of approval from the utilities board will no longer be considered a qualified facility. However, if the facility is a wind energy conversion property and is not operational within 18 months due to the unavailability of necessary equipment, the facility may apply for a 12-month extension of the 30-month limit. Extensions can be renewed for succeeding 12-month periods if the facility applies for the extension prior to expiration of the current extension period. A producer of renewable energy, who is the person who owns the renewable energy facility, cannot own more than two eligible renewable energy facilities. A person that has an equity interest equal to or greater than 51 percent in an eligible renewable energy facility cannot have an equity interest greater than 10 percent in any other renewable energy facility. However, for tax years beginning on or after January 1, 2015, an entity described in Iowa Code section 476C.1(6)*"b"*(4) or (5) may have an ownership interest in up to four solar energy conversion facilities described in Iowa Code section 476C.3(4)*"b"*(3).

42.28(2) *Tax credit certificate procedure.*

a. Tax credit application process. A producer or purchaser of a renewable energy facility must apply to the utilities board for the renewable energy tax credit. The application for the tax credit must be filed no later than 30 days after the close of the tax year for which the credit is applied. The information to be included in the application is set forth in 199—subrule 15.21(1). The utilities board will notify the department of the number of kilowatt-hours, standard cubic feet or British thermal units that were generated and purchased from an eligible facility or used for on-site consumption by the producer during the tax year for which the credit is applied.

b. Tax credit calculation. The department shall calculate the amount of the credit for which the applicant is eligible in accordance with subrules 42.28(3) and 42.28(4) and shall issue a tax credit certificate for that amount or shall notify the applicant in writing of its refusal to do so.

c. Tax credit certificate issuance. The tax credit certificate will include the taxpayer's name, address and federal identification number; the tax type for which the credit will be claimed; the amount of the credit; and the tax year for which the credit may be claimed. In addition, the tax credit certificate will include a place for the name and tax identification number of a transferee and the amount of the tax credit certificate, as provided in subrule 42.28(5). Once a tax credit certificate is issued pursuant to Iowa Code chapter 476C, it shall not be terminated or rescinded.

d. Taxpayers that are partnerships, limited liability companies, S corporations, or estates or trusts. If the taxpayer is a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, the tax credit certificate will be issued to the partners, members, shareholders or beneficiaries based on the partner's, member's, shareholder's or beneficiary's pro rata share of earnings of the partnership, limited liability company, S corporation, or estate or trust, except when the taxpayer is eligible to receive renewable electricity production tax credits authorized under Section 45 of the Internal Revenue Code. In cases where the taxpayer is eligible to receive renewable electricity production tax credits under Section 45 of the Internal Revenue Code, the partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder. In addition, if a taxpayer is a partnership, limited liability company, S corporation, or estate or trust that is eligible to receive renewable electricity production tax credits under Section 45 of the Internal Revenue Code, the taxpayer may distribute the tax credit to an equity holder or beneficiary as a liquidating distribution, or portion thereof, of an equity holder's interest in the partnership, limited liability company or S corporation or of the beneficiary's interest in the estate or trust.

e. Carryforward. To claim the tax credit, the taxpayer must include the tax credit certificate with the tax return for the tax period set forth on the certificate. Any tax credit in excess of the tax liability may be carried forward for seven years or until it is used, whichever is the earlier.

42.28(3) *Limitations.*

a. Energy production. Of the maximum amount of energy production capacity equivalent for biogas recovery facilities, biomass conversion facilities, methane gas recovery facilities, solar energy conversion facilities and refuse conversion facilities:

(1) No single facility may be allocated more than ten megawatts of nameplate generating capacity or energy production capacity equivalent.

(2) For tax years beginning on or after January 1, 2015, ten megawatts of nameplate generating capacity or energy production capacity equivalent shall be reserved for solar energy conversion facilities described in Iowa Code section 476C.3(4)*"b"*(3) that have a generating capacity of one and one-half megawatts or less.

(3) For tax years, beginning on or after January 1, 2014, 55 billion British thermal units of heat for a commercial purpose shall be reserved annually for an eligible facility that is a refuse conversion facility for processed, engineered fuel from a multicounty solid waste management planning area.

(4) For tax years beginning on or after January 1, 2014, the maximum annual amount of energy production capacity for a single refuse conversion facility is 55 billion British thermal units of heat for a commercial purpose.

b. Related persons. The credit is not allowed for any kilowatt-hours, standard cubic feet or British thermal units that are purchased from an eligible facility by a related person. Persons shall be treated as related to each other if either person owns an 80 percent or more equity interest in the other person.

c. Operation. The facility must be operational within 30 months after approval was given by the utilities board, unless a 12-month extension is granted by the utilities board as provided in subrule 42.28(1).

d. Prohibited for persons that have received a credit under Iowa Code chapter 476B. A person that has received a wind energy production tax credit pursuant to Iowa Code chapter 476B may not be issued a renewable energy tax credit certificate.

e. Ten-year award limitation. The credit is allowed for a ten-year period beginning on the date the purchaser first purchases renewable energy from a qualified facility or on the date the qualified facility first began producing renewable energy for on-site consumption. For example, if a renewable energy facility first began producing energy for on-site consumption on April 1, 2006, the credit can be claimed for kilowatt-hours, standard cubic feet or British thermal units generated and used for on-site consumption by the producer between April 1, 2006, and March 31, 2016. Tax credit certificates cannot be issued for renewable energy purchased or produced for on-site consumption after December 31, 2027.

42.28(4) *Computation of the credit.* The renewable energy tax credit equals 1½ cents per kilowatt-hour of electricity, or $1.44 per 1000 standard cubic feet of hydrogen fuel, or $4.50 per 1

million British thermal units of methane gas or other biogas used to generate electricity, or $4.50 per 1 million British thermal units of heat for a commercial purpose generated by and purchased from an eligible renewable energy facility or used for on-site consumption by the producer during the tax year. For the first tax year in which the credit is applied, the kilowatt-hours, standard cubic feet or British thermal units generated by and purchased from the facility or used for on-site consumption by the producer may exceed 12 months if the facility was operational for fewer than 12 months in its initial year of operation.

EXAMPLE: A qualified wind energy production facility was placed in service on April 1, 2006, and the taxpayer files on a calendar-year basis. The first year for which the credit can be claimed is the year ending December 31, 2007, since that is the first tax year that began on or after July 1, 2006. The credit for the 2007 tax year can include electricity generated and purchased or used for on-site consumption by the producer between April 1, 2006, and December 31, 2007.

42.28(5) *Transfer of the renewable energy tax credit certificate.*

a. One-transfer limitation. The renewable energy tax credit certificate may be transferred once to any person or entity. A decision between a producer and purchaser of renewable energy regarding who may claim the tax credit is not considered a transfer.

b. Transfer process—information required. Within 30 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department, along with a statement which contains the transferee's name, address and tax identification number; the amount of the tax credit being transferred; the value of any consideration provided by the transferee to the transferor; and any other information required by the department. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department will issue a replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company, S corporation, or estate or trust claiming the credit for individual or corporation income tax, the transferee shall provide a list of the partners, members, shareholders or beneficiaries and information on how the renewable energy tax credit should be divided among the partners, members, shareholders or beneficiaries. The transferee shall also provide the tax identification numbers and addresses of the partners, members, shareholders or beneficiaries. The replacement tax credit certificate must contain the same information as that on the original tax credit certificate and must have the same effective taxable year and the same expiration date as the original tax credit certificate. The replacement tax credit certificate may reflect a different tax type than the original tax credit certificate.

c. Tax year. The transferee may use the amount of the tax credit for any tax year for which the original transferor could have claimed the tax credit.

d. Consideration. Any consideration received for the transfer of the tax credit certificate shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit certificate shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

42.28(6) *Small wind innovation zones.* Effective for tax years beginning on or after January 1, 2009, an owner of a small wind energy system operating within a small wind innovation zone which has been approved by the Iowa utilities board is eligible for the renewable energy tax credit. The administrative rules of the Iowa utilities board for the certification of eligibility for owners of small wind energy systems operating within a small wind innovation zone may be found in rule 199—15.22(476).

42.28(7) *Appeals.* If the department refuses to issue the tax credit certificate, the taxpayer shall be notified in writing, and the taxpayer will have 60 days from the date of denial to file a protest in accordance with rule 701—7.8(17A).

This rule is intended to implement Iowa Code section 422.11J and Iowa Code chapter 476C as amended by 2015 Iowa Acts, chapter 124, and 2016 Iowa Acts, House File 2468.

[**ARC 8702B**, IAB 4/21/10, effective 5/26/10; **ARC 9876B**, IAB 11/30/11, effective 1/4/12; **ARC 0251C**, IAB 8/8/12, effective 9/12/12; **ARC 1665C**, IAB 10/15/14, effective 11/19/14; **ARC 2772C**, IAB 10/12/16, effective 11/16/16]

701—42.29(15) High quality job creation program. Effective for tax periods ending on or after July 1, 2005, for programs approved on or after July 1, 2005, but before July 1, 2009, a business which

qualifies under the high quality job creation program is eligible to receive tax credits. The high quality job creation program replaces the new jobs and income program and the new capital investment program. An eligible business under the high quality job creation program must be approved by the Iowa department of economic development and meet the qualifications of Iowa Code section 15.329. The administrative rules for the high quality job creation program for the Iowa department of economic development may be found at 261—Chapter 68.

The high quality job creation program was repealed on July 1, 2009, and has been replaced with the high quality jobs program. See rule 701—42.42(15) for information on the investment tax credit and additional research activities credit under the high quality jobs program. Any investment tax credit and additional research activities credit earned by businesses approved under the high quality job creation program prior to July 1, 2009, remains valid and can be claimed on tax returns filed after July 1, 2009.

42.29(1) *Research activities credit.* An eligible business approved under the high quality job creation program is eligible for an additional research activities credit as described in 701—subrule 52.7(4).

Research activities allowable for the Iowa research activities credit include expenses related to the development and deployment of innovative renewable energy generation components manufactured or assembled in Iowa; such expenses related to the development and deployment of innovative renewable energy generation components are not eligible for the federal credit for increasing research activities. For purposes of this subrule, innovative renewable energy generation components do not include components with more than 200 megawatts in installed effective nameplate generating capacity. The research activities credit related to renewable energy generation components under the high quality job creation program and the enterprise zone program shall not exceed $1 million in the aggregate.

These expenses related to the development and deployment of innovative renewable energy generation components are applicable only to the additional research activities credit set forth in this subrule and are not applicable to the research activities credit set forth in subrule 42.11(3), paragraphs *"a"* and *"b."* The research activities credit is subject to the threshold amounts of qualifying investment set forth in Iowa department of economic development 261—subrule 68.4(7).

42.29(2) *Investment tax credit.*

a. General rule. An eligible business can claim an investment tax credit equal to a percentage of the new investment directly related to new jobs created by the location or expansion of an eligible business. The percentage is equal to the amount provided in Iowa department of economic development 261—subrule 68.4(7). New investment directly related to new jobs created by the location or expansion of an eligible business includes the following:

(1) The cost of machinery and equipment, as defined in Iowa Code section 427A.1(1), paragraphs *"e"* and *"j,"* purchased for use in the operation of the eligible business. The purchase price shall be depreciated in accordance with generally accepted accounting principles.

(2) The purchase price of real property and any buildings and structures located on the real property.

(3) The cost of improvements made to real property which is used in the operation of the eligible business.

In addition, certain lease payments made by eligible businesses to a third-party developer will be considered to be new investment for purposes of computing the investment tax credit. The eligible business shall enter into a lease agreement with the third-party developer for a minimum of five years. The investment tax credit is based on the annual base rent paid to a third-party developer by the eligible business for a period not to exceed ten years. The total costs of the annual base rent payments for the ten-year period cannot exceed the cost of the land and the third-party developer's cost to build or renovate the building used by the eligible business. The annual base rent is defined as the total lease payment less taxes, insurance and operating and maintenance expenses.

The investment tax credit can be claimed in the tax year in which the qualifying assets are placed in service. The investment tax credit will be amortized over a five-year period. Any credit in excess of the tax liability for the tax period may be carried forward seven years or until used, whichever is the earlier.

EXAMPLE: An eligible business which files tax returns on a calendar-year basis earned $100,000 of investment tax credits for new investment made in 2006. The business can claim $20,000 of investment tax credits for each of the years from 2006 through 2010. The $20,000 of investment tax credit that

can be claimed in 2006 can be carried forward to the 2007-2013 tax years if the entire credit cannot be claimed on the 2006 return. Similarly, the $20,000 investment tax credit that can be claimed in 2007 can be carried forward to the 2008-2014 tax years if the entire credit cannot be claimed on the 2007 return.

If the business is a partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, or estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount of the credit claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, or estate or trust electing to have the income taxed directly to an individual.

b. Investment tax credit—value-added agricultural products or biotechnology-related processes. An eligible business whose project primarily involves the production of value-added agricultural products or uses biotechnology-related processes may elect to receive a refund for all or a portion of an unused investment tax credit. An eligible business includes a cooperative described in Section 521 of the Internal Revenue Code whose project primarily involves the production of ethanol.

Eligible businesses that elect to receive a refund shall apply to the Iowa department of economic development for tax credit certificates between May 1 and May 15 of each fiscal year through the fiscal year ending June 30, 2009. The election to receive a refund of all or a portion of an unused investment tax credit is no longer available beginning with the fiscal year ending June 30, 2010. Only those businesses that have completed projects before the May 1 filing date may apply for a tax credit certificate. The Iowa department of economic development shall not issue tax credit certificates for more than $4 million during a fiscal year to eligible businesses for this program and the enterprise zone program described in subrule 42.14(2). If applications are received for more than $4 million, the applicants shall receive certificates for a prorated amount.

The economic development authority shall issue tax credit certificates within a reasonable period of time. Tax credit certificates are valid for the tax year following project completion. The tax credit certificate must be included with the tax return for the tax year during which the tax credit is claimed. The tax credit certificate shall not be transferred, except for a cooperative described in Section 521 of the Internal Revenue Code whose project primarily involves the production of ethanol, as provided in subrule 42.14(2). For value-added agricultural projects involving ethanol, the cooperative must submit a list of its members and the share of each member's interest in the cooperative. The economic development authority shall issue a tax credit certificate to each member on the list.

c. Repayment of benefits. If an eligible business fails to maintain the requirements of the high quality job creation program, the taxpayer may be required to repay all or a portion of the tax incentives taken on Iowa returns. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the tax credits may have expired, the department may proceed to collect the tax incentives forfeited by failure of the eligible business to maintain the requirements of the high quality job creation program because the repayment is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability. Details on the calculation of the repayment can be found in 261—subrule 187.5(4) of the administrative rules of the economic development authority. If the business is a partnership, limited liability company, S corporation, estate or trust where the income of the taxpayer is taxed to the individual owner(s) of the business, the department may proceed to collect the tax incentives against the partners, members, shareholders or beneficiaries to whom the tax incentives were passed through. See Decision of the Administrative Law Judge in *Damien & Colette Trebilcock, et al.,* Docket No. 11DORF 042-044, June 11, 2012.

An eligible business in the high quality job creation program may also be required to repay all or a portion of the tax incentives received on Iowa returns if the eligible business experiences a layoff of employees in Iowa or closes any of its facilities in Iowa.

If, within five years of purchase, the eligible business sells, disposes of, razes, or otherwise renders unusable all or a part of the land, buildings, or other existing structures for which a tax credit was claimed under this subrule, the income tax liability of the eligible business shall be increased by one of the following amounts:

(1) One hundred percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within one full year after being placed in service.

(2) Eighty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within two full years after being placed in service.

(3) Sixty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within three full years after being placed in service.

(4) Forty percent of the tax credit claimed if the property ceases to be eligible for the tax credit within four full years after being placed in service.

(5) Twenty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within five full years after being placed in service.

42.29(3) *Determination of tax credit amounts.* The amount of tax credit claimed under the high quality job creation program shall be based on the number of high quality jobs created and the amount of qualifying investment made as determined by the Iowa department of economic development.

a. If the high quality jobs have a starting wage, including benefits, equal to or greater than 130 percent of the average county wage but less than 160 percent of the average county wage, see Iowa department of economic development 261—paragraph 68.4(7)*"a"* for the amount of tax credits that may be claimed.

b. If the high quality jobs have a starting wage, including benefits, equal to or greater than 160 percent of the average county wage, see Iowa department of economic development 261—paragraph 68.4(7)*"b"* for the amount of tax credits that may be claimed.

c. An eligible business approved under the high quality job creation program is not eligible for the wage-benefits tax credit set forth in rule 701—42.26(15I,422).

This rule is intended to implement Iowa Code sections 15.326 to 15.337.

[**ARC 8702B**, IAB 4/21/10, effective 5/26/10; **ARC 9104B**, IAB 9/22/10, effective 10/27/10; **ARC 1744C**, IAB 11/26/14, effective 12/31/14]

701—42.30(15E,422) Economic development region revolving fund tax credit. Effective for tax years ending on or after July 1, 2005, but beginning before January 1, 2010, a taxpayer who makes a contribution to an economic development region revolving fund may claim a tax credit, subject to the availability of the credit. The tax credit is equal to 20 percent of a taxpayer's contribution to the economic development region revolving fund approved by the Iowa department of economic development. The administrative rules for the economic development region revolving fund tax credit for the Iowa department of economic development may be found at 261—Chapter 32. The tax credit is repealed for tax years beginning on or after January 1, 2010.

The total amount of economic development region revolving fund tax credits available shall not exceed $2 million per fiscal year. The tax credit shall not be carried back to a tax year prior to the year in which the taxpayer redeems the credit. The economic development region revolving fund tax credit is not transferable to any other taxpayer.

Any tax credit in excess of the tax liability for the tax year may be credited to the tax liability for the following ten years or until used, whichever is the earlier.

If a taxpayer is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code sections 15E.232 and 422.11K as amended by 2010 Iowa Acts, Senate File 2380.

[**ARC 8702B**, IAB 4/21/10, effective 5/26/10; **ARC 9104B**, IAB 9/22/10, effective 10/27/10]

701—42.31(422) Early childhood development tax credit. Effective for tax years beginning on or after January 1, 2006, taxpayers may claim a tax credit equal to 25 percent of the first $1,000 of expenses paid to others for early childhood development for each dependent three to five years of age. The credit is available only to taxpayers whose net income is less than $45,000. If a taxpayer claims the early childhood development tax credit, the taxpayer cannot claim the child and dependent care credit

described in rule 701—42.15(422). The early childhood development tax credit is refundable to the extent that the credit exceeds the taxpayer's income tax liability. For the tax year beginning in the 2006 calendar year only, amounts paid for early childhood development expenses in November and December of 2005 shall be considered paid in 2006 for purposes of computing the credit.

For married taxpayers who elect to file separately on a combined form or elect to file separate returns for Iowa tax purposes, the combined income of the taxpayers must be less than $45,000 to be eligible for the credit. If the combined income is less than $45,000, the early childhood development tax credit shall be prorated to each spouse in the proportion that each spouse's respective net income bears to the total combined income.

42.31(1) *Expenses eligible for the credit.* The following expenses qualify for the early childhood development tax credit, to the extent they are paid during the time period that a dependent is either three, four or five years of age:

a. Expenses for services provided by a preschool, as defined in Iowa Code section 237A.1. The preschool may only provide services for periods of time not exceeding three hours per day.

b. Books that improve child development, including textbooks, music books, art books, teacher editions and reading books.

c. Expenses paid for instructional materials required to be used in a child development or educational lesson activity. These materials include, but are not limited to, paper, notebooks, pencils, and art supplies. In addition, software and toys which are directly and primarily used for educational or learning purposes are considered instructional materials.

d. Expenses paid for lesson plans and curricula.

e. Expenses paid for child development and educational activities outside the home. These activities include, but are not limited to, drama, art, music and museum activities, including the entrance fees for such activities.

42.31(2) *Expenses not eligible for the credit.* The following expenses do not qualify for the early childhood development tax credit:

a. Any expenses paid to a preschool once a dependent reaches the age of six.

b. Expenses relating to food, lodging, membership fees, or other nonacademic expenses relating to child development and educational activities outside the home.

c. Expenses related to services, materials, or activities for the teaching of religious tenets, doctrines, or worship, in cases where the purpose of the teaching is to inculcate the religious tenets, doctrines, or worship.

This rule is intended to implement Iowa Code section 422.12C.

[**ARC 8702B**, IAB 4/21/10, effective 5/26/10]

701—42.32(422) School tuition organization tax credit. Effective for the tax year beginning on or after January 1, 2006, but beginning before January 1, 2007, a school tuition organization tax credit is available which is equal to 65 percent of the amount of the voluntary cash contributions made by a taxpayer to a school tuition organization. For tax years beginning on or after January 1, 2007, the school tuition organization tax credit is available which is equal to 65 percent of the amount of voluntary cash or noncash contributions made by a taxpayer to a school tuition organization. There are numerous federal revenue regulations, rulings, court cases and other provisions relating to the determination of the value of a noncash contribution, and these are equally applicable to the determination of the amount of a school tuition organization tax credit for tax years beginning on or after January 1, 2007.

42.32(1) *Definitions.* The following definitions are applicable to this rule:

"Certified enrollment" means the enrollment at schools served by school tuition organizations as of October 1, or the first Monday in October if October 1 falls on a Saturday or Sunday, of the appropriate year.

"Contribution" means a voluntary cash or noncash contribution to a school tuition organization that is not used for the direct benefit of any dependent of the taxpayer or any other student designated by the taxpayer.

"Eligible student" means a student residing in Iowa who is a member of a household whose total annual income during the calendar year prior to the school year in which the student receives a tuition grant from a school tuition organization does not exceed an amount equal to three times the most recently published federal poverty guidelines in the Federal Register by the United States Department of Health and Human Services.

"Qualified school" means a nonpublic elementary or secondary school in Iowa which is accredited under Iowa Code section 256.11, including a prekindergarten program for students who are five years of age by September 15 of the appropriate year, and adheres to the provisions of the federal Civil Rights Act of 1964 and Iowa Code chapter 216, and which is represented by only one school tuition organization.

"School tuition organization" means a charitable organization in Iowa that is exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code and that does all of the following:

1. Allocates at least 90 percent of its annual revenue in tuition grants for children to allow them to attend a qualified school of their parents' choice.
2. Awards tuition grants only to children who reside in Iowa.
3. Provides tuition grants to students without limiting availability to students of only one school.
4. Provides tuition grants only to eligible students.
5. Prepares an annual financial statement certified by a public accounting firm.

"Tuition grant" means a grant to a student to cover all or part of the student's tuition at a qualified school.

42.32(2) *Initial registration.* In order for contributions to a school tuition organization to qualify for the credit, the school tuition organization must initially register with the department. The following information must be provided with this initial registration:

a. Verification from the Internal Revenue Service that Section 501(c)(3) status was granted and that the school tuition organization is exempt from federal income tax.

b. A list of all qualified schools that the school tuition organization serves.

c. The names and addresses of all the members of the board of directors of the school tuition organization.

Once the school tuition organization is registered with the department, it is not required to subsequently register unless there is a change in the qualified schools that the organization serves. The school tuition organization must notify the department in writing of any changes in the qualified schools it serves.

42.32(3) *Participation forms.* Each qualified school that is served by a school tuition organization must annually submit a participation form to the department by November 1. The following information must be provided with this participation form:

a. The certified enrollment of the qualified school as of October 1, or the first Monday in October if October 1 falls on a Saturday or Sunday.

b. The name of the school tuition organization that represents the qualified school.

For the tax year beginning in the 2006 calendar year only, each qualified school served by a school tuition organization must submit to the department a participation form postmarked on or before August 1, 2006, which provides the certified enrollment as of the third Friday of September 2005, along with the name of the school tuition organization that represents the qualified school.

42.32(4) *Authorization to issue tax credit certificates.*

a. By December 1 of each year, the department will authorize school tuition organizations to issue tax credit certificates for the following tax year. For the tax year beginning in the 2006 calendar year only, the department, by September 1, 2006, will authorize school tuition organizations to issue tax credit certificates for the 2006 calendar year only. The total amount of tax credit certificates that may be authorized is $2.5 million for the 2006 calendar year, $5 million for the 2007 calendar year, $7.5 million for the 2008 through 2011 calendar years, $8.75 million for the 2012 and 2013 calendar years, and $12 million for 2014 and subsequent calendar years.

b. The amount of authorized tax credit certificates for each school tuition organization is determined by dividing the total amount of tax credit available by the total certified enrollment of all qualified participating schools. This result, which is the per-student tax credit, is then multiplied by the

certified enrollment of each school tuition organization to determine the tax credit authorized to each school tuition organization.

EXAMPLE: For determining the authorized tax credits for the 2008 calendar year, if the certified enrollment of each qualified school in Iowa, as provided to the department by November 1, 2007, was 37,500, the per-student tax credit would be $200 ($7.5 million divided by 37,500). If a school tuition organization located in Scott County represents four qualified schools with a certified enrollment of 1,400 students, the school tuition organization would be authorized to issue $280,000 ($200 times 1,400) of tax credit certificates for the 2008 calendar year. The department would notify this school tuition organization by December 1, 2007, of the authorization to issue $280,000 of tax credit certificates for the 2008 calendar year. This authorization would allow the school tuition organization to solicit contributions totaling $430,769 ($280,000 divided by 65%) during the 2008 calendar year which would be eligible for the tax credit.

42.32(5) *Issuance of tax credit certificates.* The school tuition organization shall issue tax credit certificates to each taxpayer who made a cash or noncash contribution to the school tuition organization. The tax credit certificate, which will be designed by the department, will contain the name, address and tax identification number of the taxpayer, the amount and date that the contribution was made, the amount of the credit, the tax year that the credit may be applied, the school tuition organization to which the contribution was made, and the tax credit certificate number.

For tax years beginning on or after July 1, 2009, a tax credit certificate may be issued to corporation income taxpayers. For tax years beginning on or after January 1, 2013, a tax credit certificate may be issued to a partnership, limited liability company, S corporation, estate or trust. The amount of credit claimed by an individual shall be based on the pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, estate or trust.

42.32(6) *Claiming the tax credit.* The taxpayer must include the tax credit certificate with the tax return for which the credit is claimed. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier.

a. The taxpayer may not claim an itemized deduction for charitable contributions for Iowa income tax purposes for the amount of the contribution made to the school tuition organization.

b. Married taxpayers who file separate returns or file separately on a combined return must allocate the school tuition organization tax credit to each spouse in the proportion that each spouse's respective net income bears to the total combined net income. Nonresidents or part-year residents of Iowa must determine the school tuition organization tax credit in the ratio of their Iowa source net income to their total source net income. In addition, if nonresidents or part-year residents of Iowa are married and elect to file separate returns or to file separately on a combined return, the school tuition organization tax credit must be allocated between the spouses in the ratio of each spouse's Iowa source net income to the combined Iowa source net income.

42.32(7) *Reporting requirements.* Each school tuition organization that issues tax credit certificates must report to the department, postmarked by January 12 of each tax year, the following information:

a. The names and addresses of all the members of the board of directors of the school tuition organization, along with the name of the chairperson of the board.

b. The total number and dollar value of contributions received by the school tuition organization for the previous tax year.

c. The total number and dollar value of tax credit certificates issued by the school tuition organization for the previous tax year.

d. A list of each taxpayer who received a tax credit certificate for the previous tax year, including the amount of the contribution and the amount of tax credit issued to each taxpayer for the previous tax year. This list should also include the tax identification number of the taxpayer and the tax credit certificate number for each certificate.

e. The total number of children utilizing tuition grants for the school year in progress as of January 12, along with the total dollar value of the tuition grants.

f. The name and address of each qualified school represented by the school tuition organization at which tuition grants are being utilized for the school year in progress.

g. The number of tuition grant students and the total dollar value of tuition grants being utilized for the school year in progress at each qualified school served by the school tuition organization.

This rule is intended to implement Iowa Code section 422.11S as amended by 2013 Iowa Acts, House File 625.

[**ARC 8702B**, IAB 4/21/10, effective 5/26/10; **ARC 9876B**, IAB 11/30/11, effective 1/4/12; **ARC 1102C**, IAB 10/16/13, effective 11/20/13; **ARC 1744C**, IAB 11/26/14, effective 12/31/14]

701—42.33(422) E-85 gasoline promotion tax credit. Effective for tax years beginning on or after January 1, 2006, a retail dealer of gasoline may claim an E-85 gasoline promotion tax credit. "E-85 gasoline" means ethanol blended gasoline formulated with a minimum percentage of between 70 percent and 85 percent of volume of ethanol, if the formulation meets the standards provided in Iowa Code section 214A.2. For purposes of this rule, tank wagon sales are considered retail sales. The credit is calculated on Form IA 135.

42.33(1) *Claiming the credit.*

a. Amount of the credit. The credit is calculated by multiplying the total number of E-85 gallons sold by the retail dealer during the tax year by the following designated rates:

Calendar years 2006, 2007, and 2008	25 cents
Calendar years 2009 and 2010	20 cents
Calendar year 2011	10 cents
Calendar years 2012 through 2024	16 cents

b. Claiming the credit with other credits. A taxpayer may claim the E-85 gasoline promotion tax credit even if the taxpayer also claims the ethanol blended gasoline tax credit provided in rule 701—42.20(422) for gallons sold prior to January 1, 2009, or the ethanol promotion tax credit provided in rule 701—42.39(422) for gallons sold on or after January 1, 2009, but prior to January 1, 2021, for the same tax year for the same ethanol gallons.

c. Refundability. Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

d. Transferability. The credit may not be transferred to any other person.

e. Example. A taxpayer operated one retail motor fuel site in 2008 and sold 200,000 gallons of gasoline, of which 160,000 gallons was ethanol blended gasoline. Of these 160,000 gallons, 1,000 gallons was E-85 gasoline. Taxpayer may claim the E-85 gasoline promotion tax credit on the 1,000 gallons of E-85 gasoline sold during 2008. Taxpayer is also entitled to claim the ethanol blended gasoline tax credit of two and one-half cents multiplied by 40,000 gallons, since this constitutes the gallons in excess of 60 percent of the total gasoline gallons sold for the 2008 tax year.

42.33(2) *Fiscal year filers.* For taxpayers whose tax year is not on a calendar-year basis, the taxpayer may compute the tax credit on the gallons of E-85 gasoline sold during the year using the designated rates as shown above. Because the tax credit is repealed on January 1, 2025, a taxpayer whose tax year ends prior to December 31, 2024, may continue to claim the tax credit in the following tax year for any E-85 gallons sold through December 31, 2024. For a retail dealer whose tax year is not on a calendar-year basis and who did not claim the E-85 credit on the previous return, the dealer may claim the credit for the current tax year for the period beginning on January 1 of the previous tax year until the last day of the previous tax year.

See 701—subrule 52.30(2) for examples illustrating how this subrule is applied.

42.33(3) *Allocation of credit to owners of a business entity or to beneficiaries of an estate or trust.* If a taxpayer claiming the E-85 ethanol promotion tax credit is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata

share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code section 422.11O as amended by 2016 Iowa Acts, Senate File 2309.

[**ARC 8702B**, IAB 4/21/10, effective 5/26/10; **ARC 9821B**, IAB 11/2/11, effective 12/7/11; **ARC 3043C**, IAB 4/26/17, effective 5/31/17]

701—42.34(422) Biodiesel blended fuel tax credit. Effective for tax years beginning on or after January 1, 2006, a retail dealer of biodiesel blended fuel may claim a biodiesel blended fuel tax credit. "Biodiesel blended fuel" means a blend of biodiesel with petroleum-based diesel fuel that meets the standards provided in Iowa Code section 214A.2. In determining the minimum percentage by volume of biodiesel, the department will take into account reasonable variances due to testing and other limitations. For purposes of this rule, tank wagon sales are considered retail sales. The credit is calculated on Form IA 8864.

42.34(1) *Calculating the credit.*

a. Gallonage requirement.

(1) Tax years beginning on or after January 1, 2006, but prior to January 1, 2009. In order for a retail dealer to qualify for the biodiesel blended fuel tax credit for tax years beginning on or after January 1, 2006, but prior to January 1, 2009, of the total gallons of diesel fuel that the retail dealer sells and dispenses during the tax year, 50 percent or more of those gallons must be biodiesel blended fuel formulated with a minimum percentage of 2 percent by volume of biodiesel. The gallonage amounts for all motor fuel sites of a retail dealer are combined when calculating this gallonage requirement.

(2) Tax years beginning on or after January 1, 2009, but prior to January 1, 2012. For tax years beginning on or after January 1, 2009, but prior to January 1, 2012, the biodiesel blended fuel tax credit is calculated separately for each retail motor fuel site for which 50 percent or more of the total gallons of diesel fuel sold at the motor fuel site was biodiesel blended fuel formulated with a minimum percentage of 2 percent by volume of biodiesel.

(3) Tax years beginning on or after January 1, 2012. For tax years beginning on or after January 1, 2012, the requirement that 50 percent of all diesel fuel gallons sold be biodiesel gallons to be eligible for the tax credit is eliminated. A retail dealer may qualify for the biodiesel blended fuel tax credit even if the number of gallons of biodiesel blended fuel sold is less than 50 percent of the total gallons of diesel fuel sold.

b. Amount of credit.

(1) Fuel sold on or after January 1, 2006, but prior to January 1, 2012. For biodiesel blended fuel sold on or after January 1, 2006, but prior to January 1, 2012, the tax credit equals three cents multiplied by the qualifying number of biodiesel blended fuel gallons sold by the taxpayer during the tax year. Qualifying biodiesel blended fuel must be formulated with a minimum percentage of 2 percent by volume of biodiesel.

(2) Fuel sold on or after January 1, 2012, but prior to January 1, 2013. For biodiesel blended fuel sold on or after January 1, 2012, but prior to January 1, 2013, the tax credit equals the sum of two cents multiplied by the qualifying number of biodiesel blended fuel gallons sold by the taxpayer during the tax year that have a minimum percentage of 2 percent by volume of biodiesel but less than 5 percent by volume of biodiesel plus four and one-half cents multiplied by the qualifying number of biodiesel blended fuel gallons sold by the taxpayer during the tax year that have a minimum percentage of 5 percent by volume of biodiesel. In addition, the gallonage requirements described in paragraph 42.34(1)*"a"* do not apply to fuel sold on or after January 1, 2012.

(3) Fuel sold on or after January 1, 2013, but prior to January 1, 2018. For biodiesel blended fuel sold on or after January 1, 2013, but prior to January 1, 2018, the tax credit equals four and one-half cents multiplied by the qualifying number of biodiesel blended fuel gallons sold by the taxpayer during the tax year that have a minimum percentage of 5 percent by volume of biodiesel. Diesel fuel sold that contains less than 5 percent by volume of biodiesel does not qualify for the biodiesel blended fuel tax credit.

(4) Fuel sold on or after January 1, 2018, but prior to January 1, 2025.

1. Amount of credit. For biodiesel blended fuel sold on or after January 1, 2018, but prior to January 1, 2025, the tax credit equals the sum of three and one-half cents multiplied by the qualifying number of biodiesel blended fuel gallons sold by the taxpayer during the tax year that have a minimum percentage of 5 percent by volume of biodiesel but less than 11 percent by volume of biodiesel plus five and one-half cents multiplied by the qualifying number of biodiesel blended fuel gallons sold by the taxpayer during the tax year that have a minimum percentage of 11 percent by volume of biodiesel. Diesel fuel sold that contains less than 5 percent by volume of biodiesel does not qualify for the biodiesel blended fuel tax credit.

2. Blending errors. Where a blending error occurs and an insufficient amount of biodiesel has inadvertently been blended with petroleum-based diesel fuel so that the mixture fails to contain 11 percent by volume of biodiesel, a 1 percent tolerance applies in determining the credit amount for the blended product as described in 42.34(1)*"b"*(4)"2":

- If the amount of the biodiesel erroneously blended with petroleum-based diesel is at least 10 percent of the total blended product by volume, the entire blended product qualifies for the credit amount available for biodiesel blended fuel that has a minimum percentage of 11 percent by volume of biodiesel.
- If the amount of biodiesel blended with petroleum-based diesel is at least 5 percent but less than 10 percent of the total blended product by volume, the entire blended product qualifies for the credit amount available for biodiesel blended fuel that has a minimum percentage of 5 percent by volume of biodiesel but less than 11 percent by volume of biodiesel.
- Numbered paragraph 42.34(1)*"b"*(4)"2" applies only if a retail dealer intends to sell and dispense biodiesel blended fuel that has a minimum percentage of 11 percent by volume of biodiesel. If a retail dealer does not intend to sell and dispense biodiesel blended fuel that has a minimum percentage of 11 percent by volume of biodiesel and the product sold and dispensed contains less than 11 percent biodiesel by volume, no error has occurred and the product does not qualify for the credit amount available for biodiesel blended fuel that has a minimum percentage of 11 percent by volume of biodiesel.

c. Refundability. Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

d. Transferability. The credit may not be transferred to any other person.

e. Examples.

EXAMPLE 1: A taxpayer operated four retail motor fuel sites during 2008 and sold a combined total at all four sites of 100,000 gallons of diesel fuel, of which 55,000 gallons was biodiesel blended fuel containing a minimum percentage of 2 percent by volume of biodiesel. Because 50 percent or more of the diesel fuel sold was biodiesel blended fuel, the taxpayer may claim the biodiesel blended fuel tax credit totaling $1,650, which is 55,000 gallons multiplied by three cents.

EXAMPLE 2: A taxpayer operated two retail motor fuel sites during 2008, and each site sold 40,000 gallons of diesel fuel. One site sold 25,000 gallons of biodiesel blended fuel containing a minimum percentage of 2 percent by volume of biodiesel, and the other site sold 10,000 gallons of biodiesel blended fuel containing a minimum percentage of 2 percent by volume of biodiesel. The taxpayer would not be eligible for the biodiesel blended fuel tax credit because only 35,000 gallons of the total 80,000 gallons, or 43.75 percent of the total diesel fuel gallons sold, was biodiesel blended fuel. The 50 percent requirement is based on the aggregate number of diesel fuel gallons sold by the taxpayer, and the fact that one retail motor fuel site met the 50 percent requirement does not allow the taxpayer to claim the biodiesel blended fuel tax credit for the 2008 tax year.

EXAMPLE 3: Same facts as in example 2, except the fuel sales occurred in 2009. The taxpayer can claim a biodiesel blended fuel tax credit totaling $750, which is 25,000 gallons multiplied by three cents, since one of the retail motor fuel sites met the 50 percent biodiesel blended fuel requirement.

EXAMPLE 4: Same facts as in example 2, except the fuel sales occurred in 2016, and all biodiesel blended fuel sold contains a minimum percentage of 5 percent by volume of biodiesel. The taxpayer can claim a biodiesel blended fuel tax credit totaling $1,575, which is 35,000 gallons multiplied by four and one-half cents, since the 50 percent biodiesel blended fuel requirement has been eliminated.

42.34(2) *Fiscal year filers.* Taxpayers whose tax year is not on a calendar-year basis and whose tax year ends before December 31, 2006, may compute the tax credit on the gallons of biodiesel blended fuel sold during the period from January 1, 2006, through the end of the tax year, provided that 50 percent of all diesel fuel sold during that period was biodiesel blended fuel. Because the tax credit is repealed on January 1, 2025, a taxpayer whose tax year ends prior to December 31, 2024, may continue to claim the tax credit in the following tax year for any biodiesel blended fuel sold through December 31, 2024.

See 701—subrule 52.31(2) for examples illustrating how this subrule is applied.

42.34(3) *Allocation of credit to owners of a business entity or to beneficiaries of an estate or trust.* If a taxpayer claiming the biodiesel blended fuel tax credit is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code section 422.11P as amended by 2016 Iowa Acts, Senate File 2309.

[**ARC 8702B**, IAB 4/21/10, effective 5/26/10; **ARC 9821B**, IAB 11/2/11, effective 12/7/11; **ARC 3043C**, IAB 4/26/17, effective 5/31/17]

701—42.35(422) Soy-based transformer fluid tax credit. Effective for tax periods ending after June 30, 2006, and beginning before January 1, 2009, an electric utility may claim a soy-based transformer fluid tax credit. An electric utility, which is a public utility, city utility, or electric cooperative which furnishes electricity, may claim a credit equal to the costs incurred during the tax year for the purchase and replacement costs relating to the transition from using nonsoy-based transformer fluid to using soy-based transformer fluid.

42.35(1) *Eligibility requirements for the tax credit.* All of the following conditions must be met for the electric utility to qualify for the soy-based transformer fluid tax credit.

a. The costs must be incurred after June 30, 2006, and before January 1, 2009.

b. The costs must be incurred in the first 18 months of the transition from using nonsoy-based transformer fluid to using soy-based transformer fluid.

c. The soy-based transformer fluid must be dielectric fluid that contains at least 98 percent soy-based products.

d. The costs of the purchase and replacement must not exceed $2 per gallon of soy-based transformer fluid used in the transition.

e. The number of gallons used in the transition must not exceed 20,000 gallons per electric utility, and the total number of gallons eligible for the credit must not exceed 60,000 gallons in the aggregate.

f. The electric utility shall not deduct for Iowa income tax purposes the costs incurred in the transition to using soy-based transformer fluid which are deductible for federal income tax purposes.

42.35(2) *Applying for the tax credit.* An electric utility must apply to the department for the soy-based transformer fluid tax credit. The application for the tax credit must be filed no later than 30 days after the close of the tax year for which the credit is claimed. The application must include the following information:

a. A copy of the signed purchase agreement or other agreement to purchase soy-based transformer fluid.

b. The number of gallons of soy-based transformer fluid purchased during the tax year, along with the cost per gallon of each purchase made during the tax year.

c. The name, address, and tax identification number of the electric utility.

d. The type of tax for which the credit will be claimed, and the first year in which the credit will be claimed.

e. If the application is filed by a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, a list of the partners, members, shareholders or beneficiaries of the entity. This list shall include the name, address, tax identification

number and pro rata share of earnings from the entity for each of the partners, members, shareholders or beneficiaries.

42.35(3) *Claiming the tax credit.* After the application is reviewed, the department will issue a tax credit certificate to the electric utility. The tax credit certificate will include the taxpayer's name, address and federal identification number, the tax type for which the credit will be claimed, the amount of the credit and the tax year for which the credit may be claimed. Once the tax credit certificate is issued, the credit may be claimed only against the type of tax reflected on the certificate. If the department refuses to issue the tax credit certificate, the taxpayer shall be notified in writing; and the taxpayer will have 60 days from the date of denial to file a protest in accordance with rule 701—7.8(17A).

If the taxpayer is a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, the tax credit certificate will be issued to the partners, members, shareholders or beneficiaries based on the partner's, member's, shareholder's or beneficiary's pro rata share of earnings of the partnership, limited liability company, S corporation, or estate or trust.

Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

This rule is intended to implement Iowa Code section 422.11R.

[**ARC 8702B**, IAB 4/21/10, effective 5/26/10; **ARC 0251C**, IAB 8/8/12, effective 9/12/12]

701—42.36(16,422) Agricultural assets transfer tax credit and custom farming contract tax credit.

42.36(1) *Agricultural assets transfer tax credit.* For tax years beginning on or after January 1, 2007, but before January 1, 2013, an owner of agricultural assets that rents assets to qualified beginning farmers may claim an agricultural assets transfer tax credit for Iowa individual income tax equal to 5 percent of the rental income received by the owner for cash rental agreements and 15 percent of the rental income received by the owner for commodity share agreements. Effective for tax years beginning on or after January 1, 2013, an owner of agricultural assets that rents assets to qualified beginning farmers may claim an agricultural assets transfer tax credit for Iowa individual income tax equal to 7 percent of the rental income received by the owner for cash rental agreements and 17 percent of the rental income received by the owner for commodity share agreements.

Also effective for tax years beginning on or after January 1, 2013, if the beginning farmer is a veteran, the credit is equal to 8 percent of the rental income received by the owner for cash rental agreements, and the credit is equal to 18 percent of the rental income received by the owner for commodity share agreements for the first year that the credit is allowed. However, the taxpayer may only claim 7 percent of the rental income for cash rental agreements and 17 percent of the rental income for commodity share agreements in subsequent years if the agreement is renewed or a new agreement is executed by the same parties. The administrative rules for the agricultural assets transfer tax credit for the Iowa finance authority may be found under 265—Chapter 44.

To qualify for the tax credit, an owner of agricultural assets must enter into a lease or rental agreement with a beginning farmer for a term of at least two years, but not more than five years. Both the owner of agricultural assets and the beginning farmer must meet certain qualifications set forth by the Iowa finance authority, and the beginning farmer must be eligible to receive financial assistance under Iowa Code section 16.75.

The Iowa finance authority will issue a tax credit certificate to the owner of agricultural assets which will include the name, address and tax identification number of the owner, the amount of the credit, and the tax period for which the credit may be applied. To claim the tax credit, the owner must include the tax credit certificate with the tax return for the tax period set forth on the certificate. The tax credit certificates will be issued on a first-come, first-served basis. For fiscal years beginning on or after July 1, 2009, but before July 1, 2013, the amount of tax credit certificates issued by the Iowa agricultural development authority for the agricultural assets transfer tax credit program cannot exceed $6 million. For fiscal years beginning on or after July 1, 2013, the amount of the tax credit certificates issued by the Iowa finance authority for the agricultural assets transfer tax credit program cannot exceed $8 million and the amount of the credit issued to an individual taxpayer cannot exceed $50,000. However, effective

December 31, 2017, the amount of tax credits issued by the Iowa finance authority for the agricultural assets transfer tax credit shall revert back to $6 million.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier. However, for any agricultural assets transfer tax credits originally issued for tax years beginning on or after January 1, 2008, any credit in excess of the tax liability may be credited to the tax liability for the following ten years. The tax credit shall not be carried back to a tax year prior to the year in which the owner redeems the credit. The credit is not transferable to any other person other than the taxpayer's estate or trust upon the death of the taxpayer.

If an owner of agricultural assets is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

The lease or rental agreement may be terminated by either the owner or the beginning farmer. If the Iowa finance authority determines that the owner is not at fault for the termination, the authority will not issue a tax credit certificate for subsequent years, but any prior tax credit certificates issued will be allowed. If the Iowa finance authority determines that the owner is at fault for the termination, any prior tax credit certificates will be disallowed. The amount of tax credits previously allowed will be recaptured, and the owner will be required to repay the entire amount of tax credits previously claimed on Iowa returns.

42.36(2) *Custom farming contract tax credit.* Effective for tax years beginning on or after January 1, 2013, a landowner that hires a beginning farmer to custom farm agricultural land in this state may claim a custom farming contract tax credit for Iowa individual income tax. The credit is equal to 7 percent of the value of the contract. If the beginning farmer is a veteran, the credit is equal to 8 percent of the value of the contract for the first year. However, the taxpayer may only claim 7 percent of the value of the contract in subsequent years if the agreement is renewed or a new agreement is executed by the same parties. The administrative rules for the custom farming contract tax credit for the Iowa finance authority may be found under 265—Chapter 44.

To qualify for the tax credit, the taxpayer must enter into a lease or rental agreement with a beginning farmer for a term of at least two years but not more than five years. Both the taxpayer and the beginning farmer must meet certain qualifications set forth by the Iowa finance authority, and the beginning farmer must be eligible to receive financial assistance under Iowa Code section 16.75.

The Iowa finance authority will issue a tax credit certificate to the taxpayer which will include the name, address and tax identification number of the owner, the amount of the credit, and the tax period for which the credit may be applied. To claim the tax credit, the owner must include the tax credit certificate with the tax return for the tax period set forth on the certificate. For fiscal years beginning on or after July 1, 2013, the amount of tax credit certificates issued by the Iowa finance authority for the custom farming contract tax credit program cannot exceed $4 million, and the credit certificates will be issued on a first-come, first-served basis. The amount of the credit issued to an individual taxpayer cannot exceed $50,000. However, effective December 31, 2017, the Iowa finance authority will no longer issue custom farming contract tax credits.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following ten years or until used, whichever is the earlier. The tax credit shall not be carried back to a tax year prior to the year in which the owner redeems the credit. The credit is not transferable to any other person other than the taxpayer's estate or trust upon the death of the taxpayer.

If the party entering into the custom farming contract with the beginning farmer is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

The custom farming contract may be terminated by either the taxpayer or the beginning farmer. If the Iowa finance authority determines that the taxpayer is not at fault for the termination, the authority will not issue a tax credit certificate for subsequent years, but any prior tax credit certificates issued will

be allowed. If the Iowa finance authority determines that the taxpayer is at fault for the termination, any prior tax credit certificates will be disallowed. The amount of tax credits previously allowed will be recaptured, and the taxpayer will be required to repay the entire amount of tax credits previously claimed on Iowa returns.

This rule is intended to implement Iowa Code section 422.11M; 2014 Iowa Acts, Senate File 2328, sections 60 and 61, as amended by 2014 Iowa Acts, House File 2454; and 2014 Iowa Acts, Senate File 2328, sections 120 and 122.

[**ARC 8702B**, IAB 4/21/10, effective 5/26/10; **ARC 1138C**, IAB 10/30/13, effective 12/4/13; **ARC 1665C**, IAB 10/15/14, effective 11/19/14]

701—42.37(15,422) Film qualified expenditure tax credit. Effective for tax years beginning on or after January 1, 2007, a film qualified expenditure tax credit is available for individual income tax. The tax credit cannot exceed 25 percent of the taxpayer's qualified expenditures in a film, television, or video project registered with the film office of the Iowa department of economic development (IDED). The film office may negotiate the amount of the tax credit. The administrative rules for the film qualified expenditure tax credit for IDED may be found at 261—Chapter 36.

42.37(1) *Qualified expenditures.* A qualified expenditure is a payment to an Iowa resident or an Iowa-based business for the sale, rental or furnishing of tangible personal property or services directly related to the registered project. The qualified expenditures include, but are not limited to, the following:

1. Aircraft.
2. Vehicles.
3. Equipment.
4. Materials.
5. Supplies.
6. Accounting services.
7. Animals and animal care services.
8. Artistic and design services.
9. Graphics.
10. Construction.
11. Data and information services.
12. Delivery and pickup services.
13. Labor and personnel. For limitations on the amount of labor and personnel expenditures, see Iowa department of economic development 261—paragraph 36.7(2)*"b."*
14. Lighting services.
15. Makeup and hairdressing services.
16. Film.
17. Music.
18. Photography.
19. Sound.
20. Video and related services.
21. Printing.
22. Research.
23. Site fees and rental.
24. Travel related to Iowa distant locations.
25. Trash removal and cleanup.
26. Wardrobe.

A detailed list of all qualified expenditures for each of these categories is available from the film office of IDED.

42.37(2) *Claiming the tax credit.* Upon completion of the registered project in Iowa, the taxpayer must submit, in a format approved by IDED prior to production, a listing of the qualified expenditures. Upon verification of the qualified expenditures, IDED will issue a tax credit certificate to the taxpayer. The certificate will list the taxpayer's name, address, and tax identification number; the date of project

completion; the amount of the credit; the tax period for which the credit may be applied; and the type of tax for which the credit will be applied.

If the taxpayer is a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, the tax credit certificate will be issued to the partners, members, shareholders or beneficiaries based on each partner's, member's, shareholder's or beneficiary's pro rata share of earnings of the partnership, limited liability company, S corporation, or estate or trust.

To claim the tax credit, the taxpayer must include the tax credit certificate with the tax return for the tax period set forth on the certificate. Any tax credit in excess of the tax liability may be carried forward for five years or until the tax credit is used, whichever is the earlier. The tax credit cannot be carried back to a tax year prior to the year in which the taxpayer claimed the tax credit.

42.37(3) *Transfer of the film qualified expenditure tax credit.* The film qualified expenditure tax credit may be transferred no more than two times to any person or entity.

Within 90 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department of revenue, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department of revenue will issue a replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company, S corporation, or estate or trust claiming the credit for individual or corporation income tax, the transferee shall provide a list of the partners, members, shareholders or beneficiaries and information on how the film qualified expenditure tax credit should be divided among the partners, members, shareholders or beneficiaries. The transferee shall also provide the tax identification numbers and addresses of the partners, members, shareholders or beneficiaries. The replacement tax credit certificate must contain the same information as that on the original tax credit certificate and must have the same effective taxable year as the original tax credit certificate. The replacement tax credit certificate may reflect a different tax type than the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax year for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit certificate shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit certificate shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

42.37(4) *Repeal of film qualified expenditure tax credit.* The film qualified expenditure tax credit is repealed for tax years beginning on or after January 1, 2012. However, the credit is still available for tax years beginning prior to January 1, 2012, if the contract or agreement related to a film project was entered into on or before May 25, 2012.

This rule is intended to implement 2012 Iowa Acts, House File 2337, sections 38 to 40.

[**ARC 8702B**, IAB 4/21/10, effective 5/26/10; **ARC 0398C**, IAB 10/17/12, effective 11/21/12; **ARC 1744C**, IAB 11/26/14, effective 12/31/14]

701—42.38(15,422) Film investment tax credit. Effective for tax years beginning on or after January 1, 2007, a film investment tax credit is available for individual income tax. The tax credit cannot exceed 25 percent of the taxpayer's investment in a film, television, or video project registered with the film office of the Iowa department of economic development (IDED). The film office may negotiate the amount of the tax credit. The administrative rules for the film investment tax credit for IDED may be found at 261—Chapter 36.

42.38(1) *Claiming the tax credit.* Upon completion of the project in Iowa and verification of the investment in the project, IDED will issue a tax credit certificate to the taxpayer. The certificate will list the taxpayer's name, address, and tax identification number; the date of project completion; the amount of the credit; the tax period for which the credit may be applied; and the type of tax for which the credit will be applied.

If the taxpayer is a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, the tax credit certificate will be issued to the partners,

members, shareholders or beneficiaries based on each partner's, member's, shareholder's or beneficiary's pro rata share of earnings of the partnership, limited liability company, S corporation, or estate or trust.

To claim the tax credit, the taxpayer must include the tax credit certificate with the tax return for the tax period set forth on the certificate. Any tax credit in excess of the tax liability may be carried forward for five years or until the tax credit is used, whichever is the earlier. The tax credit cannot be carried back to a tax year prior to the year in which the taxpayer claimed the tax credit. In addition, a taxpayer cannot claim the film investment tax credit for qualified expenditures for which the film expenditure tax credit set forth in rule 701—42.37(15,422) is claimed.

The total of all film investment tax credits for a particular project cannot exceed 25 percent of the qualified expenditures as set forth in subrule 42.37(1) for the particular project. If the amount of investment exceeds the qualified expenditures, the tax credit will be allocated proportionately. For example, if three investors each invested $100,000 in a project but the qualified expenditures in Iowa only totaled $270,000, each investor would receive a tax credit based on a $90,000 investment amount.

42.38(2) *Transfer of the film investment tax credit.* The film investment tax credit may be transferred no more than two times to any person or entity.

Within 90 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department of revenue, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department of revenue will issue a replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company, S corporation, or estate or trust claiming the credit for individual or corporation income tax, the transferee shall provide a list of the partners, members, shareholders or beneficiaries and information on how the film investment tax credit should be divided among the partners, members, shareholders or beneficiaries. The transferee shall also provide the tax identification numbers and addresses of the partners, members, shareholders or beneficiaries. The replacement tax credit certificate must contain the same information as that on the original tax credit certificate and must have the same effective taxable year as the original tax credit certificate. The replacement tax credit certificate may reflect a different tax type than the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax year for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit certificate shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit certificate shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

42.38(3) *Repeal of film investment tax credit.* The film investment tax credit is repealed for tax years beginning on or after January 1, 2012. However, the credit is still available for tax years beginning prior to January 1, 2012, if the contract or agreement related to a film project was entered into on or before May 25, 2012.

This rule is intended to implement 2012 Iowa Acts, House File 2337, sections 38 to 40.

[**ARC 8702B**, IAB 4/21/10, effective 5/26/10; **ARC 0398C**, IAB 10/17/12, effective 11/21/12; **ARC 1744C**, IAB 11/26/14, effective 12/31/14]

701—42.39(422) Ethanol promotion tax credit. Effective for tax years beginning on or after January 1, 2009, a retail dealer of gasoline may claim an ethanol promotion tax credit. For purposes of this rule, tank wagon sales are considered retail sales. The ethanol promotion tax credit is computed on Form IA 137.

42.39(1) *Definitions.* The following definitions are applicable to this rule:

"Biodiesel gallonage" means the total number of gallons of biodiesel which the retail dealer sells from motor fuel pumps during a determination period. For example, 5,000 gallons of biodiesel blended fuel with a 2 percent by volume of biodiesel sold during a determination period results in a biodiesel gallonage of 100 (5,000 times 2%).

"Biofuel distribution percentage" means the sum of the retail dealer's total ethanol gallonage plus the retail dealer's total biodiesel gallonage expressed as a percentage of the retail dealer's total gasoline gallonage.

"Biofuel threshold percentage" is dependent on the aggregate number of gallons of motor fuel sold by a retail dealer during a determination period, as set forth below:

Determination Period	More that 200,000 Gallons Sold by Retail Dealer	200,000 Gallons or Less Sold by Retail Dealer
2009	10%	6%
2010	11%	6%
2011	12%	10%
2012	13%	11%
2013	14%	12%
2014	15%	13%
2015	17%	14%
2016	19%	15%
2017	21%	17%
2018	23%	19%
2019	25%	21%
2020	25%	25%

"Biofuel threshold percentage disparity" means the positive percentage difference between the retail dealer's biofuel threshold percentage and the retail dealer's biofuel distribution percentage. For example, if a retail dealer that sells more than 200,000 gallons of motor fuel in 2009 has a biofuel distribution percentage of 8 percent, the biofuel threshold percentage disparity equals 2 percent (10% minus 2%).

"Determination period" means any 12-month period beginning on January 1 and ending on December 31.

"Ethanol gallonage" means the total number of gallons of ethanol which the retail dealer sells from motor fuel pumps during a determination period. For example, 10,000 gallons of ethanol blended gasoline formulated with a 10 percent by volume of ethanol sold during a determination period results in an ethanol gallonage of 1,000 (10,000 gallons times 10%).

"Gasoline gallonage" means the total number of gallons of gasoline sold by the retail dealer during a determination period.

42.39(2) *Calculation of tax credit.*

a. The tax credit is calculated by multiplying the retail dealer's total ethanol gallonage by the tax credit rate, which is adjusted based upon the retail dealer's biofuel threshold percentage disparity. The tax credit rate is set forth below:

Biofuel Threshold Percentage Disparity	Tax Credit Rate per Gallon 2009-2010	Tax Credit Rate per Gallon 2011	Tax Credit Rate per Gallon 2012-2020
0%	6.5 cents	8 cents	8 cents
0.01% to 2.00%	4.5 cents	6 cents	6 cents
2.01% to 4.00%	2.5 cents	2.5 cents	4 cents
4.01% or more	0 cents	0 cents	0 cents

b. For use in calculating a retail dealer's total ethanol gallonage, the department is required to establish a schedule regarding the average amount of ethanol contained in E-85 gasoline.

c. A taxpayer may claim the ethanol promotion tax credit even if the taxpayer also claims the E-85 gasoline promotion tax credit provided in rule 701—42.33(422) or the E-15 plus gasoline promotion tax credit provided in rule 701—42.46(422) for the same tax year for the same ethanol gallons.

d. The tax credit must be calculated separately for each retail motor fuel site operated by the taxpayer for tax years beginning prior to January 1, 2011. The biofuel threshold percentage disparity of the taxpayer is computed on a statewide basis based on the total ethanol gallonage sold in Iowa. The taxpayer must determine the ethanol gallonage sold at each retail motor fuel site and multiply this ethanol gallonage by the applicable tax credit rate based on the biofuel threshold percentage disparity to calculate the ethanol promotion tax credit.

e. For tax years beginning on or after January 1, 2011, the taxpayer may elect to compute the biofuel threshold percentage disparity and the tax credit on either a site-by-site basis or on a companywide basis. The election made on the first return beginning on or after January 1, 2011, for either the site-by-site method or the companywide method is binding on the taxpayer for subsequent tax years unless the taxpayer petitions the department for a change in the method. Any petition for a change in the method should be made within a reasonable period of time prior to the due date of the return for which the change is requested. For example, if a change is requested for the tax return beginning January 1, 2012, the petition should be made by January 31, 2013, which is 90 days prior to the due date of the return.

The mere fact that a change in the method will result in a larger tax credit for subsequent years is not, of itself, sufficient grounds for changing the method for computing the credit. An example of a case for which the department may grant a change in the method is if the taxpayer has a significant change in the type of fuel sold at the taxpayer's retail sites in Iowa. For example, if a retail dealer opted to start selling E-85 gasoline at all the taxpayer's retail sites in Iowa for a subsequent tax year, the department may grant a change in the method.

If a taxpayer chooses the site-by-site method to compute the biofuel threshold percentage disparity, the gallons sold at all sites in Iowa must be considered in determining if the biofuel threshold percentage as defined in subrule 42.39(1) is based on more than 200,000 gallons or on 200,000 gallons or less. For example, if a taxpayer operates three motor fuel sites in Iowa and each site sells 80,000 gallons of motor fuel during 2011, the biofuel threshold percentage of 12 percent must be used for each retail site if the tax credit is computed on a site-by-site basis, even though each retail site sold less than 200,000 gallons of motor fuel.

f. Any tax credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming a refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

42.39(3) *Fiscal year filers.* For taxpayers whose tax year is not on a calendar-year basis, the taxpayer may compute the ethanol promotion tax credit on the total ethanol gallonage sold during the year using the designated tax credit rates as shown in subrule 42.39(2), paragraph *"a."* Because the tax credit is repealed on January 1, 2021, a taxpayer whose tax year ends prior to December 31, 2020, may continue to claim the tax credit in the following tax year for the total ethanol gallonage sold through December 31, 2020. A taxpayer whose tax year is not on a calendar-year basis and that did not claim the ethanol promotion tax credit on the previous return may claim the tax credit for the current tax year for the period beginning on January 1 of the previous tax year until the last day of the previous tax year.

42.39(4) *Allocation of tax credit to owners of a business entity.* If a taxpayer claiming the ethanol promotion tax credit is a partnership, limited liability company, S corporation, estate, or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by the individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, estate, or trust.

42.39(5) *Examples.* The following noninclusive examples illustrate how this rule applies:

EXAMPLE 1. A taxpayer that is a retail dealer of gasoline operates only one motor fuel site in Iowa. The number of gallons of gasoline sold at this site in 2009 equals 100,000 gallons. This consisted of 5,000 gallons of E-85 gasoline, 80,000 gallons of E-10 (10% ethanol blended gasoline) and 15,000 gallons not containing ethanol. The average ethanol content of E-85 gasoline is assumed to be 79%. The taxpayer also sold at this site during 2009 15,000 gallons of diesel fuel, of which 5,000 gallons was B-2 (2% biodiesel). The ethanol gallonage is 11,950 (5,000 E-85 gallons times 79% equals 3,950; 80,000 E-10 gallons times 10% equals 8,000; and thus 3,950 plus 8,000 equals 11,950). The biodiesel gallonage sold is 100, or 5,000 times 2%. The sum of 11,950 and 100, or 12,050, is divided by the total gasoline

gallonage of 100,000 to arrive at a biofuel distribution percentage of 12.05%. Since this percentage exceeds the biofuel threshold percentage of 6% for a retail dealer selling 200,000 gallons or less, the biofuel threshold disparity percentage is 0%. This calculation results in an ethanol promotion tax credit of 6.5 cents times 11,950, or $776.75.

In addition, the taxpayer is entitled to claim the E-85 gasoline promotion tax credit equal to 20 cents multiplied by 5,000 gallons, or $1,000.

EXAMPLE 2. A taxpayer that is a retail dealer of gasoline operates only one motor fuel site in Iowa. The number of gallons of gasoline sold at this site in 2010 equals 300,000 gallons which consisted of 10,000 gallons of E-85 gasoline, 230,000 gallons of E-10 (10% ethanol blended gasoline) and 60,000 gallons not containing ethanol. The average ethanol content of E-85 gasoline is assumed to be 79%. The taxpayer also sold 60,000 gallons of diesel fuel at this site during 2010, of which 25,000 gallons was B-2 (2% biodiesel). The ethanol gallonage is 30,900 (10,000 E-85 gallons times 79% equals 7,900; 230,000 E-10 gallons times 10% equals 23,000; and thus 7,900 plus 23,000 equals 30,900). The biodiesel gallonage sold is 500, or 25,000 times 2%. The sum of 30,900 and 500, or 31,400, is divided by the total gasoline gallonage of 300,000 to arrive at a biofuel distribution percentage of 10.47%. Since this is less than the biofuel threshold percentage of 11% for a retail dealer selling more than 200,000 gallons, the biofuel threshold disparity percentage is .53%. This calculation results in an ethanol promotion tax credit of 4.5 cents times 30,900, or $1,390.50.

In addition, the taxpayer is entitled to claim the E-85 gasoline promotion tax credit equal to 20 cents multiplied by 10,000 gallons, or $2,000.

EXAMPLE 3. A taxpayer that is a retail dealer of gasoline operates three motor fuel sites in Iowa during 2009, and each site sold 80,000 gallons of gasoline. Sites A and B each sold 70,000 gallons of E-10 (10% ethanol blended gasoline) and 10,000 gallons not containing ethanol. Site C sold 60,000 gallons of E-10, 10,000 gallons of E-85, and 10,000 gallons not containing ethanol. The average ethanol content of E-85 gasoline is assumed to be 79%. The retail dealer did not sell any diesel fuel at any of the motor fuel sites. The ethanol gallonage is 27,900, as shown below:

Site A – 70,000 times 10% equals	7,000
Site B – 70,000 times 10% equals	7,000
Site C – 60,000 times 10% equals	6,000
Site C – 10,000 times 79% equals	7,900
Total	27,900

The ethanol gallonage of 27,900 is divided by the gasoline gallonage of 240,000 to arrive at a biofuel distribution percentage of 11.63%. Since this exceeds the biofuel threshold percentage of 10% for a retail dealer selling more than 200,000 gallons, the biofuel threshold disparity percentage is 0%. The credit is computed separately for each motor fuel site, and the ethanol promotion credit equals $1,813.50, as shown below:

Site A – 7,000 times 6.5 cents equals	$455.00
Site B – 7,000 times 6.5 cents equals	$455.00
Site C – 13,900 times 6.5 cents equals	$903.50
Total	$1,813.50

Since the biofuel distribution percentage and the biofuel threshold percentage disparity are computed on a statewide basis for all gallons sold in Iowa, the 6.5 cent tax credit rate is applied to the total ethanol gallonage, even if Sites A and B did not meet the biofuel threshold percentage of 10% for 2009.

In addition, the taxpayer is entitled to claim the E-85 gasoline promotion tax credit equal to 20 cents multiplied by 10,000 gallons, or $2,000.

EXAMPLE 4. A taxpayer that is a retail dealer of gasoline has a fiscal year ending March 31, 2011, and operates one motor fuel site in Iowa. The taxpayer sold more than 200,000 gallons of gasoline during the 2010 calendar year and expects to sell more than 200,000 gallons of gasoline during the 2011 calendar

year. The ethanol gallonage is 30,000 for the period from April 1, 2010, through December 31, 2010, and the ethanol gallonage is 8,000 for the period from January 1, 2011, through March 31, 2011. The biofuel distribution percentage is 11.5% for the period from April 1, 2010, through December 31, 2010, and the biofuel distribution percentage is 11.8% for the period from January 1, 2011, through March 31, 2011. This results in a biofuel threshold percentage disparity of 0% (11.0 minus 11.5) for the period from April 1, 2010, through December 31, 2010, and a biofuel threshold percentage disparity of .2% (12.0 minus 11.8) for the period from January 1, 2011, through March 31, 2011. The taxpayer is entitled to an ethanol promotion tax credit of $2,310 for the fiscal year ending March 31, 2011, as shown below:

30,000 times 6.5 cents equals	$1,950
8,000 times 4.5 cents equals	360
Total	$2,310

EXAMPLE 5. A taxpayer that is a retail dealer of gasoline has a fiscal year ending April 30, 2009, and operates one motor fuel site in Iowa. The taxpayer expects to sell more than 200,000 gallons of gasoline during the 2009 calendar year. The ethanol gallonage is 50,000 gallons for the period from January 1, 2009, through April 30, 2009. The biofuel distribution percentage is 7.7% for the period from January 1, 2009, through April 30, 2009, which results in a biofuel threshold percentage disparity of 2.3% (10.0 minus 7.7). The taxpayer is entitled to claim an ethanol promotion tax credit of $1,250 (50,000 gallons times 2.5 cents) on the taxpayer's Iowa income tax return for the period ending April 30, 2009.

In lieu of claiming the credit on the return for the period ending April 30, 2009, the taxpayer may claim the ethanol promotion tax credit on the tax return for the period ending April 30, 2010, including the ethanol gallonage for the period from January 1, 2009, through April 30, 2010. In this case, the taxpayer will compute the biofuel distribution percentage for the period from January 1, 2009, through December 31, 2009, to determine the proper tax credit rate to be applied to the ethanol gallonage for the period from January 1, 2009, through December 31, 2009.

EXAMPLE 6. Assume the same facts as Example 3, except that the gallons were sold in 2011. The taxpayer chose the companywide method to compute the biofuel threshold percentage disparity and the tax credit. The biofuel distribution percentage is 11.63%, and since the biofuel threshold percentage is 12% for retailers selling more than 200,000 gallons of motor fuel, the biofuel threshold percentage disparity is 0.37%. This results in an ethanol promotion tax credit on a companywide basis of 6 cents multiplied by the ethanol gallonage of 27,900 or $1,674.

EXAMPLE 7. Assume the same facts as Example 3, except that the gallons were sold in 2011. The taxpayer chose the site-by-site method to compute the biofuel threshold percentage disparity and the tax credit. The biofuel threshold percentage is still 12% since the retailer sold more than 200,000 gallons of motor fuel at all sites in Iowa. The biofuel distribution percentage for Site A and Site B is 7,000 divided by 80,000, or 8.75%. The biofuel threshold percentage disparity for Site A and Site B is 3.25%, or 12% less than 8.75%. The biofuel distribution percentage for Site C is 13,900 divided by 80,000, or 17.38%. The biofuel threshold percentage disparity for Site C is 0% since the biofuel distribution percentage exceeds the biofuel threshold percentage. This results in an ethanol promotion tax credit on a site-by-site basis of $1,462, as shown below:

Site A – 7,000 times 2.5 cents equals	$175
Site B – 7,000 times 2.5 cents equals	$175
Site C – 13,900 times 8 cents equals	$1,112
Total	$1,462

This rule is intended to implement Iowa Code section 422.11N as amended by 2011 Iowa Acts, Senate File 531.

[**ARC 8702B**, IAB 4/21/10, effective 5/26/10; **ARC 9821B**, IAB 11/2/11, effective 12/7/11]

701—42.40(422) Charitable conservation contribution tax credit. Effective for tax years beginning on or after January 1, 2008, a charitable conservation contribution tax credit is available for individual income tax which is equal to 50 percent of the fair market value of a qualified real property interest located in Iowa that is conveyed as an unconditional charitable donation in perpetuity by a taxpayer to a qualified organization exclusively for conservation purposes.

42.40(1) *Definitions.* The following definitions are applicable to this rule:

"Conservation purpose" means the same as defined in Section 170(h)(4) of the Internal Revenue Code, with the exception that a conveyance of land for open space for the purpose of fulfilling density requirements to obtain subdivision or building permits is not considered a conveyance for a conservation purpose.

"Qualified organization" means the same as defined in Section 170(h)(3) of the Internal Revenue Code.

"Qualified real property interest" means the same as defined in Section 170(h)(2) of the Internal Revenue Code. Conservation easements and bargain sales are examples of a qualified real property interest.

42.40(2) *Computation of the credit.* The credit equals 50 percent of the fair market value of the qualified real property interest. There are numerous federal revenue regulations, rulings, court cases and other provisions relating to the determination of the value of a qualified real property interest, and these are equally applicable in determining the amount of the charitable conservation contribution tax credit.

The maximum amount of the tax credit is $100,000. The amount of the contribution for which the tax credit is claimed shall not be claimed as an itemized deduction for charitable contributions for Iowa income tax purposes.

42.40(3) *Claiming the tax credit.* The tax credit is claimed on Form IA 148, Tax Credits Schedule. The taxpayer must include a copy of federal Form 8283, Noncash Charitable Contributions, which reflects the calculation of the fair market value of the real property interest, with the Iowa return for the year in which the contribution is made. If a qualified appraisal of the property or other relevant information is required to be included with federal Form 8283 for federal tax purposes, the appraisal and other relevant information must also be included with the Iowa return.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following 20 years or until used, whichever is the earlier.

If the taxpayer claiming the credit is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

42.40(4) *Examples.* The following noninclusive examples illustrate how this rule applies:

EXAMPLE 1: A taxpayer conveys a real property interest with a fair market value of $150,000 to a qualified organization during 2008. The tax credit is equal to $75,000, or 50 percent of the $150,000 fair market value of the real property. The taxpayer cannot claim the $150,000 as an itemized deduction for charitable contributions on the Iowa individual income tax return for 2008.

EXAMPLE 2: A taxpayer conveys a real property interest with a fair market value of $500,000 to a qualified organization during 2009. The tax credit is limited to $100,000, which equates to $200,000 of the contribution being eligible for the tax credit. The remaining amount of $300,000 ($500,000 less $200,000) can be claimed as an itemized deduction for charitable contributions on the Iowa individual income tax return for 2009.

This rule is intended to implement Iowa Code section 422.11W.

[**ARC 8702B**, IAB 4/21/10, effective 5/26/10; **ARC 1744C**, IAB 11/26/14, effective 12/31/14]

701—42.41(15,422) Redevelopment tax credit. The economic development authority is authorized by the general assembly and the governor to oversee the implementation and administration of the redevelopment tax credit program. Effective for tax years beginning on or after July 1, 2009, a taxpayer whose project has been approved by the Iowa brownfield redevelopment advisory council and the economic development authority may claim a redevelopment tax credit once the taxpayer has been

issued a tax credit certificate for the project by the economic development authority. The credit is based on the taxpayer's qualifying investment in a brownfield or grayfield site. The administrative rules for the economic development authority's administration of this program, including definitions of brownfield and grayfield sites, may be found in rules 261—65.11(15) and 261—65.12(15).

42.41(1) *Eligibility for the credit.* The economic development authority is responsible for developing a system for registration and authorization of projects receiving redevelopment tax credits. For more information, see Iowa Administrative Code 261—Chapter 65.

42.41(2) *Amount of the credit.*

a. Maximum credit total. For the fiscal year beginning July 1, 2009, the maximum amount of tax credits allowed is $1 million, and the amount of credit authorized for any one redevelopment project cannot exceed $100,000. For the fiscal year beginning July 1, 2011, the maximum amount of tax credit allowed cannot exceed $5 million, and the amount of credit authorized for any one redevelopment project cannot exceed $500,000. For the fiscal year beginning July 1, 2012, the maximum amount of tax credits allowed cannot exceed $10 million, and the amount of credit authorized for any one redevelopment project cannot exceed $1 million. For the fiscal year beginning July 1, 2013, and for each subsequent fiscal year, the maximum amount of tax credits issued by the authority shall be an amount determined by the economic development authority board but not in excess of the amount established pursuant to Iowa Code section 15.119.

b. Maximum credit per project. The maximum amount of a tax credit for a qualifying investment in any one qualifying redevelopment project shall not exceed 10 percent of the maximum amount of tax credits available in any one fiscal year pursuant to paragraph 42.41(2)*"a."*

c. Percentage computation. The amount of the tax credit shall equal one of the following:

(1) Twelve percent of the taxpayer's qualifying investment in a grayfield site.

(2) Fifteen percent of the taxpayer's qualifying investment in a grayfield site if the qualifying redevelopment project meets the requirements of green development as defined in rule 261—65.2(15).

(3) Twenty-four percent of the taxpayer's qualifying investment in a brownfield site.

(4) Thirty percent of the taxpayer's qualifying investment in a brownfield site if the qualifying redevelopment project meets the requirements of green development as defined in rule 261—65.2(15).

42.41(3) *Claiming the credit.*

a. Certificate issuance. Upon completion of the project, the economic development authority will issue a tax credit certificate to the taxpayer. The tax credit certificate will include the taxpayer's name, address and federal identification number, the tax type for which the credit will be claimed, the amount of the credit, the tax year for which the credit may be claimed and the tax credit certificate number. In addition, the tax credit certificate will include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 42.41(4). To claim the tax credit, the taxpayer must include the tax credit certificate with the tax return for the tax period set forth on the certificate.

b. Pro rata share. If a taxpayer claiming the tax credit is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

c. Carryforward. Except as provided in paragraph 42.41(3)*"d,"* any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier. The tax credit shall not be carried back to a tax year prior to the year in which the taxpayer redeems the credit.

d. Refundability. A tax credit in excess of the taxpayer's liability for the tax year is refundable if all of the conditions of economic development authority 261—paragraph 65.11(4)*"b"* are met.

42.41(4) *Transfer of the credit.* The redevelopment tax credit can be transferred to any person or entity. However, a certificate indicating that the credit is refundable is only transferrable to the extent permitted by economic development authority 261—paragraph 65.11(4)*"b."*

a. Submission of transferred tax credit certificate to the department—information required. Within 90 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department of revenue, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred, the amount of all consideration provided in exchange for the tax credit, and the names of recipients of any consideration provided in exchange for the tax credit. If a payment of money was any part of the consideration provided in exchange for the tax credit, the transferee shall list the amount of the payment of money in its statement to the department of revenue. If any part of the consideration provided in exchange for the tax credit included nonmonetary consideration, including but not limited to any promise, representation, performance, discharge of debt or nonmonetary rights or property, the transferee shall describe the nature of nonmonetary consideration and disclose any value the transferor and transferee assigned to the nonmonetary consideration. The transferee must indicate on its statement to the department of revenue if no consideration was provided in exchange for the tax credit. If the transferee is a partnership, limited liability company, S corporation, or estate or trust claiming the credit for individual or corporation income tax, the transferee shall provide a list of the partners, members, shareholders or beneficiaries and information on how the redevelopment tax credit should be divided among the partners, members, shareholders or beneficiaries. The transferee shall also provide the tax identification numbers and addresses of the partners, members, shareholders or beneficiaries.

b. Issuance of replacement certificate by the department. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department of revenue will issue a replacement tax credit certificate to the transferee.

c. Claiming the transferred tax credit. The replacement tax credit certificate must contain the same information as that on the original tax credit certificate and must have the same effective taxable year as the original tax credit certificate. The replacement tax credit certificate may reflect a different tax type than the original tax credit certificate. The transferee may use the amount of the tax credit for any tax year for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit certificate shall not be included in Iowa taxable income for individual income tax, corporation income tax, or franchise tax purposes. Any consideration paid for the transfer of the tax credit certificate shall not be deducted from Iowa taxable income for individual income tax, corporation income tax, or franchise tax purposes.

42.41(5) *Basis reduction of the redevelopment property.* The increase in the basis of the redevelopment property that would otherwise result from the qualified redevelopment costs shall be reduced by the amount of the redevelopment tax credit. For example, if a qualifying investment in a grayfield site totaled $100,000 for which a $12,000 redevelopment tax credit was issued, the increase in the basis of the property would total $88,000 for Iowa tax purposes ($100,000 less $12,000).

This rule is intended to implement Iowa Code sections 15.293A, 422.11V and 15.119.

[**ARC 8702B**, IAB 4/21/10, effective 5/26/10; **ARC 9876B**, IAB 11/30/11, effective 1/4/12; **ARC 1102C**, IAB 10/16/13, effective 11/20/13; **ARC 1949C**, IAB 4/1/15, effective 5/6/15]

701—42.42(15) High quality jobs program. Effective for tax periods beginning on or after July 1, 2009, a business which qualifies under the high quality jobs program is eligible to receive tax credits. The high quality jobs program replaces the high quality job creation program. An eligible business under the high quality jobs program must be approved by the Iowa department of economic development and meet the qualifications of Iowa Code section 15.329. The tax credits available under the high quality jobs program are based upon the number of jobs created or retained that pay a qualifying wage threshold and the amount of qualifying investment. The administrative rules for the high quality jobs program for the Iowa department of economic development may be found at 261—Chapter 68.

42.42(1) *Research activities credit.* An eligible business approved under the high quality jobs program is eligible for an additional research activities credit as described in 701—subrule 52.7(4) for awards issued by the Iowa department of economic development prior to July 1, 2010. The eligible business is eligible for the research activities credit as described in 701—subrule 52.7(6) for awards issued by the Iowa department of economic development on or after July 1, 2010.

Research activities allowable for the Iowa research activities credit include expenses related to the development and deployment of innovative renewable energy generation components manufactured or assembled in Iowa; such expenses related to the development and deployment of innovative renewable energy generation components are not eligible for the federal credit for increasing research activities. For purposes of this subrule, innovative renewable energy generation components do not include components with more than 200 megawatts in installed effective nameplate generating capacity. The research activities credit related to renewable energy generation components under the high quality jobs program and the enterprise zone program shall not exceed $2 million for the fiscal year ending June 30, 2010, and $1 million for the fiscal year ending June 30, 2011.

These expenses related to the development and deployment of innovative renewable energy generation components are applicable only to the additional research activities credit set forth in this subrule and in 701—subrule 52.7(5) for businesses in enterprise zones, and are not applicable to the research activities credit set forth in subrule 42.11(3), paragraphs *"a"* and *"b."*

42.42(2) *Investment tax credit.* An eligible business can claim an investment tax credit equal to a percentage of the new investment directly related to new jobs created or retained by the location or expansion of an eligible business. The percentage is equal to the amount provided in Iowa department of economic development 261—subrule 68.4(7).

The determination of the new investment eligible for the investment tax credit, the eligibility of a refundable investment tax credit for value-added agricultural product or biotechnology-related projects and the repayment of investment tax credits for the high quality jobs program is the same as set forth in subrule 42.29(2) for the high quality job creation program.

42.42(3) *Repayment of benefits.* If an eligible business fails to maintain the requirements of the high quality jobs program, the taxpayer may be required to repay all or a portion of the tax incentives taken on Iowa returns. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the tax credits may have expired, the department may proceed to collect the tax incentives forfeited by failure of the eligible business to maintain the requirements of the high quality jobs program because the repayment is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability. Details on the calculation of the repayment can be found in 261—subrule 187.5(4) of the administrative rules of the economic development authority. If the business is a partnership, limited liability company, S corporation, estate or trust where the income of the taxpayer is taxed to the individual owner(s) of the business, the department may proceed to collect the tax incentives against the partners, members, shareholders or beneficiaries to whom the tax incentives were passed through. See Decision of the Administrative Law Judge in *Damien & Colette Trebilcock, et al.,* Docket No. 11DORF 042-044, June 11, 2012.

This rule is intended to implement Iowa Code chapter 15.

[**ARC 8702B**, IAB 4/21/10, effective 5/26/10; **ARC 9104B**, IAB 9/22/10, effective 10/27/10; **ARC 1744C**, IAB 11/26/14, effective 12/31/14]

701—42.43(16,422) Disaster recovery housing project tax credit. For tax years beginning on or after January 1, 2011, but before January 1, 2015, a disaster recovery housing project tax credit is available for individual income tax. The credit is equal to 75 percent of the taxpayer's qualifying investment in a disaster recovery housing project, and is administered by the Iowa finance authority. Qualifying investments are costs incurred on or after May 12, 2009, and prior to July 1, 2010, related to a disaster recovery housing project. Eligible properties must have applied for and received an allocation of federal low-income housing tax credits under Section 42 of the Internal Revenue Code to be eligible for the tax credit. The tax credit is repealed effective January 1, 2015.

42.43(1) *Issuance of tax credit certificates.* Upon completion of the project and verification of the amount of investment made in the disaster recovery housing project, the Iowa finance authority will issue a tax credit certificate to the taxpayer. The tax credit certificate shall include the taxpayer's name, address, tax identification number, amount of credit, and the tax year for which the credit may be claimed. The tax credit certificates will be issued on a first-come, first-served basis. The tax credit cannot be transferred to any person or entity.

42.43(2) *Limitation of tax credits.* The tax credit shall not exceed 75 percent of the taxpayer's qualifying investment in a disaster recovery housing project. The maximum amount of tax credits issued by the Iowa finance authority shall not exceed $3 million in each of the five consecutive years beginning in the 2011 calendar year. A tax credit certificate shall be issued by the Iowa finance authority for each year that the credit can be claimed.

42.43(3) *Claiming the tax credit.* The amount of the tax credit earned by the taxpayer will be divided by five and an amount equal thereto will be claimed on the Iowa individual income tax return commencing with the tax year beginning on or after January 1, 2011. A taxpayer is not entitled to a refund of the excess tax for any tax credit in excess of the tax liability, and also is not entitled to carry forward any excess credit to a subsequent tax year.

If the taxpayer is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

The increase in the basis of the property that would otherwise result from the disaster recovery housing investment shall be reduced by the amount of the tax credit allowed.

EXAMPLE: An individual whose tax year ends on December 31 incurs $100,000 of costs related to an eligible disaster recovery housing project. The taxpayer receives a tax credit of $75,000, and $15,000 of credit can be claimed on each Iowa individual income tax return for the periods ending December 31, 2011, through December 31, 2015. If the tax liability for the individual for the period ending December 31, 2011, is $10,000, the credit is limited to $10,000, and the remaining $5,000 credit cannot be used. If the tax liability for the individual for the period ending December 31, 2012, is $25,000, the credit is limited to $15,000, and the remaining $5,000 credit from 2011 cannot be used to reduce the tax for 2012.

42.43(4) *Potential recapture of tax credits.* If the taxpayer fails to comply with the eligibility requirements of the project or violates local zoning and construction ordinances, the Iowa finance authority can void the tax credit and the department of revenue shall seek recovery of the value of any tax credit claimed on an individual income tax return.

This rule is intended to implement Iowa Code sections 16.211, 16.212 and 422.11X as amended by 2014 Iowa Acts, Senate File 2328.

[**ARC 8702B**, IAB 4/21/10, effective 5/26/10; **ARC 1665C**, IAB 10/15/14, effective 11/19/14]

701—42.44(422) Deduction of credits. The credits against computed tax set forth in Iowa Code sections 422.5, 422.8, 422.10 through 422.12C, and 422.110 shall be claimed in the following sequence:

1. Personal exemption credit.
2. Tuition and textbook credit.
3. Volunteer fire fighter, volunteer emergency medical services personnel and reserve peace officer tax credit.
4. Nonresident and part-year resident credit.
5. Franchise tax credit.
6. S corporation apportionment credit.
7. School tuition organization tax credit.
8. Venture capital tax credits (excluding redeemed Iowa fund of funds tax credit).
9. Endow Iowa tax credit.
10. Film qualified expenditure tax credit.
11. Film investment tax credit.
12. Redevelopment tax credit.
13. From farm to food donation tax credit.
14. Workforce housing tax credit.
15. Investment tax credit.
16. Wind energy production tax credit.
17. Renewable energy tax credit.
18. Redeemed Iowa fund of funds tax credit.

19. New jobs tax credit.
20. Economic development region revolving fund tax credit.
21. Agricultural assets transfer tax credit.
22. Custom farming contract tax credit.
23. Geothermal heat pump tax credit.
24. Solar energy system tax credit.
25. Charitable conservation contribution tax credit.
26. Alternative minimum tax credit.
27. Historic preservation and cultural and entertainment district tax credit.
28. Ethanol promotion tax credit.
29. Research activities credit.
30. Out-of-state tax credit.
31. Child and dependent care tax credit or early childhood development tax credit.
32. Motor fuel tax credit.
33. Claim of right credit (if elected in accordance with rule 701—38.18(422)).
34. Wage-benefits tax credit.
35. Adoption tax credit.
36. E-85 gasoline promotion tax credit.
37. Biodiesel blended fuel tax credit.
38. E-15 plus gasoline promotion tax credit.
39. Earned income tax credit.
40. Iowa taxpayers trust fund tax credit.
41. Estimated payments, payment with vouchers, and withholding tax.

This rule is intended to implement Iowa Code sections 422.5, 422.8, 422.10, 422.11, 422.11A, 422.11B, 422.11D, 422.11E, 422.11F, 422.11H, 422.11I, 422.11J, 422.11L, 422.11M, 422.11N, 422.11O, 422.11P, 422.11Q, 422.11R, 422.11S, 422.11V, 422.11W, 422.11Y, 422.11Z, 422.12, 422.12B, 422.12C and 422.110 and 2014 Iowa Acts, House Files 2448 and 2468.

[**ARC 8702B**, IAB 4/21/10, effective 5/26/10; **ARC 9876B**, IAB 11/30/11, effective 1/4/12; **ARC 0398C**, IAB 10/17/12, effective 11/21/12; **ARC 1303C**, IAB 2/5/14, effective 3/12/14; **ARC 1744C**, IAB 11/26/14, effective 12/31/14]

701—42.45(15) Aggregate tax credit limit for certain economic development programs. Effective for the fiscal year beginning July 1, 2009, awards made under certain economic development programs cannot exceed $185 million during a fiscal year. Effective for fiscal years beginning on or after July 1, 2010, but beginning before July 1, 2012, awards made under these economic development programs cannot exceed $120 million during a fiscal year. Effective for fiscal years beginning on or after July 1, 2012, awards made under these economic development programs cannot exceed $170 million. For fiscal years beginning on or after July 1, 2010, but beginning before July 1, 2014, these programs include the assistive device tax credit program, the enterprise zone program, the housing enterprise zone program, the high quality jobs program, the redevelopment tax credit program, tax credits for investments in qualifying businesses and community-based seed capital funds, and the innovation fund tax credit program. For fiscal years beginning on or after July 1, 2014, these programs include the assistive device tax credit program, the workforce housing tax incentives program, the high quality jobs program, the redevelopment tax credit program, tax credits for investments in qualifying businesses and community-based seed capital funds, and the innovation fund tax credit program. The administrative rules for the aggregate tax credit limit for the economic development authority may be found at 261—Chapter 76.

This rule is intended to implement Iowa Code section 15.119 as amended by 2014 Iowa Acts, House File 2448.

[**ARC 8702B**, IAB 4/21/10, effective 5/26/10; **ARC 9104B**, IAB 9/22/10, effective 10/27/10; **ARC 1102C**, IAB 10/16/13, effective 11/20/13; **ARC 1744C**, IAB 11/26/14, effective 12/31/14]

701—42.46(422) E-15 plus gasoline promotion tax credit. Effective for eligible gallons sold on or after July 1, 2011, a retail dealer of gasoline may claim an E-15 plus gasoline promotion tax credit. "E-15

plus gasoline" means ethanol blended gasoline formulated with a minimum percentage of between 15 percent and 69 percent of volume of ethanol, if the formulation meets the standards provided in Iowa Code section 214A.2. For purposes of this rule, tank wagon sales are considered retail sales. The credit is calculated on Form IA 138.

42.46(1) *Calculating the credit.*

a. Amount of credit. The tax credit is calculated by multiplying the total number of E-15 plus gallons sold by the retail dealer during the tax year by the following designated rates:

Gallons sold from July 1, 2011, through December 31, 2013	3 cents
Gallons sold from January 1 through May 31 and from September 16 through December 31 for the 2014-2024 calendar years	3 cents
Gallons sold from June 1 through September 15 for the 2014-2024 calendar years	10 cents

b. Claiming the credit with other credits. A taxpayer may claim the E-15 plus gasoline promotion tax credit even if the taxpayer also claims the ethanol promotion tax credit provided in rule 701—42.39(422) for gallons sold on or after January 1, 2011, but prior to January 1, 2021, for the same tax year for the same ethanol gallons.

c. Refundability. Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

d. Transferability. The credit may not be transferred to any other person.

42.46(2) *Fiscal year filers.* For taxpayers whose tax year is not on a calendar-year basis, the taxpayer may compute the tax credit on the gallons of E-15 plus gasoline sold during the year using the designated rates as shown above. Because the tax credit is repealed on January 1, 2025, a taxpayer whose tax year ends prior to December 31, 2024, may continue to claim the tax credit in the following tax year for any E-15 plus gallons sold through December 31, 2024. For a retail dealer whose tax year is not on a calendar-year basis and who did not claim the E-15 plus credit on the previous return, the dealer may claim the credit for the current tax year for gallons sold for the period beginning on July 1 of the previous tax year until the last day of the previous tax year. However, for taxpayers whose fiscal year ends prior to December 31, 2011, the dealer must claim the credit for the current tax year for gallons sold for the period beginning on July 1 of the previous tax year until the last day of the previous tax year.

EXAMPLE 1: A taxpayer who is a retail dealer of gasoline has a fiscal year ending October 31, 2011. The taxpayer sold 2,000 gallons of E-15 plus gasoline for the period from July 1, 2011, through October 31, 2011, and sold 7,000 gallons of E-15 plus gasoline for the period from November 1, 2011, through October 31, 2012. The taxpayer is entitled to a total E-15 plus gasoline promotion tax credit of $270 for the fiscal year ending October 31, 2012, which consists of a $60 credit (2,000 gallons multiplied by 3 cents) for the period from July 1, 2011, through October 31, 2011, and a credit of $210 (7,000 gallons multiplied by 3 cents) for the period from November 1, 2011, through October 31, 2012.

EXAMPLE 2: A taxpayer who is a retail dealer of gasoline has a fiscal year ending April 30, 2012. The taxpayer sold 4,000 gallons of E-15 plus gasoline between July 1, 2011, and April 30, 2012. The taxpayer sold 9,000 gallons of E-15 plus gasoline between May 1, 2012, and April 30, 2013. The taxpayer is entitled to claim an E-15 plus gasoline promotion tax credit of $120 (4,000 gallons multiplied by 3 cents) for the fiscal year ending April 30, 2012. In lieu of claiming the credit on the return for the period ending April 30, 2012, the taxpayer can claim the E-15 plus gasoline promotion tax credit on the tax return for the period ending April 30, 2013, for all E-15 plus gasoline gallons sold for the period from July 1, 2011, through April 30, 2013.

EXAMPLE 3: A taxpayer who is a retail dealer of gasoline has a fiscal year ending February 28, 2025. The taxpayer sold 20,000 total gallons of E-15 plus gasoline for the entire period from March 1, 2024, through February 28, 2025. For the period from March 1 through May 31, 2024, the taxpayer sold 4,000 gallons of E-15 plus gasoline, which entitles the taxpayer to a credit of $120 (4,000 gallons multiplied by 3 cents). For the period from June 1 through September 15, 2024, the taxpayer sold 6,000 gallons of E-15

plus gasoline, which entitles the taxpayer to a credit of $600 (6,000 gallons multiplied by 10 cents). For the period from September 16 through December 31, 2024, the taxpayer sold 6,000 gallons of E-15 plus gasoline, which entitles the taxpayer to a credit of $180 (6,000 gallons multiplied by 3 cents). For the period from January 1 through February 28, 2025, the taxpayer sold 4,000 gallons of E-15 plus gasoline, which occurred after expiration of the credit. The taxpayer is entitled to claim a total E-15 plus gasoline promotion tax credit of $900 ($120 plus $600 plus $180) on the taxpayer's Iowa income tax return for the period ending February 28, 2025.

42.46(3) *Allocation of credit to owners of a business entity or to beneficiaries of an estate or trust.* If a taxpayer claiming the E-15 plus gasoline promotion tax credit is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code section 422.11Y as amended by 2016 Iowa Acts, Senate File 2309.

[**ARC 9821B**, IAB 11/2/11, effective 12/7/11; **ARC 1665C**, IAB 10/15/14, effective 11/19/14; **ARC 3043C**, IAB 4/26/17, effective 5/31/17]

701—42.47(422) Geothermal heat pump tax credit. For tax years beginning on or after January 1, 2019, a geothermal heat pump tax credit is available for residential property located in Iowa as provided in Iowa Code section 422.12N and this rule. Information relating to Iowa geothermal tax credits available for tax years prior to January 1, 2019, can be found in prior versions of this rule. Prior versions of the Iowa Administrative Code are located here: www.legis.iowa.gov/law/administrativeRules/agencies.

42.47(1) *Eligibility for the credit.* To be eligible for the credit described in this rule, all of the following requirements must be met:

a. The geothermal heat pump must be eligible for the federal residential energy efficient property tax credit provided in Section 25D(a)(5) of the Internal Revenue Code.

b. The taxpayer must claim the federal residential energy efficient property tax credit provided in Section 25D(a)(5) of the Internal Revenue Code.

c. The geothermal heat pump must be installed on residential property located in Iowa and placed in service on or after January 1, 2019. In determining whether this requirement is met, the term "placed in service" has the same meaning as used in Section 25D of the Internal Revenue Code.

d. The taxpayer must submit a timely and complete application to the department in accordance with subrule 42.47(4).

42.47(2) *Calculation of the credit.*

a. The credit is equal to 20 percent of the federal residential energy efficient property tax credit allowed for geothermal heat pumps provided in Section 25D(a)(5) of the Internal Revenue Code. Thus, the Iowa credit rate equals the following percentage of the qualified geothermal heat pump property expenditures:

(1) For property placed in service during calendar year 2019, 6 percent.

(2) For property placed in service during calendar years 2020 through 2022, 5.2 percent.

(3) For property placed in service during calendar year 2023, 4.4 percent.

b. This credit is set to expire on January 1, 2024, in accordance with Public Law No. 116-260, Div. EE, Title I, Subtitle C, §148. If the federal residential energy efficient property tax credit for geothermal heat pumps provided in Section 25D(a)(5) of the Internal Revenue Code is extended by federal legislation into additional tax years, the Iowa credit will continue to be available for each year in which the corresponding federal credit is available, absent action by the Iowa general assembly.

42.47(3) *Tax credit award program limitations.* No more than $1 million in geothermal heat pump tax credits will be issued per calendar year. If the annual tax credit allocation cap is not reached, the remaining amount below the cap shall be made available for the following tax year in addition to, and cumulated with, the cap for that year.

42.47(4) *How to apply for the credit—waitlist.*

a. *In general.* Timely and complete applications shall be reviewed and approved on a first-come, first-served basis. Applications for the tax credit shall be submitted through the tax credit submission system, which applicants may access through the department's website.

b. *Application deadline.* The application must be filed by May 1 of the year following the year of the installation of the geothermal heat pump.

c. *Contents of the application.* The application must contain the following information:

(1) Name, address, and federal identification number of the taxpayer.

(2) Date of installation of the geothermal heat pump. This is the same as the date the installation was placed in service by the taxpayer.

(3) Copies of invoices or other documents showing the cost of the geothermal heat pump.

(4) Amount of federal income tax credit claimed for the geothermal heat pump.

(5) Amount of Iowa tax credit requested.

(6) Any other information requested by the department in order to verify eligibility for or amount of the Iowa tax credit requested.

d. *Waitlist.*

(1) If the department receives applications for tax credits in excess of the annual aggregate award limitation, the department shall establish a waitlist for the next year's allocation of tax credits. Valid and complete applications will be placed on the waitlist in the order they are received by the department. However, in the event the department denies an application or part of an application, and upon appeal by the taxpayer a previously denied tax credit amount is allowed, the date the appeal is closed will be used to determine the placement of the allowed tax credit amount on the waitlist. Waitlisted applications are reviewed and, if approved, funded in the order they are listed on the waitlist. Only valid applications filed by the taxpayer by May 1 of the year following the year the geothermal heat pump was installed shall be eligible for the waitlist.

(2) If the annual aggregate cap is reached for the final year in which the federal credit is available, no applications will be carried over to the next year. Therefore, any geothermal heat pump tax credit request related to an installation completed prior to January 1, 2024, that does not receive a tax credit award by the time the 2023 aggregate award limitation is met shall expire and shall not be carried over on the waitlist to any future year.

(3) Placement on a waitlist shall not constitute a promise binding the state that persons placed on the waitlist will actually receive the credit in a future year. The availability of a tax credit and approval of a tax credit application pursuant to this rule in a future year is contingent upon the availability of tax credits in that particular year.

42.47(5) *Claiming the tax credit.*

a. *Certificate issuance.* If the application is approved, the department will send a letter to the taxpayer including the amount of the tax credit and providing a tax credit certificate.

b. *Claiming the tax credit.* The geothermal heat pump tax credit will be claimed on Form IA 148, Tax Credits Schedule. The taxpayer must include with any Iowa tax return claiming the geothermal heat pump tax credit federal Form 5695, Residential Energy Credits.

c. *Nonrefundable.* Any credit in excess of the taxpayer's tax liability is nonrefundable.

d. *Carryforward.* Any tax credit in excess of the taxpayer's tax liability for the tax year may be credited to the taxpayer's tax liability for the following ten years or until depleted, whichever is earlier.

e. *Nontransferable.* The tax credit may not be transferred to any other person.

This rule is intended to implement Iowa Code section 422.12N and 2019 Iowa Acts, House File 779.

[**ARC 5589C**, IAB 4/21/21, effective 5/26/21]

701—42.48(422) Solar energy system tax credit. A solar energy system tax credit is available for both residential property and business property located in Iowa as provided in Iowa Code section 422.11L and this rule.

42.48(1) *Relationship between the Iowa and federal credits.*

a. The Iowa credit is a percentage of the applicable federal credit. Taxpayers who apply for the Iowa credit must also qualify for and claim the corresponding federal credit. Availability of the Iowa

credit for a specific type of installation in a given year is dependent upon availability of the federal credit for that type of installation.

b. The Iowa credit conforms with the Internal Revenue Code as amended to and including January 1, 2016. The term "Internal Revenue Code" as used in this rule refers to the Internal Revenue Code as it existed on January 1, 2016. See Iowa Code section 422.11L(6); see also Public Law No. 114-113, Div. P, Title III, §§ 302, 303, 304, and Div. Q, Title I, § 187.

42.48(2) *Calculation of the credit—per installation award limitation.*

a. The credit is equal to the sum of the following federal tax credits for property located in Iowa:

(1) Fifty percent of the federal residential energy property credit provided in Section 25D(a)(1) of the Internal Revenue Code. This federal credit equals an applicable percentage of qualified solar energy electric property expenditures described in Section 25D(d)(2) of the Internal Revenue Code for residential use. This credit is not available for Iowa purposes for any qualified solar energy electric property placed in service after December 31, 2021, in accordance with Public Law No. 114-113 Div. P, Title III, § 304.

(2) Fifty percent of the federal residential energy property credit provided in Section 25D(a)(2) of the Internal Revenue Code. This federal credit equals an applicable percentage of the qualified solar water heating property expenditures described in Section 25D(d)(1) of the Internal Revenue Code for residential use. This credit is not available for Iowa purposes for any qualified solar water heating property placed in service after December 31, 2021, in accordance with Public Law No. 114-113 Div. P, Title III, § 304.

(3) Fifty percent of the federal energy credit provided in Section 48(a)(2)(A)(i)(II) of the Internal Revenue Code. This federal credit equals an applicable percentage of energy property equipment described in Section 48(a)(3)(A)(i) of the Internal Revenue Code that uses solar energy to generate electricity, to heat or cool (or provide hot water for use in) a structure, or to provide solar process heat (excepting property used to generate energy for the purpose of heating a swimming pool), for business use. This credit is not available for Iowa purposes for any qualified property the construction of which begins on or after January 1, 2022, in accordance with Public Law No. 114-113 Div. P, Title III, § 303.

(4) Fifty percent of the federal energy credit provided in Section 48(a)(2)(A)(i)(III) of the Internal Revenue Code. This federal credit equals an applicable percentage of energy property described in Section 48(a)(3)(A)(ii) of the Internal Revenue Code that uses solar energy to illuminate the inside of a structure using fiber-optic distributed sunlight, for business use. This credit is not available for Iowa purposes for any qualified property placed in service after December 31, 2016, in accordance with Public Law No. 114-113 Div. Q, Title I, § 187.

Iowa Solar Energy System Tax Credit Rates for Installations On or After January 1, 2016,* Based on 50% of Applicable Federal Rate Under Sections 25D and 48 of the Internal Revenue Code in Effect on January 1, 2016			
Applicable Property	Calendar Year Construction Begins	Calendar Year Property Placed in Service	Iowa Tax Credit Rate
Qualified Residential Solar Electric Property Under Section 25D(a)(1) of the Internal Revenue Code	N/A	2016-2019	15%
	N/A	2020	13%
	N/A	2021	11%
	N/A	2022 or later	0%
Qualified Residential Solar Water Heating Property Under Section 25D(a)(2) of the Internal Revenue Code	N/A	2016-2019	15%
	N/A	2020	13%
	N/A	2021	11%
	N/A	2022 or later	0%

Qualified Business Energy Property (electric, heat/cool, solar process heat) Under Section 48(a)(2)(A)(i)(II) of the Internal Revenue Code	2016-2019	2016-2023	15%
		2024 or later	5%
	2020	2020-2023	13%
		2024 or later	5%
	2021	2021-2023	11%
		2024 or later	5%
	2022 or later	2022 or later	0%
Qualified Business Energy Property (fiber-optic solar illumination) Under Section 48(a)(2)(A)(i)(III) of the Internal Revenue Code	N/A	2016	15%
	N/A	2017 or later	0%
*For a description of Iowa tax credit rates for installations placed in service prior to January 1, 2016, consult the prior versions of this rule.			

b. A solar installation must be placed in service to be eligible for the tax credit. In determining whether this requirement is met, the term "placed in service" has the same meaning as used for purposes of Section 25D or 48 of the Internal Revenue Code, as applicable. The date a taxpayer begins construction of a solar installation for purposes of Section 48 of the Internal Revenue Code shall be the same date the taxpayer begins construction for Iowa purposes.

c. The amount of tax credit claimed by a taxpayer related to subparagraphs 42.48(2)*"a"*(1) and 42.48(2)*"a"*(2) cannot exceed $5,000 per separate and distinct installation. The amount of tax credit claimed by a taxpayer related to subparagraphs 42.48(2)*"a"*(3) and 42.48(2)*"a"*(4) cannot exceed $20,000 per separate and distinct installation. When a separate and distinct installation is used for both residential and business purposes, both award limitations apply and are calculated separately based on the proportion of the installation used for business purposes and for residential purposes. The taxpayer may use any reasonable method to establish the business and residential proportions, but the burden is on the taxpayer to prove the proper proportions. If the taxpayer does not provide adequate evidence to prove that the amounts of the business and residential proportions and the method for determining those proportions are reasonable, and if the department is unable to determine reasonable proportions from the information provided by the taxpayer, the entire installation shall be deemed used for residential purposes. The term "separate and distinct installation" is described in subrule 42.48(5).

EXAMPLE 1: Taxpayer A is a farmer who installs solar energy property during 2020 that provides power to two farm buildings and A's residence. Taxpayer A submits one application for the Iowa solar energy system tax credit showing $100,000 of total eligible expenditures. Taxpayer A provides evidence to the department that adequately explains A's method of allocating the solar energy system's total usage between business use and personal use, and shows that 40 percent of the solar energy property is used for residential purposes and 60 percent is used for farm business purposes. The department determines the amounts and the method for determining those proportions to be reasonable and therefore considers the taxpayer to have submitted a tax credit application requesting both a residential solar energy system tax credit and a business solar energy system tax credit. The residential tax credit request includes $40,000 ($100,000 × 40%) of eligible expenditures, subject to the $5,000 tax credit cap. Therefore, A is eligible for a residential tax credit of $5,000 ($40,000 × 13% Iowa credit rate = $5,200, less $200 in excess of cap). The business tax credit request includes $60,000 ($100,000 × 60%) of eligible expenditures, subject to the $20,000 tax credit cap. Therefore, A is eligible for a business tax credit of $7,800 ($60,000 × 13% Iowa credit rate). Taxpayer A receives a total Iowa tax credit of $12,800 ($5,000 + $7,800). Although A submitted one tax credit application in this situation, the resulting tax credit amount would have been the same if A had instead submitted two separate tax credit applications: one residential application with $40,000 of eligible expenditures and one business application with $60,000 of eligible expenditures.

EXAMPLE 2: Same facts as Example 1, except that taxpayer A does not submit adequate evidence to the department supporting a reasonable method of determining the proportion of the solar energy property used for residential and business purposes, and the department is unable to determine reasonable

proportions from the information provided by A. The department deems the entire installation used for residential purposes, subject to the $5,000 tax credit cap. Therefore, A receives a total Iowa tax credit of $5,000 ($100,000 × 13% Iowa credit rate = $13,000, less $8,000 in excess of cap).

d. Recomputation of federal credit.

(1) Because the Iowa credit is a percentage of the applicable federal credit, when the federal credit under Section 48 of the Internal Revenue Code is recomputed under 26 CFR §1.47-1, the Iowa credit amount must also be recomputed and reduced by the same percentage that the federal credit was reduced. The federal credit recomputation is required on the federal Form 4255, Recapture of Investment Credit.

(2) In the year of the recomputation, if the amount of the Iowa credit previously claimed is less than the recomputed Iowa credit amount, the taxpayer must reduce any remaining available carryforward amount to reflect the Iowa credit carryforward remaining after the recomputation.

(3) If the amount of the Iowa credit previously claimed is more than the recomputed Iowa credit amount, the taxpayer must include the amount that was overclaimed in prior tax years as a negative credit amount on the IA 148, Iowa Tax Credit Schedule, and any remaining unused credit carryforward amount expires immediately. The negative credit amount represents the overclaimed Iowa credit and will be netted against the taxpayer's other nonrefundable tax credits on the IA 148, Iowa Tax Credit Schedule, if any. After applying the negative credit amount against other available nonrefundable credits, if the taxpayer's net total nonrefundable credits for the year is a negative amount, that negative amount must be entered on the appropriate line of the taxpayer's income tax return for reporting nonrefundable Iowa credits from the IA 148, Iowa Tax Credit Schedule, and will increase the taxpayer's tax liability.

42.48(3) *Tax credit award program limitations.* The following program limitations apply:

a. *Aggregate tax credit award limit.* No more than $5 million of tax credits per year will be issued for calendar years beginning on or after January 1, 2015. The annual tax credit allocation cap also includes the solar energy system tax credits provided in rule 701—52.44(422) for corporation income tax and in rule 701—58.22(422) for franchise tax.

b. *Allocation for residential installations.* Beginning with tax year 2014, at least $1 million of the annual tax credit allocation cap for each tax year is reserved for residential installations qualifying under Section 25D of the Internal Revenue Code. If the total amount of credits for residential installations for a tax year is less than $1 million, the remaining amount below $1 million will be allowed for nonresidential installations qualifying under Section 48 of the Internal Revenue Code.

c. *Rollover of unallocated credits.* Beginning with calendar year 2014, if the annual tax credit allocation cap is not reached, the remaining amount below the cap shall be made available for the following tax year in addition to, and cumulated with, the cap for that year.

42.48(4) *How to apply for the credit.* Timely and complete applications shall be reviewed and approved on a first-come, first-served basis. Applications for the tax credit shall be submitted through the tax credit submission system, which applicants may access through the department's website.

a. *Application deadline.* For installations completed on or after January 1, 2014, the application must be filed by May 1 following the year of installation of the solar energy system. Notwithstanding the foregoing sentence, the following extensions are applicable to installations completed in 2014 and 2015:

(1) Solar energy systems installed during the 2014 calendar year shall be eligible for approval under Iowa Code section 422.11L even if the application is filed after May 1, 2015. Valid and complete applications shall be accepted and approved on a first-come, first-served basis and shall first be eligible for approval for the tax year during which the application is received, but not before the tax year beginning January 1, 2016.

(2) Solar energy systems installed during the 2015 calendar year shall be eligible for approval under Iowa Code section 422.11L even if the application is filed after May 1, 2016. Valid and complete applications shall be accepted and approved on a first-come, first-served basis and shall first be eligible for approval for the tax year during which the application is received, but not before the tax year beginning January 1, 2017.

b. *Contents of the application.* The application must contain the following information:

(1) Name, address, and federal identification number of the taxpayer.

(2) Date of installation of the solar energy system. This is the same as the date the installation was placed in service by the taxpayer.

(3) The kilowatt capacity of the solar energy system.

(4) Copies of invoices or other documents showing the cost of the solar energy system.

(5) Amount of federal income tax credit claimed for the solar energy system.

(6) Amount of Iowa tax credit requested.

(7) All applicants must provide a completion sheet from a local utility company or similar documentation verifying that installation of the system has been completed. For nonresidential installations, the completion sheet must indicate the date the installation was placed in service. If a completion sheet from the local utility company or similar documentation is not available, a statement shall be provided that is similar to the one required to be attached to federal Form 3468 when claiming the federal energy credit and that specifies the date the system was placed in service.

(8) A copy of any signed agreement made regarding the solar energy system that verifies the applicant is a qualified applicant. This includes, but is not limited to, lease agreements. When an applicant is entitled to the Iowa solar energy system tax credit for a leased solar energy system, the other party to the lease will not be entitled to such a credit for the same leased solar energy system.

(9) For nonresidential installations, the date on which construction began.

(10) Any other information requested by the department in order to verify eligibility for or amount of the Iowa tax credit requested.

c. Previously claimed expenditures disallowed. An applicant may not include on an application any expenditure for which the taxpayer previously received, or was denied, a tax credit award or any expenditure that was part of an approved separate and distinct installation but was disallowed due to exceeding the maximum Iowa tax credit amount.

d. Waitlist. If the department receives applications for tax credits in excess of the annual aggregate award limitation, the department shall establish a waitlist for the next year's allocation of tax credits. Valid and complete applications will be placed on the waitlist in the order they are received by the department. However, in the event the department denies an application or part of an application, and upon appeal by the taxpayer a previously denied tax credit amount is allowed, the date the appeal is closed will be used to determine the placement of the allowed tax credit amount on the waitlist. Waitlisted applications are reviewed and, if approved, funded in the order they are listed on the waitlist. With the exception of the extension described in subparagraphs 42.48(4)*"a"*(1) and 42.48(4)*"a"*(2) above, only valid applications filed by the taxpayer by May 1 of the year following the year of the installation of the solar energy property shall be eligible for the waitlist. If the annual aggregate cap is reached for the final year in which the federal credit is available, no applications will be carried over to the next year. This tax credit limitation shall apply as follows:

(1) Residential property tax credit claims. The federal credits related to residential property under Sections 25D(a)(1) and 25D(a)(2) of the Internal Revenue Code expire and are unavailable for Iowa tax purposes for installations completed on or after January 1, 2022. Therefore, any residential tax credit request related to an installation completed prior to January 1, 2022, that does not receive a tax credit award by the time the 2021 aggregate award limitation is met shall expire and shall not be carried over on the waitlist to any future year.

(2) Business property tax credit claims. The federal credit related to business property under Section 48(a)(2)(A)(i)(II) of the Internal Revenue Code does not expire for Iowa tax purposes. It is available for installations that begin construction prior to January 1, 2022, in any future tax year the installation is placed in service. Therefore, any business tax credit request related to an installation that begins construction prior to January 1, 2022, but that does not receive a tax credit award by the time the annual aggregate award limitation is met will not expire and will be eligible to be carried over on the waitlist to future years, and receive a tax credit award in a future year, provided the authorization to approve and issue tax credits under Iowa Code section 422.11L(4)*"a"* is not repealed.

Placement on a waitlist shall not constitute a promise binding the state that persons placed on the waitlist will actually receive the credit in a future year. The availability of a tax credit and approval of

a tax credit application pursuant to this rule in a future year is contingent upon the availability of tax credits in that particular year.

e. *Certificate issuance.* If the application is approved, the department will send a letter to the taxpayer including the amount of the tax credit and providing a tax credit certificate.

f. *Claiming the tax credit.* The solar energy system tax credit will be claimed on Form IA 148, Tax Credits Schedule. The taxpayer must include with any Iowa tax return claiming the solar energy system tax credit federal Form 5695, Residential Energy Credits, if claiming the residential energy credit or federal Form 3468, Investment Credit, if claiming the business energy credit.

g. *Nonrefundable.* Any credit in excess of the taxpayer's tax liability is nonrefundable.

h. *Carryforward.* Any tax credit in excess of the taxpayer's tax liability for the tax year may be credited to the taxpayer's tax liability for the following ten years or until depleted, whichever is earlier.

i. *Nontransferable.* The credit may not be transferred to any other person.

42.48(5) *Separate and distinct installation requirement.* Only one tax credit may be awarded and claimed for each separate and distinct solar installation. Each separate and distinct installation requires a separate application. For purposes of this subrule, unless the context otherwise requires, use of the term "installation" or "solar installation" refers to the physical equipment that generates electricity using solar energy in a manner that qualifies that equipment for a tax credit. In order for an installation that otherwise meets the requirements of Iowa Code section 422.11L and this rule to be considered a separate and distinct solar installation, both of the factors in paragraphs 42.48(5)*"a"* and *"b"* must be met. This determination is made by the department and requires a review of the current application received by the department and all prior applications received by the department from any taxpayer. When determining whether a solar installation is separate and distinct from other solar installations, the department will consider the totality of the facts and circumstances surrounding the solar installations. The taxpayer bears the burden of showing that an installation qualifies as separate and distinct. For a safe harbor rule relating to solar installations that begin construction prior to June 1, 2021, see paragraph 42.48(5)*"c."*

a. A repair or maintenance shall not constitute a solar installation. If the installed equipment repairs or otherwise maintains the working order of another solar installation or part of another solar installation, it will not be considered separate and distinct from that other solar installation, even if the installed equipment results in increased production capacity because of its superior quality, performance, or efficiency, or other similar reason. Evidence that part of the other solar installation was removed or replaced at or around the time the equipment was installed is a strong indication that the equipment is a repair or maintenance, but it is not required for such a determination.

EXAMPLE 3: Taxpayer B applies for and is awarded an Iowa solar tax credit for a solar installation that powers taxpayer B's workshop. Two years after that solar installation is placed in service, the solar inverter malfunctions. Taxpayer B purchases and installs a new solar inverter, which keeps the solar installation in working order. At the same time, B also replaces several functioning solar panels on the solar installation with new, higher quality panels that increase the solar installation's production capacity. Taxpayer B submits a second application for the costs of the solar inverter and the solar panels. These costs are considered a repair or maintenance and do not qualify as separate and distinct from the prior installation. Therefore, they do not qualify for the Iowa solar tax credit. This is the result even if the costs qualify for the federal tax credit and even though the solar panels improve the productivity of the solar installation.

b. The solar installation must be a replacement installation or an independent installation.

(1) Replacement installation. When previous solar installations have been completely decommissioned, whether from disposal by the applicant or casualty loss or theft, the new solar installation may be considered a replacement installation of the decommissioned solar installation. A solar installation that ceases operation but that has not been physically removed and discarded by a person is not decommissioned unless it cannot operate and is incapable of being repaired to working order. A solar installation that merely changes location or ownership has not been decommissioned and thus may not qualify as a replacement installation. Expenditures that are subject to an insurance reimbursement do not qualify for the solar energy system tax credit.

EXAMPLE 4: Taxpayer C applies for and is awarded an Iowa solar tax credit for a solar installation that powers taxpayer C's business. One year after that solar installation is placed in service, it is destroyed beyond repair by a severe storm. Taxpayer C's insurance policy does not cover damage to a solar installation. Taxpayer C purchases and places in service another solar installation that powers taxpayer C's business and timely applies for the Iowa solar energy system tax credit. Taxpayer C's subsequent installation may be eligible for the Iowa solar energy system installation credit as a replacement installation.

(2) Independent installation. An independent installation is one that has a sufficiently remote association with other solar installations that received the Iowa solar energy system tax credit such that it can be considered independent from those other solar installations. When determining whether a particular solar installation qualifies as an independent installation, the department will first consider the electrical generation purpose of the relevant solar installations, as described in numbered paragraph 42.48(5)*"b"*(2)"1" below. Only if the department finds that it cannot make a determination from that criteria alone will the department consider other criteria. A nonexhaustive list of other criteria that may be considered by the department is provided in numbered paragraph 42.48(5)*"b"*(2)"2" below.

1. Electrical generation purpose. The department will review the electrical generation purpose of each solar installation. As described below, this involves a review of the building(s) or structure(s) being powered by each solar installation. When two or more solar installations have the same electrical generation purpose, they are not independent installations. When two or more solar installations have different electrical generation purposes, this is an indication that they may be independent installations. With respect only to a multiple housing cooperative under Iowa Code chapter 499A or a horizontal property regime under Iowa Code chapter 499B, each apartment shall constitute a building or structure, and each cooperative or regime owner's proportionate share of qualifying expenses incurred by the cooperative or regime shall constitute a solar installation paid by the cooperative or regime owner.

- Same building(s) or structure(s). If the applied-for solar installation will power buildings or structures that are also being powered by another solar installation, or that were being powered by another solar installation at some point during the 12-month period before the applied-for solar installation was placed in service, then the installations have the same electrical generation purpose. However, adequate proof from the taxpayer of a substantial increase in electricity demand is evidence tending to indicate that the solar installations do not have the same electrical generation purpose. A "substantial increase in electricity demand" exists when the sum of the average monthly electricity consumption of each building or structure powered by the applied-for solar installation for the 12-month period before the applied-for solar installation is placed in service is at least 50 percent greater than the sum of the average monthly electricity consumption of each building or structure powered by the other solar installation for the 12-month period before the other solar installation was placed in service. Average electricity consumption shall be measured in kilowatt hours. With respect to the other solar installation, if any applicable building or structure was not in service for a period of 12 months before the other solar installation was placed in service, the average monthly electricity consumption for that building or structure shall be the average electricity consumption for the first 12 months the building or structure was in service. With respect to the applied-for solar installation, the calculation of the average monthly electricity consumption for any building or structure that was not placed in service prior to the other solar installation shall be calculated using a denominator of 12 even if that building or structure was not in service for a period of 12 months before the applied-for solar installation was placed in service. The reason for the increased electricity consumption shall not be relevant in determining if a substantial increase in electricity demand exists.

EXAMPLE 5: Taxpayer D is awarded a solar energy system tax credit for a solar installation that provides power to D's home. Three years later, D installs a second solar installation that also provides power to D's home. Absent additional information from D that would show a substantial increase in electricity demand, the second solar installation has the same electrical generation purpose as the first installation because they both provide power to D's home. Therefore, the second solar installation would not be considered an independent installation.

EXAMPLE 6: Taxpayer E owns an apartment building with ten apartment units. In 2021, taxpayer E installs solar energy business property with a cost of $300,000 that will power the apartment building. Taxpayer E submits solar tax credit applications for ten different solar installations, one for each unit within the apartment building. Each application claims $30,000 in qualifying costs and requests an Iowa solar credit of $3,300 ($30,000 × 11%) for business property, for a sum total of $33,000 in tax credits. Because the solar installations claimed on all ten applications provide power to the same apartment building, they all have the same electrical generation purpose. Therefore, only one of the solar installations could qualify for the tax credit as an independent installation, subject to the $20,000 per-installation tax credit cap. The other nine installations would all fail to qualify as independent installations. The result is the same whether or not the apartment units have separate utility meters. See Example 10 for a different result if the building were organized as a multiple housing cooperative or horizontal property regime.

EXAMPLE 7: Taxpayer F, a machinist, is awarded a solar energy system tax credit for a solar installation that provides power to F's machine shop. Several years later, F installs a second solar installation that will provide power to F's machine shop but also to F's office building. Taxpayer F submits a complete and timely application for the solar energy system tax credit. Absent additional information from F that would show a substantial increase in electricity demand, the second solar installation has the same electrical generation purpose as the first solar installation because they both provide power to F's machine shop. Therefore, the second solar installation would not be considered an independent installation.

EXAMPLE 8: Assume the same facts as Example 7, except that taxpayer F provides additional information to the department regarding the electricity consumption of F's machine shop and office building. Taxpayer F provides utility bills which show that for the 12-month period before the first solar installation was placed in service, the average monthly electricity consumption for the machine shop was 1,000 kilowatt hours. For the 12-month period before the second solar installation was placed in service, the average monthly electricity consumption for the machine shop was 1,200 kilowatt hours. Additionally, the office building was constructed and placed in service three months before the second solar installation was placed in service. Taxpayer F provides utility bills which show that for the three months the office building was in service, the monthly electricity consumption for the office building was 1,400 kilowatt hours, 1,600 kilowatt hours, and 1,800 kilowatt hours, respectively. This means that the average monthly electricity consumption of the office building for purposes of the "substantial increase in energy demand" test is 400 kilowatt hours [i.e., (1,400 + 1,600 + 1,800) ÷ 12 = 400]. Therefore, for the 12-month period before the second solar installation was placed in service, the average monthly electricity consumption for the machine shop and office building was 1,600 kilowatt hours [i.e., 1,200 + 400 = 1,600]. Because this 1,600 monthly kilowatt hour average applicable to the second solar installation exceeds by at least 50 percent the 1,000 monthly kilowatt hour average applicable to the first solar installation, taxpayer F has shown a substantial increase in electricity demand and the second solar installation may qualify as an independent installation.

- Different building(s) or structure(s). If the applied-for solar installation will not power any building or structure that is also being powered by another solar installation, or that was also being powered by another solar installation at some point during the 12-month period before the applied-for solar installation was placed in service, this is an indication that the solar installations may have a different electrical generation purpose.

EXAMPLE 9: Taxpayer G, a farmer, is awarded a solar energy system tax credit for a solar installation that provides power to G's equipment barn. Later, G installs a second solar installation that will only provide power to G's livestock building. Because the first solar installation only provides power to G's barn and the second solar installation only provides power to G's livestock building, this is an indication that each solar installation has a different electrical generation purpose. The second solar installation would be considered an independent installation, unless additional information shows the contrary to be true.

EXAMPLE 10: Taxpayer H, a multiple housing cooperative under Iowa Code chapter 499A, owns an apartment building with ten apartment units. In 2021, H installs solar energy property with a cost of

$300,000 that will power the apartment building. The owner of each apartment unit submits a solar tax credit application for a solar installation claiming a proportionate share of H's qualifying expenditures for the solar energy property, which in this case is $30,000 per owner, and requesting an Iowa credit of $3,300 ($30,000 × 11%), for a sum total of $33,000 in tax credits. Since this building is organized as a multiple housing cooperative under Iowa Code chapter 499A, each apartment constitutes a building or structure and each owner's proportionate share of qualifying expenses incurred by the cooperative constitutes a solar installation paid by the owner. This is the first solar installation with respect to each of these apartments, so they are not being powered by another solar installation that received an Iowa tax credit. Therefore, this is an indication that each solar installation has a different electrical generation purpose. Each of the ten solar installations would be considered an independent installation, unless additional information shows the contrary to be true. The result would be the same if the building were organized as a horizontal property regime under Iowa Code chapter 499B. However, see Example 7 regarding apartment buildings not organized as a multiple housing cooperative or horizontal property regime.

2. Other criteria.

● Location. The department will consider the physical location of each solar installation. When two or more solar installations are in close physical proximity, this is an indication that the installations may not be independent installations. The farther in physical proximity the installations are, the stronger the likelihood that they are independent installations. Locating an installation at the same address or on the same or adjacent parcel as another installation is a stronger indication that the two installations are not independent installations than if they were located at different addresses or on nonadjacent parcels. The expansion in physical size or production capacity of an existing solar installation is an indication that the installations are not independent installations. If two or more solar installations are physically attached or connected to the same building or structure, this is an indication that the installations are not independent installations.

EXAMPLE 11: Taxpayer Q submits a complete and timely solar energy system tax credit application for a solar installation located at an address that is adjacent to the address of a prior solar installation for which taxpayer Q received a solar energy system tax credit award. Based on the information provided by the taxpayer, the department is unable to determine the electrical generation purpose of the solar installations. Without additional information, the proximity of the two solar installations supports a determination by the department that the second solar installation is not an independent installation.

● Billing. The department will consider the manner in which a utility company issues bills associated with solar installations. Even when a solar installation does not actually provide electricity to any buildings or structures that are also being powered by another solar installation, if a utility company issues bills associated with a solar installation under a net metering agreement in a manner that allows credits from the net outflow of one solar installation to be applied against the utility costs of buildings or structures that are powered by another solar installation, the department will evaluate the solar installations subject to the net metering agreement as if they were powering the same buildings or structures for purposes of determining electrical generation purpose in numbered paragraph 42.48(5)*"b"*(2)"1" above.

● Utility metering. The department will consider whether each solar installation is connected to a separate utility meter and the business reason, if any, for using separate utility meters. For purposes of this subrule, "utility meter" means a device installed by a utility company used to monitor the amount of electricity consumed or produced by a consumer. When a metering agreement requires a person to install two unidirectional meters, the set will be considered a single utility meter for purposes of this subrule. The department will not consider a measuring device installed and used by a person for personal monitoring of electricity production or consumption to be a "utility meter" for purposes of this subrule. This should not be interpreted to require a person to connect the person's solar installation to a utility provider's grid in order to be eligible for the tax credit.

● Payment for installation or service. The department will consider how expenses incurred for construction or servicing of a solar installation are paid. When expenses incurred for two or more solar installations are paid by related parties, it may indicate that the installations are not independent

installations. However, the department may request additional information to evaluate the relationship between the person who pays for such expenses and the person who claims the tax credit.

- Contract terms. The department will consider the terms of installation and service contracts related to the solar installation and may require a person to provide installation and service contracts related to any prior solar installation for which the department has received a tax credit application. When contract terms indicate that the solar installations have been installed as or are serviced as a single, functional unit or system, the department will consider that as evidence that the installations are not independent installations.
- Timing of installation or application. The department will consider when the applied-for solar installation was placed in service and when a person submits the tax credit application as compared to other solar installations.

c. Safe harbor for solar installations that begin construction prior to June 1, 2021. For any solar installation for which the taxpayer begins construction prior to June 1, 2021, the taxpayer may rely on the factors in the prior version of paragraph 42.48(7)*"a"* in determining whether the solar installation is a separate and distinct installation. Prior versions of the Iowa Administrative Code are located here: www.legis.iowa.gov/law/administrativeRules/agencies.

42.48(6) *Unavailable to those eligible for renewable energy tax credit.* A taxpayer who is eligible to receive a renewable energy tax credit provided in rule 701—42.28(422,476C) is not eligible for the solar energy system tax credit.

42.48(7) *Allocation of tax credit to owners of a business entity or beneficiaries of an estate or trust.* If the taxpayer claiming the tax credit based on a percentage of the federal energy credit under Section 48 of the Internal Revenue Code is a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual, the individual may claim the tax credit. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, estate, or trust. The maximum amount of credit available to a partnership, limited liability company, S corporation, estate, or trust shall be limited to $15,000 for installations placed in service in tax years 2012 and 2013 and $20,000 for installations placed in service in tax years beginning on or after January 1, 2014.

This rule is intended to implement Iowa Code section 422.11L.

[**ARC 0361C**, IAB 10/3/12, effective 11/7/12; **ARC 1303C**, IAB 2/5/14, effective 3/12/14; **ARC 1666C**, IAB 10/15/14, effective 11/19/14; **ARC 2925C**, IAB 2/1/17, effective 3/8/17; **ARC 5590C**, IAB 4/21/21, effective 5/26/21]

701—42.49(422) Volunteer fire fighter, volunteer emergency medical services personnel and reserve peace officer tax credit. Effective for tax years beginning on or after January 1, 2013, a tax credit is available for individual income tax for volunteer fire fighters and volunteer emergency medical services (EMS) personnel. Effective for tax years beginning on or after January 1, 2014, a tax credit is available for individual income tax for reserve peace officers.

42.49(1) *Definitions.* The following definitions are applicable to this rule:

"Emergency medical services personnel" or *"EMS personnel"* means an emergency medical care provider, as defined in Iowa Code section 147A.1, who is certified as a first responder in accordance with Iowa Code chapter 147A. For tax years beginning on or after January 1, 2014, "emergency medical services personnel" or "EMS personnel" also includes an individual who is a paid employee of an emergency medical services program and who is also a volunteer emergency medical services personnel in a city, county or area governed by an agreement pursuant to Iowa Code chapter 28E.

"Reserve peace officer" means a reserve peace officer as defined in Iowa Code section 80D.1A who has met the minimum state training standards established by the Iowa law enforcement academy in accordance with Iowa Code chapter 80D.

"Volunteer fire fighter" means a volunteer fire fighter, as defined in Iowa Code section 85.61, who has met the minimum training standards established by the fire service training bureau pursuant to Iowa Code chapter 100B. For tax years beginning on or after January 1, 2014, "volunteer fire fighter" means an individual who is an active member of an organized volunteer fire department in Iowa or is performing services as a volunteer fire fighter for a municipality, township or benefited fire district at the request

of the chief or other person in command and who has met the minimum training standards established by the fire service training bureau pursuant to Iowa Code chapter 100B. For tax years beginning on or after January 1, 2014, a volunteer fire fighter also includes an individual who is a paid employee of a fire department and who is also a volunteer fire fighter in a city, county or area governed by an agreement pursuant to Iowa Code chapter 28E.

42.49(2) *Calculation of the credit.*

a. The credit is equal to $50 for the tax year beginning January 1, 2013, if the volunteer fire fighter or volunteer EMS personnel was a volunteer for the entire year. The credit is equal to $100 for tax years beginning on or after January 1, 2014, if the volunteer fire fighter, volunteer EMS personnel or reserve peace officer was a volunteer for the entire year.

b. If the individual was not a volunteer fire fighter or volunteer EMS personnel for the entire 2013 calendar year, the $50 credit is prorated based on the number of months the individual was a volunteer. Beginning in the 2014 calendar year, if the individual was not a volunteer fire fighter, volunteer EMS personnel or reserve peace officer for the entire year, the $100 credit is prorated based on the number of months the individual was a volunteer. If the individual was a volunteer during any part of a month, the individual will be considered a volunteer for the entire month. The amount of credit will be rounded to the nearest dollar.

EXAMPLE: An individual became a volunteer fire fighter on April 15, 2013, and remained a volunteer for the rest of calendar year 2013. The individual is considered a volunteer for nine months of 2013. The tax credit for 2013 is equal to $38 ($50 multiplied by 9/12 equals $37.50; rounding to the nearest dollar results in a $38 credit).

c. If an individual is both a volunteer fire fighter and a volunteer EMS personnel during the same month, a credit can be claimed for only one volunteer position for that month. Therefore, if an individual was both a volunteer fire fighter and volunteer EMS personnel for all of 2013, the tax credit will equal $50. In addition, beginning in calendar year 2014, if a reserve peace officer is also either a volunteer fire fighter or a volunteer EMS personnel, a credit can be claimed for only one volunteer position for that month.

42.49(3) *Verification of eligibility for the tax credit.* An individual is required to have a written statement from the fire chief or other appropriate supervisor verifying that the individual was a volunteer fire fighter or volunteer EMS personnel for the months for which the tax credit is being claimed. Beginning with the 2014 tax year, an individual who is a reserve peace officer must have a written statement from the chief of police, sheriff, commissioner of public safety, or other appropriate supervisor verifying that the individual was a reserve peace officer for the months for which the tax credit is being claimed. The written statement does not have to be attached to a tax return claiming the credit. However, the individual may be requested to provide the written statement upon request by the department.

This rule is intended to implement Iowa Code section 422.12 as amended by 2014 Iowa Acts, House File 2459.

[**ARC 0398C**, IAB 10/17/12, effective 11/21/12; **ARC 1665C**, IAB 10/15/14, effective 11/19/14]

701—42.50(422) Taxpayers trust fund tax credit. For tax years beginning on or after January 1, 2013, a taxpayers trust fund tax credit is available for Iowa individual income tax. The credit is available for all individual income tax filers, including residents, nonresidents and part-year residents of Iowa, and individuals who file as part of a composite return as described in rule 701—48.1(422), as long as the Iowa return is filed within the extended due date to file an Iowa return. Therefore, a fiscal-year filer whose tax year does not begin on January 1 is eligible to claim the taxpayers trust fund tax credit as long as the return is filed within the extended due date of the Iowa return.

42.50(1) *Calculation of the amount of tax credit.* The credit is calculated by taking the amount in the Iowa taxpayers trust fund and dividing it by the number of individual income taxpayers who filed Iowa returns by October 31 of the year preceding the year in which the credit is allowed.

EXAMPLE: There is $120 million in the Iowa taxpayers trust fund at the end of the fiscal year ending June 30, 2013. There were 2,200,000 individuals who filed Iowa income tax returns by October 31,

2013, for tax years beginning on or after January 1, 2012, but beginning before January 1, 2013. This results in an Iowa taxpayers trust fund tax credit of $54 for the tax year beginning on or after January 1, 2013, but beginning before January 1, 2014 ($120,000,000 divided by 2,200,000 equals $54.55, which is rounded down to the nearest whole dollar). All taxpayers who file their Iowa individual income tax return by October 31, 2014, for the tax period beginning on or after January 1, 2013, but beginning before January 1, 2014, will be entitled to claim a $54 Iowa taxpayers trust fund tax credit.

If the amount of Iowa taxpayers trust fund tax credits claimed on tax returns for a particular year is less than the amount authorized, the difference will be transferred to the Iowa taxpayers trust fund for the next year and will be available as an Iowa taxpayers trust fund tax credit for the next year. There must be a balance in the Iowa taxpayers trust fund of at least $30 million in order for the Iowa taxpayers trust fund tax credit to be available.

EXAMPLE: There is $120 million in the Iowa taxpayers trust fund at the end of the fiscal year ending June 30, 2013. The total amount of Iowa taxpayers trust fund tax credit claimed on Iowa tax returns for tax years beginning on or after January 1, 2013, but beginning before January 1, 2014, which were filed on or before October 31, 2014, is $90 million. The difference of $30 million will be transferred to the Iowa taxpayers trust fund for the fiscal year ending June 30, 2014. The legislature approves an additional $60 million to be deposited in the Iowa taxpayers trust fund for the fiscal year ending June 30, 2014. This will result in $90 million in the Iowa taxpayers trust fund for the fiscal year ending June 30, 2014. If 2,200,000 individuals file Iowa individual income tax returns for tax years beginning on or after January 1, 2013, but beginning before January 1, 2014, by October 31, 2014, this will result in a $40 Iowa taxpayers trust fund tax credit for the tax year beginning on or after January 1, 2014, but beginning before January 1, 2015 ($90,000,000 divided by 2,200,000 equals $40.90, which is rounded down to the nearest whole dollar).

42.50(2) *Claiming the credit on the tax return.* The Iowa taxpayers trust fund is claimed on the amount of Iowa tax computed after all other nonrefundable credits allowed in division II of Iowa Code chapter 422 (excluding the Iowa taxpayers trust fund tax credit) are deducted, after the amount of school district surtax described in rule 701—42.1(257,422) and emergency medical services income surtax described in rule 701—42.2(422D) is added, and after all refundable credits (excluding estimated payments and tax withheld) allowed in division II of Iowa Code chapter 422 are deducted. Any Iowa taxpayers trust fund tax credit in excess of the tax liability is not refundable and shall not be carried back to the tax year prior to the tax year in which the credit is claimed and cannot be carried forward to a tax year for any following year.

EXAMPLE: A taxpayer reported a tax liability of $100 on the taxpayer's 2013 Iowa income tax return. The taxpayer claimed a $40 personal exemption credit and a $25 franchise tax credit. This resulted in tax due of $35 before applying the school district surtax. Taxpayer was subject to a $2 school district surtax which resulted in total tax due of $37. Taxpayer was entitled to claim a $54 Iowa taxpayers trust fund tax credit, but only $37 of credit could be applied on the 2013 Iowa return. The remaining $17 of credit cannot be refunded, cannot be applied to a prior year tax liability, and cannot be carried forward to be applied to a subsequent year tax liability.

This rule is intended to implement Iowa Code section 422.11E.

[**ARC 1102C**, IAB 10/16/13, effective 11/20/13; **ARC 1665C**, IAB 10/15/14, effective 11/19/14]

701—42.51(422,85GA,SF452) From farm to food donation tax credit. Effective for tax years beginning on or after January 1, 2014, a taxpayer that donates a food commodity that the taxpayer produces may claim a tax credit for Iowa individual income tax. The credit is equal to 15 percent of the value of the commodities donated during the tax year for which the credit is claimed or $5,000, whichever is less. The value of the commodities shall be determined in the same manner as a charitable contribution of food for federal tax purposes under Section 170(e)(3)(C) of the Internal Revenue Code.

To qualify for the tax credit, the taxpayer (1) must produce the donated food commodity; (2) must transfer title to the donated food commodity to an Iowa food bank or Iowa emergency feeding organization recognized by the department; and (3) shall not receive remuneration for the transfer. The donated food commodity cannot be damaged or out-of-condition and declared to be unfit for

human consumption by a federal, state, or local health official. A food commodity that meets the requirements for donated foods pursuant to the federal Emergency Food Assistance Program satisfies this requirement.

To be recognized by the department, a food bank or emergency feeding organization must either be a recognized affiliate of one of the eight partner food banks with the Iowa Food Bank Association or must register with the department. To register with the department, the organization must meet the definition of "emergency feeding organization," "food bank," or "food pantry" as defined by the department of human services in 441—66.1(234). The department of revenue will make registration forms available on the department's website. The department will maintain a list of recognized organizations on the department's website.

Food banks and emergency feeding organizations that receive eligible donations shall be required to issue receipts in a format prescribed by the department for all donations received and must annually submit to the department a receipt log of all the receipts issued during the tax year. The receipt log must be submitted in the form of a spreadsheet with column specifications as provided by the department. Receipt logs showing the donations for the previous calendar year must be delivered electronically or mailed to the department postmarked by January 15 of each year. If a receipt for a taxpayer's claim is not provided by the organization, the taxpayer's claim will be denied.

To claim the credit, a taxpayer shall submit to the department the original receipts that were issued by the food bank or emergency feeding organization. The receipt must include quantity information completed by the food bank or emergency feeding organization, taxpayer information, and a donation valuation consistent with Section 170(e)(3)(C) of the Internal Revenue Code completed by the taxpayer. Claims must be postmarked on or before January 15 of the year following the tax year for which the claim is requested. Once the department verifies the amount of the tax credit, a letter will be sent to the taxpayer providing the amount of the tax credit and a tax credit certificate number.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is earlier. The tax credit shall not be carried back to a tax year prior to the year in which the owner redeems the credit. The credit is not transferable to any other person other than the taxpayer's estate or trust upon the death of the taxpayer.

If the producer is a partnership, limited liability company, S corporation, estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement 2013 Iowa Acts, Senate File 452, division XVIII.

[**ARC 1138C**, IAB 10/30/13, effective 12/4/13]

701—42.52(422) Adoption tax credit. Effective for tax years beginning on or after January 1, 2014, an adoption tax credit is available for individual income tax equal to the amount of qualified adoption expenses paid or incurred by a taxpayer related to the adoption of a child. For an adoption finalized on or after January 1, 2014, but before January 1, 2017, the total adoption tax credit claimed for the adoption may not exceed $2,500. For an adoption finalized on or after January 1, 2017, the total adoption tax credit claimed for the adoption may not exceed $5,000.

42.52(1) *Adoption.* For purposes of the credit, an adoption occurs when a child is permanently placed in Iowa by any of the following:

a. The department of human services;

b. An adoption service provider as defined in Iowa Code section 600A.2; or

c. An agency that meets the provisions of the interstate compact in Iowa Code section 232.158.

42.52(2) *Child.* A "child" is an individual who is under the age of 18 years. "Child" does not include any individual who is 18 years of age or older.

42.52(3) *Qualified adoption expenses.*

a. *Generally.* "Qualified adoption expenses" means unreimbursed expenses paid or incurred in connection with the adoption of a child. Qualified adoption expenses include all fees and costs related to the adoption of a child, such as:

(1) Medical and hospital expenses of the biological mother that are incident to the child's birth;
(2) Welfare agency fees and other reasonable and necessary adoption fees;
(3) Court costs, attorney fees, and other legal fees;
(4) Travel expenses, including amounts spent for meals and lodging while away from home; and
(5) All other fees and costs related to the adoption of a child.

b. Limitations. Expenses that are eligible for the federal adoption credit as provided in Section 23(d)(1) of the Internal Revenue Code will be considered qualified adoption expenses. Expenses paid or incurred in violation of state or federal law are not qualified adoption expenses. Expenses that have been reimbursed are not qualified adoption expenses.

42.52(4) *Claiming the credit.*

a. Amount eligible for credit. For tax years beginning on or after January 1, 2014, but beginning before January 1, 2017, the first $2,500 of qualified adoption expenses is eligible for the credit. For tax years beginning on or after January 1, 2017, the first $5,000 of qualified adoption expenses is eligible for the credit. The maximum credit amount is determined at the time the adoption becomes final. If the qualified adoption expenses are less than the maximum credit amount, then the total amount of qualified expenses can be claimed as a credit. The amount of tax credit claimed cannot be used as an itemized deduction for adoption expenses provided in 701—subrule 41.5(3).

b. Claiming the credit in tax years beginning on or after January 1, 2014, but before January 1, 2019.

(1) Claiming the credit in the year the adoption becomes final. For tax years beginning on or after January 1, 2014, but before January 1, 2019, to claim an adoption tax credit, a taxpayer must claim the credit for all qualified adoption expenses paid or incurred in the tax year the adoption becomes final, up to the maximum credit amount provided in paragraph 42.52(4)*"a."*

EXAMPLE: Michael and Lori are married. Michael and Lori adopt a child who is permanently placed in Iowa. The adoption process begins and becomes final in 2015. Because the adoption becomes final on or after January 1, 2014, but prior to January 1, 2017, Michael and Lori qualify for a maximum credit amount of $2,500. Michael and Lori incur and pay unreimbursed qualified adoption expenses of $20,000 in 2015. Michael and Lori jointly file their Iowa individual income tax return in 2015. Michael and Lori may claim an Iowa adoption tax credit of $2,500 in 2015.

(2) Claiming the credit in years other than the year the adoption becomes final. For tax years beginning on or after January 1, 2014, but before January 1, 2019, if a taxpayer cannot claim the maximum credit amount provided in paragraph 42.52(4)*"a"* for the year the adoption becomes final, the taxpayer may amend a prior year's return to claim any remaining credit for expenses paid in that prior year, or the taxpayer may claim any remaining credit on a subsequent year's return for expenses paid in that subsequent year. If a qualified adoption expense was incurred in one tax year and paid in another tax year, the taxpayer may only claim a credit for that expense in one year. The total adoption tax credit claimed for all years combined may not exceed the maximum credit amount per adoption provided in paragraph 42.52(4)*"a."* An adjustment to a prior's year return is subject to the limitations in rule 701—40.20(422).

EXAMPLE: Erin adopts a child as a single parent. The child is permanently placed in Iowa. The adoption process begins in 2016 and becomes final in 2017. Because the adoption becomes final on or after January 1, 2017, Erin qualifies for a maximum credit amount of $5,000. Erin pays and incurs unreimbursed qualified adoption expenses of $20,000 in 2016 and $1,000 in 2017. In tax year 2017, Erin may claim an Iowa adoption tax credit equal to the $1,000 in unreimbursed qualified adoption expenses paid and incurred in 2017. After claiming the credit for tax year 2017, Erin may amend the 2016 return to claim the remaining $4,000 credit for unreimbursed qualified adoption expenses paid and incurred in 2016.

c. Claiming the credit in tax years beginning on or after January 1, 2019.

(1) Claiming the credit in the year the adoption becomes final. For tax years beginning on or after January 1, 2019, to claim an adoption tax credit, a taxpayer must claim the credit in the tax year the adoption is finalized for all qualified adoption expenses paid or incurred prior to or in the tax year the adoption becomes final, up to the maximum credit amount of $5,000. A taxpayer shall not amend a

prior year return in an attempt to claim the credit for unreimbursed qualified adoption expenses paid or incurred prior to the tax year in which the adoption becomes final.

EXAMPLE: Y and Z are married. Y and Z adopt a child who is permanently placed in Iowa. The adoption process begins in 2016 and becomes final in 2019. Because the adoption becomes final on or after January 1, 2017, Y and Z qualify for a maximum credit amount of $5,000. Additionally, because the adoption becomes final on or after January 1, 2019, Y and Z may claim an Iowa adoption tax credit for unreimbursed qualified adoption expenses paid or incurred prior to or in the year the adoption becomes final. Y and Z incur and pay unreimbursed qualified adoption expenses of $5,000 in 2016, $10,000 in 2017, $2,000 in 2018, and $2,000 in 2019. Y and Z jointly file their Iowa individual income tax return in 2019. Y and Z may claim an Iowa adoption tax credit of $5,000 on their 2019 Iowa income tax return. Y and Z are not allowed to amend a prior year return in an attempt to claim the credit for unreimbursed qualified adoption expenses paid or incurred prior to the tax year in which the adoption became final.

(2) Claiming the credit in years after the adoption becomes final. For tax years beginning on or after January 1, 2019, if a taxpayer cannot claim the maximum credit amount of $5,000 for the year the adoption becomes final, the taxpayer may claim an adoption tax credit for any unreimbursed qualified adoption expenses paid or incurred after the tax year in which the adoption becomes final in the tax year in which unreimbursed qualified adoption expenses are paid or incurred.

EXAMPLE: W and X are married. W and X adopt a child who is permanently placed in Iowa. The adoption process begins in 2018 and becomes final in 2019. Because the adoption becomes final on or after January 1, 2017, W and X qualify for a maximum credit amount of $5,000. W and X incur and pay unreimbursed qualified adoption expenses of $1,000 in 2018, and $1,000 in 2019. W and X jointly file their Iowa individual income tax return in 2019. W and X may claim the Iowa adoption tax credit in 2019 in the amount of $2,000. In 2020, W and X incur and pay $5,000 in unreimbursed qualified adoption expenses in connection to the adoption finalized in 2019. W and X may claim the remaining $3,000 credit on their jointly filed Iowa individual income tax return for 2020 for unreimbursed qualified adoption expenses incurred and paid in 2020. W and X shall not amend their 2019 return to reflect the additional unreimbursed qualified adoption expenses from 2020.

d. Claiming the credit by two adoptive parents. The adoption tax credit may only be claimed by a person who adopted the child. When a married couple adopts a child together and the couple files jointly on the same return, the credit may only be claimed once between the couple. When any other two persons adopt a child together, including married persons filing separately on the same or different returns or any unmarried persons filing on separate returns, the credit must be divided between the adoptive parents. Two adoptive parents, other than persons who are married filing jointly, may agree to divide the credit in any way. The total adoption tax credit claimed for all years by both parents combined may not exceed the maximum credit amount per adoption provided in paragraph 42.52(4)*"a."*

EXAMPLE: Peyton and Kerry are unmarried individuals. Peyton and Kerry adopt a child together. The child is permanently placed in Iowa. The adoption process begins and ends in 2018. Because the adoption becomes final on or after January 1, 2017, Peyton and Kerry qualify for a maximum credit amount of $5,000. However, Peyton and Kerry pay and incur unreimbursed qualified adoption expenses of only $3,000 in 2018. Accordingly, Peyton and Kerry may claim an Iowa adoption tax credit of $3,000 in 2018, which must be divided between them. Peyton and Kerry agree that Peyton will claim $2,000 of the credit, and Kerry will claim $1,000 of the credit.

e. Adoption of a special needs child. If a taxpayer adopts a special needs child, the credit under this rule cannot exceed the amount of qualified adoption expenses paid or incurred by the taxpayer during the tax year. The amount of the federal adoption tax credit claimed for the adoption of a special needs child does not affect the amount of the credit under this rule.

EXAMPLE: Francis and Mandy are married. Francis and Mandy adopt a special needs child who is permanently placed in Iowa. The adoption process begins and ends in 2017. Francis and Mandy paid and incurred $2,000 in unreimbursed qualified adoption expenses related to the adoption during 2017. For federal purposes, Francis and Mandy qualify for a maximum adoption tax credit of $13,570 for the adoption of a special needs child. For Iowa purposes, Francis and Mandy qualify for a maximum

adoption tax credit of $2,000, which is equal to the amount of unreimbursed qualified adoption expenses they paid or incurred related to the adoption during the tax year.

f. Adoption tax credit in excess of tax liability. Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

This rule is intended to implement Iowa Code section 422.12A as amended by 2016 Iowa Acts, House File 2468; 2017 Iowa Acts, Senate File 433; and 2019 Iowa Acts, House File 779.

[**ARC 1665C**, IAB 10/15/14, effective 11/19/14; **ARC 3749C**, IAB 4/11/18, effective 5/16/18; **ARC 5308C**, IAB 12/2/20, effective 1/6/21]

701—42.53(15) Workforce housing tax incentives program. A business which qualifies under the workforce housing tax incentives program is eligible to receive tax incentives for individual income tax. The workforce housing tax incentives program replaced the eligible housing business enterprise zone program. An eligible business under the workforce housing tax incentives program must be approved by the economic development authority. The administrative rules for the workforce housing tax incentives program for the economic development authority may be found at 261—Chapter 48. The general assembly has mandated that the economic development authority and the department of revenue adopt rules to jointly administer Iowa Code sections 15.351 to 15.356. In general, the economic development authority is responsible for evaluating whether projects meet the requirements for a workforce housing tax incentives program while the department of revenue administers tax credit claims and transfers.

42.53(1) *Definitions.*

"Costs directly related" means the same as defined in rule 261—48.3(15).

"Qualifying new investment" means the same as defined in rule 261—48.3(15).

42.53(2) *Workforce housing tax incentives.* The economic development authority will allocate no more than $20 million in tax incentives for this program for any fiscal year, $5 million of which shall be reserved for allocation to qualified housing projects in small cities, as defined in Iowa Code section 15.352(10), that are registered on or after July 1, 2017. A housing business that has entered into an agreement with the economic development authority is eligible to receive the tax incentives described in the following paragraphs:

a. Sales tax refund. A housing business may claim a refund of the sales and use tax described in rule 701—12.19(15).

b. Investment tax credit.

(1) Computation of the credit. A housing business may claim a tax credit in an amount not to exceed 10 percent of the qualifying new investment in a housing project not located in a small city, or 20 percent of the qualifying new investment in a housing project located in a small city.

(2) Allocation of the tax credit to the individual owners of the entity or beneficiaries of an estate or trust. An individual may claim a tax credit if the housing business is a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the partnership, limited liability company, S corporation, estate, or trust.

(3) Refundability. Any tax credit in excess of the taxpayer's liability for the tax year is not refundable.

(4) Carryforward. Any tax credit in excess of the taxpayer's liability may be credited to the tax liability for the following five years or until depleted, whichever is earlier.

42.53(3) *Claiming the tax credit—information required.* The taxpayer must receive a tax credit certificate from the economic development authority to claim the eligible housing business tax credit. The tax credit certificate shall include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the date the project was completed, the amount of the eligible housing business tax credit and the tax year for which the credit may be claimed. In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 42.53(5). The tax credit certificate must be included with the income tax return for the tax period in which the housing is ready for occupancy.

42.53(4) *Basis adjustment.* The increase in the basis of the property that would otherwise result from the qualifying new investment shall be reduced by the amount of the investment tax credit. For example, if a new housing project had qualifying new investment of $1 million which resulted in a $100,000 investment tax credit for Iowa tax purposes, the basis of the property for Iowa income tax purposes would be $900,000.

42.53(5) *Transfer of the credit.*

a. Submission of transferred tax credit certificate to the department—information required. Tax credit certificates issued under an agreement entered into pursuant to subrule 42.53(3) may be transferred to any person. Within 90 days of transfer, the transferee shall submit the transferred tax credit certificate to the department of revenue along with a statement containing the transferee's name, tax identification number, and address, the denomination that each replacement tax credit certificate is to carry, and any other information required by the department of revenue. However, tax credit certificate amounts of less than the minimum amount established in rule by the economic development authority shall not be transferable.

b. Issuance of replacement certificate by the department. Within 30 days of receiving the transferred tax credit certificate and the transferee's statement, the department of revenue shall issue one or more replacement tax credit certificates to the transferee. Each replacement tax credit certificate must contain the information required for the original tax credit certificate and must have the same expiration date that appeared on the transferred tax credit certificate.

c. Claiming the transferred tax credit. A tax credit shall not be claimed by a transferee under this rule until a replacement tax credit certificate identifying the transferee as the proper holder has been issued. The transferee may use the amount of the tax credit transferred for any tax year the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income, or franchise tax purposes.

d. Unlimited number of transferees and subsequent transfers. There is no limitation on the number of transferees to whom the credit may be transferred. There is no limitation on the number of times that the credit may be retransferred by a transferee. The transferor may divide the credit into multiple credits of alternate denominations so long as the resulting credits are for amounts of no less than the minimum amount established in rule by the economic development authority.

e. Carryforward limitations on transferees. The transferee may use the amount of the transferred tax credit for any tax year that the original transferor could have claimed the tax credit. The carryforward limitations described in subparagraph 42.53(2)*"b"*(4) shall apply.

42.53(6) *Repayment of benefits.* If the housing business fails to maintain the requirements of Iowa Code section 15.353, the taxpayer may be required to repay all or a portion of the tax incentives the taxpayer received. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the income tax credit may have expired, the department may proceed to collect the tax incentives forfeited by failure of the taxpayer to maintain the requirements of Iowa Code section 15.353. This repayment is required because it is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability. Details on the calculation of the repayment can be found in 261—subrule 187.5(4) of the administrative rules of the economic development authority. If the business is a partnership, limited liability company, S corporation, estate or trust where the income of the taxpayer is taxed to the individual owner(s) of the business, the department may proceed to collect the tax incentives against the partners, members, shareholders or beneficiaries to whom the tax incentives were passed through. See Decision of the Administrative Law Judge in *Damien & Colette Trebilcock, et al.,* Docket No. 11DORF 042-044, June 11, 2012.

This rule is intended to implement Iowa Code sections 15.354 and 15.355.

[**ARC 1744C**, IAB 11/26/14, effective 12/31/14; **ARC 3837C**, IAB 6/6/18, effective 7/11/18]

701—42.54(404A,422) Historic preservation and cultural and entertainment district tax credit for projects registered on or after July 1, 2014, and before August 15, 2016. For projects registered

before August 15, 2016, the department of cultural affairs is authorized by the general assembly to award tax credits for a percentage of the qualified rehabilitation expenditures on a qualified rehabilitation project as described in the historic preservation and cultural and entertainment district tax credit program, Iowa Code chapter 404A. The program is administered by the department of cultural affairs with the assistance of the department of revenue. The general assembly has mandated that the department of cultural affairs and the department of revenue adopt rules to jointly administer Iowa Code chapter 404A. In general, the department of cultural affairs is responsible for evaluating whether projects comply with the prescribed standards for rehabilitation while the department of revenue is responsible for evaluating whether projects comply with the tax aspects of the program.

2014 Iowa Acts, House File 2453, amended the historic preservation and cultural and entertainment district tax credit program effective July 1, 2014. The department of revenue's provisions for projects with Part 2 applications approved and tax credits reserved prior to July 1, 2014, are found in rule 701—42.19(404A,422). The department of revenue's provisions for projects registered on or after July 1, 2014, and before August 15, 2016, are found in this rule. The department of cultural affairs' rules related to this program may be found at 223—Chapter 48.

2016 Iowa Acts, House File 2443, amended the program and transferred primary responsibility for its administration to the economic development authority effective August 15, 2016. Effective August 15, 2016, the program is administered by the economic development authority with the assistance of the department of cultural affairs and the department of revenue. The department of revenue's provisions for projects registered on or after August 15, 2016, are found in rule 701—42.55(404A,422). The economic development authority's rules related to the program may be found at 261—Chapter 49. When adopted, the department of cultural affairs' rules related to the program will be found in 223—Chapter 48.

Notwithstanding anything contained herein to the contrary, the department of cultural affairs shall not reserve tax credits under 2013 Iowa Code chapter 404A as amended by 2013 Iowa Acts, chapter 112, section 1, for applicants that do not have an approved Part 2 application and a tax credit reservation on or before June 30, 2014. Projects with approved Part 2 applications and provisional tax credit reservations on or before June 30, 2014, shall be governed by 2013 Iowa Code chapter 404A as amended by 2013 Iowa Acts, chapter 112, section 1; by 223—Chapter 48, Division I; and by rule 701—42.19(404A,422). Projects registered on or after July 1, 2014, but before August 15, 2016, shall be governed by 2014 Iowa Code chapter 404A as amended by 2014 Iowa Acts, House File 2453; by 223—Chapter 48, Division II; and by this rule. Projects registered on or after August 15, 2016, shall be governed by 2016 Iowa Code chapter 404A as amended by 2016 Iowa Acts, House File 2443; by 261—Chapter 49; and by rule 701—42.55(404A,422).

42.54(1) *Application, registration, and agreement for the historic preservation and cultural and entertainment district tax credit.* Taxpayers that want to claim an income tax credit for completing a qualified rehabilitation project must submit an application for approval of the project. The application forms and instructions for the historic preservation and cultural and entertainment district tax credit are available on the department of cultural affairs' website. Once a project is registered, the taxpayer must enter into an agreement with the department of cultural affairs to be eligible for the credit.

42.54(2) *Computation of the amount of the historic preservation and cultural and entertainment district tax credit.* The amount of the historic preservation and cultural and entertainment district tax credit is a maximum of 25 percent of the qualified rehabilitation expenditures verified by the department of cultural affairs and the department of revenue following project completion, up to the amount specified in the agreement between the taxpayer and the department of cultural affairs.

42.54(3) *Qualified rehabilitation expenditures.* "Qualified rehabilitation expenditures" means the same as defined in rule 223—48.22(404A) of the historical division of the department of cultural affairs. In general, the department of cultural affairs evaluates whether expenditures comply with the prescribed standards for rehabilitation while the department of revenue evaluates whether expenditures comply with the tax requirements to be considered qualified rehabilitation expenditures, including whether the expenditures are in accordance with the requirements of Internal Revenue Code Section 47 and its related regulations.

a. Type of property and services eligible. In accordance with Iowa Code section 404A.1(6), the types of property and services claimed for the state tax credit must be "qualified rehabilitation expenditures" in accordance with Internal Revenue Code Section 47. Notwithstanding the foregoing sentence, expenditures incurred by an eligible taxpayer that is a nonprofit organization as defined in Iowa Code section 404A.1(4) shall be considered "qualified rehabilitation expenditures" if they are for "structural components," as that term is defined in Treasury Regulation § 1.48-1(e)(2), and for amounts incurred for architectural and engineering fees, site survey fees, legal expenses, insurance premiums, development fees and other construction-related costs.

b. Effect of financing sources on eligibility of expenditures. Qualified rehabilitation expenditures do not include expenditures financed by federal, state, or local government grants or forgivable loans unless otherwise allowed under Section 47 of the Internal Revenue Code. For an eligible taxpayer that is a nonprofit organization as defined in Iowa Code section 404A.1(4) that is not eligible for the federal rehabilitation credit, or another person that is not eligible for the federal rehabilitation credit, expenditures financed with federal, state, or local government grants or forgivable loans are not qualified rehabilitation expenditures.

42.54(4) *Completion of the qualified rehabilitation project and claiming the tax credit on the Iowa return.* After the taxpayer completes a qualified rehabilitation project, the taxpayer will be issued a certificate of completion of the project from the department of cultural affairs if the project complies with the federal standards, as defined in rule 223—48.22(404A). After the department of cultural affairs and the department of revenue verify the taxpayer's eligibility for the tax credit, the department of cultural affairs shall issue a tax credit certificate.

a. Claiming the credit. For the taxpayer to claim the credit, the certificate must be included with the taxpayer's income tax return for the tax year in which the rehabilitation project is completed or the income tax return for any tax year within the five years following the tax year of project completion. Taxpayers that elect to delay claiming the credit to a later tax year return as described in this paragraph are subject to the carryforward limitations described in paragraph 42.54(4)*"d"* below. The credit may be claimed on an amended return so long as the amended return is filed within the statute of limitations applicable to the tax year for which the amended tax return is being filed.

b. Information required. The tax credit certificate shall include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the address or location of the rehabilitation project, the date the project was completed, the amount of the historic preservation and cultural and entertainment district tax credit, and, if applicable, an indication of whether the credit is nonrefundable (see paragraph 42.54(4)*"c"* below). In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 42.54(5). In addition, if the taxpayer is a partnership, limited liability company, estate or trust, and the tax credit is allocated to the owners or beneficiaries of the entity, a list of the owners or beneficiaries and the amount of credit allocated to each owner or beneficiary shall be provided with the certificate.

c. Refundability. A historic preservation and cultural and entertainment district tax credit in excess of the taxpayer's tax liability is fully refundable with interest computed under Iowa Code section 422.25. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year. To receive a refundable credit, the taxpayer must elect to receive the credit as refundable at the Part 3 stage of the application process administered by the department of cultural affairs. Once the taxpayer elects to receive a nonrefundable credit, the taxpayer cannot elect to change the credit to a refundable credit or vice versa. See department of cultural affairs' 223—Chapter 48. If the taxpayer is a transferee, the taxpayer may elect to receive the credit as refundable or nonrefundable when the taxpayer applies to the department of revenue for transfer of the tax credit as described in subrule 42.54(5).

d. Carryforward. If the taxpayer elects to receive a nonrefundable historic preservation and cultural and entertainment district tax credit as described in paragraph 42.54(4)*"b,"* the amount in excess of the taxpayer's tax liability may be carried forward for five years following the tax year in which the project is completed, or until it is depleted, whichever is earlier. A tax credit shall not be

carried back to a tax year prior to the tax year in which the taxpayer is first eligible to claim the credit. Regardless of whether the taxpayer elects to claim the tax credit on a tax return for a year that is later than the year of project completion as described in paragraph 42.54(4)*"a,"* the taxpayer must utilize the entire credit within five years following the tax year of the project completion as described in this paragraph; any credit amount that is not utilized within the five-year carryforward period is forfeited. The five-year carryforward limitation does not apply if the taxpayer elects to receive a refundable credit, the excess of which may be credited to future tax years as an overpayment.

e. Allocation of historic preservation and cultural and entertainment district tax credits to the individual owners of the entity or beneficiaries of an estate or trust. A partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder. The credit does not have to be allocated based on the pro rata share of earnings of the partnership, limited liability company or S corporation. For an individual claiming a tax credit of an estate or trust, the amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the estate or trust.

42.54(5) *Transfer of the historic preservation and cultural and entertainment district tax credit.* The historic preservation and cultural and entertainment district tax credit certificates may be transferred to any person or entity. The transferee may use the amount of the tax credit transferred against the taxes imposed in Iowa Code chapter 422, divisions II, III, and V, and in Iowa Code chapter 432, for any tax year the original transferor could have claimed the tax credit. Transferees must elect to receive either a refundable or nonrefundable tax credit. Once the transferee elects to receive a nonrefundable credit, the transferee cannot elect to change the credit to a refundable credit or vice versa. A tax credit certificate of less than $1,000 shall not be transferable.

a. Transfer process—information required. Within 90 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department of revenue along with a statement that contains the transferee's name, address and tax identification number, the amount of the tax credit being transferred, an election to receive either a refundable or nonrefundable tax credit, and the amount of all consideration provided in exchange for the tax credit and the names of recipients of any consideration provided in exchange for the tax credit. If a payment of money was any part of the consideration provided in exchange for the tax credit, the transferee shall list the amount of the payment of money in its statement to the department of revenue. If any part of the consideration provided in exchange for the tax credit included nonmonetary consideration, including but not limited to any promise, representation, performance, discharge of debt or nonmonetary rights or property, the tax credit transferee shall describe the nature of the nonmonetary consideration and disclose any value the transferor and transferee assigned to the nonmonetary consideration. The tax credit transferee must indicate on its statement to the department of revenue if no consideration was provided in exchange for the tax credit. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department of revenue will issue the replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members or shareholders and information on how the historic preservation and cultural and entertainment district tax credit should be divided among the partners, members or shareholders. The transferee shall also provide the tax identification numbers and addresses of the partners, members or shareholders. The certificate must have the same information required for the original tax certificate and must have the same expiration date as the original tax credit certificate. The transferee may not claim a tax credit until a replacement certificate identifying the transferee as the proper holder has been issued.

b. Consideration. Any consideration received for the transfer of the tax credit shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

c. Unlimited number of transferees and subsequent transfers. There is no limitation on the number of transferees to whom the credit may be transferred. There is no limitation on the number of times that the credit may be retransferred by a transferee. The transferor may divide the credit into multiple credits of alternate denominations so long as the resulting credits are for amounts of no less than $1,000.

d. Carryforward limitations on transferees. The transferee may use the amount of the transferred tax credit for any tax year that the original transferor could have claimed the tax credit. The carryforward limitations described in paragraph 42.54(4)*"d"* shall apply.

42.54(6) *Appeals.* Challenges to an action by the department of revenue related to tax credit transfers, the claiming of tax credits, tax credit revocation, or repayment or recovery of tax credits must be brought pursuant to 701—Chapter 7.

This rule is intended to implement Iowa Code chapter 404A as amended by 2016 Iowa Acts, House File 2443, and Iowa Code section 422.11D.

[**ARC 1968C**, IAB 4/15/15, effective 5/20/15; **ARC 2928C**, IAB 2/1/17, effective 3/8/17]

701—42.55(404A,422) Historic preservation and cultural and entertainment district tax credit for projects registered on or after August 15, 2016. The economic development authority is authorized by the general assembly to award tax credits for a percentage of the qualified rehabilitation expenditures on a qualified rehabilitation project as described in the historic preservation and cultural and entertainment district tax credit program, Iowa Code chapter 404A. The program is administered by the economic development authority with the assistance of the department of cultural affairs and the department of revenue. The general assembly has mandated that the economic development authority, the department of cultural affairs and the department of revenue adopt rules as necessary to administer Iowa Code chapter 404A. In general, the department of revenue is responsible for administering tax credit transfers and processing and auditing tax credits claimed on returns. For the economic development authority's rules on the credit program, see 261—Chapter 49. For the department of cultural affairs' rules on the credit program, see 223—Chapter 48.

42.55(1) *Program transition.* 2016 Iowa Acts, House File 2443, made several changes to the credit program, including transferring primary responsibility for the program's administration from the department of cultural affairs to the economic development authority. Projects registered prior to August 15, 2016, remain under the purview of the department of cultural affairs, with assistance from the department of revenue. For department of revenue rules related to projects registered prior to August 15, 2016, see rules 701—42.54(404A,422) and 701—42.19(404A,422).

42.55(2) *Application, registration, and agreement for the historic preservation and cultural and entertainment district tax credit.* For rules on the application, registration, and agreement process, see economic development authority rules, 261—Chapter 49.

42.55(3) *Computation of the amount of the historic preservation and cultural and entertainment district tax credit.* The amount of the historic preservation and cultural and entertainment district tax credit is a maximum of 25 percent of the qualified rehabilitation expenditures verified by the economic development authority following project completion, up to the amount specified in the agreement between the taxpayer and the economic development authority. For more information on the credit computation, see economic development authority rules, 261—Chapter 49. The amount remains subject to audit by the department of revenue when the credit is claimed on the taxpayer's tax return.

42.55(4) *Qualified rehabilitation expenditures.* "Qualified rehabilitation expenditures" means the same as defined in Iowa Code section 404A.1(7) and rule 261—49.5(404A) of economic development authority rules. In the event of an audit, the department of revenue evaluates whether expenditures comply with the agreement between the economic development authority and the eligible taxpayer, as well as with applicable statutes and rules, including Internal Revenue Code Section 47 and its related regulations.

42.55(5) *Completion of the qualified rehabilitation project and claiming the tax credit.* After the economic development authority verifies the taxpayer's eligibility for the tax credit, the economic development authority shall issue a tax credit certificate. For more information on credit certificate issuance, see economic development authority rules, 261—Chapter 49.

a. Claiming the credit. For the taxpayer to claim the credit, the certificate must be included with the taxpayer's income tax return for the tax year in which the rehabilitation project is completed or the income tax return for any year within the five years following the year of project completion. Taxpayers that elect to delay claiming the credit to a later year's return as described in this paragraph are subject to

the carryforward limitations described in paragraph 42.55(5)*"d"* below. The credit may be claimed on an amended return so long as the amended return is filed within the statute of limitations applicable to the tax year for which the amended tax return is being filed.

b. Information required. The tax credit certificate shall include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the address or location of the rehabilitation project, the date the project was completed, the amount of the historic preservation and cultural and entertainment district tax credit, and, if applicable, an indication of whether the credit is nonrefundable (see paragraph 42.55(5)*"c"* below). In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 42.55(6). In addition, if the taxpayer is a partnership, limited liability company, estate or trust, and the tax credit is allocated to the owners or beneficiaries of the entity, a list of the owners or beneficiaries and the amount of credit allocated to each owner or beneficiary shall be provided with the certificate.

c. Refundability. A historic preservation and cultural and entertainment district tax credit in excess of the taxpayer's tax liability is fully refundable with interest computed under Iowa Code section 422.25. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year. To receive a refundable credit, the taxpayer must elect to receive the credit as refundable at the Part 3 stage of the application process administered by the economic development authority. See the economic development authority's rule 261—49.15(404A). Once the taxpayer elects to receive a nonrefundable credit, the taxpayer cannot elect to change the credit to a refundable credit or vice versa. If the taxpayer is a transferee, the taxpayer may elect to receive the credit as refundable when the taxpayer applies to the department of revenue for transfer of the tax credit as described in subrule 42.55(6).

d. Carryforward. If the taxpayer elects to receive a nonrefundable historic preservation and cultural and entertainment district tax credit as described in paragraph 42.55(5)*"b,"* the amount in excess of the taxpayer's tax liability may be carried forward for five years following the tax year in which the project is completed, or until it is depleted, whichever is earlier. A tax credit shall not be carried back to a tax year prior to the tax year in which the taxpayer is first eligible to claim the credit. Regardless of whether the taxpayer elects to claim the tax credit on a tax return for a year that is later than the year of project completion as described in paragraph 42.55(5)*"a,"* the taxpayer must utilize the entire credit within five years following the tax year of the project completion as described in this paragraph; any credit amount that is not utilized within the five-year carryforward period is forfeited. The five-year carryforward limitation does not apply if the taxpayer elects to receive a refundable credit, the excess of which may be credited to future tax years as an overpayment.

e. Allocation of historic preservation and cultural and entertainment district tax credits to the individual owners of the entity or beneficiaries of an estate or trust. A partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder. The credit does not have to be allocated based on the pro rata share of earnings of the partnership, limited liability company or S corporation. For an individual claiming a tax credit of an estate or trust, the amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the estate or trust.

42.55(6) *Transfer of the historic preservation and cultural and entertainment district tax credit.* The historic preservation and cultural and entertainment district tax credit certificates may be transferred to any person or entity. The transferee may use the amount of the tax credit transferred against the taxes imposed in Iowa Code chapter 422, divisions II, III, and V, and in Iowa Code chapter 432, for any tax year that the original transferor could have claimed the tax credit. Transferees must elect to receive either a refundable or nonrefundable tax credit. Once the transferee elects to receive a nonrefundable credit, the transferee cannot elect to change the credit to a refundable credit or vice versa. A tax credit certificate of less than $1,000 shall not be transferable.

a. Transfer process—information required. Within 90 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department of revenue along with a statement that contains the transferee's name, address and tax identification number, the amount of the

tax credit being transferred, an election to receive either a refundable or nonrefundable tax credit, and the amount of all consideration provided in exchange for the tax credit and the names of recipients of any consideration provided in exchange for the tax credit. If a payment of money was any part of the consideration provided in exchange for the tax credit, the transferee shall list the amount of the payment of money in its statement to the department of revenue. If any part of the consideration provided in exchange for the tax credit included nonmonetary consideration, including but not limited to any promise, representation, performance, discharge of debt or nonmonetary rights or property, the tax credit transferee shall describe the nature of the nonmonetary consideration and disclose any value the transferor and transferee assigned to the nonmonetary consideration. The tax credit transferee must indicate on its statement to the department of revenue if no consideration was provided in exchange for the tax credit. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department of revenue will issue the replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members or shareholders and information on how the historic preservation and cultural and entertainment district tax credit should be divided among the partners, members or shareholders. The transferee shall also provide the tax identification numbers and addresses of the partners, members or shareholders. The certificate must have the same information required for the original tax credit certificate and must have the same expiration date as the original tax credit certificate. The transferee may not claim a tax credit until a replacement certificate identifying the transferee as the proper holder has been issued.

b. Consideration. Any consideration received for the transfer of the tax credit shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

c. Unlimited number of transferees and subsequent transfers. There is no limitation on the number of transferees to whom the credit may be transferred. There is no limitation on the number of times that the credit may be retransferred by a transferee. The transferor may divide the credit into multiple credits of alternate denominations so long as the resulting credits are for amounts of no less than $1,000.

d. Carryforward limitations on transferees. The transferee may use the amount of the transferred tax credit for any tax year that the original transferor could have claimed the tax credit. The carryforward limitations described in paragraph 42.55(4)*"d"* shall apply.

42.55(7) *Appeals.* Challenges to an action by the department of revenue related to tax credit transfers, the claiming of tax credits, tax credit revocation, or repayment or recovery of tax credits must be brought pursuant to 701—Chapter 7.

This rule is intended to implement Iowa Code chapter 404A as amended by 2016 Iowa Acts, House File 2443, and Iowa Code section 422.11D.

[**ARC 2928C**, IAB 2/1/17, effective 3/8/17]

701—42.56(15,422) Renewable chemical production tax credit program. An eligible business that has received a renewable chemical production tax credit certificate from the economic development authority may claim a tax credit against individual income tax. The credit is equal to the product of five cents multiplied by the number of pounds of renewable chemicals produced in Iowa from biomass feedstock by the eligible business during a given production year, subject to the limitations described in Iowa Code sections 15.315 through 15.322, 261—Chapter 81, and this rule. The economic development authority's rules on eligibility for the credit may be found in 261—Chapter 81.

42.56(1) *Application and agreement for the credit.* To be eligible for the tax credit, the eligible business must apply to and enter into an agreement with the economic development authority. The economic development authority's rules on the application and agreement process may be found in 261—Chapter 81.

42.56(2) *Computation of the amount of credit and certificate issuance.* Upon establishing that all requirements of the program and the agreement have been fulfilled and verifying the taxpayer's eligibility for the tax credit, the economic development authority calculates the credit. Then the economic development authority issues the related tax credit certificate to the eligible business stating

the amount of the renewable chemical production tax credit that the eligible business may claim. A tax credit certificate shall not be issued by the economic development authority prior to July 1, 2018. The economic development authority's rules on credit certificate issuance may be found in 261—Chapter 81.

42.56(3) *Claiming the tax credit.*

a. Claiming the credit, generally. To claim the credit, a taxpayer must include one or more tax credit certificates with the taxpayer's tax return for the tax year during which the eligible business was issued the tax credit certificate or certificates. If the taxpayer claiming the credit has already filed a return for the tax year for which the credit certificate was issued, the taxpayer may claim the credit on an amended return. The taxpayer must file the amended return within the statute of limitations applicable to such amended return. No tax credit may be claimed under this program by a taxpayer prior to September 1, 2018.

b. Claiming the credit of a pass-through entity. To claim the credit of an eligible business that is a pass-through entity, an individual taxpayer must claim the credit on the tax return for the tax year during which the eligible business received the tax credit certificate. Such tax year may be either the tax year of the eligible business or of the individual.

EXAMPLE: A partnership has a fiscal year of September 2017 through August 2018. The partnership receives a renewable chemical production tax credit certificate under this program in July 2018, which is during the partnership's 2017 tax year. A partner in the partnership files individual returns on a calendar year basis, which means that the credit was issued in the partner's 2018 tax year. That partner may file an amended 2017 tax return to claim the credit based on the partnership's tax year, or that partner may claim the credit on the partner's 2018 tax return based on the partner's own tax year.

c. Information required. The tax credit certificate shall include the taxpayer's name, address, tax identification number, the amount of the credit, the name of the eligible business, and any other information required by the department of revenue.

d. Allocation to the individual owners of the entity or beneficiaries of an estate or trust. An individual may claim the credit of a partnership, limited liability company, S corporation, cooperative organized under Iowa Code chapter 501 and filing as a partnership for tax purposes, estate, or trust electing to have income taxed directly to the individual. The amount claimed by the individual shall be based on the pro rata share of the individual's earnings from the partnership, limited liability company, S corporation, cooperative, estate, or trust.

e. Refundability. Any credit in excess of the tax liability is refundable. In lieu of claiming a refund, the taxpayer may elect to have the overpayment shown on the taxpayer's final, completed return credited to the tax liability for the following tax year.

f. Transferability. Tax credit certificates shall not be transferred to any other person.

g. Rescission and recapture. The tax credit certificate, unless rescinded by the economic development authority, shall be accepted by the department of revenue, subject to any conditions or restrictions placed upon the face of the tax credit certificate by the economic development authority and subject to the limitations of the program. Should the economic development authority reduce, terminate, or rescind any tax credits issued under the program, the eligible business may be subject to the repayment or recapture of any credits already claimed. The economic development authority's rules related to the program may be found in 261—Chapter 81. The repayment of tax credits or recapture by the department of revenue shall be accomplished in the same manner as provided in Iowa Code section 15.330(2).

This rule is intended to implement Iowa Code section 422.10B.

[**ARC 3008C**, IAB 3/29/17, effective 5/3/17]

[Filed 12/12/74]
[Filed 12/10/76, Notice 9/22/76—published 12/29/76, effective 2/2/77]
[Filed 10/28/77, Notice 9/21/77—published 11/16/77, effective 12/21/77]
[Filed 12/7/79, Notice 10/31/79—published 12/26/79, effective 1/30/80]
[Filed emergency 7/17/80—published 8/6/80, effective 7/17/80]
[Filed 12/3/82, Notice 10/27/82—published 12/22/82, effective 1/26/83]
[Filed 12/16/83, Notice 11/9/83—published 1/4/84, effective 2/8/84]

[Filed 5/31/85, Notice 4/24/85—published 6/19/85, effective 7/24/85]
[Filed 8/23/85, Notice 7/17/85—published 9/11/85, effective 10/16/85]
[Filed 9/6/85, Notice 7/31/85—published 9/25/85, effective 10/30/85]◊
[Filed 1/24/86, Notice 12/18/85—published 2/12/86, effective 3/19/86]
[Filed 6/27/86, Notice 5/7/86—published 7/16/86, effective 8/20/86]
[Filed 8/22/86, Notice 7/16/86—published 9/10/86, effective 10/15/86]
[Filed 10/3/86, Notice 8/27/86—published 10/22/86, effective 11/26/86]
[Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]
[Filed emergency 12/23/87—published 1/13/88, effective 12/23/87]
[Filed 12/23/87, Notice 11/18/87—published 1/13/88, effective 2/17/88]
[Filed 2/19/88, Notice 1/13/88—published 3/9/88, effective 4/13/88]
[Filed 8/19/88, Notice 7/13/88—published 9/7/88, effective 10/12/88]
[Filed 1/19/90, Notice 12/13/89—published 2/7/90, effective 3/14/90]◊
[Filed 8/30/90, Notice 7/25/90—published 9/19/90, effective 10/24/90]
[Filed 10/26/90, Notice 9/19/90—published 11/14/90, effective 12/19/90]
[Filed 11/9/90, Notice 10/3/90—published 11/28/90, effective 1/2/91]
[Filed 11/7/91, Notice 10/2/91—published 11/27/91, effective 1/1/92]
[Filed 10/23/92, Notice 9/16/92—published 11/11/92, effective 12/16/92]
[Filed 11/20/92, Notice 10/14/92—published 12/9/92, effective 1/13/93]
[Filed 9/10/93, Notice 8/4/93—published 9/29/93, effective 11/3/93]
[Filed 5/20/94, Notice 4/13/94—published 6/8/94, effective 7/13/94]
[Filed 9/23/94, Notice 8/17/94—published 10/12/94, effective 11/16/94]
[Filed 1/12/96, Notice 12/6/95—published 1/31/96, effective 3/6/96]
[Filed 8/23/96, Notice 7/17/96—published 9/11/96, effective 10/16/96]
[Filed 10/17/97, Notice 9/10/97—published 11/5/97, effective 12/10/97]
[Filed 7/10/98, Notice 6/3/98—published 7/29/98, effective 9/2/98]
[Filed 10/2/98, Notice 8/26/98—published 10/21/98, effective 11/25/98]
[Filed 11/13/98, Notice 10/7/98—published 12/2/98, effective 1/6/99]
[Filed 12/23/99, Notice 11/17/99—published 1/12/00, effective 2/16/00]
[Filed 1/5/01, Notice 11/29/00—published 1/24/01, effective 2/28/01]
[Filed 5/24/01, Notice 4/18/01—published 6/13/01, effective 7/18/01]
[Filed 12/7/01, Notice 10/31/01—published 12/26/01, effective 1/30/02]
[Filed 2/1/02, Notice 12/26/01—published 2/20/02, effective 3/27/02]
[Filed 3/15/02, Notice 1/23/02—published 4/3/02, effective 5/8/02]
[Filed 3/15/02, Notice 2/6/02—published 4/3/02, effective 5/8/02]
[Filed 10/11/02, Notice 9/4/02—published 10/30/02, effective 12/4/02]◊
[Filed 11/8/02, Notice 10/2/02—published 11/27/02, effective 1/1/03]
[Filed 1/17/03, Notice 12/11/02—published 2/5/03, effective 3/12/03]
[Filed 9/26/03, Notice 8/20/03—published 10/15/03, effective 11/19/03]◊
[Filed 10/24/03, Notice 9/17/03—published 11/12/03, effective 12/17/03]◊
[Filed 11/6/03, Notice 10/1/03—published 11/26/03, effective 12/31/03]
[Filed 12/5/03, Notice 10/15/03—published 12/24/03, effective 1/28/04]◊
[Filed 12/31/03, Notice 11/26/03—published 1/21/04, effective 2/25/04]
[Filed 1/30/04, Notice 12/24/03—published 2/18/04, effective 3/24/04]◊
[Filed 8/12/04, Notice 7/7/04—published 9/1/04, effective 10/6/04]
[Filed 9/24/04, Notice 8/18/04—published 10/13/04, effective 11/17/04]
[Filed 10/22/04, Notice 9/15/04—published 11/10/04, effective 12/15/04]
[Filed 11/4/04, Notice 9/29/04—published 11/24/04, effective 12/29/04]
[Filed 12/3/04, Notice 10/27/04—published 12/22/04, effective 1/26/05]
[Filed 1/14/05, Notice 12/8/04—published 2/2/05, effective 3/9/05]
[Filed 9/22/05, Notice 8/3/05—published 10/12/05, effective 11/16/05]◊
[Filed 10/20/05, Notice 9/14/05—published 11/9/05, effective 12/14/05]

[Filed 12/30/05, Notice 11/23/05—published 1/18/06, effective 2/22/06]◊
[Filed 1/27/06, Notice 12/21/05—published 2/15/06, effective 3/22/06]
[Filed 6/2/06, Notice 3/29/06—published 6/21/06, effective 7/26/06]
[Filed 7/28/06, Notice 6/21/06—published 8/16/06, effective 9/20/06]
[Filed 9/8/06, Notice 7/19/06—published 9/27/06, effective 11/1/06]
[Filed 10/5/06, Notice 8/30/06—published 10/25/06, effective 11/29/06]◊
[Filed 11/1/06, Notice 8/16/06—published 11/22/06, effective 12/27/06]
[Filed 12/13/06, Notice 11/8/06—published 1/3/07, effective 2/7/07]
[Filed 1/11/07, Notice 12/6/06—published 1/31/07, effective 3/7/07]
[Filed 10/5/07, Notice 8/15/07—published 10/24/07, effective 11/28/07]
[Filed 10/5/07, Notice 8/29/07—published 10/24/07, effective 11/28/07]
[Filed 10/19/07, Notice 9/12/07—published 11/7/07, effective 12/12/07]◊
[Filed 3/7/08, Notice 1/30/08—published 3/26/08, effective 4/30/08]
[Filed 5/2/08, Notice 3/26/08—published 5/21/08, effective 6/25/08]
[Filed 10/31/08, Notice 9/24/08—published 11/19/08, effective 12/24/08]◊
[Filed ARC 8702B (Notice ARC 8512B, IAB 2/10/10), IAB 4/21/10, effective 5/26/10]
[Filed ARC 9104B (Notice ARC 8954B, IAB 7/28/10), IAB 9/22/10, effective 10/27/10]
[Filed ARC 9821B (Notice ARC 9741B, IAB 9/7/11), IAB 11/2/11, effective 12/7/11]
[Filed ARC 9820B (Notice ARC 9740B, IAB 9/7/11), IAB 11/2/11, effective 12/7/11]
[Filed ARC 9876B (Notice ARC 9796B, IAB 10/5/11), IAB 11/30/11, effective 1/4/12]
[Filed ARC 9966B (Notice ARC 9856B, IAB 11/16/11), IAB 1/11/12, effective 2/15/12]
[Filed ARC 0251C (Notice ARC 0145C, IAB 5/30/12), IAB 8/8/12, effective 9/12/12]
[Filed ARC 0337C (Notice ARC 0232C, IAB 7/25/12), IAB 9/19/12, effective 10/24/12]
[Filed ARC 0361C (Notice ARC 0253C, IAB 8/8/12), IAB 10/3/12, effective 11/7/12]
[Filed ARC 0398C (Notice ARC 0292C, IAB 8/22/12), IAB 10/17/12, effective 11/21/12]
[Filed ARC 1101C (Notice ARC 0976C, IAB 8/21/13), IAB 10/16/13, effective 11/20/13]
[Filed ARC 1102C (Notice ARC 0975C, IAB 8/21/13), IAB 10/16/13, effective 11/20/13]
[Filed ARC 1138C (Notice ARC 0998C, IAB 9/4/13), IAB 10/30/13, effective 12/4/13]
[Filed ARC 1303C (Notice ARC 1231C, IAB 12/11/13), IAB 2/5/14, effective 3/12/14]
[Filed ARC 1545C (Notice ARC 1469C, IAB 5/28/14), IAB 7/23/14, effective 8/27/14]
[Filed ARC 1665C (Notice ARC 1590C, IAB 8/20/14), IAB 10/15/14, effective 11/19/14]
[Filed ARC 1666C (Notice ARC 1589C, IAB 8/20/14), IAB 10/15/14, effective 11/19/14]
[Filed ARC 1744C (Notice ARC 1654C, IAB 10/1/14), IAB 11/26/14, effective 12/31/14]
[Filed ARC 1949C (Notice ARC 1857C, IAB 2/4/15), IAB 4/1/15, effective 5/6/15]
[Filed ARC 1968C (Notice ARC 1837C, IAB 1/21/15), IAB 4/15/15, effective 5/20/15]
[Filed ARC 2632C (Notice ARC 2547C, IAB 5/25/16), IAB 7/20/16, effective 8/24/16]
[Filed ARC 2772C (Notice ARC 2681C, IAB 8/17/16), IAB 10/12/16, effective 11/16/16]
[Filed ARC 2829C (Notice ARC 2737C, IAB 9/28/16), IAB 11/23/16, effective 1/1/17]
[Filed ARC 2833C (Notice ARC 2776C, IAB 10/12/16), IAB 12/7/16, effective 1/11/17]
[Filed ARC 2925C (Notice ARC 2736C, IAB 9/28/16), IAB 2/1/17, effective 3/8/17]
[Filed ARC 2928C (Notice ARC 2806C, IAB 11/9/16), IAB 2/1/17, effective 3/8/17]
[Filed ARC 3008C (Notice ARC 2865C, IAB 12/21/16), IAB 3/29/17, effective 5/3/17]
[Filed ARC 3043C (Notice ARC 2896C, IAB 1/18/17), IAB 4/26/17, effective 5/31/17]
[Filed ARC 3749C (Notice ARC 3579C, IAB 1/17/18), IAB 4/11/18, effective 5/16/18]
[Filed ARC 3837C (Notice ARC 3724C, IAB 4/11/18), IAB 6/6/18, effective 7/11/18]
[Filed ARC 4143C (Notice ARC 4025C, IAB 9/26/18), IAB 11/21/18, effective 12/26/18]
[Filed ARC 5308C (Notice ARC 5181C, IAB 9/23/20), IAB 12/2/20, effective 1/6/21]
[Filed ARC 5589C (Notice ARC 5469C, IAB 2/24/21), IAB 4/21/21, effective 5/26/21]
[Filed ARC 5590C (Notice ARC 5470C, IAB 2/24/21), IAB 4/21/21, effective 5/26/21]

◊ Two or more ARCs

CHAPTER 52
FILING RETURNS, PAYMENT OF TAX, PENALTY AND INTEREST, AND TAX CREDITS

[Prior to 12/17/86, Revenue Department[730]]

701—52.1(422) Who must file. Every corporation, organized under the laws of Iowa or qualified to do business within this state or doing business within Iowa, regardless of net income, shall file a true and accurate return of its income or loss for the taxable period. The return shall be signed by the president or other duly authorized officer. If the corporation was inactive or not doing business within Iowa, although qualified to do so, during the taxable year, the return must contain a statement to that effect.

For tax years beginning on or after January 1, 1989, every corporation organized under the laws of Iowa, doing business within Iowa, or deriving income from sources consisting of real or tangible property located or having a situs within Iowa, shall file a true and accurate return of its income or loss for the taxable period. The return shall be signed by the president or other duly authorized officer.

For tax years beginning on or after January 1, 1995, every corporation organized under the laws of Iowa, doing business within Iowa, or deriving income from sources consisting of real, tangible, or intangible property located or having a situs within Iowa, shall file a true and accurate return of its income or loss for the taxable period. The return shall be signed by the president or other duly authorized officer. For tax years beginning on or after January 1, 1999, every corporation doing business within Iowa, or deriving income from sources consisting of real, tangible, or intangible property located or having a situs within Iowa, shall file a true and accurate return of its income or loss for the taxable period. The return shall be signed by the president or other duly authorized officer.

Political organizations described in Internal Revenue Code Section 527 which are domiciled in this state and are required to file federal Form 1120POL and pay federal corporation income tax are subject to Iowa corporation income tax to the same extent as they are subject to federal corporation income tax.

Homeowners associations described in Internal Revenue Code Section 528 which are domiciled in this state and are required to file federal Form 1120H and pay federal corporation income tax are subject to Iowa corporation income tax to the same extent as they are subject to federal corporation income tax.

52.1(1) *Definitions.*

a. Doing business. The term "doing business" is used in a comprehensive sense and includes all activities or any transactions for the purpose of financial or pecuniary gain or profit. Irrespective of the nature of its activities, every corporation organized for profit and carrying out any of the purposes of its organization shall be deemed to be "doing business." In determining whether a corporation is doing business, it is immaterial whether its activities actually result in a profit or loss.

b. Representative. A person may be considered a representative even though that person may not be considered an employee for other purposes such as withholding of income tax from commissions.

c. Tangible property having a situs within this state. The term "tangible property having a situs within this state" means that tangible property owned or used by a foreign corporation is habitually present in Iowa or it maintains a fixed and regular route through Iowa sufficient so that Iowa could constitutionally under the 14th Amendment and Commerce Clause of the United States Constitution impose an apportioned ad valorem tax on the property. *Central R. Co. v. Pennsylvania,* 370 U.S. 607, 82 S.Ct. 1297, 8 L.Ed.2d (1962); *New York Central & H. Railroad Co. v. Miller,* 202 U.S. 584, 26 S.Ct. 714, 50 L.Ed. 1155 (1906); *American Refrigerator Transit Company v. State Tax Commission,* 395 P.2d 127 (Or. 1964); *Upper Missouri River Corporation v. Board of Review,* Woodbury County, 210 N.W.2d 828.

d. Intangible property located or having a situs within Iowa. Intangible property does not have a situs in the physical sense in any particular place. *Wheeling Steel Corporation v. Fox,* 298 U.S. 193, 80 L.Ed. 1143, 56 S.Ct. 773 (1936); *McNamara v. George Engine Company, Inc.,* 519 So.2d 217 (La. App. 1988). The term "intangible property located or having a situs within Iowa" means generally that the intangible property belongs to a corporation with its commercial domicile in Iowa or, regardless of where the corporation which owns the intangible property has its commercial domicile, the intangible property has become an integral part of some business activity occurring regularly in Iowa. *Beidler v. South Carolina Tax Commission,* 282 U.S. 1, 75 L.Ed. 131, 51 S.Ct. 54 (1930); *Geoffrey, Inc. v. South*

Carolina Tax Commission, 437 S.E.2d 13 (S.C. 1993), cert. denied, 114 S.Ct. 550 (1993); *Kmart Properties, Inc. v. Taxation & Revenue Department of New Mexico,* 131 P. 3d 27 (N.M. Ct. App. 2001), rev'd on other issues, 131 P. 3d 22 (N.M. 2005); *Secretary, Department of Revenue v. Gap (Apparel), Inc.,* 886 So. 2d 459 (La.Ct.App. 2004); *A & F Trademark v. Tolson,* 605 S.E. 2d 187 (N.C.App. 2004), cert. denied 126 S.Ct. 353 (2005); *Lanco, Inc. v. Director, Division of Taxation,* 879 A.2d 1234 (N.J.Super.A.D. 2005), aff'd, 908 A.2d 176 (N.J. 2006) (per curiam), cert. denied 127 S.Ct. 2974 (June 18, 2007); *Geoffrey, Inc. v. Oklahoma Tax Commission,* 132 P. 3d 632 (Okla. Ct. Civ. App. 2005), cert. denied (Mar. 20, 2006), as corrected (Apr. 12, 2006); *FIA Card Services, Inc. v. Tax Comm'r,* 640 S.E.2d 226 (W. Va. 2006), cert. denied, 127 S.Ct. 2997 (June 18, 2007); *Capital One Bank v. Commissioner of Revenue,* 899 N.E.2d 76 (Mass. 2009); *Geoffrey, Inc. v. Commissioner of Revenue,* 899 N.E.2d 87 (Mass. 2009); *KFC Corporation v. Iowa Department of Revenue,* 792 N.W. 2d 308 (Iowa 2010), cert. denied 132 S. Ct. 97 (October 3, 2011). The following is a noninclusive list of types of intangible property: copyrights, patents, processes, trademarks, trade names, franchises, contracts, bank deposits including certificates of deposit, repurchase agreements, mortgage loans, consumer loans, business loans, shares of stocks, bonds, licenses, partnership interests including limited partnership interests, leaseholds, money, evidences of an interest in property, evidences of debts such as credit card debt, leases, an undivided interest in a loan, rights-of-way, and interests in trusts.

The term also includes every foreign corporation which has acquired a commercial domicile in Iowa and whose property has not acquired a constitutional tax situs outside of Iowa.

52.1(2) *Corporate activities not creating taxability.* Public Law 86-272, 15 U.S.C.A., Sections 381-385, in general prohibits any state from imposing an income tax on income derived within the state from interstate commerce if the only business activity within the state consists of the solicitation of orders of tangible personal property by or on behalf of a corporation by its employees or representatives. Such orders must be sent outside the state for approval or rejection and, if approved, must be filled by shipment or delivery from a point outside the state to be within the purview of Public Law 86-272. Public Law 86-272 does not extend to those corporations which sell services, real estate, or intangibles in more than one state or to domestic corporations. For example, Public Law 86-272 does not extend to brokers or manufacturers' representatives or other persons or entities selling products for another person or entity.

a. If the only activities in Iowa of a foreign corporation selling tangible personal property are those of the type described in the noninclusive listing below, the corporation is protected from the Iowa corporation income tax law by Public Law 86-272.

(1) The free distribution by salespersons of product samples, brochures, and catalogues which explain the use of or laud the product, or both.

(2) The lease or ownership of motor vehicles for use by salespersons in soliciting orders.

(3) Salespersons' negotiation of a price for a product, subject to approval or rejection outside the taxing state of such negotiated price and solicited order.

(4) Demonstration by salesperson, prior to the sale, of how the corporation's product works.

(5) The placement of advertising in newspapers, radio, and television.

(6) Delivery of goods to customers by foreign corporation in its own or leased vehicles from a point outside the taxing state. Delivery does not include nonimmune activities, such as picking up damaged goods.

(7) Collection of state or local-option sales taxes or state use taxes from customers.

(8) Audit of inventory levels by salespersons to determine if corporation's customer needs more inventory.

(9) Recruitment, training, evaluation, and management of salespersons pertaining to solicitation of orders.

(10) Salespersons' intervention/mediation in credit disputes between customers and non-Iowa located corporate departments.

(11) Use of hotel rooms and homes for sales-related meetings pertaining to solicitation of orders.

(12) Salespersons' assistance to wholesalers in obtaining suitable displays for products at retail stores.

(13) Salespersons' furnishing of display racks to retailers.

(14) Salespersons' advice to retailers on the art of displaying goods to the public.

(15) Rental of hotel rooms for short-term display of products.

(16) Mere forwarding of customer questions, concerns, or problems by salespersons to non-Iowa locations.

b. For tax years beginning on or after January 1, 1996, a foreign corporation will not be considered doing business in this state or deriving income from sources within this state if its only activities within this state are one or more of the following activities:

(1) Holding meetings of the board of directors or shareholders, or holiday parties, or employee appreciation dinners.

(2) Maintaining bank accounts.

(3) Borrowing money, with or without security.

(4) Utilizing Iowa courts for litigation.

(5) Owning and controlling a subsidiary corporation which is incorporated in or which is transacting business within this state where the holding or parent company has no physical presence in the state as that presence relates to the ownership or control of the subsidiary.

(6) Recruiting personnel where hiring occurs outside the state.

c. For tax years beginning on or after January 1, 1997, a foreign corporation will not be considered doing business in this state or deriving income from sources within this state if its only activities within this state, in addition to the activities listed in paragraph *"b"* above, are training its employees or educating its employees, or using facilities in this state for this purpose.

d. For tax years beginning on or after January 1, 2006, a foreign corporation will not be considered to be doing business in Iowa or deriving income from sources within Iowa if its only activities within Iowa, in addition to the activities listed in paragraphs "b" and "c" of this subrule, are utilizing a distribution facility in Iowa, owning or leasing property at a distribution facility in Iowa, or selling property shipped or distributed from a distribution facility in Iowa.

A distribution facility is an establishment at which shipments of tangible personal property are processed for delivery to customers. A distribution facility does not include an establishment at which retail sales of tangible personal property or returns of such property are undertaken with respect to retail customers more than 12 days in a year. However, an exception to the 12-day requirement is allowed for distribution facilities that process customer orders by mail, telephone, or electronic means, if the distribution facility also processes shipments of tangible personal property to customers, as long as no more than 10 percent of the goods are delivered or shipped to a purchaser in Iowa.

The following nonexclusive examples illustrate how this subrule applies:

EXAMPLE 1: A, a foreign corporation, stores its inventory of books at a facility in Iowa. The facility processes orders for these books solely by mail, telephone and the Internet on behalf of A, and customers are not allowed to purchase books at the facility's site in Iowa. The facility processes shipments of these books, and 5 percent of the books at this facility are delivered to purchasers located in Iowa. A does not conduct any other business activities in Iowa. A is not considered to be doing business in Iowa because less than 10 percent of the books at the facility are delivered to an Iowa customer.

EXAMPLE 2: B, a foreign corporation, stores its inventory of compact disks at a facility in Iowa. The facility processes orders for these compact disks solely by mail, telephone and the Internet on behalf of B, and customers are not allowed to purchase compact disks at the facility's site in Iowa. The facility processes shipments of these compact disks, and 15 percent of the compact disks at the facility are delivered to purchasers located in Iowa. B does not conduct any other business activities in Iowa. B is considered to be doing business in Iowa because more than 10 percent of the compact disks at the facility are delivered to an Iowa customer.

EXAMPLE 3: C, a foreign corporation, stores its inventory of doors and windows at a facility in Iowa. The facility processes orders for these windows and doors solely by mail, telephone and the Internet, and customers are not allowed to purchase these windows and doors at the facility's site in Iowa. The facility processes shipments of these windows and doors, and 7 percent of the windows and doors are delivered to purchasers located in Iowa. C will also install these windows and doors in Iowa upon customer request.

C is considered to be doing business in Iowa even though less than 10 percent of the windows and doors are delivered to Iowa customers because C is also conducting installation activities in Iowa which are not protected under Public Law 86-272.

EXAMPLE 4: D, a foreign corporation, stores its inventory of home decorating and craft kits at a facility in Iowa. The facility does not process any customer orders by mail, telephone or the Internet, and does not process any shipments of these kits directly to customers. D allows customers to come to the facility 14 days each year to directly purchase these kits, and customers must arrange for their own delivery of the kits. D is considered to be doing business in Iowa because sales to retail customers are conducted more than 12 days in a year, and the facility does not process customer orders or shipments to customers.

52.1(3) *Corporate activities creating taxability.* "Solicitation of orders" within Public Law 86-272 is limited to those activities which explicitly or implicitly propose a sale or which are entirely ancillary to requests for purchases. Activities that are entirely ancillary to requests for purchases are ones that serve no independent business function apart from their connection to the soliciting of orders. An activity that is not ancillary to requests for purchases is one that a corporation (taxpayer) has a reason to do anyway whether or not it chooses to allocate it to its sales force operating in Iowa (such as repair, installation, service-type activities, or collection on accounts). Activities that take place after a sale ordinarily will not be entirely ancillary to a request for purchases and, therefore, ordinarily will not be considered in "solicitation of orders." *Wisconsin Department of Revenue v. William Wrigley, Jr. Company,* 505 U.S. 214, 120 L.Ed.2d 174, 112 S.Ct. 2447 (1992).

De minimis activities which are not "solicitation of orders" are protected under Public Law 86-272. Whether in-state nonsolicitation activities are sufficiently de minimis to avoid loss of tax immunity depends upon whether those activities establish only a trivial additional connection with the taxing state. Whether a corporation's nonsolicitation in-state activities are de minimis should not be decided solely by the quantity of one type of such activity but, rather, all types of nonsolicitation activities of the taxpayer should be considered in their totality. *Wisconsin v. Wrigley,* 505 U.S. 214, 120 L.Ed.2d 174, 112 S.Ct. 2447 (1992). Frequency of the activity may be relevant, but an isolated activity is not invariably trivial. The mere fact that an activity involves small amounts of money or property does not invariably mean it is trivial.

If a foreign corporation has greater than a de minimis amount of Iowa nonsolicitation activity which includes activity of the types described in the noninclusive listing below, whether done by the salesperson, other employee, or other representative, it is not immunized from the Iowa corporation income tax by Public Law 86-272.

a. Installation or assembly of the corporate product.

b. Ownership or lease of real estate by corporation.

c. Solicitation of orders for, or sale of, services or real estate.

d. Sale of tangible personal property (as opposed to solicitation of orders) or performance of services within Iowa.

e. Maintenance of a stock of inventory.

f. Existence of an office or other business location.

g. Managerial activities pertaining to nonsolicitation activities.

h. Collections on regular or delinquent accounts.

i. Technical assistance and training given after the sale to purchaser and user of corporate products.

j. The repair or replacement of faulty or damaged goods.

k. The pickup of damaged, obsolete, or returned merchandise from purchaser or user.

l. Rectification of or assistance in rectifying any product complaints, shipping complaints, etc., if more is involved than relaying complaints to a non-Iowa location.

m. Delivery of corporate merchandise inventory to corporation's distributors or dealers on consignment.

n. Maintenance of personal property which is not related to solicitation of orders.

o. Participation in recruitment, training, monitoring, or approval of servicing distributors, dealers, or others where purchasers of corporation's products can have such products serviced or repaired.

p. Inspection or verification of faulty or damaged goods.

q. Inspection of the customer's installation of the corporate product.

r. Research.

s. Salespersons' use of part of their homes or other places as an office if the corporation pays for such use.

t. The use of samples for replacement or sale; storage of such samples at home or in rented space.

u. Removal of old or defective products.

v. Verification of the destruction of damaged merchandise.

w. Independent contractors, agents, brokers, representatives and other individuals or entities who act on behalf of or at the direction of the corporation (taxpayer) and who do non-de minimis amounts of nonsolicitation activities remove the corporation from the protection of Public Law 86-272. However, the maintenance of an office in Iowa or the making of sales in Iowa by independent contractors does not remove the corporation from the protection of Public Law 86-272. The term "independent contractors" means commission agents, brokers, or other independent contractors who are engaged in selling or soliciting orders for the sale of tangible personal property or perform other services for more than one principal and who hold themselves out as such in the regular course of their business activities. If a person is subject to the direct control of the foreign corporation that person may not qualify as an independent contractor.

52.1(4) *Taxation of corporations having only intangible property located or having a situs in Iowa.* For tax years beginning on or after January 1, 1995, corporations whose only connection with Iowa is their ownership of intangible property located or having a situs in Iowa are subject to Iowa income tax and must file an Iowa income tax return. Intangible property is located or has a situs in Iowa if the corporation's commercial domicile is in Iowa and the intangible property has not become an integral part of some business activity occurring regularly within or without Iowa. Regardless whether the corporation's commercial domicile is in or out of Iowa, intangible property is located or has a situs in Iowa if the intangible property has become an integral part of some business activity occurring regularly in Iowa. *Geoffrey, Inc. v. South Carolina Tax Commission,* 437 S.E.2d 13 (S.C. 1993), cert. denied, 114 S.Ct. 550 (1993); *Arizona Tractor Company v. Arizona State Tax Commission,* 115 Ariz. 602, 566 P.2d 1348 (Ariz. App. 1977); *KFC Corporation v. Iowa Department of Revenue,* 792 N.W. 2d 308 (Iowa 2010), cert. denied 132 S.Ct. 97 (October 3, 2011). In the event that the intangible property interest is a general or limited partnership interest, the location or situs of that partnership interest is the place(s) where the partnership conducts business. *Arizona Tractor Company v. Arizona State Tax Commission,* supra.

The following nonexclusive examples illustrate how this subrule applies:

EXAMPLE 1: A, a corporation with a commercial domicile in State X, has a limited partnership interest in a partnership which does a regular business in Iowa. A has no physical presence in Iowa and has no other contact with Iowa. A's interest in the limited partnership is intangible personal property. A is required to file an Iowa income tax return because A's intangible personal property limited partnership interest has a business situs in Iowa. *Arizona Tractor Company v. Arizona State Tax Commission,* supra.

EXAMPLE 2: B, a corporation with a commercial domicile in State X, owns stock in a subsidiary corporation doing business regularly in Iowa. B has no physical presence in Iowa and has no other contact with Iowa. B controls the subsidiary and has a unitary relationship with it. B pledged the subsidiary stock to secure a line of credit from a bank and used the loaned funds in B's business. Under these circumstances, the subsidiary stock is not an integral part of the subsidiary's business and, therefore, the stock does not have a location or situs in Iowa. Accordingly, B is not required to file an Iowa income tax return as a result of any dividends received by B or capital gains received by B from the sale of the stock. *McNamara v. George Engine Company, Inc.,* 519 So.2d 217 (La. App. 1988).

EXAMPLE 3: C, a corporation with a commercial domicile in State X, owns trademarks and trade names which it, by license agreements, allows other corporations to use. Some of those other corporations do business in Iowa. The trademarks and trade names are used by these other corporations

at their Iowa stores in connection with their business activities at those stores. C has no physical presence in Iowa and has no other contact with Iowa. C is paid royalties of 1 percent of net sales of the licensed products or services. C is required to file an Iowa income tax return because C's intangible property interests in the trademarks and trade names have situses in Iowa. *Geoffrey, Inc. v. South Carolina Tax Commission,* 437 S.E.2d 13 (S.C. 1993), cert. denied, 114 S.Ct. 550 (1993).

EXAMPLE 4: D, a corporation with a commercial domicile in Iowa, is a holding company which does not sell any tangible personal property or sell any business service but which does own the stock of five subsidiaries, all of which do business outside of Iowa. D has no physical presence outside of Iowa and has no other contact outside of Iowa. D has a unitary relationship with each subsidiary. Under these circumstances, the stock is not an integral part of each subsidiary's business so the stock does not have a location or situs outside of Iowa. The location or situs of the stock is in Iowa because D's commercial domicile is in Iowa. Accordingly, all of the dividends from the stock paid to D and any capital gains incurred as a result of D's sale of the stock are wholly taxed by Iowa.

EXAMPLE 5: E, a corporation with a commercial domicile in Iowa, owns trademarks and trade names which it, by license agreements, allows other corporations, located outside of Iowa, to use. The trademarks and trade names are used by these other corporations at their non-Iowa stores in connection with their business activities at those stores. E has no physical presence outside of Iowa and has no other contact outside of Iowa. E has business activities in Iowa. The fees and royalties paid to E are part of E's unitary business income. Under these circumstances, E is entitled to apportion its net income within and without Iowa because E's intangible property interests in the trademarks and trade names have situses outside of Iowa and E has business activities in Iowa.

EXAMPLE 6: F, a corporation with a commercial domicile in State X, owns all of the stock of a subsidiary corporation doing business in Iowa. F has no physical presence in Iowa and no other contact with Iowa. F loans funds to the subsidiary which the subsidiary uses in its Iowa business. Under these circumstances, the interest-bearing asset is not an integral part of the subsidiary's business and, therefore, that intangible asset does not have a location or situs in Iowa. Accordingly, F is not required to file an Iowa income tax return. *Beidler v. South Carolina Tax Commission,* 282 U.S. 1, 75 L.Ed.131, 51 S.Ct. 54 (1930).

EXAMPLE 7: G, a corporation with a commercial domicile in State X, earns fees from the licensing of custom computer software. G has no physical presence in Iowa and no other contact with Iowa. G licenses the software to other corporations which do business in Iowa and which use the software in that business in Iowa. Under these circumstances, regardless whether the fees constitute royalties or something else, the license fees are earned from intangible personal property with a location or situs in Iowa. Accordingly, G is required to file an Iowa income tax return.

EXAMPLE 8: H, a corporation with a commercial domicile in State X, has no physical presence in Iowa. H has entered into a contract with an independent contractor to solicit sales of H's magazines in Iowa. The independent contractor does business in Iowa and receives payment for the magazines and deposits the funds in an Iowa bank for H's account. H earns interest on this account. Under these circumstances which are H's only contact with Iowa, H's interest-bearing account is an integral part of business activity in Iowa. Accordingly, H is required to file an Iowa income tax return and include the interest income in the numerator of the business activity formula.

EXAMPLE 9: J, a corporation with a commercial domicile in State X, earns income from mortgages that the corporation has purchased. J has no physical presence in Iowa and no other contact with Iowa. J earns interest income from the mortgages on property located in Iowa. Under these circumstances, the interest income is an integral part of business activity in Iowa. Accordingly, J is required to file an Iowa income tax return and include the interest income from the mortgages related to Iowa property in the numerator of the apportionment factor.

52.1(5) *Taxation of "S" corporations, domestic international sales corporations and real estate investment trusts.* Certain corporations and other types of entities, which are taxable as corporations for federal purposes, may by federal election and qualification have a portion or all of their income taxable to the shareholders or the beneficiaries. Generally, the state of Iowa follows the federal provisions (with adjustments provided by Iowa law) for determining the amount and to whom the income is taxable.

Examples of entities which may avail themselves of pass-through provisions for taxation of at least part of their net income are real estate investment trusts, small business corporations electing to file under Sections 1371-1378 of the Internal Revenue Code, domestic international sales corporations as authorized under Sections 991-997 of the Internal Revenue Code, and certain types of cooperatives and regulated investment companies. The entity's portion of the net income which is taxable as corporation net income for federal purposes is generally also taxable as Iowa corporation income (with adjustments as provided by Iowa law) and the shareholders or beneficiaries will report on their Iowa returns their share of the organization's income reportable for federal purposes as shareholder income (with adjustments provided by Iowa law). Nonresident shareholders or beneficiaries are required to report their distributive share of said income reasonably attributable to Iowa sources. Schedules shall be filed with the individual's return showing the computation of the income attributable to Iowa sources and the computation of the nonresident taxpayer's distributive share thereof. Entities with a nonresident beneficiary or shareholder shall include a schedule in the return computing the amount of income as determined under 701—Chapter 54. It will be the responsibility of the entity to make the apportionment of the income and supply the nonresident taxpayer with information regarding the nonresident taxpayer's Iowa taxable income.

For tax years beginning on or after January 1, 1995, S corporations which are subject to tax on built-in gains under Section 1374 of the Internal Revenue Code or passive investment income under Section 1375 of the Internal Revenue Code are subject to Iowa corporation income tax on this income to the extent received from business carried on in this state or from sources in this state.

a. The starting point for computing the Iowa tax on built-in gains is the amount of built-in gains subject to federal tax after considering the federal income limitation. The starting point for computing the capital gains subject to Iowa tax is the amount of capital gains subject to federal tax. The starting point for computing the passive investment income subject to Iowa income tax is the amount of passive investment income subject to federal tax. To the extent that any of the above three types of income exist for federal income tax purposes, they are combined for Iowa income tax purposes.

b. No adjustment is made to the above amounts for either 50 percent of federal income tax or Iowa corporation income tax deducted in computing the federal net income of the S corporation for tax years beginning prior to January 1, 2008, and for tax years beginning on or after January 1, 2014. The 50 percent of federal income tax and Iowa corporation income tax deducted in computing federal net income are adjustments to the Iowa net income which flows through to the shareholders for tax years beginning prior to January 1, 2008, and for tax years beginning on or after January 1, 2014. For tax years beginning on or after January 1, 2008, but before January 1, 2014, an adjustment is made to the above amounts for either 50 percent of federal income tax or Iowa corporation income tax deducted in computing the federal net income of the S corporation.

c. The allocation and apportionment rules of 701—Chapter 54 apply to nonresident shareholders if the S corporation is carrying on business within and without the state of Iowa.

d. Any net operating loss carryforward arising in a taxable year for which the corporation was a C corporation shall be allowed as a deduction against the net recognized built-in gain, capital gains, or passive investment income of the S corporation for the taxable year. For purposes of determining the amount of any such loss which may be carried to any of the 15 subsequent taxable years, after the year of the net operating loss, the amount of the net recognized built-in gain shall be treated as taxable income. For taxable years beginning after August 5, 1997, a net operating loss can be carried forward 20 taxable years.

e. Except for estimated and other advance tax payments and any credit carryforward under Iowa Code section 422.33 arising in a taxable year for which the corporation was a C corporation no credits shall be allowed against the built-in gains tax or the tax on capital gains or passive investment income.

For tax years beginning after 1996, Iowa recognizes the federal election to treat subsidiaries of a parent corporation that has elected S corporation status as "qualified subchapter S subsidiaries" (QSSSs). To the extent that, for federal income tax purposes, the incomes and expenses of the QSSSs are combined with the parent's income and expenses, they must be combined for Iowa tax purposes.

52.1(6) *Exempted corporations and organizations filing requirements.*

a. Exempt status. An organization that is exempt from federal income tax under Section 501 of the Internal Revenue Code, unless the exemption is denied under Section 501, 502, 503 or 504 of the Internal Revenue Code, is exempt from Iowa corporation income tax except as set forth in paragraph *"e"* of this subrule. The department may, if a question arises regarding the exempt status of an organization, request a copy of the federal determination letter.

b. Information returns. Every corporation shall file returns of information as provided by Iowa Code sections 422.15 and 422.16 and any regulations regarding information returns.

c. Annual return. An organization or association which is exempt from Iowa corporation income tax because it is exempt from federal income tax is not required to file an annual income tax return unless it is subject to the tax on unrelated business income. The organization shall inform the director in writing of any revocation of or change of exempt status by the Internal Revenue Service within 30 days after the federal determination.

d. Tax on unrelated business income for tax years beginning on or after January 1, 1988. A tax is imposed on the unrelated business income of corporations, associations, and organizations exempt from the general business tax on corporations by Iowa Code section 422.34, subsection 2, to the extent this income is subject to tax under the Internal Revenue Code. The exempt organization is also subject to the alternative minimum tax imposed by Iowa Code section 422.33(4).

The exempt corporation, association, or organization must file Form IA 1120, Iowa Corporation Income Tax Return, to report its income and complete Form IA 4626 if subject to the alternative minimum tax. The exempt organization must make estimated tax payments if its expected income tax liability for the year is $1,000 or more.

The tax return is due the last day of the fourth month following the last day of the tax year and may be extended for six months by filing Form IA 7004 prior to the due date. For tax years beginning on or after January 1, 1991, the tax return is due on the fifteenth day of the fifth month following close of the tax year and may be extended six months if 90 percent of the tax is paid prior to the due date.

The starting point for computing Iowa taxable income is federal taxable income as properly computed before deduction for net operating losses. Federal taxable income shall be adjusted as required in Iowa Code section 422.35.

If the activities which generate the unrelated business income are carried on partly within and partly without the state, then the taxpayer should determine the portion of unrelated business income attributable to Iowa by the apportionment and allocation provisions of Iowa Code section 422.33.

The provisions of 701—Chapters 51, 52, 53, 54, 55 and 56 apply to the unrelated business income of organizations exempt from the general business tax on corporations.

e. Certain posts or organizations of past or present armed forces members may be tax-exempt corporations for tax years beginning after May 21, 2003. An organization that would have qualified as an organization exempt from federal income tax under Section 501(c)(19) of the Internal Revenue Code but for the fact that the requirement that 75 percent of the members need to be past or present armed forces members is not met because the membership includes ancestors or lineal descendants is considered to be an organization exempt from federal income tax.

This change is effective for tax years beginning after May 21, 2003.

f. Out-of-state business performing work in Iowa due to state-declared disaster. On or after January 1, 2016, see 701—Chapter 242 for filing requirements for an out-of-state business who enters Iowa to perform disaster and emergency-related work during a disaster response period as those terms are defined in Iowa Code section 29C.24.

52.1(7) *Income tax of corporations in liquidation.* When a corporation is in the process of liquidation, or in the hands of a receiver, the income tax returns must be made under oath or affirmation of the persons responsible for the conduct of the affairs of such corporations, and must be filed at the same time and in the same manner as required of other corporations.

52.1(8) *Income tax returns for corporations dissolved.* Corporations which have been dissolved during the income year must file income tax returns for the period prior to dissolution which has not already been covered by previous returns. Officers and directors are responsible for the filing of the returns and for the payment of taxes, if any, for the audit period provided by law.

Where a corporation dissolves and disposes of its assets without making provision for the payment of its accrued Iowa income tax, liability for the tax follows the assets so distributed and upon failure to secure the unpaid amount, suit to collect the tax may be instituted against the stockholders and other persons receiving the property, to the extent of the property received, except bona fide purchasers or others as provided by law.

52.1(9) *Income tax returns for corporations storing goods in an Iowa warehouse.* For tax years beginning on or after January 1, 2001, foreign corporations are not required to file income tax returns if their only activities in Iowa are the storage of goods for a period of 60 consecutive days or less in a warehouse for hire located in Iowa, provided that the foreign corporation transports or causes a carrier to transport such goods to that warehouse and that none of these goods are delivered or shipped to a purchaser in Iowa.

The following nonexclusive examples illustrate how this subrule applies:

EXAMPLE 1: A, a foreign corporation, stores goods in a warehouse for hire in Iowa for a period of 45 consecutive days. The goods are then delivered to a purchaser outside Iowa. If this is A's only activity in Iowa, A is not required to file an Iowa income tax return.

EXAMPLE 2: B, a foreign corporation, stores goods in a warehouse for hire in Iowa for a period of 75 consecutive days. The goods are then delivered to a purchaser outside Iowa. B is required to file an Iowa income tax return because the goods were stored in Iowa for more than 60 consecutive days.

EXAMPLE 3: C, a foreign corporation, stores goods in a warehouse for hire in Iowa for a period of 30 consecutive days. One percent of these goods are shipped to a purchaser in Iowa, and the other 99 percent are shipped to a purchaser outside Iowa. C is required to file an Iowa income tax return because a portion of the goods were shipped to a purchaser in Iowa.

EXAMPLE 4: D, a foreign corporation, has retail stores in Iowa. D also stores goods in a warehouse for hire in Iowa for a period of 30 consecutive days. The goods are then delivered to a purchaser outside Iowa. D is required to file an Iowa income tax return because its Iowa activities are not limited to the storage of goods in a warehouse for hire in Iowa.

EXAMPLE 5: E, a foreign corporation, has goods delivered by a common carrier, F, into a warehouse for hire in Iowa. The goods are stored in the warehouse for a period of 40 consecutive days, and are then delivered to a purchaser outside Iowa. If this is E's only activity in Iowa, E is not required to file an Iowa income tax return. However, F is required to file an Iowa income tax return because it derives income from transportation operations in Iowa.

52.1(10) *Deferment of income for start-up companies.* For tax periods beginning on or after January 1, 2002, but before January 1, 2008, a business that qualifies as a "start-up" business can defer taxable income for the first three years that the business is in operation. The deferment of income for start-up companies is repealed effective for tax years beginning on or after January 1, 2008.

a. Definition of start-up business. A start-up business for purposes of this subrule does not include any of the following:

(1) An existing business locating in Iowa from another state.

(2) An existing business locating in Iowa from another location in Iowa.

(3) A newly created business which is the result of the merger of two or more businesses.

(4) A newly created subsidiary or new business of a corporation.

(5) A previously existing business which has been dissolved and reincorporated.

(6) An existing business operating under a different name and located in a different location.

(7) A newly created partnership owned by two or more of the same partners as an existing business and engaging in similar business activity as the existing business.

(8) A business entity that reorganizes or experiences a change in either the legal or trade name of the business.

(9) A joint venture.

b. Criteria for deferment of taxable income. In order to qualify for the deferment of taxable income for a start-up business, each of the following criteria must be met:

(1) The taxpayer is a business that is a wholly new start-up business beginning operations during the first tax year for which the deferment of taxable income is claimed.

(2) The business has its commercial domicile, as defined by Iowa Code section 422.32, in Iowa.

(3) The operations of the business are funded by at least 25 percent venture capital moneys. "Venture capital moneys" means an equity investment from an individual or a private seed and venture capital fund whose only business is investing in seed and venture capital opportunities. "Venture capital moneys" does not mean a loan or other nonequity financing from a person, financial institution or other entity.

(4) The taxpayer does not have any delinquent taxes or other debt outstanding and owing to the state of Iowa.

c. Request for deferment of income. A taxpayer must submit a request to the department for the deferment of taxable income. The request must provide evidence that all of the criteria to qualify as a start-up business have been met. The request should be made as soon as possible after the close of the first tax year of the business. The request is to be filed with the Iowa Department of Revenue, Policy Section, Compliance Division, P.O. Box 10457, Des Moines, Iowa 50306-0457. Upon determination that the criteria have been met, the department will notify the taxpayer that the deferment of taxable income is approved. If the request for deferment of taxable income is denied, the taxpayer may file a protest within 60 days of the date of the letter denying the request for deferment of taxable income. The department's determination letter shall set forth the taxpayer's rights to protest the department's determination.

d. Filing of tax returns. If the request for deferment of taxable income is approved, taxable income for the first three years that the business is in operation is deferred. The taxpayer shall pay taxes on the deferred taxable income in five equal annual installments during the five tax years following the three years of deferment. Tax returns must be filed for each tax year in which the deferment is approved. If the taxpayer has a net loss during any tax year during the three-year deferment period, the loss may be applied to any deferred taxable income during that period. For purposes of assessing penalty and interest, the tax on any deferred income is not due and payable until the tax years in which the five equal annual installments are due and payable.

The following nonexclusive examples illustrate how this subrule applies:

EXAMPLE 1: A qualifying start-up business reports Iowa taxable income of $1,000 in year one, $5,000 in year two and $10,000 in year three. The total tax deferred is $60 in year 1, $300 in year two and $600 in year three, or $960. The taxpayer shall pay $192 ($960 divided by 5) in deferred tax for each of the next five tax returns. No penalty or interest is due on the deferred annual tax of $192 if the returns for years four through eight are filed by the due date and the tax is timely paid. After the return for year three is filed, the department will issue a schedule to the qualifying business indicating that $192 of additional tax is due annually for years four through eight, and when the additional payments of $192 are due.

EXAMPLE 2: A qualifying start-up business reports an Iowa taxable loss of $10,000 in year one, a loss of $2,000 in year two and taxable income of $22,000 in year three. The losses for year one and year two can be netted against the income in year three, resulting in deferred taxable income of $10,000. The tax of $600 computed on income of $10,000 will be paid in five equal installments of $120 for the next five tax returns. No penalty or interest is due on the deferred annual tax of $120 if the returns for years four through eight are filed by the due date and the tax is timely paid. After the return for year three is filed, the department will issue a schedule to the qualifying business indicating that $120 of additional tax is due annually for years four through eight and when the additional payments of $120 are due.

This rule is intended to implement Iowa Code sections 422.21, 422.32, 422.33, 422.34, 422.34A, and 422.36 and Iowa Code section 422.24A as amended by 2008 Iowa Acts, Senate File 2400, section 66.

[**ARC 7761B**, IAB 5/6/09, effective 6/10/09; **ARC 1303C**, IAB 2/5/14, effective 3/12/14; **ARC 1665C**, IAB 10/15/14, effective 11/19/14; **ARC 3085C**, IAB 5/24/17, effective 6/28/17]

701—52.2(422) Time and place for filing return.

52.2(1) *Returns of corporations.* A return of income for all corporations must be filed on or before the due date. The due date for all corporations excepting cooperative associations as defined in Section 6072(d) of the Internal Revenue Code is the last day of the fourth month following the close of the

taxpayer's taxable year, whether the return be made on the basis of the calendar year or the fiscal year; or the last day of the period covered by an extension of time granted by the director. When the due date falls on a Saturday, Sunday or a legal holiday, the return will be due the first business day following the Saturday, Sunday or legal holiday. If a return is placed in the mails, properly addressed and postage paid in ample time to reach the department on or before the due date for filing, no penalty will attach should the return not be received until after that date. Mailed returns should be addressed to Corporate Income Tax Processing, Hoover State Office Building, Des Moines, Iowa 50319.

52.2(2) *Returns of cooperatives.* A return of income for cooperatives, defined in Section 6072(d) of the Internal Revenue Code, must be filed on or before the fifteenth day of the ninth month following the close of the taxpayer's taxable year.

52.2(3) *Short period returns.* Where under a provision of the Internal Revenue Code, a corporation is required to file a tax return for a period of less than 12 months, a short period Iowa return must be filed for the same period. The short period Iowa return is due 45 days after the federal due date, not considering any federal extension of time to file.

52.2(4) *Extension of time for filing returns for tax years beginning on or after January 1, 1991.* See 701—subrule 39.2(4).

This rule is intended to implement Iowa Code sections 422.21 and 422.24.

701—52.3(422) Form for filing.

52.3(1) *Use and completeness of prescribed forms.* Returns shall be made by corporations on forms supplied by the department. Taxpayers not supplied with the proper forms shall make application for same to the department in ample time to have their returns made, verified and filed on or before the due date. Each taxpayer shall carefully prepare the taxpayer's return so as to fully and clearly set forth the data required. For lack of a prescribed form, a statement made by a taxpayer disclosing the taxpayer's gross income and the deductions therefrom may be accepted as a tentative return, and if verified and filed within the prescribed time, will relieve the taxpayer from liability to penalties, provided that without unnecessary delay such a tentative return is replaced by a return made on the proper form. Each question shall be answered and each direction complied with in the same manner as if the forms and instructions were embodied in these rules.

Failure to receive the proper forms does not relieve the taxpayer from the obligation of making any return required by the statute.

Returns received which are not completed, but merely state "see schedule attached" are not considered to be a properly filed return and may be returned to the taxpayer for proper completion. This may result in the imposition of penalties and interest due to the return being filed after the due date.

52.3(2) *Form for filing—domestic corporations.* A domestic corporation, as defined by Iowa Code subsection 422.32(5), is required to file a complete Iowa return for each year of its existence regardless of whether the corporation has income, loss, or inactivity. For tax periods beginning on or after January 1, 1999, domestic corporations are required to file a complete Iowa return only if they are doing business in Iowa, or deriving income from sources within Iowa. For tax periods beginning on or after July 1, 2012, domestic corporations must also include a true and accurate copy of their federal corporation income tax return as filed with the Internal Revenue Service with the filing of their Iowa return. At a minimum this return includes the following federal schedules: income statement, balance sheet, reconciliation of income per books with income per return, analysis of unappropriated retained earnings per books, dividend income and special deductions, cost of goods sold, capital gains, tax computation and tax deposits, alternative minimum tax computation, and statements detailing other income and other deductions.

When a domestic corporation is included in the filing of a consolidated federal income tax return, the Iowa corporation income tax return shall include a schedule of the consolidating income statements as properly computed for federal income tax purposes showing the income and expenses of each member of the consolidated group, and a schedule of capital gains on a separate basis.

If a domestic corporation claims a foreign tax credit, research activities credit, alcohol fuel credit, employer social security credit, or work opportunity credit on its federal income tax return, a detailed

computation of the credits claimed shall be included with the Iowa return upon filing. In those instances where the domestic corporation is involved in the filing of a consolidated federal income tax return, the credit computations shall be reported on a separate entity basis.

Similarly, where a domestic corporation is charged with a holding company tax or an alternative minimum tax, the details of the taxes levied shall be put forth in a schedule to be included with the Iowa return. Furthermore, these taxes shall be identified on a separate company basis where the domestic corporation files as a member of a consolidated group for federal purposes.

52.3(3) *Form for filing—foreign corporations.* Foreign corporations, as defined by Iowa Code subsection 422.32(6), must include a true and accurate copy of their federal corporation income tax return as filed with the Internal Revenue Service with the filing of their Iowa return. At a minimum this return includes the following federal schedules: income statement, balance sheet, reconciliation of income per books with income per return, analysis of unappropriated retained earnings per books, dividend income and special deductions, cost of goods sold, capital gains, tax computation and tax deposits, research activities credit computation, work opportunity credit computation, foreign tax credit computation, alcohol fuel credit computation, employer social security credit computation, alternative minimum tax computation, and statements detailing other income and other deductions.

When a foreign corporation whose income is included in a consolidated federal income tax return files an Iowa return, federal consolidating income statements as properly computed for federal income tax purposes showing the income and expenses of each member of the consolidated group shall be required together with the following additional schedules on a separate basis:

a. Capital gains.
b. Dividend income and special deductions.
c. Research activities credit, alcohol fuel credit and employer social security credit computations.
d. Work opportunity credit computation.
e. Foreign tax credit computation.
f. Holding company tax computation.
g. Alternative minimum tax computation.
h. Schedules detailing other income and other deductions.

52.3(4) *Amended returns.* If it becomes known to the taxpayer that the amount of income reported to be federal net income or Iowa taxable income was erroneously stated on the Iowa return, or changed by Internal Revenue Service audit, or otherwise, the taxpayer shall file an amended Iowa return along with supporting schedules, to include the amended federal return and a copy of the federal revenue agent's report if applicable. A copy of the federal revenue agent's report and notification of final federal adjustments provided by the taxpayer will be acceptable in lieu of an amended return. The assessment or refund of tax shall be dependent on the statute of limitations as set forth in 701—subrule 51.2(1) and rule 701—55.3(422).

This rule is intended to implement Iowa Code section 422.21 and section 422.36 as amended by 2012 Iowa Acts, Senate File 2328.

[**ARC 0337C**, IAB 9/19/12, effective 10/24/12]

701—52.4(422) Payment of tax.

52.4(1) *Quarterly estimated payments.* Effective for taxable years beginning on or after July 1, 1977, corporations are required to make quarterly payments of estimated income tax. Rules pertaining to the estimated tax are contained in 701—Chapter 56.

52.4(2) *Full estimated payment on original due date.* Rescinded IAB 3/15/95, effective 4/19/95.

52.4(3) *Penalty and interest on unpaid tax.* See rule 701—10.6(421) for penalty for tax periods beginning on or after January 1, 1991. See rule 701—10.8(421) for statutory exemptions to penalty for tax periods beginning on or after January 1, 1991.

Interest shall accrue on tax due from the original due date of the return. Interest on refunds of any portion of the tax imposed by statute which has been erroneously refunded and which is recoverable by the department shall bear interest as provided by law from the date of payment of the refund, considering each fraction of a month as an entire month. See rule 701—10.2(421) for the statutory interest rate.

All payments shall be first applied to the penalty and then to the interest, and the balance, if any, to the amount of tax due.

52.4(4) *Payment of tax by uncertified checks.* The department will accept uncertified checks in payment of income taxes, provided the checks are collectible for their full amount without any deduction for exchange or other charges unless requirements for electronic transmission of remittances and related information specify otherwise. The date on which the department receives the check will be considered the date of payment, so far as the taxpayer is concerned, unless the check is dishonored. If one check is remitted to cover two or more corporations' taxes, the remittance must be accompanied by a letter of transmittal stating: (a) the name of the drawer of the check; (b) the amount of the check; (c) the amount of any cash, money order or other instrument included in the same remittance; (d) the name of each corporation whose tax is to be paid by the remittance; and (e) the amount of payment on account of each corporation.

52.4(5) *Procedure with respect to dishonored checks.* If any check is returned unpaid, all expenses incidental to the collection thereof will be charged to the taxpayer. If any taxpayer whose check has been returned by the depository bank uncollected should fail at once to make the check good, the director will proceed to collect the tax as though no check had been given. A taxpayer who tenders a certified check in payment for taxes is not relieved from his obligation until the check has been paid.

52.4(6) *New jobs credit.* Transferred to 701—52.8(422) IAB 11/28/90, effective 1/2/91.

This rule is intended to implement Iowa Code sections 422.21, 422.24, 422.25, 422.33 and 422.86.

701—52.5(422) Minimum tax.

52.5(1) Rescinded IAB 11/24/04, effective 12/29/04.

52.5(2) For tax years beginning after 1997, a small business corporation or a new corporation for its first year of existence, which through the operation of Internal Revenue Code Section 55(e) is exempt from the federal alternative minimum tax, is not subject to Iowa alternative minimum tax. A small business corporation may apply any alternative minimum tax credit carryforward to the extent of its regular corporation income tax liability.

For tax years beginning on or after January 1, 1987, the minimum tax is imposed only to the extent that it exceeds the taxpayer's regular tax liability computed under Iowa Code subsection 422.33(1). The minimum tax rate is 60 percent of the maximum corporate tax rate rounded to the nearest one-tenth of 1 percent or 7.2 percent. Minimum taxable income is computed as follows:

	State taxable income as adjusted by Iowa Code section 422.35
Plus:	Tax preference items, adjustments and losses added back
Less:	Allocable income including allocable preference items and adjustments under Section 56 of the Internal Revenue Code including adjusted current earnings related to allocable income including the allocable preference items
	Subtotal
Times:	Apportionment percentage
	Result
Plus:	Income allocable to Iowa including allocable preference items and adjustments under Section 56 of the Internal Revenue Code including adjusted current earnings related to allocable income including the allocable preference items
Less:	Iowa alternative tax net operating less deduction
	$40,000 exemption amount
Equals:	Iowa alternative minimum taxable income

For tax years beginning on or after January 1, 1987, the items of tax preference are the same items of tax preference under Section 57 except for Subsections (a)(1) and (a)(5) of the Internal Revenue Code used to compute federal alternative minimum taxable income. The adjustments to state taxable

income are those adjustments required by Section 56 except for Subsections (a)(4) and (d) of the Internal Revenue Code used to compute federal alternative minimum taxable income. In making the adjustment under Section 56(c)(1) of the Internal Revenue Code, interest and dividends from federal securities net of amortization of any discount or premium shall be subtracted. For tax years beginning on or after January 1, 1988, in making the adjustment under Section 56(c)(1) of the Internal Revenue Code, interest and dividends from state and other political subdivisions and from regulated investment companies exempt from federal income tax under the Internal Revenue Code shall be subtracted net of amortization of any discount or premium. In making the adjustment for adjusted current earnings, subtract Foreign Sales Company (FSC) dividend income and Puerto Rican dividend income computed under Internal Revenue Code Section 936 to the extent they are included in the federal computation of adjusted current earnings. Losses to be added are those losses required to be added by Section 58 of the Internal Revenue Code in computing federal alternative minimum taxable income.

a. Tax preference items are:

1. Intangible drilling costs;
2. Incentive stock options;
3. Reserves for losses on bad debts of financial institutions;
4. Appreciated property charitable deductions;
5. Accelerated depreciation or amortization on certain property placed in service before January 1, 1987.

b. Adjustments are:

1. Depreciation;
2. Mining exploration and development;
3. Long-term contracts;
4. Iowa alternative minimum net operating loss deduction;
5. Book income or adjusted earnings and profits.

c. Losses added back are:

1. Farm losses;
2. Passive activity losses.

Computation of Iowa alternative minimum tax net operating loss deduction.

Net operating losses computed under rule 701—53.2(422) carried forward from tax years which begin before January 1, 1987, are deductible without adjustment.

Net operating losses from tax years which begin after December 31, 1986, which are carried back or carried forward to the current tax year shall be reduced by the amount of tax preferences and adjustments taken into account in computing the net operating loss prior to applying rule 701—53.2(422). The deduction for a net operating loss from a tax year beginning after December 31, 1986, which is carried back or carried forward shall not exceed 90 percent of the alternative minimum taxable income computed without regard for the net operating loss deduction.

The exemption amount shall be reduced by 25 percent of the amount that the alternative minimum taxable income computed without regard to the $40,000 exemption exceeds $150,000. The exemption shall not be reduced below zero.

EXAMPLE: The following example shows the computation of the alternative minimum tax when there are net operating loss carryforwards and carrybacks including an alternative minimum tax net operating loss.

For tax year 1987, the following information is available:

Federal taxable income before NOL	$182,000
Federal NOL carryforward	<97,000>
Federal income tax	19,750
Tax preferences and adjustments	48,000
Iowa income tax expensed on federal	2,570
Iowa NOL carryforward	147,000

For tax year 1988, the following information is available:

Federal taxable income before NOL	$<154,000>
Federal income tax refund	15,460
Tax preferences and adjustments	78,000
Iowa income tax refund reported on federal	2,570

The alternative minimum tax for 1987 before the 1988 net operating loss carryback should be computed as follows:

Regular Iowa Tax	
Federal taxable income	$182,000
less 50% federal tax	<9,875>
add Iowa income tax expensed	2,570
Iowa taxable income before NOL carryforward	$174,695
less NOL carryforward	<147,000>
Iowa taxable income	$ 27,695
Iowa income tax	$ 1,716
Alternative Minimum Tax	
Iowa taxable income before NOL	$174,695
add preferences and adjustments	48,000
Total	$222,695
less NOL carryforward*	<147,000>
Iowa alternative taxable income	$ 75,695
less exemption amount	<40,000>
Total	$ 35,695
Times 7.2%	2,570
Less regular tax	<1,715>
Alternative minimum tax	$ 855

*Net operating loss carryforwards from tax years beginning before January 1, 1987, are deductible at 100 percent without reduction for items of tax preference or adjustments arising in the tax year.

The alternative minimum tax for 1987 after the 1988 net operating loss carryback should be computed as follows:

Regular Iowa Tax	
Federal taxable income	$ 182,000
less 50% federal tax	<9,875>
add Iowa income tax expensed	2,570
Iowa taxable income before NOL carryforward	$ 174,695
less NOL carryforward	<147,000>
	$ 27,695
less NOL carryback from 1988[1]	<148,840>
NOL carryforward	$ <121,145>

Alternative Minimum Tax	
Iowa taxable income before NOL	$ 174,695
add preferences and adjustments	48,000
Total	$ 222,695
less NOL carryforward from pre-1987 tax year	<147,000>
Total	$ 75,695
less alternative minimum tax NOL[2]	<68,126>
Total	$ 7,569
less exemption	<40,000>
Alternative minimum taxable income after NOL	$ -0-

[1]Computation of 1988 Iowa NOL

Federal NOL	$<154,000>
add 50% of federal refund	7,730
less Iowa refund in federal income	<2,570>
Iowa NOL	$<148,840>

[2]Computation of 1988 Alternative Minimum Tax NOL

Iowa NOL	$<148,840>
add preferences and adjustments	78,000
Total	$ <70,840>
NOL carryback limited to 90% of alternative minimum income before NOL and exemption*	$ <68,126>
Alternative minimum tax NOL carryforward	$ 2,705

*For purposes of the alternative minimum tax, net operating loss carryforward or carryback from tax years beginning after December 31, 1986, must be reduced by items of tax preference and adjustments, and are limited to 90 percent of alternative minimum taxable income before deduction of the post-1986 NOL and the $40,000 exemption amount ($75,695 × 90% = $68,126).

52.5(3) Effective for tax years beginning on or after January 1, 1986, estimated payments are required for minimum tax.

52.5(4) Alternative minimum tax credit for minimum tax paid in a prior tax year. Minimum tax paid by a taxpayer in prior tax years commencing with tax years beginning on or after January 1, 1987, can be claimed as a tax credit against the taxpayer's regular income tax liability in a subsequent tax year. Therefore, 1988 is the first tax year that the minimum tax credit is available for use, and the credit is based on the minimum tax paid by the taxpayer for 1987. The minimum tax credit may only be used against regular income tax for a tax year to the extent that the regular tax is greater than the minimum tax for the tax year. If the minimum tax credit is not used up against the regular tax for a tax year, the remaining credit is carried to the following tax year to be applied against the regular income tax liability for that period.

a. Computation of minimum tax credit on Schedule IA 8827. The minimum tax credit is computed on Schedule IA 8827 from information on Schedule IA 4626 for prior tax years, from Form IA 1120 and Schedule IA 4626 for the current year and from Schedule IA 8827 for prior tax years.

b. Examples of computation of the minimum tax credit and carryover of the credit.

EXAMPLE 1. Taxpayer reported $5,000 of minimum tax for 2007. For 2008, taxpayer reported regular tax of $8,000 and the minimum tax liability is $6,000. The minimum tax credit is $2,000 for 2008 because, although the taxpayer had an $8,000 regular tax liability, the credit is allowed only to the

extent that the regular tax exceeds the minimum tax. Since only $2,000 of the carryover credit from 2007 was used, there is a $3,000 minimum tax carryover credit to 2009.

EXAMPLE 2. Taxpayer reported $2,500 of minimum tax for 2007. For 2008, taxpayer reported regular tax of $8,000 and the minimum tax liability is $5,000. The minimum tax credit is $2,500 for 2008 because, although the regular tax exceeded the minimum tax by $3,000, the credit is allowed only to the extent of minimum tax paid for prior tax years. There is no minimum tax carryover credit to 2009.

c. Computation of the minimum tax credit attributable to a member leaving an affiliated group filing a consolidated Iowa corporation income tax return. The amount of minimum tax credit available for carryforward attributable to a member of a consolidated Iowa income tax return shall be computed as follows: The consolidated minimum tax credit available for carryforward from each tax year is multiplied by a fraction, the numerator of which is the separate member's tax preferences and adjustments for the tax year and the denominator of which is the total tax preferences and adjustments of all members of the consolidated Iowa income tax return for the tax year.

d. Computation of the amount of minimum tax credit which may be used by a new member of a consolidated Iowa corporation income tax return. The amount of minimum tax credit carryforward which may be used by a new member of a consolidated Iowa income tax return is limited to the separate member's contribution to the amount by which the regular income tax set forth in Iowa Code section 422.33 exceeds the tentative minimum tax.

The separate member's contribution to the amount by which the regular income tax exceeds the tentative minimum tax shall be computed as follows:

$$\frac{\left[\frac{A}{B} \times C + D\right] \times F}{E} = \text{Separate member's contribution to the amount by which regular income tax set forth in section 422.33 exceeds the tentative minimum tax.}$$

A = Separate corporation gross sales within Iowa after elimination of all intercompany transactions.
B = Consolidated gross sales within and without Iowa after elimination of all intercompany transactions.
C = Iowa consolidated income subject to apportionment.
D = Separate corporation income allocable to Iowa.
E = Iowa consolidated income subject to tax.
F = The amount by which the regular income tax set forth in Iowa Code section 422.33 exceeds the tentative minimum tax.

e. Minimum tax credit after merger. When two or more corporations merge or consolidate into one corporation, the minimum tax credit of the merged or consolidated corporations is available for use by the survivor of the merger or consolidation.

This rule is intended to implement Iowa Code section 422.33.

[**ARC 7761B**, IAB 5/6/09, effective 6/10/09; **ARC 2829C**, IAB 11/23/16, effective 1/1/17]

701—52.6(422) Motor fuel credit. A corporation may elect to receive an income tax credit in lieu of the motor fuel tax refund provided by Iowa Code chapter 452A. A corporation which holds a motor fuel tax refund permit when it makes this election must cancel the permit within 30 days after the first day of the tax year. However, if the refund permit is not canceled within this period, the permit becomes invalid at the time the election to receive an income tax credit is made. The election will continue for subsequent tax years unless a new motor fuel tax refund permit is obtained.

The amount of the income tax credit must be the amount of Iowa motor fuel tax paid on qualifying fuel purchases as determined by Iowa Code chapter 452A and Iowa Code section 422.110 less any state sales tax as determined by 701—subrule 231.2(2). The credit must be claimed on the tax return covering the tax year in which the motor fuel tax was paid. If the motor fuel credit results in an overpayment of income tax, the overpayment may be refunded or may be credited to income tax due in the subsequent tax year.

Shareholders of S corporations may claim an income tax credit on their individual income tax returns for their respective shares of the motor vehicle fuel taxes paid by the corporations. The credit for a

shareholder is that person's pro rata share of the fuel tax paid by the corporation. A schedule must be attached to the individual's return showing the distribution of gallons and the amount of credit claimed by each shareholder.

The corporation must attach to its return a schedule showing the allocation to each shareholder of the motor fuel purchased by the corporation.

This rule is intended to implement Iowa Code section 422.33.

701—52.7(422) Research activities credit. The taxes imposed on corporate income shall be reduced by a state tax credit for increasing research activities in this state. For corporate income tax, the requirements of the research activities credit are described in Iowa Code section 422.33. This rule explains terms not defined in the statute and procedures for claiming the credit.

52.7(1) *Definitions.*

"Accountant" means a person authorized under Iowa Code chapter 542 to engage in the practice of public accounting in Iowa as defined in Iowa Code section 542.3(23) or authorized to engage in such practice in another state under a similar law of another state.

"Architect" means a person licensed under Iowa Code chapter 544A or a similar law of another state.

"Aviation and aerospace" means the design, development or production of aircraft, rockets, missiles, spacecraft and other machinery and equipment that operate in aerospace.

"Collection agency" means a person primarily engaged in the business of collecting debt, including but not limited to consumer debt collection subject to the provisions of the federal Fair Debt Collections Practices Act in 15 U.S.C. §1692 et seq., the Iowa debt collection practices Act in Iowa Code sections 537.7101 through 537.7103, or other similar state law.

"Finance or investment company" means a person primarily engaged in finance or investment activities broadly consisting of the holding, depositing, or management of a customer's money or assets for investment purposes, or the provision of loans or other similar financing or credit to customers. "Finance or investment company" includes but is not limited to a person organized or licensed under Iowa Code chapter 524, 533, or 533D or other similar state or federal law, or an investment company as defined in 15 U.S.C. §80a-3.

"Life sciences" means the sciences concerned with the study of living organisms, including agriscience, biology, botany, zoology, microbiology, physiology, biochemistry, and related subjects.

"Manufacturing" means the same as defined in 2018 Iowa Acts, Senate File 2417, section 183.

"Publisher" means a person whose primary business is the publishing of books, periodicals, newspapers, music, or other works for sale in any format.

"Real estate company" means a person licensed under Iowa Code chapter 543B or otherwise primarily engaged in acts constituting dealing in real estate as described in Iowa Code section 543B.6.

"Retailer" means a person that primarily engages in sales of personal property as defined in 2018 Iowa Acts, Senate File 2417, section 158, or services directly to an ultimate consumer. A business that primarily makes sales for resale is not a retailer.

"Software engineering" means the detailed study of the design, development, operation, and maintenance of software.

"Transportation company" means a person whose primary business is the transportation of persons or property from one place to another.

"Wholesaler" means a person that primarily engages in buying large quantities of goods and reselling them in smaller quantities to retailers or other merchants who in turn sell those goods to the ultimate consumer.

52.7(2) *Requirement that the business claim and be allowed the federal credit.* To claim this credit, a taxpayer's business must claim and be allowed a research credit for such qualified research expenses under Section 41 of the Internal Revenue Code for the same taxable year as the taxpayer's business is claiming the credit.

a. Being "allowed" the federal credit. For purposes of this subrule, a federal credit is "allowed" if the taxpayer meets all requirements to claim the credit under Section 41 of the Internal Revenue Code

and any applicable federal regulation and Internal Revenue Service guidance and such credit has not been disallowed by the Internal Revenue Service.

b. Applicability of requirement to pass-throughs. If the individual received the Iowa credit through a pass-through entity, the pass-through entity that conducted the research must have claimed and been allowed the federal credit in order for the individual to claim the Iowa credit.

c. Impact of federal audit. If the Internal Revenue Service audits or otherwise reviews the return and disallows the credit, the taxpayer shall file an amended Iowa return along with supporting schedules, including an amended federal return or a copy of the federal revenue agent's report and notification of final federal adjustments, to add back the Iowa credit to the extent not previously disallowed by the department.

d. Authority of the department. Nothing in this subrule shall limit the department's authority to review, examine, audit, or otherwise challenge an Iowa tax credit claim under Iowa Code section 422.33, regardless of inaction, a settlement, or a determination by the Internal Revenue Service under Section 41 of the Internal Revenue Code.

52.7(3) *Calculating the credit.* For information on how the credit is calculated, see Iowa Code section 422.33.

52.7(4) *Claiming the tax credit.*

a. Forms. The credit must be claimed on the forms provided on the department's website and must include all information required by the forms.

b. Allocation to the individual owners of an entity or beneficiaries of an estate or trust. If the business is a partnership, S corporation, limited liability company, estate or trust where the income from the business is taxed to the individual owners of the business, these individual owners may claim the research activities credit allowed to the business. The research credit is allocated to each of the individual owners of the business on the basis of the pro rata share of that individual's earnings from the business.

c. Refundability. Any research credit in excess of the corporation's tax liability for the taxable year may be refunded to the taxpayer or credited to the corporation's tax liability for the following year.

d. Transferability. Tax credit certificates shall not be transferred to any other person.

e. Enterprise zone claimants. The enterprise zone program was repealed on July 1, 2014. Any supplemental research activities credit earned by businesses pursuant to Iowa Code section 15.335 and approved under the enterprise zone program prior to July 1, 2014, remains valid and can be claimed on tax returns filed after July 1, 2014.

This rule is intended to implement Iowa Code sections 15.335 and 422.33 as amended by 2018 Iowa Acts, Senate File 2417.

[**ARC 8589B**, IAB 3/10/10, effective 4/14/10; **ARC 8702B**, IAB 4/21/10, effective 5/26/10; **ARC 9104B**, IAB 9/22/10, effective 10/27/10; **ARC 9820B**, IAB 11/2/11, effective 12/7/11; **ARC 0337C**, IAB 9/19/12, effective 10/24/12; **ARC 1101C**, IAB 10/16/13, effective 11/20/13; **ARC 1545C**, IAB 7/23/14, effective 8/27/14; **ARC 1744C**, IAB 11/26/14, effective 12/31/14; **ARC 4143C**, IAB 11/21/18, effective 12/26/18]

701—52.8(422) New jobs credit. A tax credit is available to a corporation which has entered into an agreement under Iowa Code chapter 260E and has increased employment by at least 10 percent.

52.8(1) *Definitions.*

a. The term *"new jobs"* means those jobs directly resulting from a project covered by an agreement authorized by Iowa Code chapter 260E (Iowa Industrial New Jobs Training Act) but does not include jobs of recalled workers or replacement jobs or other jobs that formerly existed in the industry in the state.

b. The term *"jobs directly related to new jobs"* means those jobs which directly support the new jobs but does not include in-state employees transferred to a position which would be considered to be a job directly related to new jobs unless the transferred employee's vacant position is filled by a new employee.

EXAMPLE A. A taxpayer who has entered into a chapter 260E agreement to train new employees for a new product line transfers an in-state employee to be supervisor of the new product line but does not fill the transferred employee's position. The new supervisor's position would not be considered a

job directly related to new jobs even though it directly supports the new jobs because the transferred employee's old position was not refilled.

EXAMPLE B. A taxpayer who has entered into a chapter 260E agreement to train new employees for a new product line transfers an in-state employee to be supervisor of the new product line and fills the transferred employee's position with a new employee. The new supervisor's position would be considered a job directly related to new jobs because it directly supports the new jobs and the transferred employee's old position was filled by a new employee.

The burden of proof that a job is directly related to new jobs is on the taxpayer.

c. The term *"taxable wages"* means those wages upon which an employer is required to contribute to the state unemployment fund as defined in Iowa Code subsection 96.19(37) for the year in which the taxpayer elects to take the new jobs tax credit. For fiscal-year taxpayers, "taxable wages" shall not be greater than the maximum wage upon which an employer is required to contribute to the state unemployment fund for the calendar year in which the taxpayer's fiscal year begins.

d. The term *"agreement"* means an agreement entered into under Iowa Code chapter 260E after July 1, 1985, an amendment to that agreement, or an amendment to an agreement entered into before July 1, 1985, if the amendment sets forth the base employment level as of the date of the amendment. The term "agreement" also includes a preliminary agreement entered into under Iowa Code chapter 260E provided the preliminary agreement contains all the elements of a contract and includes the necessary elements and commitment relating to training programs and new jobs.

e. The term *"base employment level"* means the number of full-time jobs an industry employs at a plant site which is covered by an agreement under chapter 260E on the date of the agreement.

f. The term *"project"* means a training arrangement which is the subject of an agreement entered into under Iowa Code chapter 260E.

g. The term *"industry"* means a business engaged in interstate or intrastate commerce for the purpose of manufacturing, processing, or assembling products, conducting research and development, or providing services in interstate commerce, but excludes retail, health or professional services. Industry does not include a business which closes or substantially reduces its operations in one area of the state and relocates substantially the same operation in another area of the state. Industry is a business engaged in the above listed activities rather than the generic definition encompassing all businesses in the state engaged in the same activities. For example, in the meat-packing business, an industry is considered to be a single corporate entity or operating division, rather than the entire meat-packing business in the state.

h. The term *"new employees"* means the same as new jobs or jobs directly related to new jobs.

i. The term *"full-time job"* means any of the following:

(1) An employment position requiring an average work week of 35 or more hours;

(2) An employment position for which compensation is paid on a salaried full-time basis without regard to hours worked; or

(3) An aggregation of any number of part-time or job-sharing employment positions which equal one full-time employment position. For purposes of this subrule each part-time or job-sharing employment position shall be categorized with regard to the average number of hours worked each week as one-quarter, half, three-quarters, or full-time position, as set forth in the following table:

Average Number of Weekly Hours	Category
More than 0 but less than 15	¼
15 or more but less than 25	½
25 or more but less than 35	¾
35 or more	1 (full-time)

52.8(2) *How to compute the credit.* The credit is 6 percent of the taxable wages paid to employees in new jobs or jobs directly related to new jobs for the taxable year in which the taxpayer elects to take the credit.

EXAMPLE 1. A taxpayer enters into an agreement to increase employment by 20 new employees which is greater than 10 percent of the taxpayer's base employment level of 100 employees. In year one of the agreement the taxpayer hires 20 new employees but elects not to take the credit in that year. In year two of the agreement only 18 of the new employees hired in year one are still employed and the taxpayer elects to take the credit. The credit would be 6 percent of the taxable wages of the 18 remaining new employees. In year three of the agreement the taxpayer hires two additional new employees under the agreement to replace the two employees which left in year two and elects to take the credit. The credit would be 6 percent of the taxable wages paid to the two replacement employees. In year four of the agreement three of the employees for which a credit had been taken left employment and three additional employees were hired. No credit is available for these employees. A credit can only be taken one time for each new job or job directly related to a new job.

EXAMPLE 2. A taxpayer operating two plants in Iowa enters into a chapter 260E agreement to train new employees for a new product line at one of the taxpayer's plants. The base employment level on the date of the agreement at plant A is 300 and at plant B is 100. Under the agreement 20 new employees will be trained for plant B which is greater than a 10 percent increase of the base employment level for plant B. In the year in which the taxpayer elects to take the credit, the employment level at plant A is 290 and at plant B is 120. The credit would be 6 percent of the wages of 10 new employees at plant B as 10 new jobs were created by the industry in the state. A credit for the remaining 10 employees can be taken if the employment level at plant A increases back to 300 during the period of time that the credit can be taken.

52.8(3) *When the credit can be taken.* The taxpayer may elect to take the credit in any tax year which either begins or ends during the period beginning with the date of the agreement and ending with the date by which the project is to be completed under the agreement. However, the taxpayer may not take the credit until the base employment level has been exceeded by at least 10 percent.

EXAMPLE: A taxpayer enters into an agreement to increase employment from a base employment level of 200 employees to 225 employees. In year one of the agreement the taxpayer hires 20 new employees which is a 10 percent increase over the base employment level but elects not to take the credit. In year two of the agreement 2 of the new employees leave employment. The taxpayer elects to take the credit which would be 6 percent of the taxable wages of the 18 employees currently employed. In year three the taxpayer hires 7 new employees and elects to take the credit. The credit would be 6 percent of the taxable wages of the seven new employees.

A shareholder in an S corporation may claim the pro rata share of the Iowa new jobs credit on the shareholder's individual tax return. The S corporation shall provide each shareholder with a schedule showing the computation of the corporation's Iowa new jobs credit and the shareholder's pro rata share. The shareholder's pro rata share of the Iowa new jobs credit shall be in the same ratio as the shareholder's pro rata share in the earnings of the S corporation. All shareholders of an S corporation shall elect to take the Iowa new jobs credit the same year.

Any new jobs credit in excess of the corporation's tax liability less the credits authorized in Iowa Code sections 422.33, 422.91, and 422.110 may be carried forward for ten years or until it is used, whichever is the earliest.

This rule is intended to implement Iowa Code section 422.33.

701—52.9(422) Seed capital income tax credit. Rescinded IAB 3/6/02, effective 4/10/02.

701—52.10(15) New jobs and income program tax credits. For tax years ending after May 1, 1994, for programs approved after May 1, 1994, but before July 1, 2005, an investment tax credit under Iowa Code section 15.333 and an additional research activities credit under Iowa Code section 15.335 are available to an eligible business. The new jobs and income program was repealed on July 1, 2005, and has been replaced with the high quality job creation program. See rule 701—52.28(15) for information on the investment tax credit and additional research activities credit under the high quality job creation program. Any investment tax credit and additional research activities credit earned by businesses approved under

the new jobs and income program prior to July 1, 2005, remains valid, and can be claimed on tax returns filed after July 1, 2005.

52.10(1) *Definitions:*

a. *"Eligible business"* means a business meeting the conditions of Iowa Code section 15.329.

b. *"Improvements to real property"* includes the cost of utility lines, drilling wells, construction of sewage lagoons, parking lots and permanent structures. The term does not include temporary structures.

c. *"Machinery and equipment"* means machinery used in manufacturing establishments and computers except point-of-sale equipment as defined in Iowa Code section 427A.1. The term does not include computer software.

d. *"New investment directly related to new jobs created by the location or expansion of an eligible business under the program"* means the cost of machinery and equipment purchased for use in the operation of the eligible business which has been depreciated in accordance with generally accepted accounting principles and the cost of improvements to real property.

For the cost of improvements to real property to be eligible for an investment tax credit, the improvements to real property must have received an exemption from property taxes under Iowa Code section 15.332. Replacement machinery and equipment and additional improvements to real property placed in service during the period of property tax exemption by an eligible business qualify for an investment tax credit.

For tax years beginning on or after January 1, 2001, the requirement that the improvements to real property must have received an exemption from property taxes under Iowa Code section 15.332 has been eliminated.

52.10(2) *Investment tax credit.* An investment tax credit of up to 10 percent of the new investment which is directly related to new jobs created by the location or expansion of an eligible business is available. The credit is available for machinery and equipment or improvements to real property placed in service after May 1, 1994. The credit is to be taken in the year the qualifying asset is placed in service. For business applications received on or after July 1, 1999, for purposes of the investment tax credit claimed under Iowa Code section 15.333, the cost of land and any buildings and structures located on the land will be considered to be a new investment which is directly related to new jobs for purposes of determining the amount of new investment upon which an investment tax credit may be taken.

For eligible businesses approved by the Iowa department of economic development on or after March 17, 2004, certain lease payments made by eligible businesses to a third-party developer will be considered to be new investment for purposes of computing the investment tax credit. The eligible business shall enter into a lease agreement with the third-party developer for a minimum of ten years. The investment tax credit is based on the annual base rent paid to a third-party developer by the eligible business for a period not to exceed ten years. The total costs of the annual base rent payments for the ten-year period cannot exceed the cost of the land and the third-party developer's cost to build or renovate the building used by the eligible business. The annual base rent is defined as the total lease payment less taxes, insurance and operating and maintenance expenses.

If an eligible business fails to maintain the requirements of the new jobs and income program, the taxpayer may be required to repay all or a portion of the tax incentives taken on Iowa returns. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the tax credits may have expired, the department may proceed to collect the tax incentives forfeited by failure of the taxpayer to maintain the requirements of the new jobs and income program because this is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability. Details on the calculation of the repayment can be found in 261—subrule 187.5(4) of the administrative rules of the economic development authority. If the business is a partnership, limited liability company, S corporation, estate or trust where the income of the taxpayer is taxed to the individual owner(s) of the business, the department may proceed to collect the tax incentives against the partners, members, shareholders or beneficiaries to whom the tax incentives were passed through. See Decision of the Administrative Law Judge in *Damien & Colette Trebilcock, et al.,* Docket No. 11DORF 042-044, June 11, 2012.

If the eligible business, within five years of purchase, sells, disposes of, razes, or otherwise renders unusable all or a part of the land, buildings, or other existing structures for which tax credit was claimed

under this subrule, the income tax liability of the eligible business for the year in which all or part of the property is sold, disposed of, razed, or otherwise rendered unusable shall be increased by one of the following amounts:

a. One hundred percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within one full year after being placed in service.

b. Eighty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within two full years after being placed in service.

c. Sixty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within three full years after being placed in service.

d. Forty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within four full years after being placed in service.

e. Twenty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within five full years after being placed in service.

Any credit in excess of the tax liability for the tax year may be carried forward seven years or until used, whichever is the earlier.

If the business is a partnership, S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

52.10(3) *Research activities credit.* An additional research activities credit of 6½ percent of the state's apportioned share of "qualifying expenditures" is available to an eligible business. The credit is available for qualifying expenditures incurred after May 1, 1994. The additional research activities credit is in addition to the credit set forth in Iowa Code section 422.33(5).

See rule 701—52.7(422) for the computation of the research activities credit.

See also subrule 52.7(3) for the computation of the research activities credit for tax years beginning on or after January 1, 2000, and subrule 52.7(4) for the research activities credit for an eligible business for tax years beginning on or after January 1, 2000.

Any credit in excess of the tax liability for the tax year may be carried forward seven years or until used, whichever is the earlier. This is in contrast to the research activities credit in Iowa Code section 422.33(5) where any credit in excess of the tax liability for the tax year may be carried forward until used or refunded. For tax years ending on or after July 1, 1996, the additional research activities credit may at the option of the taxpayer be refunded.

If the business is a partnership, S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

52.10(4) *Investment tax credit—value-added agricultural products.* For tax years beginning on or after July 1, 2001, an eligible business whose project primarily involves the production of value-added agricultural products may elect to receive a refund for all or a portion of an unused investment credit. For tax years beginning on or after July 1, 2001, but before July 1, 2003, an eligible business includes a cooperative described in Section 521 of the Internal Revenue Code which is not required to file an Iowa corporation tax return, and whose project primarily involves the production of ethanol. For tax years beginning on or after July 1, 2003, an eligible business includes a cooperative described in Section 521 of the Internal Revenue Code which is not required to file an Iowa corporation income tax return.

Eligible businesses that elect to receive a refund shall apply to the economic development authority for tax credit certificates between May 1 and May 15 of each fiscal year through the fiscal year ending June 30, 2009. The election to receive a refund of all or a portion of an unused investment tax credit is no longer available beginning with the fiscal year ending June 30, 2010. Only those businesses that have completed projects before the May 1 filing date may apply for a tax credit certificate. The economic development authority will not issue tax credit certificates for more than $4 million during a fiscal year. If applications are received for more than $4 million, the applicants shall receive certificates for a prorated amount.

The economic development authority will issue tax credit certificates within a reasonable period of time. Tax credit certificates are valid for the tax year following project completion. The tax credit certificate must be included with the tax return for the tax year during which the tax credit is claimed. The tax credit certificate shall not be transferred, except for a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return and whose project primarily involves the production of ethanol for tax years beginning on or after January 1, 2002, or for a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return for tax years beginning on or after July 1, 2003.

For value-added agricultural projects for cooperatives that are not required to file an Iowa income tax return because they are exempt from federal income tax, the cooperative must submit a list of its members and the share of each member's interest in the cooperative. The economic development authority will issue a tax credit certificate to each member on the list.

For tax years beginning on or after January 1, 2002, but before July 1, 2003, a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return and whose project primarily involves the production of ethanol may elect to transfer all or a portion of its tax credit to its members. For tax years beginning on or after July 1, 2003, a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return may elect to transfer all or a portion of its tax credit to its members. The amount of tax credit transferred and claimed by a member shall be based upon the pro rata share of the member's earnings in the cooperative. The economic development authority will issue a tax credit certificate to each member of the cooperative to whom the credit was transferred provided that tax credit certificates which total no more than $4 million are issued during a fiscal year.

The following nonexclusive examples illustrate how this subrule applies:

EXAMPLE 1. Corporation A completes a value-added agricultural project in October 2001 and has an investment tax credit of $1 million. Corporation A is required to file an Iowa income tax return but expects no tax liability for the year ending December 31, 2001. Thus, Corporation A applies for a tax credit certificate for the entire unused credit of $1 million in May 2002. The entire $1 million is approved by the economic development authority, so the tax credit certificate is included with the tax return for the year ending December 31, 2002. Corporation A will request a refund of $1 million on this tax return.

EXAMPLE 2. Corporation B completes a value-added agricultural project in October 2001 and has an investment tax credit of $1 million. Corporation B is required to file an Iowa income tax return but expects no tax liability for the year ending December 31, 2001. Thus, Corporation B applies for a tax credit of $1 million in May 2002. Due to the proration of available credits, Corporation B is awarded a tax credit certificate for $400,000. The tax credit certificate is included with the tax return for the year ending December 31, 2002. Corporation B will request a refund of $400,000 on this tax return. The remaining $600,000 of unused credit can be carried forward for the following seven tax years or until the credit is depleted, whichever occurs first. If Corporation B expects no tax liability for the tax period ending December 31, 2002, Corporation B may apply for a tax credit certificate in May 2003 for this $600,000 amount.

EXAMPLE 3. Corporation C completes a value-added agricultural project in March 2002 and has an investment tax credit of $1 million. Corporation C is required to file an Iowa income tax return and expects a tax liability of $200,000 for the tax period ending December 31, 2002. Thus, Corporation C applies for a tax credit certificate for the unused credit of $800,000 in May 2002. A tax credit certificate is awarded for the entire $800,000. The tax credit certificate for $800,000 shall be included with the tax return for the period ending December 31, 2003, since the certificate is not valid until the year following the project's completion. The tax return for the period ending December 31, 2002, reports a tax liability of $150,000. The investment credit is limited to $150,000 for the period ending December 31, 2002, and the remaining $50,000 can be carried forward for the following seven tax years.

EXAMPLE 4. Corporation D is a cooperative described in Section 521 of the Internal Revenue Code that completes a project involving ethanol in August 2002. Corporation D has an investment tax credit of $500,000. Corporation D is not required to file an Iowa income tax return because Corporation D is exempt from federal income tax. When filing for the tax credit certificate in May 2003 for the $500,000

unused credit, Corporation D must attach a list of its members and the share of each member's interest in the cooperative. The economic development authority will issue tax credit certificates to each member on the list based on each member's interest in the cooperative. The members can include the tax credit certificate with their Iowa income tax returns for the year ending December 31, 2003, since the certificate is not valid until the year following project completion.

EXAMPLE 5. Corporation E is a cooperative described in Section 521 of the Internal Revenue Code that completes a project involving ethanol in August 2002. Corporation E has an investment tax credit of $500,000. Corporation E is required to file an Iowa income tax return because Corporation E is not exempt from federal income tax. Corporation E expects a tax liability of $100,000 on its Iowa income tax return for the year ending December 31, 2002. Corporation E applies for a tax credit certificate for the unused credit of $400,000 and elects to transfer the $400,000 unused credit to its members. When applying for the tax credit certificate in May 2003, Corporation E must provide a list of its members and the pro rata share of each member's earnings in the cooperative. The economic development authority will issue tax credit certificates to each member of the cooperative. The members can include the tax credit certificate with their Iowa income tax returns for the year ending December 31, 2003, since the certificate is not valid until the year following project completion.

EXAMPLE 6. Corporation F is a cooperative described in Section 521 of the Internal Revenue Code that completes a project involving ethanol in August 2002. Corporation F is a limited liability company that files a partnership return for federal income tax purposes. Corporation F is required to file an Iowa partnership return because Corporation F is not exempt from federal income tax. Corporation F has an investment tax credit of $500,000 which must be claimed by the individual partners of the partnership based on their pro rata share of individual earnings of the partnership. Corporation F expects a tax liability of $200,000 for the individual partners. Corporation F may apply for a tax credit certificate in May 2003 for the unused credit of $300,000. Corporation F must list the names of each partner and the ownership interest of each partner in order to allocate the investment credit for each partner. The tax credit certificate may be claimed on the partner's Iowa income tax return for the period ending December 31, 2003.

52.10(5) *Corporate tax credit—certain sales taxes paid by developer.* For eligible businesses approved by the Iowa department of economic development on or after March 17, 2004, the eligible business may claim a corporate tax credit for certain sales taxes paid by a third-party developer.

a. Sales taxes eligible for the credit. The sales taxes paid by the third-party developer which are eligible for this credit include the following:

(1) Iowa sales and use tax for gas, electricity, water, or sewer utility services, goods, wares, or merchandise, or on services rendered to, furnished to or performed for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility within the economic development area.

(2) Iowa sales and use tax paid for racks, shelving, and conveyor equipment to be used in a warehouse or distribution center within the economic development area.

Any Iowa sales and use tax paid relating to intangible property, furniture and other furnishings is not eligible for the corporate tax credit.

b. How to claim the credit. The third-party developer must provide to the economic development authority the amount of Iowa sales and use tax paid as described in paragraph *"a."* Beginning on July 1, 2009, this information must be provided to the Iowa department of revenue. The amount of Iowa sales and use tax attributable to racks, shelving, and conveyor equipment must be identified separately.

The economic development authority will issue a tax credit certificate to the eligible business equal to the Iowa sales and use tax paid by the third-party developer for gas, electricity, water, or sewer utility services, goods, wares, or merchandise, or on services rendered to, furnished to or performed for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility. In addition, the economic development authority will also issue a separate tax credit certificate to the eligible business equal to the Iowa sales and use tax paid by the third-party developer for racks, shelving, and conveyor equipment to be used in a warehouse or distribution center. Beginning on July 1, 2009, the Iowa department of revenue shall issue these tax credit certificates.

The tax credit certificate shall contain the name, address, and tax identification number of the eligible business, along with the amount of the tax credit and the year in which the tax credit can be claimed. The tax credit certificate must be included with the taxpayer's income tax return for the tax year for which the tax credit is claimed. Any tax credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following seven years or until it is used, whichever is the earlier.

For the tax credit certificate relating to Iowa sales and use tax paid by the third-party developer for racks, shelving, and conveyor equipment, the aggregate amount of tax credit certificates and tax refunds for Iowa sales and use tax paid for racks, shelving, and conveyor equipment to eligible businesses under the new jobs and income program, high quality job creation program, enterprise zone program, new capital investment program and high quality jobs program cannot exceed $500,000 in a fiscal year. The requests for tax credit certificates or refunds will be processed in the order they are received on a first-come, first-served basis until the amount of credits authorized for issuance has been exhausted. If applications for tax credit certificates or refunds exceed the $500,000 limitation for any fiscal year, the applications shall be considered in succeeding fiscal years.

This rule is intended to implement Iowa Code sections 15.331C, 15.333 as amended by 2010 Iowa Acts, Senate File 2380, and 15.335.

[**ARC 8605B**, IAB 3/10/10, effective 4/14/10; **ARC 9104B**, IAB 9/22/10, effective 10/27/10; **ARC 1744C**, IAB 11/26/14, effective 12/31/14]

701—52.11(422) Refunds and overpayments.

52.11(1) to **52.11(6)** Reserved.

52.11(7) *Computation of interest on refunds resulting from net operating losses or net capital losses for tax years or periods beginning on or after January 1, 1974.* Rescinded IAB 11/24/04, effective 12/29/04.

52.11(8) *Computation of interest on refunds resulting from net operating losses or net capital losses for tax years or periods beginning on or after January 1, 1974, and ending on or after July 1, 1980.* Rescinded IAB 11/24/04, effective 12/29/04.

52.11(9) *Computation of interest on refunds resulting from net operating losses or net capital losses for tax years ending on or after April 30, 1981.* Rescinded IAB 11/24/04, effective 12/29/04.

52.11(10) *For refund claims received by the department after June 11, 1984.* If the amount of tax is reduced as a result of a net operating loss or net capital loss, interest shall accrue on the refund resulting from the loss carryback beginning on the date a claim for refund or amended return carrying back the net operating loss or net capital loss is filed with the department or the first day of the second calendar month following the actual payment date, whichever is later.

52.11(11) *Overpayment—interest accruing before July 1, 1980.* Rescinded IAB 11/24/04, effective 12/29/04.

52.11(12) *Interest commencing on or after January 1, 1982.* See rule 701—10.2(421) regarding the rate of interest charged by the department on delinquent taxes and the rate paid by the department on refunds commencing on or after January 1, 1982.

52.11(13) *Overpayment—interest accruing on or after July 1, 1980, and before April 30, 1981.* Rescinded IAB 11/24/04, effective 12/29/04.

52.11(14) *Overpayment—interest accruing on overpayments resulting from returns due on or after April 30, 1981.* If the amount of tax determined to be due by the department is less than the amount paid, the excess to be refunded will accrue interest from the first day of the second calendar month following the date of payment or the date the return was due to be filed or was filed, whichever is the later.

This rule is intended to implement Iowa Code section 422.25.

701—52.12(422) Deduction of credits. The credits against computed tax set forth in Iowa Code sections 422.33 and 422.110 shall be claimed in the following sequence.

1. Franchise tax credit.
2. School tuition organization tax credit.
3. Venture capital tax credit (excluding redeemed Iowa fund of funds tax credit).

4. Endow Iowa tax credit.
5. Film qualified expenditure tax credit.
6. Film investment tax credit.
7. Redevelopment tax credit.
8. From farm to food donation tax credit.
9. Workforce housing tax credit.
10. Investment tax credit.
11. Wind energy production tax credit.
12. Renewable energy tax credit.
13. Redeemed Iowa fund of funds tax credit.
14. New jobs tax credit.
15. Economic development region revolving fund tax credit.
16. Agricultural assets transfer tax credit.
17. Custom farming contract tax credit.
18. Solar energy system tax credit.
19. Charitable conservation contribution tax credit.
20. Alternative minimum tax credit.
21. Historic preservation and cultural and entertainment district tax credit.
22. Corporate tax credit for certain sales tax paid by developer.
23. Ethanol promotion tax credit.
24. Research activities credit.
25. Assistive device tax credit.
26. Motor fuel tax credit.
27. Wage-benefits tax credit.
28. E-85 gasoline promotion tax credit.
29. Biodiesel blended fuel tax credit.
30. E-15 plus gasoline promotion tax credit.
31. Estimated tax and payment with vouchers.

This rule is intended to implement Iowa Code sections 422.33, 422.91 and 422.110.

[**ARC 8589B**, IAB 3/10/10, effective 4/14/10; **ARC 9104B**, IAB 9/22/10, effective 10/27/10; **ARC 9876B**, IAB 11/30/11, effective 1/4/12; **ARC 0398C**, IAB 10/17/12, effective 11/21/12; **ARC 1303C**, IAB 2/5/14, effective 3/12/14; **ARC 1744C**, IAB 11/26/14, effective 12/31/14]

701—52.13(422) Livestock production credits. For rules relating to the livestock production income tax credit refunds see rule 701—43.8(422).

This rule is intended to implement 1996 Iowa Acts, chapter 1197, sections 19, 20, and 21.

701—52.14(15E) Enterprise zone tax credits. For tax years ending after July 1, 1997, for programs approved after July 1, 1997, but before July 1, 2014, a business which qualifies under the enterprise zone program is eligible to receive tax credits. The enterprise zone program was repealed on July 1, 2014. Any tax credits earned by businesses approved under the enterprise zone program prior to July 1, 2014, remain valid and can be claimed on tax returns filed after July 1, 2014. An eligible business under the enterprise zone program must be approved by the economic development authority and meet the requirements of 2014 Iowa Code section 15E.193. The administrative rules for the enterprise zone program for the economic development authority may be found at 261—Chapter 59.

52.14(1) *Supplemental new jobs credit from withholding.* An eligible business approved under the enterprise zone program is allowed the supplemental new jobs credit from withholding as provided in 701—subrule 46.9(1).

52.14(2) *Investment tax credit.* An eligible business approved under the enterprise zone program is allowed an investment tax credit of up to 10 percent of the new investment which is directly related to new jobs created by the location or expansion of the eligible business.

The provisions under the new jobs and income program for the investment tax credit described in rule 701—52.10(15) are applicable to the enterprise zone program with the following exceptions:

a. The corporate tax credit for certain sales taxes paid by a developer described in subrule 52.10(5) does not apply for the enterprise zone program.

b. For projects approved on or after July 1, 2005, under the enterprise zone program, the investment tax credit will be amortized over a five-year period, as described in subrule 52.28(2).

c. For tax years ending on or after July 1, 2005, an eligible business approved under the enterprise zone program whose project primarily involves biotechnology-related processes may elect to receive a refund for all or a portion of an unused investment credit as described in subrule 52.10(4).

52.14(3) *Research activities credit.* An eligible business approved under the enterprise zone program is eligible for an additional research activities credit as described in subrules 52.7(5) and 52.7(6).

a. Tax years ending on or after July 1, 2005, but before July 1, 2009. For eligible businesses approved under the enterprise zone program, research activities allowable for the Iowa research activities credit include expenses related to the development and deployment of innovative renewable energy generation components manufactured or assembled in Iowa; such expenses related to the development and deployment of innovative renewable energy generation components are not eligible for the federal credit for increasing research activities. For purposes of this subrule, innovative renewable energy generation components do not include components with more than 200 megawatts in installed effective nameplate capacity. The research activities credit related to renewable energy generation components under the enterprise zone program and the high quality job creation program described in subrule 52.28(1) shall not exceed $1 million in the aggregate.

These expenses related to the development and deployment of innovative renewable energy generation components are applicable only to the additional research activities credit set forth in subrule 52.7(5) for businesses in enterprise zones and the additional research activities credit set forth in subrule 52.28(1) for businesses approved under the high quality job creation program, and are not applicable to the research activities credit set forth in subrule 52.7(3).

b. Tax years ending on or after July 1, 2009. For eligible businesses approved under the enterprise zone program, research activities allowable for the Iowa research activities credit include expenses related to the development and deployment of innovative renewable energy generation components manufactured or assembled in Iowa; such expenses related to the development and deployment of innovative renewable energy generation components are not eligible for the federal credit for increasing research activities.

(1) For purposes of this paragraph, innovative renewable energy generation components do not include components with more than 200 megawatts in installed effective nameplate capacity.

(2) The research activities credit related to renewable energy generation components under the enterprise zone program and the high quality jobs program described in subrule 52.28(1) shall not exceed $2 million for the fiscal year ending June 30, 2010, and $1 million for the fiscal year ending June 30, 2011.

(3) These expenses related to the development and deployment of innovative renewable energy generation components are applicable only to the additional research activities credit set forth in subrule 52.7(5) for businesses in enterprise zones and the additional research activities credit set forth in subrule 52.40(1) for businesses approved under the high quality jobs program, and are not applicable to the research activities credit set forth in subrule 52.7(3).

52.14(4) *Repayment of incentives.* Effective July 1, 2003, eligible businesses in an enterprise zone may be required to repay all or a portion of the tax incentives received on Iowa returns if the eligible business experiences a layoff of employees in Iowa or closes any of its facilities in Iowa. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the tax credits may have expired, the department may proceed to collect the tax incentives forfeited by failure to maintain the requirements of the enterprise zone program because this is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability. Details on the calculation of the repayment can be found in 261—subrule 187.5(4) of the administrative rules of the economic development authority. If the business is a partnership, limited liability company, S corporation, estate or trust where the income of the taxpayer is taxed to the individual owner(s) of the business, the department may proceed to collect the tax incentives against the partners, members, shareholders or beneficiaries to whom the tax incentives

were passed through. See Decision of the Administrative Law Judge in *Damien & Colette Trebilcock, et al.,* Docket No. 11DORF 042-044, June 11, 2012.

This rule is intended to implement 2014 Iowa Code sections 15E.193 and 15E.196.

[**ARC 8589B**, IAB 3/10/10, effective 4/14/10; **ARC 9104B**, IAB 9/22/10, effective 10/27/10; **ARC 1744C**, IAB 11/26/14, effective 12/31/14]

701—52.15(15E) Eligible housing business tax credit. A corporation which qualifies as an eligible housing business may receive a tax credit of up to 10 percent of the new investment which is directly related to the building or rehabilitating of homes in an enterprise zone. The enterprise zone program was repealed on July 1, 2014, and the eligible housing business tax credit has been replaced with the workforce housing tax incentives program. See rule 701—52.46(15) for information on the tax incentives provided under the workforce housing tax incentives program. Any investment tax credit earned by businesses approved under the enterprise zone program prior to July 1, 2014, remains valid and can be claimed on tax returns filed after July 1, 2014. The tax credit may be taken on the tax return for the tax year in which the home is ready for occupancy.

An eligible housing business is one which meets the criteria in 2014 Iowa Code section 15E.193B.

52.15(1) *Computation of tax credit.* New investment which is directly related to the building or rehabilitating of homes includes but is not limited to the following costs: land, surveying, architectural services, building permits, inspections, interest on a construction loan, building materials, roofing, plumbing materials, electrical materials, amounts paid to subcontractors for labor and materials provided, concrete, labor, landscaping, appliances normally provided with a new home, heating and cooling equipment, millwork, drywall and drywall materials, nails, bolts, screws, and floor coverings.

New investment does not include the machinery, equipment, hand or power tools necessary to build or rehabilitate homes.

A taxpayer may claim on the taxpayer's corporation income tax return the pro rata share of the Iowa eligible housing business tax credit from a partnership, limited liability company, estate, or trust. The portion of the credit claimed by the taxpayer shall be in the same ratio as the taxpayer's pro rata share of the earnings of the partnership, limited liability company, or estate or trust, except for projects beginning on or after July 1, 2005, which used low-income housing credits authorized under Section 42 of the Internal Revenue Code to assist in the financing of the housing development. For these projects, the partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder.

Any Iowa eligible housing business tax credit in excess of the corporation's tax liability may be carried forward for seven years or until it is used, whichever is the earlier.

If the eligible housing business fails to maintain the requirements of Iowa Code section 15E.193B to be an eligible housing business, the taxpayer may be required to repay all or a part of the tax incentives the business received. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the income tax credit may have expired, the department may proceed to collect the tax incentives forfeited by failure to maintain the requirements of Iowa Code section 15E.193B. This is because it is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability. Details on the calculation of the repayment can be found in 261—subrule 187.5(4) of the administrative rules of the economic development authority. If the business is a partnership, limited liability company, S corporation, estate or trust where the income of the taxpayer is taxed to the individual owner(s) of the business, the department may proceed to collect the tax incentives against the partners, members, shareholders or beneficiaries to whom the tax incentives were passed through. See Decision of the Administrative Law Judge in *Damien & Colette Trebilcock, et al.,* Docket No. 11DORF 042-044, June 11, 2012.

Prior to January 1, 2001, the tax credit cannot exceed 10 percent of $120,000 for each home or individual unit in a multiple dwelling unit building. Effective January 1, 2001, the tax credit cannot exceed 10 percent of $140,000 for each home or individual unit in a multiple dwelling unit building.

Effective for tax periods beginning on or after January 1, 2003, the taxpayer must receive a tax credit certificate from the economic development authority to claim the eligible housing business tax credit.

The tax credit certificate shall include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the date the project was completed, the amount of the eligible housing business tax credit and the tax year for which the credit may be claimed. In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 52.15(2). The tax credit certificate must be included with the income tax return for the tax period in which the home is ready for occupancy. The administrative rules for the eligible housing business tax credit for the economic development authority may be found under 261—Chapter 59.

52.15(2) *Transfer of the eligible housing business tax credit.* For tax periods beginning on or after January 1, 2003, the eligible housing business tax credit certificates may be transferred to any person or entity if low-income housing tax credits authorized under Section 42 of the Internal Revenue Code are used to assist in the financing of the housing development. In addition, the eligible housing business tax credit certificates may be transferred to any person or entity for projects beginning on or after July 1, 2005, if the housing development is located in a brownfield site as defined in Iowa Code section 15.291, or if the housing development is located in a blighted area as defined in Iowa Code section 403.17. No more than $3 million of tax credits for housing developments located in brownfield sites or blighted areas may be transferred in a calendar year, with no more than $1.5 million being transferred for any one eligible housing business in a calendar year.

The excess of the $3 million limitation of tax credits eligible for transfer in the 2013 and 2014 calendar years for housing developments located in brownfield sites or blighted areas cannot be claimed by a transferee prior to January 1, 2016. The eligible housing business must have notified the economic development authority in writing before July 1, 2014, of the business's intent to transfer any tax credits for housing developments located in brownfield sites or blighted areas. If a tax credit certificate is issued by the economic development authority for a housing development approved prior to July 1, 2014, that is located in a brownfield site or blighted area, the tax credit can still be claimed by the eligible business, but the tax credit cannot be transferred by the eligible business if the economic development authority was not notified prior to July 1, 2014.

EXAMPLE 1: A housing development located in a brownfield site was completed in December 2013 and was issued a tax credit certificate totaling $250,000. The $3 million calendar cap for transferred tax credits for brownfield sites and blighted areas has already been reached for the 2013 and 2014 tax years. The $250,000 tax credit is going to be transferred to ABC Company, and the economic development authority was notified of the transfer prior to July 1, 2014. Once a replacement tax credit certificate has been issued, ABC Company cannot file an amended Iowa corporation income tax return for the 2013 tax year until January 1, 2016, to claim the $250,000 tax credit.

EXAMPLE 2: A housing development located in a blighted area was completed in May 2014 and was issued a tax credit certificate totaling $150,000. The $3 million calendar cap for transferred tax credits for brownfield sites and blighted areas has already been reached for the 2014 tax year. The $150,000 tax credit is going to be transferred to XYZ Company, and the economic development authority was notified of the transfer prior to July 1, 2014. Once a replacement tax credit certificate has been issued, XYZ Company cannot file an amended Iowa corporation income tax return for the 2014 tax year until January 1, 2016, to claim the $150,000 tax credit.

Within 90 days of transfer of the tax credit certificate for transfers prior to July 1, 2006, the transferee must submit the transferred tax credit certificate to the economic development authority, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. For transfers on or after July 1, 2006, the transferee must submit the transferred tax credit certificate to the department of revenue. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee for transfers prior to July 1, 2006, the economic development authority will issue a replacement tax credit certificate to the transferee. For transfers on or after July 1, 2006, the department of revenue will issue the replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members or shareholders and information on how the housing business tax credit should be divided among the partners, members or shareholders. The transferee shall also

provide the tax identification numbers and addresses of the partners, members or shareholders. The replacement tax credit certificate must contain the same information that was on the original certificate and must have the same expiration date as the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax period for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

This rule is intended to implement 2014 Iowa Code section 15E.193B.

[**ARC 1744C**, IAB 11/26/14, effective 12/31/14]

701—52.16(422) Franchise tax credit. For tax years beginning on or after January 1, 1998, a shareholder in a financial institution as defined in Section 581 of the Internal Revenue Code which has elected to have its income taxed directly to the shareholders may take a tax credit equal to the shareholder's pro rata share of the Iowa franchise tax paid by the financial institution.

The credit must be computed by recomputing the amount of tax computed under Iowa Code section 422.33 by reducing the shareholder's taxable income by the shareholder's pro rata share of the items of income and expenses of the financial institution and deducting from the recomputed tax the credits allowed by Iowa Code section 422.33. The recomputed tax must be subtracted from the amount of tax computed under Iowa Code section 422.33 reduced by the credits allowed in Iowa Code section 422.33.

The resulting amount, not to exceed the shareholder's pro rata share of the franchise tax paid by the financial institution, is the amount of tax credit allowed the shareholder.

This rule is intended to implement Iowa Code section 422.33, as amended by 1999 Iowa Acts, chapter 95.

701—52.17(422) Assistive device tax credit. Effective for tax years beginning on or after January 1, 2000, a taxpayer who is a small business that purchases, rents, or modifies an assistive device or makes workplace modifications for an individual with a disability who is employed or will be employed by the taxpayer may qualify for an assistive device tax credit, subject to the availability of the credit. The assistive device credit is equal to 50 percent of the first $5,000 paid during the tax year by the small business for the purchase, rental, or modification of an assistive device or for making workplace modifications. Any credit in excess of the tax liability may be refunded or applied to the taxpayer's tax liability for the following tax year. If the taxpayer elects to take the assistive device tax credit, the taxpayer is not to deduct for Iowa income tax purposes any amount of the cost of the assistive device or workplace modification that is deductible for federal income tax purposes. A small business will not be eligible for the assistive device credit if the device is provided for an owner of the small business unless the owner is a bona fide employee of the small business.

52.17(1) *Submitting applications for the credit.* A small business wanting to receive the assistive device tax credit must submit an application for the credit to the Iowa department of economic development and provide other information and documents requested by the Iowa department of economic development. If the taxpayer meets the criteria for qualification for the credit, the Iowa department of economic development will issue the taxpayer a certificate of entitlement for the credit. However, the aggregate amount of assistive device tax credits that may be granted by the Iowa department of economic development to all small businesses during a fiscal year cannot exceed $500,000. The certificate for entitlement of the assistive device credit is to include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the estimated amount of the tax credit, the date on which the taxpayer's application was approved and the date when it is anticipated that the assistive device project will be completed and a space on the application where the taxpayer is to enter the date that the assistive device project was completed. The certificate for entitlement will not be considered to be valid for purposes of claiming the assistive device credit on the taxpayer's Iowa income tax return until the taxpayer has completed the assistive device project and has entered the completion date on the certificate of entitlement form. The tax year of the small business in which the assistive

device project is completed is the tax year for which the assistive device credit may be claimed. For example, in a case where taxpayer A received a certificate of entitlement for an assistive device credit on September 15, 2000, and completed the assistive device workplace modification project on January 15, 2001, taxpayer A could claim the assistive device credit on taxpayer A's 2001 Iowa return assuming that taxpayer A is filing returns on a calendar-year basis.

The department of revenue will not allow the assistive device credit on a taxpayer's return if the certificate of entitlement or a legible copy of the certificate is not included with the taxpayer's income tax return. If the taxpayer has been granted a certificate of entitlement and the taxpayer is an S corporation, where the income of the taxpayer is taxed to the individual owner(s) of the business entity, the taxpayer must provide a copy of the certificate to each of the shareholders with a statement showing how the credit is to be allocated among the individual owners of the S corporation. An individual owner is to include a copy of the certificate of entitlement and the statement of allocation of the assistive device credit with the individual's state income tax return.

52.17(2) *Definitions.* The following definitions are applicable to this subrule:

"Assistive device" means any item, piece of equipment, or product system which is used to increase, maintain, or improve the functional capabilities of an individual with a disability in the workplace or on the job. "Assistive device" does not mean any medical device, surgical device, or organ implanted or transplanted into or attached directly to an individual. "Assistive device" does not include any device for which a certificate of title is issued by the state department of transportation, but does include any item, piece of equipment, or product system otherwise meeting the definition of "assistive device" that is incorporated, attached, or included as a modification in or to such a device issued a certificate of title.

"Business entity" means partnership, limited liability company, S corporation, estate or trust, where the income of the business is taxed to the individual owners of the business, whether the individual owner is a partner, member, shareholder, or beneficiary.

"Disability" means the same as defined in Iowa Code section 15.102. Therefore, "disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of the individual, a record of physical or mental impairment that substantially limits one or more of the major life activities of the individual, or being regarded as an individual with a physical or mental impairment that substantially limits one or more of the major life activities of the individual. "Disability" does not include any of the following:

1. Homosexuality or bisexuality;
2. Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders, or other sexual behavior disorders;
3. Compulsive gambling, kleptomania, or pyromania;
4. Psychoactive substance abuse disorders resulting from current illegal use of drugs;
5. Alcoholism.

"Employee" means an individual who is employed by the small business who meets the criteria in Treasury Regulation § 31.3401(c)-1(b), which is the definition of an employee for federal income tax withholding purposes. An individual who receives self-employment income from the small business is not to be considered to be an employee of the small business for purposes of this rule.

"Small business" means that the business either had gross receipts in the tax year before the current tax year of $3 million or less or employed not more than 14 full-time employees during the tax year prior to the current tax year.

"Workplace modifications" means physical alterations to the office, factory, or other work environment where the disabled employee is working or is to work.

52.17(3) *Allocation of credit to owners of a business entity.* If the taxpayer that was entitled to an assistive device credit is a business entity, the business entity is to allocate the allowable credit to each of the individual owners of the entity on the basis of each owner's pro rata share of the earnings of the entity to the total earnings of the entity. Therefore, if an S corporation has an assistive device credit for a tax year of $2,500 and one shareholder of the S corporation receives 25 percent of the earnings of

the corporation, that shareholder would receive an assistive device credit for the tax year of $625 or 25 percent of the total assistive device credit of the S corporation.

This rule is intended to implement Iowa Code section 422.33.

[**ARC 1744C**, IAB 11/26/14, effective 12/31/14]

701—52.18(404A,422) Historic preservation and cultural and entertainment district tax credit for projects with Part 2 applications approved and tax credits reserved prior to July 1, 2014. A historic preservation and cultural and entertainment district tax credit, subject to the availability of the credit, may be claimed against a taxpayer's Iowa corporate income tax liability for 25 percent of the qualified costs of rehabilitation of property to the extent the costs were incurred on or after July 1, 2000, for the approved rehabilitation projects of eligible property in Iowa.

The general assembly has mandated that the department of cultural affairs and the department of revenue adopt rules to jointly administer Iowa Code chapter 404A. 2014 Iowa Acts, House File 2453, amended the historic preservation and cultural and entertainment district tax credit program effective July 1, 2014. The department of revenue's provisions for projects with tax credits reserved prior to July 1, 2014, are found in this rule. The department of revenue's provisions for projects with agreements entered into on or after July 1, 2014, are found in rule 701—52.47(404A,422). The department of cultural affairs' rules related to this program may be found at 223—Chapter 48. Division I of 223—Chapter 48 applies to projects with reservations approved prior to July 1, 2014. Division II of 223—Chapter 48 applies to projects with agreements entered into on or after July 1, 2014.

Notwithstanding anything contained herein to the contrary, the department of cultural affairs shall not reserve tax credits under 2013 Iowa Code chapter 404A as amended by 2013 Iowa Acts, chapter 112, section 1, for applicants that do not have an approved Part 2 application and a tax credit reservation on or before June 30, 2014. Projects with approved Part 2 applications and provisional tax credit reservations on or before June 30, 2014, shall be governed by 2013 Iowa Code chapter 404A as amended by 2013 Iowa Acts, chapter 112, section 1; by 223—Chapter 48, Division I; and by rule 701—52.18(404A,422). Projects for which Part 2 applications were approved and agreements entered into after June 30, 2014, shall be governed by 2014 Iowa Acts, House File 2453; by 223—Chapter 48, Division II; and by rule 701—52.47(404A,422).

52.18(1) *Eligible property for the historic preservation and cultural and entertainment district tax credit.* The following types of property are eligible for the historic preservation and cultural and entertainment district tax credit:

a. Property verified as listed on the National Register of Historic Places or eligible for such listing.

b. Property designated as of historic significance to a district listed in the National Register of Historic Places or eligible for such designation.

c. Property or district designated a local landmark by a city or county ordinance.

d. Any barn constructed prior to 1937.

52.18(2) *Application and review process for the historic preservation and cultural and entertainment district tax credit.*

a. Taxpayers who want to claim an income tax credit for completing a historic preservation and cultural and entertainment district project must submit an application for approval of the project. The application forms for the historic preservation and cultural and entertainment district tax credit may be requested from the State Tax Credit Program Manager, State Historic Preservation Office, Department of Cultural Affairs, 600 E. Locust, Des Moines, Iowa 50319-0290. The telephone number for this office is (515)281-4137. Applications for the credit will be accepted by the state historic preservation office on or after July 1, 2000, until such time as all the available credits allocated for each fiscal year are encumbered.

b. Applicants for the historic preservation and cultural and entertainment district tax credit must include all information and documentation requested on the application forms for the credit in order for the applications to be processed.

52.18(3) *Computation of the amount of the historic preservation and cultural and entertainment district tax credit.* The amount of the historic preservation and cultural and entertainment district tax

credit is 25 percent of the qualified rehabilitation costs made to eligible property in a project. Qualified rehabilitation costs are those rehabilitation costs approved by the state historic preservation office for a project for a particular taxpayer to the extent those rehabilitation costs are actually expended by that taxpayer.

a. In the case of commercial property, qualified rehabilitation costs must equal at least $50,000 or 50 percent of the assessed value of the property, excluding the value of the land, prior to rehabilitation, whichever is less. In the case of property other than commercial property, the qualified rehabilitation costs must equal at least $25,000 or 25 percent of the assessed value, excluding the value of the land, prior to the rehabilitation, whichever amount is less.

b. In computing the tax credit, the only costs which may be included are the qualified rehabilitation costs incurred commencing from the date on which the first qualified rehabilitation cost is incurred and ending with the end of the taxable year in which the property is placed in service. The rehabilitation period may include dates that precede approval of a project, provided that any qualified rehabilitation costs incurred prior to the date of approval of the project must be qualified rehabilitation costs.

c. For purposes of the historic preservation and cultural and entertainment district tax credit, qualified rehabilitation costs include those costs properly included in the basis of the eligible property for income tax purposes. Costs treated as expenses and deducted in the year paid or incurred and amounts that are otherwise not added to the basis of the property for income tax purposes are not qualified rehabilitation costs. Amounts incurred for architectural and engineering fees, site survey fees, legal expenses, insurance premiums, development fees, and other construction-related costs are qualified rehabilitation costs to the extent they are added to the basis of the eligible property for tax purposes. Costs of sidewalks, parking lots, and landscaping do not constitute qualified rehabilitation costs. Any rehabilitation costs used in the computation of the historic preservation and cultural and entertainment district tax credit are not added to the basis of the property for Iowa income tax purposes if the rehabilitation costs were incurred in a tax year beginning on or after January 1, 2000, but prior to January 1, 2001. Any rehabilitation costs incurred in a tax year beginning on or after January 1, 2001, are added to the basis of the rehabilitated property for income tax purposes except those rehabilitation costs that are equal to the amount of the computed historic preservation and cultural and entertainment district tax credit for the tax year.

EXAMPLE: The basis of a commercial building in a historic district was $500,000, excluding the value of the land, before the rehabilitation project. During a project to rehabilitate this building, $600,000 in rehabilitation costs were expended to complete the project and $500,000 of those rehabilitation costs were qualified rehabilitation costs which were eligible for the historic preservation and cultural and entertainment district tax credit of $125,000. Therefore, the basis of the building for Iowa income tax purposes was $975,000, since the qualified rehabilitation costs of $125,000, which are equal to the amount of the historic preservation and cultural and entertainment district tax credit for the tax year, are not added to the basis of the rehabilitated property. The basis of the building for federal income tax purposes was $1,100,000. It should be noted that this example does not consider any possible reduced basis for the building for federal income tax purposes due to the rehabilitation investment credit provided in Section 47 of the Internal Revenue Code.

52.18(4) *Completion of the historic preservation and cultural and entertainment district project and claiming the historic preservation and cultural and entertainment district tax credit on the Iowa return.* After the taxpayer completes an authorized rehabilitation project, the taxpayer must get a certificate of completion of the project from the state historic preservation office of the department of cultural affairs. After verifying the taxpayer's eligibility for the historic preservation and cultural and entertainment district tax credit, the state historic preservation office shall issue a historic preservation and cultural and entertainment district tax credit certificate, which shall be included with the taxpayer's income tax return for the tax year in which the rehabilitation project is completed or the year the credit was reserved, whichever is later. For example, if a project was completed in 2008 and the credit was reserved for the state fiscal year ending June 30, 2010, the credit can be claimed on the 2009 calendar year return that is due on April 30, 2010. The tax credit certificate is to include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the address or location of the rehabilitation

project, the date the project was completed, the year the tax credit was reserved, and the amount of the historic preservation and cultural and entertainment district tax credit. In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, and any consideration received in exchange for the tax credit, as provided in subrule 52.18(6). In addition, if the taxpayer is a partnership, limited liability company, estate or trust, where the tax credit is allocated to the owners or beneficiaries of the entity, a list of the owners or beneficiaries and the amount of credit allocated to each owner or beneficiary should be provided with the certificate. The tax credit certificate should be included with the income tax return for the period in which the project was completed.

For tax years ending on or after July 1, 2007, any historic preservation and cultural and entertainment district tax credit in excess of the taxpayer's tax liability is fully refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

52.18(5) *Allocation of historic preservation and cultural and entertainment district tax credits to individual owners of the entity for tax credits reserved for fiscal years beginning on or after July 1, 2012.* For tax credits reserved for fiscal years beginning on or after July 1, 2012, the partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder. The credit does not have to be allocated based on the pro rata share of earnings of the partnership, limited liability company or S corporation.

52.18(6) *Transfer of the historic preservation and cultural and entertainment district tax credit.* For tax periods beginning on or after January 1, 2003, the historic preservation and cultural and entertainment district tax credit certificates may be transferred to any person or entity. A tax credit certificate of less than $1,000 shall not be transferable.

a. For transfers on or after July 1, 2006, the department of revenue will issue the replacement tax credit certificate to the transferee. Within 90 days of the transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department of revenue along with a statement containing the transferee's name, tax identification number and address, the denomination that each replacement tax credit certificate is to carry, the amount of all consideration provided in exchange for the tax credit and the names of recipients of any consideration provided in exchange for the tax credit. If a payment of money was any part of the consideration provided in exchange for the tax credit, the transferee shall list the amount of the payment of money in its statement to the department of revenue. If any part of the consideration provided in exchange for the tax credit included nonmonetary consideration, including but not limited to any promise, representation, performance, discharge of debt or nonmonetary rights or property, the tax credit transferee shall describe the nature of nonmonetary consideration and disclose any value the transferor and transferee assigned to the nonmonetary consideration. The tax credit transferee must indicate on its statement to the department of revenue if no consideration was provided in exchange for the tax credit. If the transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members or shareholders and information on how the historic preservation and cultural and entertainment district tax credit should be divided among the partners, members or shareholders. The transferee shall also provide the tax identification numbers and addresses of the partners, members or shareholders. The replacement tax credit certificate must contain the same information that was on the original certificate and must have the same expiration date as the original tax credit certificate.

b. The transferee may use the amount of the tax credit for any tax period for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

c. If the historic preservation and cultural and entertainment district tax credit of the transferee exceeds the tax liability shown on the transferee's return, the tax credit shall be fully refundable.

This rule is intended to implement Iowa Code chapter 404A as amended by 2013 Iowa Acts, Senate File 436, and Iowa Code section 422.33.

[**ARC 7761B**, IAB 5/6/09, effective 6/10/09; **ARC 8589B**, IAB 3/10/10, effective 4/14/10; **ARC 9104B**, IAB 9/22/10, effective 10/27/10; **ARC 9876B**, IAB 11/30/11, effective 1/4/12; **ARC 0398C**, IAB 10/17/12, effective 11/21/12; **ARC 1138C**, IAB 10/30/13, effective 12/4/13; **ARC 1968C**, IAB 4/15/15, effective 5/20/15]

701—52.19(422) Ethanol blended gasoline tax credit. Effective for tax years beginning on or after January 1, 2002, an ethanol blended gasoline tax credit may be claimed against a taxpayer's corporation income tax liability for retail dealers of gasoline. The taxpayer must operate at least one retail motor fuel site at which more than 60 percent of the total gallons of gasoline sold and dispensed through one or more motor fuel pumps by the taxpayer in the tax year is ethanol blended gasoline. The tax credit shall be calculated separately for each retail motor fuel site operated by the taxpayer. The amount of the credit for each eligible retail motor fuel site is two and one-half cents multiplied by the total number of gallons of ethanol blended gasoline sold and dispensed through all motor fuel pumps located at that retail motor fuel site during the tax year in excess of 60 percent of all gasoline sold and dispensed through motor fuel pumps at that retail motor fuel site during the tax year.

For fiscal years ending in 2002, the tax credit is available for each eligible retail motor fuel site based on the total number of gallons of ethanol blended gasoline sold and dispensed through all motor fuel pumps located at the taxpayer's retail motor fuel site from January 1, 2002, until the end of the taxpayer's fiscal year. Assuming a tax period that began on July 1, 2001, and ended on June 30, 2002, the taxpayer would be eligible for the tax credit based on the gallons of ethanol blended gasoline sold from January 1, 2002, through June 30, 2002. For taxpayers having a fiscal year ending in 2002, a claim for refund to claim the ethanol blended gasoline tax credit must be filed before October 1, 2003, even though the statute of limitations for refund set forth in 701—subrule 55.3(5) has not yet expired.

EXAMPLE: A taxpayer sold 100,000 gallons of gasoline at the taxpayer's retail motor fuel site during the tax year, 70,000 gallons of which was ethanol blended gasoline. The taxpayer is eligible for the credit since more than 60 percent of the total gallons sold was ethanol blended gasoline. The number of gallons in excess of 60 percent of all gasoline sold is 70,000 less 60,000, or 10,000 gallons. Two and one-half cents multiplied by 10,000 equals a $250 credit available.

The credit may be calculated on Form IA 6478. The credit must be calculated separately for each retail motor fuel site operated by the taxpayer. Therefore, if the taxpayer operates more than one retail motor fuel site, it is possible that one retail motor fuel site may be eligible for the credit while another retail motor fuel site may not. The credit can be taken only for those retail motor fuel sites for which more than 60 percent of gasoline sales involve ethanol blended gasoline.

Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

Starting with the 2006 calendar tax year, a taxpayer may claim the ethanol blended gasoline tax credit even if the taxpayer also claims the E-85 gasoline promotion tax credit provided in rule 701—52.30(422) for the same tax year for the same ethanol gallons.

EXAMPLE: A taxpayer sold 200,000 gallons of gasoline at a retail motor fuel site in 2006, of which 160,000 gallons was ethanol blended gasoline. Of these 160,000 gallons, 1,000 gallons was E-85 gasoline. Taxpayer is entitled to claim the ethanol blended gasoline tax credit of two and one-half cents multiplied by 40,000 gallons, since this constitutes the gallons in excess of 60 percent of the total gasoline gallons sold. Taxpayer may also claim the E-85 gasoline promotion tax credit on the 1,000 gallons of E-85 gasoline sold.

52.19(1) *Definitions.* The following definitions are applicable to this rule:

"Ethanol blended gasoline" means the same as defined in Iowa Code section 214A.1 as amended by 2006 Iowa Acts, House File 2754, section 3.

"Gasoline" means any liquid product prepared, advertised, offered for sale or sold for use as, or commonly and commercially used as, motor fuel for use in a spark-ignition, internal combustion engine, and which meets the specifications provided in Iowa Code section 214A.2.

"Motor fuel pump" means a pump, meter, or similar commercial weighing and measuring device used to measure and dispense motor fuel for sale on a retail basis.

"Retail dealer" means a person engaged in the business of storing and dispensing motor fuel from a motor fuel pump for sale on a retail basis, regardless of whether the motor fuel pump is located at a retail motor fuel site including a permanent or mobile location.

"Retail motor fuel site" means a geographic location in this state where a retail dealer sells and dispenses motor fuel on a retail basis. For example, tank wagons are considered retail motor fuel sites.

"Sell" means to sell on a retail basis.

52.19(2) *Allocation of credit to owners of a business entity.* If the taxpayer that was entitled to the ethanol blended gasoline tax credit is a partnership, limited liability company, S corporation, estate, or trust, the business entity shall allocate the allowable credit to each of the individual owners of the entity on the basis of each owner's pro rata share of the earnings of the entity to the total earnings of the entity. Therefore, if a partnership has an ethanol blended gasoline tax credit of $3,000 and one partner of the partnership receives 25 percent of the earnings of the partnership, that partner would receive an ethanol blended gasoline tax credit for the tax year of $750 or 25 percent of the total ethanol blended gasoline tax credit of the partnership.

52.19(3) *Repeal of ethanol blended gasoline tax credit.* The ethanol blended gasoline tax credit is repealed on January 1, 2009. However, the tax credit is available for taxpayers whose fiscal year ends after December 31, 2008, for those ethanol gallons sold beginning on the first day of the taxpayer's fiscal year until December 31, 2008. The ethanol promotion tax credit described in rule 701—52.36(422) is available beginning January 1, 2009, for retail dealers of gasoline.

EXAMPLE: A taxpayer who is a retail dealer of gasoline has a fiscal year end of April 30, 2009. The taxpayer sold 150,000 gallons of gasoline from May 1, 2008, through December 31, 2008, at the taxpayer's retail motor fuel site, of which 110,000 gallons was ethanol blended gasoline. The number of gallons in excess of 60 percent of all gasoline sold is 110,000 less 90,000, or 20,000 gallons. The taxpayer may claim the ethanol blended gasoline tax credit for the fiscal year ending April 30, 2009, in the amount of $500, or 20,000 gallons times two and one-half cents.

This rule is intended to implement Iowa Code section 422.33 as amended by 2006 Iowa Acts, House File 2754.

701—52.20(15E) Eligible development business investment tax credit. Effective for tax years beginning on or after January 1, 2001, a business which qualifies as an eligible development business may receive a tax credit of up to 10 percent of the new investment which is directly related to the construction, expansion or rehabilitation of building space to be used for manufacturing, processing, cold storage, distribution, or office facilities.

An eligible development business must be approved by the Iowa department of economic development prior to March 17, 2004, and meet the qualifications of Iowa Code section 15E.193C. Effective March 17, 2004, the eligible development business program is repealed.

New investment includes the purchase price of land and the cost of improvements made to real property. The tax credit may be claimed by an eligible development business in the tax year in which the construction, expansion or rehabilitation is completed.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until used, whichever is the earlier.

If the business is a partnership, S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

If the eligible development business fails to meet and maintain any one of the requirements to be an eligible business, the business shall be subject to repayment of all or a portion of the amount of tax incentives received. For example, if within five years of project completion the development business sells or leases any space to any retail business, the development business shall proportionally repay the value of the investment credit. The proportion of the investment credit that would be due for repayment

by an eligible development business for selling or leasing space to a retail business would be determined by dividing the square footage of building space occupied by the retail business by the square footage of the total building space.

An eligible business, which is not a development business, which operates in an enterprise zone cannot claim an investment tax credit if the property is owned, or was previously owned, by an approved development business that has already received an investment tax credit. An eligible business, which is not a development business, can claim an investment tax credit only on additional, new improvements made to real property that was not included in the development business's approved application for the investment tax credit.

This rule is intended to implement Iowa Code section 15E.193C.

701—52.21(15E,422) Venture capital credits.

52.21(1) *Investment tax credit for an equity investment in a community-based seed capital fund or qualifying business.*

a. Equity investments in a qualifying business or community-based seed capital fund before January 1, 2011. See rule 123—2.1(15E) for the discussion of the investment tax credit for an equity investment in a community-based seed capital fund or an equity investment made on or after January 1, 2004, in a qualifying business, along with the issuance of tax credit certificates by the Iowa capital investment board, for equity investments made before January 1, 2011.

b. Equity investments in a qualifying business or community-based seed capital fund on or after January 1, 2011, and before July 2, 2015. For equity investments made on or after January 1, 2011, see 261—Chapter 115 for information regarding eligibility for qualifying businesses and community-based seed capital funds, applications for the investment tax credit for equity investments in a qualifying business or community-based seed capital fund, and the issuance of tax credit certificates by the economic development authority.

(1) Certificate issuance. The department of revenue will be notified by the economic development authority when the tax credit certificates are issued.

(2) Amount of the tax credit. The credit is equal to 20 percent of the taxpayer's equity investment in a qualifying business or community-based seed capital fund.

(3) Year in which the tax credit may be claimed. An investment shall be deemed to have been made on the same date as the date of acquisition of the equity interest as determined by the Internal Revenue Code. For investments made prior to January 1, 2014, a taxpayer shall not claim the tax credit prior to the third tax year following the tax year in which the investment is made. For investments made in qualifying businesses on or after January 1, 2014, the credit can be claimed in the year of the investment, but these investments cannot be redeemed prior to January 1, 2016. For example, if a corporation taxpayer whose tax year ends on December 31, 2012, makes an equity investment during the 2012 calendar year, the corporation taxpayer cannot claim the tax credit until the tax year ending December 31, 2015. For fiscal years beginning July 1, 2011, the amount of tax credits authorized cannot exceed $2 million. The tax credit certificate must be included with the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

(4) Carried over tax credits. If a tax credit is carried over and issued for the tax year immediately following the year in which the investment was made because the $2 million cap has been reached, the tax credit may be claimed by the taxpayer for the third tax year following the tax year for which the credit is issued. For example, if a corporation taxpayer whose tax year ends on December 31, 2012, makes an equity investment in December 2012 and the $2 million cap for the fiscal year ending June 30, 2013, had already been reached, the tax credit will be issued for the tax year ending December 31, 2013, and cannot be redeemed until the tax year ending December 31, 2016.

(5) Limitations. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier. The tax credit cannot be carried back to a tax year prior to the tax year in which the taxpayer claims the tax credit. The tax credit is not transferable to any other taxpayer.

(6) Pro rata tax credit claims for certain business entities. For equity investments made in a community-based seed capital fund and equity investments made on or after January 1, 2004, in a qualifying business, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

c. Equity investments in a qualifying business on or after July 2, 2015. For equity investments made on or after July 2, 2015, see 261—Chapter 115 for information regarding eligibility for qualifying businesses, applications for the investment tax credit for equity investments in a qualifying business, and the issuance of tax credit certificates by the economic development authority.

(1) Certificate issuance. The department of revenue will be notified by the economic development authority when the tax credit certificates are issued.

(2) Amount of the tax credit. For fiscal years beginning July 1, 2011, the amount of the tax credits authorized cannot exceed $2 million. The credit is equal to 25 percent of the taxpayer's equity investment in a qualifying business. In any one calendar year, the amount of tax credits issued for any one qualifying business shall not exceed $500,000. For purposes of this paragraph, a tax credit issued to a partnership, limited liability company, S corporation, estate or trust electing to have income taxed directly to the individual shall be deemed to be issued to the individual owners based upon a pro rata share of the individual's earnings from the entity.

(3) Year in which the credit may be claimed. A taxpayer shall not claim a tax credit prior to September 1, 2016. The tax credit certificate must be included with the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate. For the purposes of this paragraph, an investment shall be deemed to have been made on the same date as the date of acquisition of the equity interest as determined by the Internal Revenue Code.

(4) Pro rata tax credit claims for certain business entities. An individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust. Any credits claimed by an individual are subject to the limitations provided in 701—paragraph 42.22(1)*"c."*

(5) Carryforward period. For a tax credit claimed against the taxes imposed in Iowa Code chapter 422, division III, any tax credit in excess of the taxpayer's liability for the tax year may be credited to the tax liability for the following three years or until depleted, whichever is earlier.

(6) Refunds, transfers, and carryback prohibited. The tax credit cannot be carried back to a tax year prior to the tax year in which the taxpayer claims the tax credit. The tax credit is not refundable and is not transferable to any other taxpayer.

52.21(2) *Investment tax credit for an equity investment in a venture capital fund.* See rule 123—3.1(15E) for the discussion of the investment tax credit for an equity investment in a venture capital fund, along with the issuance of tax credit certificates by the Iowa capital investment board. This credit is repealed for investments in venture capital funds made after July 1, 2010.

The department of revenue will be notified by the Iowa capital investment board when the tax credit certificates are issued. The tax credit certificate must be attached to the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier.

For equity investments made in a venture capital fund, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

52.21(3) *Contingent tax credit for investments in Iowa fund of funds.* See rule 123—4.1(15E) for the discussion of the contingent tax credit available for investments made in the Iowa fund of funds

organized by the Iowa capital investment corporation. Tax credit certificates related to the contingent tax credits will be issued by the Iowa capital investment board.

The department of revenue will be notified by the Iowa capital investment board when these tax credit certificates are issued and, if applicable, when they are redeemed. If the tax credit certificate is redeemed, the certificate must be attached to the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

If the tax credit certificate is redeemed, any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until used, whichever is the earlier.

If the tax credit certificate is redeemed, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

52.21(4) *Innovation fund investment tax credit.* See 261—Chapter 116 for information regarding eligibility for an innovation fund, applications for the investment tax credit for investments in an innovation fund, and the issuance of tax credit certificates by the economic development authority.

The department of revenue will be notified by the economic development authority when the tax credit certificates are issued. The credit is equal to 20 percent of the taxpayer's equity investment in the form of cash in an innovation fund for tax years beginning and investments made on or after January 1, 2011, and before January 1, 2013. For tax years beginning and investments made on or after January 1, 2013, the taxpayer may claim a tax credit equal to 25 percent of the taxpayer's equity investment in the form of cash in an innovation fund. An investment shall be deemed to have been made on the same date as the date of acquisition of the equity interest as determined by the Internal Revenue Code. A taxpayer shall claim the tax credit for the tax year in which the investment is made. For fiscal years beginning July 1, 2011, the amount of tax credits authorized cannot exceed $8 million. No tax credit certificates will be issued prior to September 1, 2014. The tax credit certificate must be attached to the taxpayer's return for the tax year in which the investment was made as stated on the tax credit certificate.

If a tax credit is carried over and issued for the tax year immediately following the year in which the investment was made because the $8 million cap has been reached, the tax credit may be claimed by the taxpayer for the tax year following the tax year for which the credit is issued. For example, if a corporation taxpayer whose tax year ending on December 31, 2013, makes an equity investment in December 2013 and the $8 million cap for the fiscal year ending June 30, 2014, had already been reached, the tax credit will be issued for the tax year ending December 31, 2014, and can be redeemed for the tax year ending December 31, 2014.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until depleted, whichever is the earlier. The tax credit cannot be carried back to a tax year prior to the tax year in which the taxpayer claims the tax credit.

The innovation fund tax credit certificate may be transferred once to any person or entity.

Within 90 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department will issue a replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company, S corporation, or estate or trust claiming the credit for individual or corporation income tax, the transferee shall provide a list of the partners, members, shareholders or beneficiaries and information on how the innovation fund tax credit should be divided among the partners, members, shareholders or beneficiaries. The transferee shall also provide the tax identification numbers and addresses of the partners, members, shareholders or beneficiaries. The replacement tax credit certificate must contain the same information as that on the original tax credit certificate and must have the same effective taxable year and the same expiration date as the original tax credit certificate. The replacement tax credit certificate may reflect a different tax type than the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax year for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit certificate shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit certificate shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

For equity investments made in an innovation fund, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

This rule is intended to implement Iowa Code sections 15E.42, 15E.52, 15E.66 and 422.33 and section 15E.43 as amended by 2015 Iowa Acts, chapter 138.

[**ARC 9104B**, IAB 9/22/10, effective 10/27/10; **ARC 9966B**, IAB 1/11/12, effective 2/15/12; **ARC 1102C**, IAB 10/16/13, effective 11/20/13; **ARC 1665C**, IAB 10/15/14, effective 11/19/14; **ARC 2632C**, IAB 7/20/16, effective 8/24/16]

701—52.22(15) New capital investment program tax credits. Effective for tax periods beginning on or after January 1, 2003, a business which qualifies under the new capital investment program is eligible to receive tax credits. An eligible business under the new capital investment program must be approved by the Iowa department of economic development and meet the qualifications of 2003 Iowa Acts, chapter 125, section 4. The new capital investment program was repealed on July 1, 2005, and has been replaced with the high quality job creation program. See rule 701—52.28(15) for information on the tax credits available under the high quality job creation program. Any tax credits earned by businesses approved under the new capital investment program prior to July 1, 2005, remain valid, and can be claimed on tax returns filed after July 1, 2005.

52.22(1) *Research activities credit.* A business approved under the new capital investment program is eligible for an additional research activities credit as described in subrule 52.7(5). This credit for increasing research activities is in lieu of the research activities credit described in subrule 52.7(3).

52.22(2) *Investment tax credit.*

a. General rule. An eligible business can claim an investment tax credit equal to a percentage of the new investment directly related to new jobs created by the location or expansion of an eligible business. The percentage is equal to the amount provided in paragraph *"b."* New investment directly related to new jobs created by the location or expansion of an eligible business includes the following:

(1) The cost of machinery and equipment, as defined in Iowa Code section 427A.1(1), paragraphs *"e"* and *"j,"* purchased for use in the operation of the eligible business. The purchase price shall be depreciated in accordance with generally accepted accounting principles.

(2) The purchase price of real property and any buildings and structures located on the real property.

(3) The cost of improvements made to real property which is used in the operation of the eligible business.

For eligible businesses approved by the Iowa department of economic development on or after March 17, 2004, certain lease payments made by eligible businesses to a third-party developer will be considered to be new investment for purposes of computing the investment tax credit. The eligible business shall enter into a lease agreement with the third-party developer for a minimum of five years. The investment tax credit is based on the annual base rent paid to a third-party developer by the eligible business for a period not to exceed ten years. The total costs of the annual base rent payments for the ten-year period cannot exceed the cost of the land and the third-party developer's cost to build or renovate the building used by the eligible business. The annual base rent is defined as the total lease payment less taxes, insurance and operating and maintenance expenses.

Any credit in excess of the tax liability for the tax period may be carried forward seven years or until used, whichever is the earlier.

If the business is a partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, or estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount of

the credit claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, or estate or trust.

b. Tax credit percentage. The amount of tax credit claimed shall be based on the number of high-quality jobs created as determined by the Iowa department of economic development:

(1) If no high-quality jobs are created but economic activity within Iowa is advanced, the eligible business may claim a tax credit of up to 1 percent of the new investment.

(2) If 1 to 5 high-quality jobs are created, the eligible business may claim a tax credit of up to 2 percent of the new investment.

(3) If 6 to 10 high-quality jobs are created, the eligible business may claim a tax credit of up to 3 percent of the new investment.

(4) If 11 to 15 high-quality jobs are created, the eligible business may claim a tax credit of up to 4 percent of the new investment.

(5) If 16 or more high-quality jobs are created, the eligible business may claim a tax credit of up to 5 percent of the new investment.

c. Investment tax credit—value-added agricultural products or biotechnology-related processes. An eligible business whose project primarily involves the production of value-added agricultural products or uses biotechnology-related processes may elect to receive a refund for all or a portion of an unused investment tax credit. An eligible business includes a cooperative described in Section 521 of the Internal Revenue Code whose project primarily involves the production of ethanol.

Eligible businesses that elect to receive a refund shall apply to the Iowa department of economic development for tax credit certificates between May 1 and May 15 of each fiscal year through the fiscal year ending June 30, 2009. The election to receive a refund of all or a portion of an unused investment tax credit is no longer available beginning with the fiscal year ending June 30, 2010. Only those businesses that have completed projects before the May 1 filing date may apply for a tax credit certificate. The Iowa department of economic development shall not issue tax credit certificates for more than $4 million during a fiscal year to eligible businesses for this program and eligible businesses described in subrule 52.10(4). If applications are received for more than $4 million, the applicants shall receive certificates for a prorated amount.

The economic development authority shall issue tax credit certificates within a reasonable period of time. Tax credit certificates are valid for the tax year following project completion. The tax credit certificate must be included with the tax return for the tax year during which the tax credit is claimed. The tax credit certificate shall not be transferred, except for a cooperative described in Section 521 of the Internal Revenue Code whose project primarily involves the production of ethanol, as provided in subrule 52.10(4). For value-added agricultural projects involving ethanol, the cooperative must submit a list of its members and the share of each member's interest in the cooperative. The economic development authority shall issue a tax credit certificate to each member on the list.

d. Repayment of benefits. If an eligible business fails to maintain the requirements of the new capital investment program, the taxpayer may be required to repay all or a portion of the tax incentives taken on Iowa returns. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the tax credits may have expired, the department may proceed to collect the tax incentives forfeited by failure of the taxpayer to maintain the requirements of the new capital investment program. This is because it is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability. Details on the calculation of the repayment can be found in 261—subrule 187.5(4) of the administrative rules of the economic development authority. If the business is a partnership, limited liability company, S corporation, estate or trust where the income of the taxpayer is taxed to the individual owner(s) of the business, the department may proceed to collect the tax incentives against the partners, members, shareholders or beneficiaries to whom the tax incentives were passed through. See Decision of the Administrative Law Judge in *Damien & Colette Trebilcock, et al.,* Docket No. 11DORF 042-044, June 11, 2012.

An eligible business in the new capital investment program may also be required to repay all or a portion of the tax incentives received on Iowa returns if the eligible business experiences a layoff of employees in Iowa or closes any of its facilities in Iowa.

If, within five years of purchase, the eligible business sells, disposes of, razes, or otherwise renders unusable all or a part of the land, buildings, or other existing structures for which a tax credit was claimed under this subrule, the income tax liability of the eligible business shall be increased by one of the following amounts:

(1) One hundred percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within one full year after being placed in service.

(2) Eighty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within two full years after being placed in service.

(3) Sixty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within three full years after being placed in service.

(4) Forty percent of the tax credit claimed if the property ceases to be eligible for the tax credit within four full years after being placed in service.

(5) Twenty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within five full years after being placed in service.

52.22(3) *Corporate tax credit—certain sales taxes paid by developer.* For eligible businesses approved by the Iowa department of economic development on or after March 17, 2004, the eligible business may claim a corporate tax credit for certain sales taxes paid by a third-party developer.

a. Sales taxes eligible for the credit. The sales taxes paid by the third-party developer which are eligible for this credit include the following:

(1) Iowa sales and use tax for gas, electricity, water, or sewer utility services, goods, wares, or merchandise, or on services rendered to, furnished to or performed for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility within the economic development area.

(2) Iowa sales and use tax paid for racks, shelving, and conveyor equipment to be used in a warehouse or distribution center within the economic development area.

Any Iowa sales and use tax paid relating to intangible property, furniture and other furnishings is not eligible for the corporate tax credit.

b. How to claim the credit. The third-party developer must provide to the Iowa department of economic development the amount of Iowa sales and use tax paid as described in paragraph *"a."* The amount of Iowa sales and use tax attributable to racks, shelving, and conveyor equipment must be identified separately.

The Iowa department of economic development will issue a tax credit certificate to the eligible business equal to the Iowa sales and use tax paid by the third-party developer for gas, electricity, water, or sewer utility services, goods, wares, or merchandise, or on services rendered to, furnished to or performed for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility. In addition, the Iowa department of economic development will also issue a separate tax credit certificate to the eligible business equal to the Iowa sales and use tax paid by the third-party developer for racks, shelving, and conveyor equipment to be used in a warehouse or distribution center.

The tax credit certificate shall contain the name, address, and tax identification number of the eligible business, along with the amount of the tax credit and the year in which the tax credit can be claimed. The tax credit certificate must be attached to the taxpayer's income tax return for the tax year for which the tax credit is claimed. Any tax credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following seven years or until it is used, whichever is the earlier.

For the tax credit certificate relating to Iowa sales and use tax paid by the third-party developer for racks, shelving, and conveyor equipment, the aggregate amount of tax credit certificates and tax refunds for Iowa sales and use tax paid for racks, shelving, and conveyor equipment to eligible businesses under the new jobs and income program, enterprise zone program and new capital investment program cannot

exceed $500,000 in a fiscal year. The requests for tax credit certificates or refunds will be processed in the order they are received on a first-come, first-served basis until the amount of credits authorized for issuance has been exhausted. If applications for tax credit certificates or refunds exceed the $500,000 limitation for any fiscal year, the applications shall be considered in succeeding fiscal years.

This rule is intended to implement Iowa Code sections 15.331C, 15.333 as amended by 2010 Iowa Acts, Senate File 2380, and 15.381 to 15.387.

[**ARC 9104B**, IAB 9/22/10, effective 10/27/10; **ARC 1744C**, IAB 11/26/14, effective 12/31/14]

701—52.23(15E,422) Endow Iowa tax credit. Effective for tax years beginning on or after January 1, 2003, a taxpayer who makes an endowment gift to an endow Iowa qualified community foundation may qualify for an endow Iowa tax credit, subject to the availability of the credit. For tax years beginning on or after January 1, 2003, but before January 1, 2010, the credit is equal to 20 percent of a taxpayer's endowment gift to an endow Iowa qualified community foundation approved by the Iowa department of economic development. For tax years beginning on or after January 1, 2010, the credit is equal to 25 percent of a taxpayer's endowment gift to an endow Iowa qualified community foundation approved by the Iowa department of economic development. For tax years beginning on or after January 1, 2010, a taxpayer cannot claim a deduction for charitable contributions under Section 170 of the Internal Revenue Code for the amount of the contribution for which the tax credit is claimed for Iowa tax purposes. The administrative rules for the endow Iowa tax credit for the Iowa department of economic development may be found under 261—Chapter 47.

The total amount of endow Iowa tax credits available is $2 million in the aggregate for the 2003 and 2004 calendar years. The total amount of endow Iowa tax credits is $2 million annually for the 2005-2007 calendar years, and $200,000 of these tax credits on an annual basis is reserved for endowment gifts of $30,000 or less. The maximum amount of tax credit granted to a single taxpayer shall not exceed $100,000 for the 2003-2007 calendar years. The total amount of endow Iowa tax credits annually for the 2008 and 2009 calendar years is $2 million plus a percentage of the tax imposed on the adjusted gross receipts from gambling games in accordance with Iowa Code section 99F.11(3). The total amount of endow Iowa tax credits annually for 2010 is $2.7 million plus a percentage of the tax imposed on the adjusted gross receipts from gambling games in accordance with Iowa Code section 99F.11(3). The total amount of endow Iowa tax credits annually for 2011 is $3.5 million plus a percentage of the tax imposed on the adjusted gross receipts from gambling games in accordance with Iowa Code section 99F.11(3). The maximum amount of tax credit granted to a single taxpayer shall not exceed 5 percent of the total endow Iowa tax credit amount authorized for 2008 and subsequent years. For calendar year 2012 and subsequent calendar years, the total amount of endow Iowa tax credits is $6 million; the maximum amount of tax credit authorized to a single taxpayer is $300,000 ($6 million multiplied by 5 percent). The endow Iowa tax credit cannot be transferred to any other taxpayer.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier.

If a taxpayer is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code section 15E.305 as amended by 2013 Iowa Acts, House File 620, and Iowa Code section 422.33.

[**ARC 8589B**, IAB 3/10/10, effective 4/14/10; **ARC 9104B**, IAB 9/22/10, effective 10/27/10; **ARC 9876B**, IAB 11/30/11, effective 1/4/12; **ARC 0398C**, IAB 10/17/12, effective 11/21/12; **ARC 1138C**, IAB 10/30/13, effective 12/4/13]

701—52.24(422) Soy-based cutting tool oil tax credit. Effective for tax periods ending after June 30, 2005, and beginning before January 1, 2007, a manufacturer may claim a soy-based cutting tool oil tax credit. A manufacturer, as defined in Iowa Code section 428.20, may claim the credit equal to the costs incurred during the tax year for the purchase and replacement costs relating to the transition from using nonsoy-based cutting tool oil to using soy-based cutting tool oil.

All of the following conditions must be met to qualify for the tax credit.

1. The costs must be incurred after June 30, 2005, and before January 1, 2007.
2. The costs must be incurred in the first 12 months of the transition from using nonsoy-based cutting tool oil to using soy-based cutting tool oil.
3. The soy-based cutting tool oil must contain at least 51 percent soy-based products.
4. The costs of the purchase and replacement must not exceed $2 per gallon of soy-based cutting tool oil used in the transition.
5. The number of gallons used in the transition cannot exceed 2,000 gallons.
6. The manufacturer shall not deduct for Iowa income tax purposes the costs incurred in the transition to using soy-based cutting tool oil which are deductible for federal tax purposes.

Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

If a taxpayer is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code section 422.33 as amended by 2005 Iowa Acts, Senate File 389.

701—52.25(15I,422) Wage-benefits tax credit. Effective for tax years ending on or after June 9, 2006, a wage-benefits tax credit equal to a percentage of the annual wages and benefits paid for a qualified new job created by the location or expansion of the business in Iowa is available for qualified businesses.

52.25(1) *Definitions.* The following definitions are applicable to this rule:

"Average county wage" means the annualized average hourly wage calculated by the Iowa department of economic development using the most current four quarters of wage and employment information as provided in the Quarterly Covered Wage and Employment Data report provided by the department of workforce development. Agricultural/mining and governmental employment categories are deleted in compiling the wage information.

"Benefits" means all of the following:

1. Medical and dental insurance plans.
2. Pension and profit-sharing plans.
3. Child care services.
4. Life insurance coverage.
5. Vision insurance plan.
6. Disability coverage.

"Department" means the Iowa department of revenue.

"Full-time" means the equivalent of employment of one person:

1. For 8 hours per day for a 5-day, 40-hour workweek for 52 weeks per year, including paid holidays, vacations, and other paid leave, or
2. The number of hours or days per week, including paid holidays, vacations, and other paid leave, currently established by schedule, custom or otherwise, as constituting a week of full-time work for the kind of service an individual performs for an employing unit.

"Grow Iowa values fund" means the grow Iowa values fund created in Iowa Code Supplement section 15G.108.

"Nonqualified new job" means any one of the following:

1. A job previously filled by the same employee in Iowa.
2. A job that was relocated from another location in Iowa.
3. A job that is created as a result of a consolidation, merger, or restructuring of a business entity if the job does not represent a new job in Iowa.

"Qualified new job" or *"job creation"* means a job that meets all of the following criteria:

1. Is a new full-time job that has not existed in the business within the previous 12 months in Iowa.
2. Is filled by a new employee for at least 12 months.
3. Is filled by a resident of the state of Iowa.

4. Is not created as a result of a change in ownership.

5. Was created on or after June 9, 2005.

"Retail business" means a business which sells its product directly to a consumer.

"Retained qualified new job" or *"job retention"* means the continued employment, after the first 12 months of employment, of the same employee in a qualified new job for another 12 months.

"Service business" means a business which is not engaged in the sale of tangible personal property, and which provides services to a local consumer market and does not have a significant proportion of its sales coming from outside the state.

52.25(2) *Calculation of credit.* A business which is not a retail or service business may claim the wage-benefits tax credit which is determined as follows:

a. If the annual wages and benefits for the qualified new job equal less than 130 percent of the average county wage, the credit is 0 percent of the annual wage and benefits paid.

b. If the annual wages and benefits for the qualified new job equal at least 130 percent but less than 160 percent of the average county wage, the credit is 5 percent of the annual wage and benefits paid for each qualified new job.

c. If the annual wages and benefits for the qualified new job equal at least 160 percent of the average county wage, the credit is 10 percent of the annual wage and benefits paid for each qualified new job.

If the business is a partnership, S corporation, limited liability company, or estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

52.25(3) *Application for the tax credit, tax credit certificate and amount of tax credit available.*

a. In order to claim the wage-benefits tax credit, the business must submit an application to the department along with information on the qualified new job or retained qualified new job. The application cannot be submitted until the end of the twelfth month after the qualified job was filled. For example, if the new job was created on June 9, 2005, the application cannot be submitted until June 9, 2006. The following information must be submitted in the application:

(1) Name, address and federal identification number of the business.

(2) A description of the activities of the business. If applicable, the proportion of the sales of the business which come from outside Iowa should be included.

(3) The amount of wages and benefits paid to each employee for each new job for the previous 12 months.

(4) A computation of the amount of credit being requested.

(5) The address and state of residence of each new employee.

(6) The date that the qualified new job was filled.

(7) An indication of whether the job is a qualified new job or a retained qualified new job for which an application was filed for a previous year.

(8) The type of tax for which the credit will be applied.

(9) If the business is a partnership, S corporation, limited liability company, or estate or trust, a schedule of the partners, shareholders, members or beneficiaries. This schedule shall include the names, addresses and federal identification number of the partners, shareholders, members or beneficiaries, along with their percentage of the pro rata share of earnings of the partnership, S corporation, limited liability company, or estate or trust.

b. Upon receipt of the application, the department has 45 days either to approve or disapprove the application. If the department does not act on the application within 45 days, the application is deemed to be approved. If the department disapproves the application, the business may appeal the decision to the Iowa economic development board within 30 days of the notice of disapproval.

c. If the application is approved, or if the Iowa economic development board approves the application that was previously denied by the department, a tax credit certificate will be issued by the

department to the business, subject to the availability of the amount of credits that may be issued. The tax credit certificate will contain the name, address and tax identification number of the business (or individual, estate or trust, if applicable), the date of the qualified new job(s), the wage and benefits paid for each job(s) for the 12-month period, the amount of the credit, the tax period for which the credit may be applied, and the type of tax for which the credit will be applied.

d. The tax credit certificates that are issued in a fiscal year cannot exceed $10 million for the fiscal year ending June 30, 2007, and shall not exceed $4 million for the fiscal years ending June 30, 2008, through June 30, 2011. The tax credit certificates are issued on a first-come, first-served basis. Therefore, if tax credit certificates have already been issued for the $10 million limit for the fiscal year ending June 30, 2007, any applications for tax credit certificates received after the $10 million limit has been reached will be denied. Similarly, if tax credit certificates have already been issued for the $4 million limit for the fiscal years ending June 30, 2008, through June 30, 2011, any applications for tax credit certificates received after the $4 million limit has been reached will be denied. If a business failed to receive all or a part of the tax credit due to the $10 million or $4 million limitation, the business may reapply for the tax credit for the retained new job for a subsequent tax period.

e. A business which qualifies for the tax credit for the fiscal year ending June 30, 2007, is eligible to receive the tax credit certificate for each of the fiscal years ending June 30, 2008, through June 30, 2011, subject to the $4 million limit for tax credits for the fiscal years ending June 30, 2008, through June 30, 2011, if the business retains the qualified new job during each of the fiscal years ending June 30, 2008, through June 30, 2011. The business must reapply by June 30 of each fiscal year for the tax credit, and the percentage of the wages and benefits allowed for the credit set forth in subrule 52.25(2) for the first year is applicable for each subsequent period. Preference will be given in issuing tax credit certificates for those businesses that retain qualified new jobs, and preference will be given in the order in which applications were filed for the fiscal year ending June 30, 2007. Therefore, those businesses which received the first $4 million of tax credits for the year ending June 30, 2007, in which the qualified jobs were created will automatically receive a tax credit for the fiscal years ending June 30, 2008, through June 30, 2011, as long as the qualified jobs are retained and an application is completed.

f. For the fiscal years ending June 30, 2008, through June 30, 2011, if credits become available because the jobs were not retained by businesses which received the first $4 million of credits for the year ending June 30, 2007, an application which was originally denied will be considered in the order in which the application was received for the fiscal year ending June 30, 2007.

EXAMPLE: Wage-benefits tax credits of $4 million were issued for the fiscal year ending June 30, 2007, relating to applications filed between July 1, 2006, and March 31, 2007. For the next fiscal year ending June 30, 2008, the same businesses that received the $4 million in wage-benefits tax credits filed applications totaling $3 million for the retained jobs for which the application for the prior year was filed on or before March 31, 2007. The first $3 million of the available $4 million will be allowed to these same businesses. The remaining $1 million that is still available for the year ending June 30, 2008, will be allowed for those retained jobs for which applications for the prior year were filed starting on April 1, 2007, until the remaining $1 million in tax credits is issued.

g. A business may apply in writing to the Iowa economic development board for a waiver of the average wage and benefit requirement. See 261—subrule 68.3(2) for more detail on the procedures to apply for a waiver of the wage and benefit requirement. If a waiver is granted, the business must provide the department with the waiver and it must be attached to the application.

h. A business may receive other federal, state, and local incentives and tax credits in addition to the wage-benefits tax credit. However, a business that receives a wage-benefits tax credit cannot receive tax incentives under the high quality job creation program set forth in Iowa Code chapter 15 as amended by 2005 Iowa Acts, chapter 150, or moneys from the grow Iowa values fund.

52.25(4) *Examples.* The following noninclusive examples illustrate how this rule applies:

EXAMPLE 1: Business A operates a grocery store and hires five new employees, each of whom will earn wages and benefits in excess of 130 percent of the average county wage. Business A would not qualify for the wage-benefits tax credit because Business A is a retail business.

EXAMPLE 2: Business B operates an accounting firm and hires two new accountants, each of whom will earn wages and benefits in excess of 160 percent of the average county wage. The accounting firm provides services to clients wholly within Iowa. Business B would not qualify for the wage-benefits tax credit because it is a service business. The majority of its sales are generated from within the state of Iowa and thus Business B, because it is a service business, is not eligible for the credit.

EXAMPLE 3: Business C operates a software development business and hires two new programmers, each of whom will earn wages and benefits in excess of 160 percent of the average county wage. Over 50 percent of the customers of Business C are located outside Iowa. Business C would qualify for the wage-benefits tax credit because a majority of its sales are coming from outside the state, even though Business C is engaged in the performance of services.

EXAMPLE 4: Business D is a manufacturer that hires a new employee in Clayton County, Iowa, on July 8, 2005. The average county wage for Clayton County for the third quarter of 2005 is $11.86 per hour. If the average county wage per hour for Clayton County is $11.95 for the fourth quarter of 2005, $12.05 for the first quarter of 2006, and $12.14 for the second quarter of 2006, the annualized average county wage for this 12-month period is $12.00 per hour. This wage equates to an average annual wage of $24,960 ($12.00 × 40 hours × 52 weeks). In order to qualify for the 5 percent wage-benefits tax credit, the new employee must receive wages and benefits totaling $32,448 (130 percent of $24,960) for the 12-month period from July 8, 2005, through July 7, 2006. In order to qualify for the 10 percent wage-benefits tax credit, the new employee must receive wages and benefits totaling $39,936 (160 percent of $24,960) for the 12-month period from July 8, 2005, through July 7, 2006.

EXAMPLE 5: Business E is a manufacturer that hires three new employees in Grundy County, Iowa, on July 1, 2005. If the average county wage for the 12-month period from July 1, 2005, through June 30, 2006, is $13.75 per hour in Grundy County, this wage equates to an average county wage of $28,600. The wages and benefits for each of these three new employees is $40,000 for the period from July 1, 2005, through June 30, 2006, which is 140 percent of the average county wage. Business E is entitled to a wage-benefits tax credit of $2,000 for each employee ($40,000 × 5 percent), for a total wage-benefits tax credit of $6,000. If Business E files on a calendar-year basis, the $6,000 wage-benefits tax credit can be claimed on the tax return for the period ending December 31, 2006.

EXAMPLE 6: Business F is a manufacturer that hires ten new employees on July 1, 2005, and qualifies for the wage-benefits tax credit because the wages and benefits paid exceed 130 percent of the average county wage. Business F receives a wage-benefits tax credit in July 2006 for these ten employees, which can be used on the tax return for the period ending December 31, 2006. On August 31, 2006, two of the employees leave the business and are replaced by two new employees. Business F is entitled to a wage-benefits tax credit for only eight employees in July 2007 because only eight employees continued employment for the subsequent 12 months, which meets the definition of a retained qualified new job. Business F cannot request a wage-benefits tax credit for the two employees hired on August 31, 2006. Business F cannot request the wage-benefits tax credit because these two full-time jobs existed in the business within the previous 12 months in Iowa, and these jobs do not meet the definition of a qualified new job or retained qualified new job.

EXAMPLE 7: Business G is a manufacturer that hires ten new employees on July 1, 2005, and qualifies for the wage-benefits tax credit because the wages and benefits paid exceed 130 percent of the average county wage. Business G receives a wage-benefits tax credit in July 2006 for these ten employees equal to 5 percent of the wages and benefits paid. On October 1, 2006, Business G hires an additional five employees, each of whom receives wages and benefits in excess of 130 percent of the average county wage. Business G can apply for the wage-benefits tax credit on October 1, 2007, for these five employees, since these employees have now been employed for 12 months. However, the credit may not be allowed if more than $4 million of retained job applications is received for the fiscal year ending June 30, 2008.

EXAMPLE 8: Assume the same facts as Example 6, except that the $10 million limit of tax credits has already been met for the fiscal year ending June 30, 2007, and Business F hired five new employees on August 31, 2006. Business F can apply for the wage-benefits tax credit for the three employees on August 31, 2007, a number which is above the ten full-time jobs originally created, but Business F may

not receive the tax credit if more than $4 million of retained job applications is received for the fiscal year ending June 30, 2008.

EXAMPLE 9: Assume the same facts as Example 7, except that the ten employees hired on July 1, 2005, by Business G received wages and benefits equal to 155 percent of the average county wage, and the five employees hired on October 1, 2006, by Business G received wages equal to 161 percent of the average county wage. Business G can apply for the tax credit on October 1, 2007, equal to 10 percent of the wages and benefits paid for the employees hired on October 1, 2006. On July 1, 2007, Business G can reapply for the tax credit equal to 5 percent of the wages and benefits paid only for the ten employees originally hired on July 1, 2005, even if the wages and benefits for these ten employees exceed 160 percent of the average county wage for the period from July 1, 2006, through June 30, 2007.

52.25(5) *Repeal of the wage-benefits tax credit.* The wage-benefits tax credit is repealed effective July 1, 2008. However, the wage-benefits tax credit is still available through the fiscal year ending June 30, 2011, as provided in subrule 52.25(3), paragraphs *"d," "e,"* and *"f."* A business is not entitled to a wage-benefits tax credit for a qualified new job created on or after July 1, 2008.

This rule is intended to implement Iowa Code chapter 15I as amended by 2008 Iowa Acts, House File 2700, section 167, and Iowa Code section 422.33(18).

701—52.26(422,476B) Wind energy production tax credit. Effective for tax years beginning on or after July 1, 2006, an owner of a qualified wind energy production facility that has been approved by the Iowa utilities board may claim a wind energy production tax credit for qualified electricity sold by the owner or used for on-site consumption against a taxpayer's Iowa corporation income tax liability. The administrative rules for the certification of eligibility for the wind energy production tax credit for the Iowa utilities board may be found in rule 199—15.18(476B).

52.26(1) *Application and review process for the wind energy production tax credit.* An owner of a wind energy production facility must be approved by the Iowa utilities board in order to qualify for the wind energy production tax credit. The facility must be an electrical production facility that produces electricity from wind, is located in Iowa, and must be placed in service on or after July 1, 2005, but before July 1, 2012. For applications filed on or after March 1, 2008, a facility must consist of one or more wind turbines which have a combined nameplate generating capacity of at least 2 megawatts and no more than 30 megawatts. For applications filed on or after July 1, 2009, by a private college or university, community college, institution under the control of the state board of regents, public or accredited nonpublic elementary and secondary school, or public hospital as defined in Iowa Code section 249J.3, the facility must have a combined nameplate capacity of no less than ¾ of a megawatt.

The maximum amount of nameplate generating capacity for all qualified wind energy production facilities cannot exceed 50 megawatts of nameplate generating capacity. An owner shall not own more than two qualified facilities. A facility that is not operational within 18 months after issuance of the approval from the Iowa utilities board will no longer be considered a qualified facility. However, a facility that is not operational within 18 months due to the unavailability of necessary equipment shall be granted an additional 12 months to become operational.

An owner of the qualified facility must apply to the Iowa utilities board for the wind energy production tax credit. The application for the tax credit must be filed no later than 30 days after the close of the tax year for which the credit is applied. The information to be included in the application is set forth in 199—subrule 15.20(1).

52.26(2) *Computation of the credit.* The wind energy production credit equals one cent multiplied by the number of kilowatt-hours of qualified electricity sold or used for on-site consumption by the owner during the tax year. For the first tax year in which the credit is applied, the kilowatt-hours of qualified electricity sold may exceed 12 months.

EXAMPLE: A qualified facility was placed in service on April 1, 2006, and the taxpayer files on a calendar-year basis. The first year for which the credit can be claimed is the period ending December 31, 2007, since that is the first tax year that began on or after July 1, 2006. The credit for the 2007 tax year can include electricity sold between April 1, 2006, and December 31, 2007.

The credit is not allowed for any kilowatt-hours of electricity sold to a related person. The definition of "related person" uses the same criteria set forth in Section 45(e)(4) of the Internal Revenue Code relating to the federal renewable electricity production credit. Persons shall be treated as related to each other if such persons are treated as a single employer under Treasury Regulation §1.52-1. In the case of a corporation that is a member of an affiliated group of corporations filing a federal consolidated return, such corporation shall be treated as selling electricity to an unrelated person if such electricity is sold to the person by another member of the affiliated group.

The utilities board will notify the department of the number of kilowatt-hours of electricity sold by the qualified facility or generated and used on site by the qualified facility during the tax year. The department will calculate the credit and issue a tax credit certificate to the owner. The tax credit certificate will include the taxpayer's name, address and federal identification number, the tax type for which the credit will be claimed, the amount of the credit and the tax year for which the credit may be claimed. In addition, the tax credit certificate will include a place for the name and tax identification number of a transferee and the amount of the tax credit certificate, as provided in subrule 52.26(3). If the department refuses to issue the tax credit certificate, the taxpayer shall be notified in writing and the taxpayer will have 60 days from the date of denial to file a protest in accordance with rule 701—7.8(17A). The department will not issue a tax credit certificate if the facility is not operational within 18 months after approval was given by the utilities board, unless a 12-month extension is granted by the utilities board as provided in subrule 52.26(1).

If the taxpayer is a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, the tax credit certificate will be issued to the partners, members, shareholders or beneficiaries based on the partner's, member's, shareholder's or beneficiary's pro rata share of earnings of the partnership, limited liability company, S corporation, or estate or trust, except when the taxpayer is eligible to receive renewable electricity production tax credits authorized under Section 45 of the Internal Revenue Code. In cases where the taxpayer is eligible to receive renewable electricity production tax credits under Section 45 of the Internal Revenue Code, the partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder. In addition, if a taxpayer is a partnership, limited liability company, S corporation, or estate or trust that is eligible to receive renewable electricity production tax credits under Section 45 of the Internal Revenue Code, the taxpayer may distribute the tax credit to an equity holder or beneficiary as a liquidating distribution or portion thereof, of an equity holder's interest in the partnership, limited liability company or S corporation, or the beneficiary's interest in the estate or trust.

The credit can be allowed for a ten-year period beginning on the date the qualified facility was originally placed in service. For example, if a facility was placed in service on April 1, 2006, the credit can be claimed for kilowatt-hours of electricity sold between April 1, 2006, and March 31, 2016.

To claim the tax credit, the taxpayer must include the tax credit certificate with the tax return for the tax year set forth on the certificate. Any tax credit in excess of the tax liability may be carried forward for seven years or until it is used, whichever is the earlier.

52.26(3) *Transfer of the wind energy production tax credit certificate.* The wind energy production tax credit certificate may be transferred to any person or entity.

Within 30 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department will issue a replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company, S corporation, or estate or trust claiming the credit for individual or corporation income tax, the transferee shall provide a list of the partners, members, shareholders or beneficiaries and information on how the wind energy production tax credit should be divided among the partners, members, shareholders or beneficiaries. The transferee shall also provide the tax identification numbers and addresses of the partners, members, shareholders or beneficiaries. The replacement tax credit certificate must contain the same information as that on the original tax credit certificate and must have

the same effective taxable year and the same expiration date as the original tax credit certificate. The replacement tax credit certificate may reflect a different tax type than the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax year for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit certificate shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit certificate shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

This rule is intended to implement Iowa Code section 422.33 and chapter 476B as amended by 2011 Iowa Acts, House File 672.

[**ARC 8589B**, IAB 3/10/10, effective 4/14/10; **ARC 9876B**, IAB 11/30/11, effective 1/4/12; **ARC 0251C**, IAB 8/8/12, effective 9/12/12; **ARC 1744C**, IAB 11/26/14, effective 12/31/14]

701—52.27(422,476C) Renewable energy tax credit. Effective for tax years beginning on or after July 1, 2006, a purchaser or producer of renewable energy whose facility has been approved by the Iowa utilities board may claim a renewable energy tax credit for qualified renewable energy against a taxpayer's Iowa corporation income tax liability.

52.27(1) *Eligible facility application process.*

a. Eligible facility application process, generally. A producer or purchaser of a renewable energy facility must be approved as an eligible renewable energy facility by the Iowa utilities board in order to qualify for the renewable energy tax credit. The eligible renewable energy facility can be a wind energy conversion facility, biogas recovery facility, biomass conversion facility, methane gas recovery facility, solar energy conversion facility or refuse conversion facility. The facility must be located in Iowa and placed in service on or after July 1, 2005, and before January 1, 2018. The administrative rules for the certification of eligibility for the renewable energy tax credit for the Iowa utilities board may be found in rule 199—15.19(476C).

b. Limitations on maximum energy production and nameplate generating capacity. The maximum amount of nameplate generating capacity of all wind energy conversion facilities cannot exceed 363 megawatts of nameplate generating capacity. For tax years beginning prior to January 1, 2015, the maximum amount of energy production capacity for biogas recovery facilities, biomass conversion facilities, methane gas recovery facilities, solar energy conversion facilities and refuse conversion facilities cannot exceed a combined output of 53 megawatts of nameplate generating capacity and 167 billion British thermal units of heat for a commercial purpose. For tax years beginning on or after January 1, 2015, the maximum amount of energy production for biogas recovery facilities, biomass conversion facilities, methane gas recovery facilities, solar energy conversion facilities and refuse conversion facilities cannot exceed a combined output of 63 megawatts of nameplate generating capacity and, annually, 167 billion British thermal units of heat for a commercial purpose. A facility that is not operational within 30 months after issuance of approval from the utilities board will no longer be considered a qualified facility. However, if the facility is a wind energy conversion property and is not operational within 18 months due to the unavailability of necessary equipment, the facility may apply for a 12-month extension of the 30-month limit. Extensions can be renewed for succeeding 12-month periods if the facility applies for the extension prior to expiration of the current extension period. A producer of renewable energy, which is the person who owns the renewable energy facility, cannot own more than two eligible renewable energy facilities. A person that has an equity interest equal to or greater than 51 percent in an eligible renewable energy facility cannot have an equity interest greater than 10 percent in any other renewable energy facility. However, for tax years beginning on or after January 1, 2015, an entity described in Iowa Code section 476C.1(6)*"b"*(4) or (5) may have an ownership interest in up to four solar energy conversion facilities described in Iowa Code section 476C.3(4)*"b"*(3).

52.27(2) *Tax credit certificate procedure.*

a. Tax credit application process. A producer or purchaser of a renewable energy facility must apply to the utilities board for the renewable energy tax credit. The application for the tax credit must be filed no later than 30 days after the close of the tax year for which the credit is applied. The information

to be included in the application is set forth in 199—subrule 15.21(1). The utilities board will notify the department of the number of kilowatt-hours, standard cubic feet or British thermal units that were generated and purchased from an eligible facility or used for on-site consumption by the producer during the tax year for which the credit is applied.

b. Tax credit calculation. The department shall calculate the amount of the credit for which the applicant is eligible in accordance with subrules 52.27(3) and 52.27(4) and shall issue a tax credit certificate for that amount or shall notify the applicant in writing of its refusal to do so.

c. Tax credit certificate issuance. The tax credit certificate will include the taxpayer's name, address and federal identification number; the tax type for which the credit will be claimed; the amount of the credit; and the tax year for which the credit may be claimed. In addition, the tax credit certificate will include a place for the name and tax identification number of a transferee and the amount of the tax credit certificate, as provided in subrule 52.27(5). Once a tax credit certificate is issued pursuant to Iowa Code chapter 476C, it shall not be terminated or rescinded.

d. Taxpayers that are partnerships, limited liability companies, S corporations, or estates or trusts. If the taxpayer is a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, the tax credit certificate will be issued to the partners, members, shareholders or beneficiaries based on the partner's, member's, shareholder's or beneficiary's pro rata share of earnings of the partnership, limited liability company, S corporation, or estate or trust, except when the taxpayer is eligible to receive renewable electricity production tax credits authorized under Section 45 of the Internal Revenue Code. In cases where the taxpayer is eligible to receive renewable electricity production tax credits under Section 45 of the Internal Revenue Code, the partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder. In addition, if a taxpayer is a partnership, limited liability company, S corporation, or estate or trust that is eligible to receive renewable electricity production tax credits under Section 45 of the Internal Revenue Code, the taxpayer may distribute the tax credit to an equity holder or beneficiary as a liquidating distribution, or portion thereof, of an equity holder's interest in the partnership, limited liability company or S corporation or of the beneficiary's interest in the estate or trust.

e. Carryforward. To claim the tax credit, the taxpayer must include the tax credit certificate with the tax return for the tax period set forth on the certificate. Any tax credit in excess of the tax liability may be carried forward for seven years or until it is used, whichever is the earlier.

52.27(3) *Limitations.*

a. Energy production. Of the maximum amount of energy production capacity equivalent for biogas recovery facilities, biomass conversion facilities, methane gas recovery facilities, solar energy conversion facilities and refuse conversion facilities;

(1) No single facility may be allocated more than ten megawatts of nameplate generating capacity or energy production capacity equivalent.

(2) For tax years beginning on or after January 1, 2015, ten megawatts of nameplate generating capacity or energy production capacity equivalent shall be reserved for solar energy conversion facilities described in Iowa Code section 476C.3(4)*"b"*(3) that have a generating capacity of one and one-half megawatts or less.

(3) For tax years beginning on or after January 1, 2014, 55 billion British thermal units of heat for a commercial purpose shall be reserved annually for an eligible facility that is a refuse conversion facility for processed, engineered fuel from a multicounty solid waste management planning area.

(4) For tax years beginning on or after January 1, 2014, the maximum annual amount of energy production capacity for a single refuse conversion facility is 55 billion British thermal units of heat for a commercial purpose.

b. Related persons. The credit is not allowed for any kilowatt-hours, standard cubic feet or British thermal units that are purchased from an eligible facility by a related person. Persons shall be treated as related to each other if either person owns an 80 percent or more equity interest in the other person.

c. Operation. The facility must be operational within 30 months after approval was given by the utilities board, unless a 12-month extension is granted by the utilities board as provided in subrule 52.27(1).

d. Prohibited for persons that have received a credit under Iowa Code chapter 476B. A person that has received a wind energy production tax credit pursuant to Iowa Code chapter 476B may not be issued a renewable energy tax credit certificate.

e. Ten-year award limitation. The credit is allowed for a ten-year period beginning on the date the purchaser first purchases renewable energy from a qualified facility or on the date the qualified facility first began producing renewable energy for on-site consumption. For example, if a renewable energy facility first began producing energy for on-site consumption on April 1, 2006, the credit can be claimed for kilowatt-hours, standard cubic feet or British thermal units generated and used for on-site consumption by the producer between April 1, 2006, and March 31, 2016. Tax credit certificates cannot be issued for renewable energy purchased or produced for on-site consumption after December 31, 2027.

52.27(4) *Computation of the credit.* The renewable energy tax credit equals 1½ cents per kilowatt-hour of electricity, or $1.44 per 1000 standard cubic feet of hydrogen fuel, or $4.50 per 1 million British thermal units of methane gas or other biogas used to generate electricity, or $4.50 per 1 million British thermal units of heat for a commercial purpose generated by and purchased from an eligible renewable energy facility or used for on-site consumption by the producer during the tax year. For the first tax year in which the credit is applied, the kilowatt-hours, standard cubic feet or British thermal units generated by and purchased from the facility or used for on-site consumption by the producer may exceed 12 months if the facility was operational for fewer than 12 months in its initial year of operation.

EXAMPLE: A qualified wind energy production facility was placed in service on April 1, 2006, and the taxpayer files on a calendar-year basis. The first year for which the credit can be claimed is the year ending December 31, 2007, since that is the first tax year that began on or after July 1, 2006. The credit for the 2007 tax year can include electricity generated and purchased or used for on-site consumption by the producer between April 1, 2006, and December 31, 2007.

52.27(5) *Transfer of the renewable energy tax credit certificate.*

a. One-transfer limitation. The renewable energy tax credit certificate may be transferred once to any person or entity. A decision between a producer and purchaser of renewable energy regarding who may claim the tax credit is not considered a transfer.

b. Transfer process—information required. Within 30 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department, along with a statement which contains the transferee's name, address and tax identification number; the amount of the tax credit being transferred; the value of any consideration provided by the transferee to the transferor; and any other information required by the department. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department will issue a replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company, S corporation, or estate or trust claiming the credit for individual or corporation income tax, the transferee shall provide a list of the partners, members, shareholders or beneficiaries and information on how the renewable energy tax credit should be divided among the partners, members, shareholders or beneficiaries. The transferee shall also provide the tax identification numbers and addresses of the partners, members, shareholders or beneficiaries. The replacement tax credit certificate must contain the same information as that on the original tax credit certificate and must have the same effective taxable year and the same expiration date as the original tax credit certificate. The replacement tax credit certificate may reflect a different tax type than the original tax credit certificate.

c. Tax year. The transferee may use the amount of the tax credit for any tax year for which the original transferor could have claimed the tax credit.

d. Consideration. Any consideration received for the transfer of the tax credit certificate shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes.

Any consideration paid for the transfer of the tax credit certificate shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

52.27(6) *Small wind innovation zones.* Effective for tax years beginning on or after January 1, 2009, an owner of a small wind energy system operating within a small wind innovation zone which has been approved by the Iowa utilities board is eligible for the renewable energy tax credit. The administrative rules of the Iowa utilities board for the certification of eligibility for owners of small wind energy systems operating within a small wind innovation zone may be found in rule 199—15.22(476).

52.27(7) *Appeals.* If the department refuses to issue the tax credit certificate, the taxpayer shall be notified in writing and the taxpayer will have 60 days from the date of denial to file a protest in accordance with rule 701—7.8(17A).

This rule is intended to implement Iowa Code section 422.33 and chapter 476C as amended by 2015 Iowa Acts, chapter 124, and 2016 Iowa Acts, House File 2468.

[**ARC 8589B**, IAB 3/10/10, effective 4/14/10; **ARC 8605B**, IAB 3/10/10, effective 4/14/10; **ARC 9876B**, IAB 11/30/11, effective 1/4/12; **ARC 0251C**, IAB 8/8/12, effective 9/12/12; **ARC 1665C**, IAB 10/15/14, effective 11/19/14; **ARC 2772C**, IAB 10/12/16, effective 11/16/16]

701—52.28(15) High quality job creation program. Effective for tax periods ending on or after July 1, 2005, for programs approved on or after July 1, 2005, but before July 1, 2009, a business which qualifies under the high quality job creation program is eligible to receive tax credits. The high quality job creation program replaces the new jobs and income program and the new capital investment program. An eligible business under the high quality job creation program must be approved by the Iowa department of economic development and meet the qualifications of Iowa Code section 15.329. The administrative rules for the high quality job creation program for the Iowa department of economic development may be found at 261—Chapter 68.

The high quality job creation program was repealed on July 1, 2009, and has been replaced with the high quality jobs program. See rule 701—52.40(15) for information on the investment tax credit and additional research activities credit under the high quality jobs program. Any investment tax credit and additional research activities credit earned by businesses approved under the high quality job creation program prior to July 1, 2009, remains valid and can be claimed on tax returns filed after July 1, 2009.

52.28(1) *Research activities credit.* An eligible business approved under the high quality job creation program is eligible for an additional research activities credit as subrule described in 52.7(4).

Research activities allowable for the Iowa research activities credit include expenses related to the development and deployment of innovative renewable energy generation components manufactured or assembled in Iowa; such expenses related to the development and deployment of innovative renewable energy generation components are not eligible for the federal credit for increasing research activities. For purposes of this subrule, innovative renewable energy generation components do not include components with more than 200 megawatts in installed effective nameplate capacity. The research activities credit related to renewable energy generation components under the high quality job creation program and the enterprise zone program shall not exceed $1 million in the aggregate.

These expenses related to the development and deployment of innovative renewable energy generation components are applicable only to the additional research activities credit set forth in this subrule and are not applicable to the research activities credit set forth in subrule 52.7(3). The research activities credit is subject to the threshold amounts of qualifying investment set forth in Iowa department of economic development 261—subrule 68.4(7).

52.28(2) *Investment tax credit.*

a. *General rule.* An eligible business can claim an investment tax credit equal to a percentage of the new investment directly related to new jobs created by the location or expansion of an eligible business. The percentage is equal to the amount provided in Iowa department of economic development 261—subrule 68.4(7). New investment directly related to new jobs created by the location or expansion of an eligible business includes the following:

(1) The cost of machinery and equipment, as defined in Iowa Code section 427A.1(1), paragraphs *"e"* and *"j,"* purchased for use in the operation of the eligible business. The purchase price shall be depreciated in accordance with generally accepted accounting principles.

(2) The purchase price of real property and any buildings and structures located on the real property.

(3) The cost of improvements made to real property which is used in the operation of the eligible business.

In addition, certain lease payments made by eligible businesses to a third-party developer will be considered to be new investment for purposes of computing the investment tax credit. The eligible business shall enter into a lease agreement with the third-party developer for a minimum of five years. The investment tax credit is based on the annual base rent paid to a third-party developer by the eligible business for a period not to exceed ten years. The total costs of the annual base rent payments for the ten-year period cannot exceed the cost of the land and the third-party developer's cost to build or renovate the building used by the eligible business. The annual base rent is defined as the total lease payment less taxes, insurance and operating and maintenance expenses.

The investment tax credit can be claimed in the tax year in which the qualifying assets are placed in service. The investment tax credit will be amortized over a five-year period. Any credit in excess of the tax liability for the tax period may be carried forward seven years or until used, whichever is the earlier.

EXAMPLE: An eligible business which files tax returns on a calendar-year basis earned $100,000 of investment tax credits for new investment made in 2006. The business can claim $20,000 of investment tax credits for each of the years from 2006 through 2010. The $20,000 of investment tax credit that can be claimed in 2006 can be carried forward to the 2007-2013 tax years if the entire credit cannot be claimed on the 2006 return. Similarly, the $20,000 investment tax credit that can be claimed in 2007 can be carried forward to the 2008-2014 tax years if the entire credit cannot be claimed on the 2007 return.

If the business is a partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, or estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount of the credit claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, or estate or trust electing to have the income taxed directly to an individual.

EXAMPLE: An eligible business which files tax returns on a calendar-year basis was awarded $500,000 in investment tax credits in December 2008. The credits were amortized over a five-year period, with $100,000 of investment tax credits being available for the fiscal years ending June 30, 2009, through June 30, 2013. This equates to the investment tax credit being available for the 2008-2012 calendar year returns since the due date of these returns range from April 30, 2009, through April 30, 2013, which falls within the fiscal years ending June 30, 2009, through June 30, 2013. The eligible business placed the qualifying assets in service during the 2010 calendar year. The eligible business can claim $300,000 of investment tax credit for 2010, $100,000 of investment tax credit for 2011 and $100,000 of investment tax credit for 2012. Of the $300,000 claimed for the 2010 tax year, $100,000 can be carried forward until the 2015 tax year, $100,000 can be carried forward to the 2016 tax year, and $100,000 can be carried forward to the 2017 tax year. The seven-year carryforward period is determined by the amortization schedule, not the initial year in which the investment tax credit can be claimed on an Iowa tax return.

b. Investment tax credit—value-added agricultural products or biotechnology-related processes. An eligible business whose project primarily involves the production of value-added agricultural products or uses biotechnology-related processes may elect to receive a refund for all or a portion of an unused investment tax credit. An eligible business includes a cooperative described in Section 521 of the Internal Revenue Code whose project primarily involves the production of ethanol.

Eligible businesses that elect to receive a refund shall apply to the Iowa department of economic development for tax credit certificates between May 1 and May 15 of each fiscal year through the fiscal year ending June 30, 2009. The election to receive a refund of all or a portion of an unused investment tax credit is no longer available beginning with the fiscal year ending June 30, 2010. Only those businesses that have completed projects before the May 1 filing date may apply for a tax credit certificate. The Iowa department of economic development shall not issue tax credit certificates for more than $4 million during a fiscal year to eligible businesses for this program and the enterprise zone program described

in subrule 52.14(2). If applications are received for more than $4 million, the applicants shall receive certificates for a prorated amount.

The economic development authority shall issue tax credit certificates within a reasonable period of time. Tax credit certificates are valid for the tax year following project completion. The tax credit certificate must be included with the tax return for the tax year during which the tax credit is claimed. The tax credit certificate shall not be transferred, except for a cooperative described in Section 521 of the Internal Revenue Code whose project primarily involves the production of ethanol, as provided in subrule 52.10(4). For value-added agricultural projects involving ethanol, the cooperative must submit a list of its members and the share of each member's interest in the cooperative. The economic development authority shall issue a tax credit certificate to each member on the list.

c. *Repayment of benefits.* If an eligible business fails to maintain the requirements of the high quality job creation program, the taxpayer may be required to repay all or a portion of the tax incentives taken on Iowa returns. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the tax credits may have expired, the department may proceed to collect the tax incentives forfeited by failure of the eligible business to maintain the requirements of the high quality job creation program because it is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability. Details on the calculation of the repayment can be found in 261—subrule 187.5(4) of the administrative rules of the economic development authority. If the business is a partnership, limited liability company, S corporation, estate or trust where the income of the taxpayer is taxed to the individual owner(s) of the business, the department may proceed to collect the tax incentives against the partners, members, shareholders or beneficiaries to whom the tax incentives were passed through. See Decision of the Administrative Law Judge in *Damien & Colette Trebilcock, et al.,* Docket No. 11DORF 042-044, June 11, 2012.

An eligible business in the high quality job creation program may also be required to repay all or a portion of the tax incentives received on Iowa returns if the eligible business experiences a layoff of employees in Iowa or closes any of its facilities in Iowa.

If, within five years of purchase, the eligible business sells, disposes of, razes, or otherwise renders unusable all or a part of the land, buildings, or other existing structures for which a tax credit was claimed under this subrule, the income tax liability of the eligible business shall be increased by one of the following amounts:

(1) One hundred percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within one full year after being placed in service.

(2) Eighty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within two full years after being placed in service.

(3) Sixty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within three full years after being placed in service.

(4) Forty percent of the tax credit claimed if the property ceases to be eligible for the tax credit within four full years after being placed in service.

(5) Twenty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within five full years after being placed in service.

52.28(3) *Determination of tax credit amounts.* The amount of tax credit claimed under the high quality job creation program shall be based on the number of high quality jobs created and the amount of qualifying investment made as determined by the Iowa department of economic development.

a. If the high quality jobs have a starting wage, including benefits, equal to or greater than 130 percent of the average county wage but less than 160 percent of the average county wage, see Iowa department of economic development 261—paragraph 68.4(7)*"a"* for the amount of tax credits that may be claimed.

b. If the high quality jobs have a starting wage, including benefits, equal to or greater than 160 percent of the average county wage, see Iowa department of economic development 261—paragraph 68.4(7)*"b"* for the amount of tax credits that may be claimed.

c. An eligible business approved under the high quality job creation program is not eligible for the wage-benefits tax credit set forth in rule 701—52.25(15H).

This rule is intended to implement Iowa Code Supplement chapter 15.

[**ARC 8589B**, IAB 3/10/10, effective 4/14/10; **ARC 9104B**, IAB 9/22/10, effective 10/27/10; **ARC 0398C**, IAB 10/17/12, effective 11/21/12; **ARC 1744C**, IAB 11/26/14, effective 12/31/14]

701—52.29(15E,422) Economic development region revolving fund tax credit. Effective for tax years ending on or after July 1, 2005, but beginning before January 1, 2010, a taxpayer who makes a contribution to an economic development region revolving fund may claim a tax credit, subject to the availability of the credit. The credit is equal to 20 percent of a taxpayer's contribution to the economic development region revolving fund approved by the Iowa department of economic development. The administrative rules for the economic development region revolving fund tax credit for the Iowa department of economic development may be found at 261—Chapter 32. The tax credit is repealed for tax years beginning on or after January 1, 2010.

The total amount of economic development region revolving fund tax credits available shall not exceed $2 million per fiscal year. The tax credit shall not be carried back to a tax year prior to the year in which the taxpayer redeems the credit. The economic development region revolving fund tax credit is not transferable to any other taxpayer.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following ten years or until used, whichever is the earlier.

If a taxpayer is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code sections 15E.232 and 422.33 as amended by 2010 Iowa Acts, Senate File 2380.

[**ARC 9104B**, IAB 9/22/10, effective 10/27/10]

701—52.30(422) E-85 gasoline promotion tax credit. Effective for tax years beginning on or after January 1, 2006, a retail dealer of gasoline may claim an E-85 gasoline promotion tax credit. "E-85 gasoline" means ethanol blended gasoline formulated with a minimum percentage of between 70 percent and 85 percent of volume of ethanol, if the formulation meets the standards provided in Iowa Code section 214A.2. For purposes of this rule, tank wagon sales are considered retail sales. The credit is calculated on Form IA 135.

52.30(1) *Claiming the credit.*

a. *Amount of credit.* The credit is calculated by multiplying the total number of E-85 gallons sold by the retail dealer during the tax year by the following designated rates:

Calendar years 2006, 2007, and 2008	25 cents
Calendar years 2009 and 2010	20 cents
Calendar year 2011	10 cents
Calendar years 2012 through 2024	16 cents

b. *Claiming the credit with other credits.* A taxpayer may claim the E-85 gasoline promotion tax credit even if the taxpayer also claims the ethanol blended gasoline tax credit provided in rule 701—52.19(422) for gallons sold prior to January 1, 2009, or the ethanol promotion tax credit provided in rule 701—52.36(422) for gallons sold on or after January 1, 2009, but prior to January 1, 2021, for the same tax year for the same ethanol gallons.

c. *Refundability.* Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

d. *Transferability.* The credit may not be transferred to any other person.

e. Example. A taxpayer operated one retail motor fuel site in 2006 and sold 200,000 gallons of gasoline, of which 160,000 gallons was ethanol blended gasoline. Of these 160,000 gallons, 1,000 gallons was E-85 gasoline. Taxpayer may claim the E-85 gasoline promotion tax credit on the 1,000 gallons of E-85 gasoline sold during 2006. Taxpayer is also entitled to claim the ethanol blended gasoline tax credit of two and one-half cents multiplied by 40,000 gallons, since this constitutes the gallons in excess of 60 percent of the total gasoline gallons sold for the 2006 tax year.

52.30(2) *Fiscal year filers.* For taxpayers whose tax year is not on a calendar-year basis, the taxpayer may compute the tax credit on the gallons of E-85 gasoline sold during the year using the designated rates as shown above. Because the tax credit is repealed on January 1, 2025, a taxpayer whose tax year ends prior to December 31, 2024, can continue to claim the tax credit in the following tax year for any E-85 gallons sold through December 31, 2024. For a retail dealer whose tax year is not on a calendar-year basis and who did not claim the E-85 credit on the previous return, the dealer may claim the credit for the current tax year for the period beginning on January 1 of the previous tax year until the last day of the previous tax year.

EXAMPLE 1: A taxpayer who is a retail dealer of gasoline has a fiscal year ending March 31, 2009. The taxpayer sold 2,000 gallons of E-85 gasoline for the period from April 1, 2008, through December 31, 2008, and sold 500 gallons of E-85 gasoline for the period from January 1, 2009, through March 31, 2009. The taxpayer is entitled to a total E-85 gasoline promotion tax credit of $600 for the fiscal year ending March 31, 2009, which consists of a $500 credit (2,000 gallons multiplied by 25 cents) for the period from April 1, 2008, through December 31, 2008, and a credit of $100 (500 gallons multiplied by 20 cents) for the period from January 1, 2009, through March 31, 2009.

EXAMPLE 2: A taxpayer who is a retail dealer of gasoline has a fiscal year ending April 30, 2006. The taxpayer sold 800 gallons of E-85 gasoline for the period from January 1, 2006, through April 30, 2006. The taxpayer is entitled to claim an E-85 gasoline promotion tax credit of $200 (800 gallons multiplied by 25 cents) on the taxpayer's Iowa income tax return for the period ending April 30, 2006. In lieu of claiming the credit on the return for the period ending April 30, 2006, the taxpayer can claim the E-85 gasoline promotion tax credit on the tax return for the period ending April 30, 2007, including all E-85 gallons sold for the period from January 1, 2006, through April 30, 2007.

52.30(3) *Allocation of credit to owners of a business entity or to beneficiaries of an estate or trust.* If a taxpayer claiming the E-85 gasoline promotion tax credit is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code section 422.33 as amended by 2016 Iowa Acts, Senate File 2309.

[**ARC 9821B**, IAB 11/2/11, effective 12/7/11; **ARC 3043C**, IAB 4/26/17, effective 5/31/17]

701—52.31(422) Biodiesel blended fuel tax credit. Effective for tax years beginning on or after January 1, 2006, a retail dealer of biodiesel blended fuel may claim a biodiesel blended fuel tax credit. "Biodiesel blended fuel" means a blend of biodiesel with petroleum-based diesel fuel that meets the standards provided in Iowa Code section 214A.2. In determining the minimum percentage by volume of biodiesel, the department will take into account reasonable variances due to testing and other limitations. For purposes of this rule, tank wagon sales are considered retail sales. The credit is calculated on Form IA 8864.

52.31(1) *Calculating the credit.*

a. Gallonage requirement.

(1) Tax years beginning on or after January 1, 2006, but prior to January 1, 2009. In order for a retail dealer to qualify for the biodiesel blended fuel tax credit for tax years beginning on or after January 1, 2006, but prior to January 1, 2009, of the total gallons of diesel fuel that the retail dealer sells and dispenses during the tax year, 50 percent or more of those gallons must be biodiesel blended fuel

formulated with a minimum percentage of 2 percent by volume of biodiesel. The gallonage amounts for all motor fuel sites of a retail dealer are combined when calculating this gallonage requirement.

(2) Tax years beginning on or after January 1, 2009, but prior to January 1, 2012. For tax years beginning on or after January 1, 2009, but prior to January 1, 2012, the biodiesel blended fuel tax credit is calculated separately for each retail motor fuel site for which 50 percent or more of the total gallons of diesel fuel sold at the motor fuel site was biodiesel blended fuel formulated with a minimum percentage of 2 percent by volume of biodiesel.

(3) Tax years beginning on or after January 1, 2012. For tax years beginning on or after January 1, 2012, the requirement that 50 percent of all diesel fuel gallons sold be biodiesel gallons to be eligible for the tax credit is eliminated. A retail dealer may qualify for the biodiesel fuel tax credit even if the gallons of biodiesel blended fuel sold is less than 50 percent of the total gallons of diesel fuel sold.

b. Amount of credit.

(1) Fuel sold on or after January 1, 2006, but prior to January 1, 2012. For biodiesel blended fuel sold on or after January 1, 2006, but prior to January 1, 2012, the tax credit equals three cents multiplied by the qualifying number of biodiesel blended fuel gallons sold by the taxpayer during the tax year. Qualifying biodiesel blended fuel must be formulated with a minimum percentage of 2 percent by volume of biodiesel.

(2) Fuel sold on or after January 1, 2012, but prior to January 1, 2013. For biodiesel blended fuel sold on or after January 1, 2012, but prior to January 1, 2013, the tax credit equals the sum of two cents multiplied by the qualifying number of biodiesel blended fuel gallons sold by the taxpayer during the tax year that have a minimum percentage of 2 percent by volume of biodiesel but less than 5 percent by volume of biodiesel plus four and one-half cents multiplied by the qualifying number of biodiesel blended fuel gallons sold by the taxpayer during the tax year that have a minimum percentage of 5 percent by volume of biodiesel. In addition, the gallonage requirements described in paragraph 52.31(1)*"a"* do not apply to fuel sold on or after January 1, 2012.

(3) Fuel sold on or after January 1, 2013, but prior to January 1, 2018. For biodiesel blended fuel sold on or after January 1, 2013, but prior to January 1, 2018, the tax credit equals four and one-half cents multiplied by the qualifying number of biodiesel blended fuel gallons that have a minimum percentage of 5 percent by volume of biodiesel. Diesel fuel sold that contains less than 5 percent by volume of biodiesel does not qualify for the biodiesel blended fuel tax credit.

(4) Fuel sold on or after January 1, 2018, but prior to January 1, 2025.

1. Amount of credit. For biodiesel blended fuel sold on or after January 1, 2018, but prior to January 1, 2025, the tax credit equals the sum of three and one-half cents multiplied by the qualifying number of biodiesel blended fuel gallons sold by the taxpayer during the tax year that have a minimum percentage of 5 percent by volume of biodiesel but less than 11 percent by volume of biodiesel plus five and one-half cents multiplied by the qualifying number of biodiesel blended fuel gallons sold by the taxpayer during the tax year that have a minimum percentage of 11 percent by volume of biodiesel.

2. Blending errors. Where a blending error occurs and an insufficient amount of biodiesel has inadvertently been blended with petroleum-based diesel fuel so that the mixture fails to contain 11 percent by volume of biodiesel, a 1 percent tolerance applies in determining the credit amount for the blended product as described in 52.31(1)*"b"*(4)"2":

- If the amount of the biodiesel erroneously blended with petroleum-based diesel is at least 10 percent of the total blended product by volume, the entire blended product qualifies for the credit amount available for biodiesel blended fuel that has a minimum percentage of 11 percent by volume of biodiesel.
- If the amount of biodiesel blended with petroleum-based diesel is at least 5 percent but less than 10 percent of the total blended product by volume, the entire blended product qualifies for the credit amount available for biodiesel blended fuel that has a minimum percentage of 5 percent by volume of biodiesel but less than 11 percent by volume of biodiesel.
- Numbered paragraph 52.31(1)*"b"*(4)"2" applies only if a retail dealer intends to sell and dispense biodiesel blended fuel that has a minimum percentage of 11 percent by volume of biodiesel. If a retail dealer does not intend to sell and dispense biodiesel blended fuel that has a minimum percentage of 11 percent by volume of biodiesel and the product sold and dispensed contains less than 11 percent

biodiesel by volume, no error has occurred and the product does not qualify for the credit amount available for biodiesel blended fuel that has a minimum percentage of 11 percent by volume of biodiesel.

c. *Refundability.* Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

d. *Transferability.* The credit may not be transferred to any other person.

e. *Examples.*

EXAMPLE 1: A taxpayer operated four retail motor fuel sites during 2006 and sold a combined total at all four sites of 100,000 gallons of diesel fuel, of which 55,000 gallons was biodiesel blended fuel containing a minimum percentage of 2 percent by volume of biodiesel. Because 50 percent or more of the diesel fuel sold was biodiesel blended fuel, the taxpayer may claim the biodiesel blended fuel tax credit totaling $1,650, which is 55,000 gallons multiplied by three cents.

EXAMPLE 2: A taxpayer operated two retail motor fuel sites during 2006, and each site sold 40,000 gallons of diesel fuel. One site sold 25,000 gallons of biodiesel blended fuel containing a minimum percentage of 2 percent by volume of biodiesel, and the other site sold 10,000 gallons of biodiesel blended fuel containing a minimum percentage of 2 percent by volume of biodiesel. The taxpayer would not be eligible for the biodiesel blended fuel tax credit because only 35,000 gallons of the total 80,000 gallons, or 43.75 percent of the total diesel fuel gallons sold, was biodiesel blended fuel. The 50 percent requirement is based on the aggregate number of diesel fuel gallons sold by the taxpayer, and the fact that one retail motor fuel site met the 50 percent requirement does not allow the taxpayer to claim the biodiesel blended fuel tax credit for the 2006 tax year.

EXAMPLE 3: Same facts as in example 2, except the fuel sales occurred in 2009. The taxpayer can claim a biodiesel blended fuel tax credit totaling $750, which is 25,000 gallons multiplied by three cents, since one of the retail motor fuel sites met the 50 percent biodiesel blended fuel requirement.

EXAMPLE 4: Same facts as in example 2, except the fuel sales occurred in 2016, and all biodiesel blended fuel sold contains a minimum percentage of 5 percent by volume of biodiesel. The taxpayer can claim a biodiesel blended fuel tax credit totaling $1,575, which is 35,000 gallons multiplied by four and one-half cents, since the 50 percent biodiesel blended fuel requirement has been eliminated.

52.31(2) *Fiscal year filers.* For taxpayers whose tax year is not on a calendar-year basis and whose tax year ends before December 31, 2006, the taxpayer may compute the tax credit on the gallons of biodiesel blended fuel sold during the period from January 1, 2006, through the end of the tax year, provided that 50 percent of all diesel fuel sold during that period was biodiesel blended fuel. Because the tax credit is repealed on January 1, 2025, a taxpayer whose tax year ends prior to December 31, 2024, may continue to claim the tax credit in the following tax year for any biodiesel blended fuel sold through December 31, 2024.

EXAMPLE 1: A taxpayer who operates one retail motor fuel site has a fiscal year ending April 30, 2006. The taxpayer sold 60,000 gallons of diesel fuel for the period from May 1, 2005, through April 30, 2006, of which 28,000 gallons was biodiesel blended fuel. However, for the period from January 1, 2006, through April 30, 2006, the taxpayer sold 20,000 gallons of diesel fuel, of which 12,000 gallons was biodiesel blended fuel. The taxpayer is entitled to claim the biodiesel blended fuel tax credit of $360 (12,000 gallons multiplied by 3 cents) on the taxpayer's Iowa income tax return for the period ending April 30, 2006, since more than 50 percent of all diesel fuel sold during the period from January 1, 2006, through April 30, 2006, was biodiesel blended fuel.

EXAMPLE 2: A taxpayer who operates one retail motor fuel site has a fiscal year ending June 30, 2006. The taxpayer sold 80,000 gallons of diesel fuel for the period from July 1, 2005, through June 30, 2006, of which 42,000 gallons was biodiesel blended fuel. However, for the period from January 1, 2006, through June 30, 2006, the taxpayer sold 40,000 gallons of diesel fuel, of which 19,000 gallons was biodiesel blended fuel. The taxpayer is not entitled to claim the biodiesel blended fuel tax credit on the taxpayer's Iowa income tax return for the period ending June 30, 2006, since less than 50 percent of all diesel fuel sold during the period from January 1, 2006, through June 30, 2006, was biodiesel blended fuel, even though more than 50 percent of all diesel fuel sold during the period from July 1, 2005, through June 30, 2006, was biodiesel blended fuel.

EXAMPLE 3: A taxpayer who operates one retail motor fuel site has a fiscal year ending February 28, 2025. The taxpayer sold 100,000 gallons of diesel fuel for the period from March 1, 2024, through February 28, 2025, of which 60,000 gallons was biodiesel blended fuel containing a minimum percentage of 5 percent by volume of biodiesel. For the period from March 1, 2024, through December 31, 2024, the taxpayer sold 85,000 gallons of diesel fuel, of which 50,000 gallons was biodiesel fuel. The taxpayer is entitled to claim the biodiesel blended fuel tax credit of $2,250 (50,000 gallons multiplied by 4.5 cents) on the taxpayer's Iowa income tax return for the period ending February 12, 2025, since the credit is computed only on gallons sold through December 31, 2024.

52.31(3) *Allocation of credit to owners of a business entity or to beneficiaries of an estate or trust.* If a taxpayer claiming the biodiesel blended fuel tax credit is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code section 422.33 as amended by 2016 Iowa Acts, Senate File 2309.

[**ARC 9821B**, IAB 11/2/11, effective 12/7/11; **ARC 3043C**, IAB 4/26/17, effective 5/31/17]

701—52.32(422) Soy-based transformer fluid tax credit. Effective for tax periods ending after June 30, 2006, and beginning before January 1, 2009, an electric utility may claim a soy-based transformer fluid tax credit. An electric utility, which is a public utility, city utility, or electric cooperative which furnishes electricity, may claim a credit equal to the costs incurred during the tax year for the purchase and replacement costs relating to the transition from using nonsoy-based transformer fluid to using soy-based transformer fluid.

52.32(1) *Eligibility requirements for the tax credit.* All of the following conditions must be met for the electric utility to qualify for the soy-based transformer fluid tax credit.

a. The costs must be incurred after June 30, 2006, and before January 1, 2009.

b. The costs must be incurred in the first 18 months of the transition from using nonsoy-based transformer fluid to using soy-based transformer fluid.

c. The soy-based transformer fluid must be dielectric fluid that contains at least 98 percent soy-based products.

d. The costs of the purchase and replacement must not exceed $2 per gallon of soy-based transformer fluid used in the transition.

e. The number of gallons used in the transition must not exceed 20,000 gallons per electric utility, and the total number of gallons eligible for the credit must not exceed 60,000 gallons in the aggregate.

f. The electric utility shall not deduct for Iowa income tax purposes the costs incurred in the transition to using soy-based transformer fluid which are deductible for federal income tax purposes.

52.32(2) *Applying for the tax credit.* An electric utility must apply to the department for the soy-based transformer fluid tax credit. The application for the tax credit must be filed no later than 30 days after the close of the tax year for which the credit is claimed. The application must include the following information:

a. A copy of the signed purchase agreement or other agreement to purchase soy-based transformer fluid.

b. The number of gallons of soy-based transformer fluid purchased during the tax year, along with the cost per gallon of each purchase made during the tax year.

c. The name, address, and tax identification number of the electric utility.

d. The type of tax for which the credit will be claimed, and the first year in which the credits will be claimed.

e. If the application is filed by a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, a list of the partners, members, shareholders or beneficiaries of the entity. This list shall include the name, address, tax identification

number and pro rata share of earnings from the entity for each of the partners, members, shareholders or beneficiaries.

52.32(3) *Claiming the tax credit.* After the application is reviewed, the department will issue a tax credit certificate to the electric utility. The tax credit certificate will include the taxpayer's name, address and federal identification number, the tax type for which the credit will be claimed, the amount of the credit and the tax year for which the credit may be claimed. Once the tax credit certificate is issued, the credit may be claimed only against the type of tax reflected on the certificate. If the department refuses to issue the tax credit certificate, the taxpayer shall be notified in writing; and the taxpayer will have 60 days from the date of denial to file a protest in accordance with rule 701—7.8(17A).

If the taxpayer is a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, the tax credit certificate will be issued to the partners, members, shareholders or beneficiaries based on the partner's, member's, shareholder's or beneficiary's pro rata share of earnings of the partnership, limited liability company, S corporation, or estate or trust.

Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

This rule is intended to implement Iowa Code Supplement section 422.33 as amended by 2008 Iowa Acts, Senate File 572.

[**ARC 0251C**, IAB 8/8/12, effective 9/12/12]

701—52.33(16,422) Agricultural assets transfer tax credit and custom farming contract tax credit.

52.33(1) *Agricultural assets transfer tax credit.* For tax years beginning on or after January 1, 2007, but before January 1, 2013, an owner of agricultural assets that rents assets to qualified beginning farmers may claim an agricultural assets transfer tax credit for Iowa corporation income tax equal to 5 percent of the rental income received by the owner for cash rental agreements and 15 percent of the rental income received by the owner for commodity share agreements. Effective for tax years beginning on or after January 1, 2013, an owner of agricultural assets that rents assets to qualified beginning farmers may claim an agricultural assets transfer tax credit for Iowa corporation income tax equal to 7 percent of the rental income received by the owner for cash rental agreements and 17 percent of the rental income received by the owner for commodity share agreements.

Also effective for tax years beginning on or after January 1, 2013, if the beginning farmer is a veteran, the credit is equal to 8 percent of the rental income received by the owner for cash rental agreements, and the credit is equal to 18 percent of the rental income received by the owner for commodity share agreements for the first year that the credit is allowed. However, the taxpayer may only claim 7 percent of the rental income for cash rental agreements and 17 percent of the rental income for commodity share agreements in subsequent years if the agreement is renewed or a new agreement is executed by the same parties. The administrative rules for the agricultural assets transfer tax credit for the Iowa finance authority may be found under 265—Chapter 44.

To qualify for the tax credit, an owner of agricultural assets must enter into a lease or rental agreement with a beginning farmer for a term of at least two years but not more than five years. Both the owner of agricultural assets and the beginning farmer must meet certain qualifications set forth by the Iowa finance authority, and the beginning farmer must be eligible to receive financial assistance under Iowa Code section 16.75.

The Iowa finance authority will issue a tax credit certificate to the owner of agricultural assets which will include the name, address and tax identification number of the owner, the amount of the credit, and the tax period for which the credit may be applied. To claim the tax credit, the owner must include the tax credit certificate with the tax return for the tax period set forth on the certificate. The tax credit certificates will be issued on a first-come, first-served basis. For fiscal years beginning on or after July 1, 2009, but before July 1, 2013, the amount of tax credit certificates issued by the Iowa agricultural development authority for the agricultural assets transfer tax credit program cannot exceed $6 million. For fiscal years beginning on or after July 1, 2013, the amount of tax credit certificates issued by the Iowa finance authority for the agricultural assets transfer tax credit program cannot exceed $8 million and the amount of the credit issued to an individual taxpayer cannot exceed $50,000. However, effective

December 31, 2017, the amount of tax credits issued by the Iowa finance authority for the agricultural assets transfer tax credit shall revert back to $6 million.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier. However, for any agricultural assets transfer credits originally issued for tax years beginning on or after January 1, 2008, any credit in excess of the tax liability may be credited to the tax liability for the following ten years. The tax credit shall not be carried back to a tax year prior to the year in which the owner redeems the credit. The credit is not transferable to any other person other than the taxpayer's estate or trust upon the death of the taxpayer.

If an owner of agricultural assets is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

The lease or rental agreement may be terminated by either the owner or the beginning farmer. If the Iowa finance authority determines that the owner is not at fault for the termination, the authority will not issue a tax credit certificate for subsequent years, but any prior tax credit certificates issued will be allowed. If the Iowa finance authority determines that the owner is at fault for the termination, any prior tax credit certificates will be disallowed. The amount of tax credits previously allowed will be recaptured, and the owner will be required to repay the entire amount of tax credits previously claimed on Iowa returns.

52.33(2) *Custom farming contract tax credit.* Effective for tax years beginning on or after January 1, 2013, a landowner that hires a beginning farmer to custom farm agricultural land in this state may claim a custom farming contract tax credit for Iowa corporation income tax. The credit is equal to 7 percent of the value of the contract. If the beginning farmer is a veteran, the credit is equal to 8 percent of the value of the contract for the first year. However, the taxpayer may only claim 7 percent of the value of the contract in subsequent years if the agreement is renewed or a new agreement is executed by the same parties. The administrative rules for the custom farming contract tax credit for the Iowa finance authority may be found under 265—Chapter 44.

To qualify for the tax credit, the taxpayer must enter into a lease or rental agreement with a beginning farmer for a term of at least two years but not more than five years. Both the taxpayer and the beginning farmer must meet certain qualifications set forth by the Iowa finance authority, and the beginning farmer must be eligible to receive financial assistance under Iowa Code section 16.75.

The Iowa finance authority will issue a tax credit certificate to the taxpayer which will include the name, address and tax identification number of the owner, the amount of the credit, and the tax period for which the credit may be applied. To claim the tax credit, the owner must include the tax credit certificate with the tax return for the tax period set forth on the certificate. For fiscal years beginning on or after July 1, 2013, the amount of tax credit certificates issued by the Iowa finance authority for the custom farming contract tax credit program cannot exceed $4 million, and the credit certificates will be issued on a first-come, first-served basis. The amount of the credit issued to an individual taxpayer cannot exceed $50,000. However, effective December 31, 2017, the Iowa finance authority will no longer issue custom farming contract tax credits.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following ten years or until used, whichever is the earlier. The tax credit shall not be carried back to a tax year prior to the year in which the owner redeems the credit. The credit is not transferable to any other person other than the taxpayer's estate or trust upon the death of the taxpayer.

If the party entering into the custom farming contract with the beginning farmer is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

The custom farming contract may be terminated by either the taxpayer or the beginning farmer. If the Iowa finance authority determines that the taxpayer is not at fault for the termination, the authority will not issue a tax credit certificate for subsequent years, but any prior tax credit certificates issued will

be allowed. If the Iowa finance authority determines that the taxpayer is at fault for the termination, any prior tax credit certificates will be disallowed. The amount of tax credits previously allowed will be recaptured, and the taxpayer will be required to repay the entire amount of tax credits previously claimed on Iowa returns.

This rule is intended to implement Iowa Code section 422.33; 2014 Iowa Acts, Senate File 2328, sections 60 and 61, as amended by 2014 Iowa Acts, House File 2454; and 2014 Iowa Acts, Senate File 2328, sections 120 and 122.

[**ARC 8589B**, IAB 3/10/10, effective 4/14/10; **ARC 1138C**, IAB 10/30/13, effective 12/4/13; **ARC 1665C**, IAB 10/15/14, effective 11/19/14]

701—52.34(15,422) Film qualified expenditure tax credit. Effective for tax years beginning on or after January 1, 2007, a film qualified expenditure tax credit is available for corporation income tax. The tax credit cannot exceed 25 percent of the taxpayer's qualified expenditures in a film, television, or video project registered with the film office of the Iowa department of economic development (IDED). The film office may negotiate the amount of the tax credit. The administrative rules for the film qualified expenditure tax credit for IDED may be found at 261—Chapter 36.

52.34(1) *Qualified expenditures.* A qualified expenditure is a payment to an Iowa resident or an Iowa-based business for the sale, rental or furnishing of tangible personal property or services directly related to the registered project. The qualified expenditures include, but are not limited to, the following:

1. Aircraft.
2. Vehicles.
3. Equipment.
4. Materials.
5. Supplies.
6. Accounting services.
7. Animals and animal care services.
8. Artistic and design services.
9. Graphics.
10. Construction.
11. Data and information services.
12. Delivery and pickup services.
13. Labor and personnel. For limitations on the amount of labor and personnel expenditures, see Iowa department of economic development 261—paragraph 36.7(2)*"b."*
14. Lighting services.
15. Makeup and hairdressing services.
16. Film.
17. Music.
18. Photography.
19. Sound.
20. Video and related services.
21. Printing.
22. Research.
23. Site fees and rental.
24. Travel related to Iowa distant locations.
25. Trash removal and cleanup.
26. Wardrobe.

A detailed list of all qualified expenditures for each of these categories is available from the film office of IDED.

52.34(2) *Claiming the tax credit.* Upon completion of the registered project in Iowa, the taxpayer must submit, in a format approved by IDED prior to production, a listing of the qualified expenditures. Upon verification of the qualified expenditures, IDED will issue a tax credit certificate to the taxpayer. The certificate will list the taxpayer's name, address, and tax identification number; the date of project

completion; the amount of the credit; the tax period for which the credit may be applied; and the type of tax for which the credit will be applied.

If the taxpayer is a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, the tax credit certificate will be issued to the partners, members, shareholders or beneficiaries based on each partner's, member's, shareholder's or beneficiary's pro rata share of earnings of the partnership, limited liability company, S corporation, or estate or trust.

To claim the tax credit, the taxpayer must include the tax credit certificate with the tax return for the tax period set forth on the certificate. Any tax credit in excess of the tax liability may be carried forward for five years or until the tax credit is used, whichever is the earlier. The tax credit cannot be carried back to a tax year prior to the year in which the taxpayer claimed the tax credit.

52.34(3) *Transfer of the film qualified expenditure tax credit.* The film qualified expenditure tax credit may be transferred no more than two times to any person or entity.

Within 90 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department of revenue, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department of revenue will issue a replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company, S corporation, or estate or trust claiming the credit for individual or corporation income tax, the transferee shall provide a list of the partners, members, shareholders or beneficiaries and information on how the film qualified expenditure tax credit should be divided among the partners, members, shareholders or beneficiaries. The transferee shall also provide the tax identification numbers and addresses of the partners, members, shareholders or beneficiaries. The replacement tax credit certificate must contain the same information as that on the original tax credit certificate and must have the same effective taxable year as the original tax credit certificate. The replacement tax credit certificate may reflect a different tax type than the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax year for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit certificate shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit certificate shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

52.34(4) *Repeal of film qualified expenditure tax credit.* The film qualified expenditure tax credit is repealed for tax years beginning on or after January 1, 2012. However, the credit is still available for tax years beginning prior to January 1, 2012, if the contract or agreement related to a film project was entered into on or before May 25, 2012.

This rule is intended to implement 2012 Iowa Acts, House File 2337, sections 38 to 40, and Iowa Code section 422.33 as amended by 2012 Iowa Acts, House File 2337, section 34.

[**ARC 8589B**, IAB 3/10/10, effective 4/14/10; **ARC 0398C**, IAB 10/17/12, effective 11/21/12; **ARC 1744C**, IAB 11/26/14, effective 12/31/14]

701—52.35(15,422) Film investment tax credit. Effective for tax years beginning on or after January 1, 2007, a film investment tax credit is available for corporation income tax. The tax credit cannot exceed 25 percent of the taxpayer's investment in a film, television, or video project registered with the film office of the Iowa department of economic development (IDED). The film office may negotiate the amount of the tax credit. The administrative rules for the film investment tax credit for IDED may be found at 261—Chapter 36.

52.35(1) *Claiming the tax credit.* Upon completion of the project in Iowa and verification of the investment in the project, IDED will issue a tax credit certificate to the taxpayer. The certificate will list the taxpayer's name, address, and tax identification number; the date of project completion; the amount of the credit; the tax period for which the credit may be applied; and the type of tax for which the credit will be applied.

If the taxpayer is a partnership, limited liability company, S corporation, or estate or trust requesting a credit for individual or corporation income tax, the tax credit certificate will be issued to the partners,

members, shareholders or beneficiaries based on each partner's, member's, shareholder's or beneficiary's pro rata share of earnings of the partnership, limited liability company, S corporation, or estate or trust.

To claim the tax credit, the taxpayer must include the tax credit certificate with the tax return for the tax period set forth on the certificate. Any tax credit in excess of the tax liability may be carried forward for five years or until the tax credit is used, whichever is the earlier. The tax credit cannot be carried back to a tax year prior to the year in which the taxpayer claimed the tax credit. In addition, a taxpayer cannot claim the film investment tax credit for qualified expenditures for which the film expenditure tax credit set forth in rule 701—52.34(15,422) is claimed.

The total of all film investment tax credits for a particular project cannot exceed 25 percent of the qualified expenditures as set forth in subrule 52.34(1) for the particular project. If the amount of investment exceeds the qualified expenditures, the tax credit will be allocated proportionately. For example, if three investors each invested $100,000 in a project but the qualified expenditures in Iowa only totaled $270,000, each investor would receive a tax credit based on a $90,000 investment amount.

52.35(2) *Transfer of the film investment tax credit.* The film investment tax credit may be transferred no more than two times to any person or entity.

Within 90 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department of revenue, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department of revenue will issue a replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company, S corporation, or estate or trust claiming the credit for individual or corporation income tax, the transferee shall provide a list of the partners, members, shareholders or beneficiaries and information on how the film investment tax credit should be divided among the partners, members, shareholders or beneficiaries. The transferee shall also provide the tax identification numbers and addresses of the partners, members, shareholders or beneficiaries. The replacement tax credit certificate must contain the same information as that on the original tax credit certificate and must have the same effective taxable year as the original tax credit certificate. The replacement tax credit certificate may reflect a different tax type than the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax year for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit certificate shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit certificate shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

52.35(3) *Repeal of film investment tax credit.* The film investment tax credit is repealed for tax years beginning on or after January 1, 2012. However, the credit is still available for tax years beginning prior to January 1, 2012, if the contract or agreement related to a film project was entered into on or before May 25, 2012.

This rule is intended to implement 2012 Iowa Acts, House File 2337, sections 38 to 40, and Iowa Code section 422.33 as amended by 2012 Iowa Acts, House File 2337, section 34.

[**ARC 8589B**, IAB 3/10/10, effective 4/14/10; **ARC 0398C**, IAB 10/17/12, effective 11/21/12; **ARC 1744C**, IAB 11/26/14, effective 12/31/14]

701—52.36(422) Ethanol promotion tax credit. Effective for tax years beginning on or after January 1, 2009, a retail dealer of gasoline may claim an ethanol promotion tax credit. For purposes of this rule, tank wagon sales are considered retail sales. The ethanol promotion tax credit is computed on Form IA 137.

52.36(1) *Definitions.* The following definitions are applicable to this rule:

"Biodiesel gallonage" means the total number of gallons of biodiesel which the retail dealer sells from motor fuel pumps during a determination period. For example, 5,000 gallons of biodiesel blended fuel with a 2 percent by volume of biodiesel sold during a determination period results in a biodiesel gallonage of 100 (5,000 times 2%).

"Biofuel distribution percentage" means the sum of the retail dealer's total ethanol gallonage plus the retail dealer's total biodiesel gallonage expressed as a percentage of the retail dealer's total gasoline gallonage.

"Biofuel threshold percentage" is dependent on the aggregate number of gallons of motor fuel sold by a retail dealer during a determination period, as set forth below:

Determination Period	More than 200,000 Gallons Sold by Retail Dealer	200,000 Gallons or Less Sold by Retail Dealer
2009	10%	6%
2010	11%	6%
2011	12%	10%
2012	13%	11%
2013	14%	12%
2014	15%	13%
2015	17%	14%
2016	19%	15%
2017	21%	17%
2018	23%	19%
2019	25%	21%
2020	25%	25%

"Biofuel threshold percentage disparity" means the positive percentage difference between the retail dealer's biofuel threshold percentage and the retail dealer's biofuel distribution percentage. For example, if a retail dealer that sells more than 200,000 gallons of motor fuel in 2009 has a biofuel distribution percentage of 8 percent, the biofuel threshold percentage disparity equals 2 percent (10% minus 2%).

"Determination period" means any 12-month period beginning on January 1 and ending on December 31.

"Ethanol gallonage" means the total number of gallons of ethanol which the retail dealer sells from motor fuel pumps during a determination period. For example, 10,000 gallons of ethanol blended gasoline formulated with a 10 percent by volume of ethanol sold during a determination period results in an ethanol gallonage of 1,000 (10,000 gallons times 10%).

"Gasoline gallonage" means the total number of gallons of gasoline sold by the retail dealer during a determination period.

52.36(2) *Calculation of tax credit.*

a. The tax credit is calculated by multiplying the retail dealer's total ethanol gallonage by the tax credit rate, which is adjusted based upon the retail dealer's biofuel threshold percentage disparity. The tax credit rate is set forth below:

Biofuel Threshold Percentage Disparity	Tax Credit Rate per Gallon 2009-2010	Tax Credit Rate per Gallon 2011	Tax Credit Rate per Gallon 2012-2020
0%	6.5 cents	8 cents	8 cents
0.01% to 2.00%	4.5 cents	6 cents	6 cents
2.01% to 4.00%	2.5 cents	2.5 cents	4 cents
4.01% or more	0 cents	0 cents	0 cents

b. For use in calculating a retail dealer's total ethanol gallonage, the department is required to establish a schedule regarding the average amount of ethanol contained in E-85 gasoline.

c. A taxpayer may claim the ethanol promotion tax credit even if the taxpayer also claims the E-85 gasoline promotion tax credit provided in rule 701—52.30(422) or the E-15 plus gasoline promotion tax credit provided in rule 701—52.43(422) for the same tax year for the same ethanol gallons.

d. The tax credit must be calculated separately for each retail motor fuel site operated by the taxpayer for tax years beginning prior to January 1, 2011. The biofuel threshold percentage disparity of the taxpayer is computed on a statewide basis based on the total ethanol gallonage sold in Iowa. The taxpayer must determine the ethanol gallonage sold at each retail motor fuel site and multiply this ethanol gallonage by the applicable tax credit rate based on the biofuel threshold percentage disparity to calculate the ethanol promotion tax credit.

e. For tax years beginning on or after January 1, 2011, the taxpayer may elect to compute the biofuel threshold percentage disparity and the tax credit on either a site-by-site basis or on a companywide basis. The election made on the first return beginning on or after January 1, 2011, for either the site-by-site method or the companywide method is binding on the taxpayer for subsequent tax years unless the taxpayer petitions the department for a change in the method. Any petition for a change in the method should be made within a reasonable period of time prior to the due date of the return for which the change is requested. For example, if a change is requested for the tax return beginning January 1, 2012, the petition should be made by January 31, 2013, which is 90 days prior to the due date of the return.

The mere fact that a change in the method will result in a larger tax credit for subsequent years is not, of itself, sufficient grounds for changing the method for computing the credit. An example of a case for which the department may grant a change in the method is if the taxpayer has a significant change in the type of fuel sold at the taxpayer's retail sites in Iowa. For example, if a retail dealer opted to start selling E-85 gasoline at all the taxpayer's retail sites in Iowa for a subsequent tax year, the department may grant a change in the method.

If a taxpayer chooses the site-by-site method to compute the biofuel threshold percentage disparity, the gallons sold at all sites in Iowa must be considered in determining if the biofuel threshold percentage as defined in subrule 52.36(1) is based on more than 200,000 gallons, or 200,000 gallons or less. For example, if a taxpayer operates three motor fuel sites in Iowa and each site sells 80,000 gallons of motor fuel during 2011, the biofuel threshold percentage of 12 percent must be used for each retail site if the tax credit is computed on a site-by-site basis, even though each retail site sold less than 200,000 gallons of motor fuel.

f. Any tax credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming a refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

52.36(3) *Fiscal year filers.* or taxpayers whose tax year is not on a calendar year basis, the taxpayer may compute the ethanol promotion tax credit on the total ethanol gallonage sold during the year using the designated tax credit rates as shown in subrule 52.36(2), paragraph *"a."* Because the tax credit is repealed on January 1, 2021, a taxpayer whose tax year ends prior to December 31, 2020, may continue to claim the tax credit in the following tax year for the total ethanol gallonage sold through December 31, 2020. For a taxpayer whose tax year is not on a calendar year basis and that did not claim the ethanol promotion tax credit on the previous return, the taxpayer may claim the tax credit for the current tax year for the period beginning on January 1 of the previous tax year until the last day of the previous tax year.

52.36(4) *Allocation of tax credit to owners of a business entity.* If a taxpayer claiming the ethanol promotion tax credit is a partnership, limited liability company, S corporation, estate, or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by the individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, estate, or trust.

52.36(5) *Examples.* The following noninclusive examples illustrate how this rule applies:

EXAMPLE 1. A taxpayer that is a retail dealer of gasoline operates only one motor fuel site in Iowa. The number of gallons of gasoline sold at this site in 2009 equals 100,000 gallons. This consisted of 5,000 gallons of E-85 gasoline, 80,000 gallons of E-10 (10% ethanol blended gasoline) and 15,000 gallons not containing ethanol. The average ethanol content of E-85 gasoline is assumed to be 79%. The taxpayer also sold at this site during 2009 15,000 gallons of diesel fuel, of which 5,000 gallons was B-2 (2% biodiesel). The ethanol gallonage is 11,950 (5,000 E-85 gallons times 79% equals 3,950; 80,000 E-10 gallons times 10% equals 8,000; and thus 3,950 plus 8,000 equals 11,950). The biodiesel gallonage sold is 100, or 5,000 times 2%. The sum of 11,950 and 100, or 12,050, is divided by the

total gasoline gallonage of 100,000 to arrive at a biofuel distribution percentage of 12.05%. Since this exceeds the biofuel threshold percentage of 6% for a retail dealer selling 200,000 gallons or less, the biofuel threshold disparity percentage is 0%. This results in an ethanol promotion tax credit of 6.5 cents times 11,950, or $776.75.

In addition, the taxpayer is entitled to claim the E-85 gasoline promotion tax credit equal to 20 cents multiplied by 5,000 gallons, or $1,000.

EXAMPLE 2. A taxpayer that is a retail dealer of gasoline operates only one motor fuel site in Iowa. The number of gallons of gasoline sold at this site in 2010 equals 300,000 gallons. This consisted of 10,000 gallons of E-85 gasoline, 230,000 gallons of E-10 (10% ethanol blended gasoline) and 60,000 gallons not containing ethanol. The average ethanol content of E-85 gasoline is assumed to be 79%. The taxpayer also sold at this site during 2010 60,000 gallons of diesel fuel, of which 25,000 gallons was B-2 (2% biodiesel). The ethanol gallonage is 30,900 (10,000 E-85 gallons times 79% equals 7,900; 230,000 E-10 gallons times 10% equals 23,000; and thus 7,900 plus 23,000 equals 30,900). The biodiesel gallonage sold is 500, or 25,000 times 2%. The sum of 30,900 and 500, or 31,400, is divided by the total gasoline gallonage of 300,000 to arrive at a biofuel distribution percentage of 10.47%. Since this is less than the biofuel threshold percentage of 11% for a retail dealer selling more than 200,000 gallons, the biofuel threshold disparity percentage is .53%. This results in an ethanol promotion tax credit of 4.5 cents times 30,900, or $1,390.50.

In addition, the taxpayer is entitled to claim the E-85 gasoline promotion tax credit equal to 20 cents multiplied by 10,000 gallons, or $2,000.

EXAMPLE 3. A taxpayer that is a retail dealer of gasoline operates three motor fuel sites in Iowa during 2009, and each site sold 80,000 gallons of gasoline. Sites A and B each sold 70,000 gallons of E-10 (10% ethanol blended gasoline) and 10,000 gallons not containing ethanol. Site C sold 60,000 gallons of E-10, 10,000 gallons of E-85, and 10,000 gallons not containing ethanol. The average ethanol content of E-85 gasoline is assumed to be 79%. The retail dealer did not sell any diesel fuel at any of the motor fuel sites. The ethanol gallonage is 27,900, as shown below:

Site A – 70,000 times 10% equals	7,000
Site B – 70,000 times 10% equals	7,000
Site C – 60,000 times 10% equals	6,000
Site C – 10,000 times 79% equals	7,900
Total	27,900

The ethanol gallonage of 27,900 is divided by the gasoline gallonage of 240,000 to arrive at a biofuel distribution percentage of 11.63%. Since this exceeds the biofuel threshold percentage of 10% for a retail dealer selling more than 200,000 gallons, the biofuel threshold disparity percentage is 0%. The credit is computed separately for each motor fuel site, and the ethanol promotion credit equals $1,813.50, as shown below:

Site A – 7,000 times 6.5 cents equals	$455.00
Site B – 7,000 times 6.5 cents equals	$455.00
Site C – 13,900 times 6.5 cents equals	$903.50
Total	$1,813.50

Since the biofuel distribution percentage and the biofuel threshold percentage disparity are computed on a statewide basis for all gallons sold in Iowa, the 6.5 cent tax credit rate is applied to the total ethanol gallonage, even if Sites A and B did not meet the biofuel threshold percentage of 10% for 2009.

In addition, the taxpayer is entitled to claim the E-85 gasoline promotion tax credit equal to 20 cents multiplied by 10,000 gallons, or $2,000.

EXAMPLE 4. A taxpayer that is a retail dealer of gasoline has a fiscal year ending March 31, 2011, and operates one motor fuel site in Iowa. The taxpayer sold more than 200,000 gallons of gasoline during the 2010 calendar year and expects to sell more than 200,000 gallons of gasoline during the 2011 calendar

year. The ethanol gallonage is 30,000 for the period from April 1, 2010, through December 31, 2010, and the ethanol gallonage is 8,000 for the period from January 1, 2011, through March 31, 2011. The biofuel distribution percentage is 11.5% for the period from April 1, 2010, through December 31, 2010, and the biofuel distribution percentage is 11.8% for the period from January 1, 2011, through March 31, 2011. This results in a biofuel threshold percentage disparity of 0% (11.0 minus 11.5) for the period from April 1, 2010, through December 31, 2010, and a biofuel threshold percentage disparity of .2% (12.0 minus 11.8) for the period from January 1, 2011, through March 31, 2011. The taxpayer is entitled to an ethanol promotion tax credit of $2,310 for the fiscal year ending March 31, 2011, as shown below:

30,000 times 6.5 cents equals	$1,950
8,000 times 4.5 cents equals	360
Total	$2,310

EXAMPLE 5. A taxpayer that is a retail dealer of gasoline has a fiscal year ending April 30, 2009, and operates one motor fuel site in Iowa. The taxpayer expects to sell more than 200,000 gallons of gasoline during the 2009 calendar year. The ethanol gallonage is 50,000 gallons for the period from January 1, 2009, through April 30, 2009. The biofuel distribution percentage is 7.7% for the period from January 1, 2009, through April 30, 2009, which results in a biofuel threshold percentage disparity of 2.3% (10.0 minus 7.7). The taxpayer is entitled to claim an ethanol promotion tax credit of $1,250 (50,000 gallons times 2.5 cents) on the taxpayer's Iowa income tax return for the period ending April 30, 2009.

In lieu of claiming the credit on the return for the period ending April 30, 2009, the taxpayer may claim the ethanol promotion tax credit on the tax return for the period ending April 30, 2010, including the ethanol gallonage for the period from January 1, 2009, through April 30, 2010. In this case, the taxpayer will compute the biofuel distribution percentage for the period from January 1, 2009, through December 31, 2009, to determine the proper tax credit rate to be applied to the ethanol gallonage for the period from January 1, 2009, through December 31, 2009.

EXAMPLE 6. Assume the same facts as Example 3, except that the gallons were sold in 2011. The taxpayer chose the companywide method to compute the biofuel threshold percentage disparity and the tax credit. The biofuel distribution percentage is 11.63%, and since the biofuel threshold percentage is 12% for retailers selling more than 200,000 gallons of motor fuel, the biofuel threshold percentage disparity is 0.37%. This results in an ethanol promotion tax credit on a companywide basis of 6 cents multiplied by the ethanol gallonage of 27,900 or $1,674.

EXAMPLE 7. Assume the same facts as Example 3, except that the gallons were sold in 2011. The taxpayer chose the site-by-site method to compute the biofuel threshold percentage disparity and the tax credit. The biofuel threshold percentage is still 12% since the retailer sold more than 200,000 gallons of motor fuel at all sites in Iowa. The biofuel distribution percentage for Site A and Site B is 7,000 divided by 80,000, or 8.75%. The biofuel threshold percentage disparity for Site A and Site B is 3.25%, or 12% less 8.75%. The biofuel distribution percentage for Site C is 13,900 divided by 80,000, or 17.38%. The biofuel threshold percentage disparity for Site C is 0% since the biofuel distribution percentage exceeds the biofuel threshold percentage. This results in an ethanol promotion tax credit on a site-by-site basis of $1,462, as shown below:

Site A – 7,000 times 2.5 cents equals	$175
Site B – 7,000 times 2.5 cents equals	$175
Site C – 13,900 times 8 cents equals	$1,112
Total	$1,462

This rule is intended to implement Iowa Code section 422.33 as amended by 2011 Iowa Acts, Senate File 531.

[**ARC 9821B**, IAB 11/2/11, effective 12/7/11]

701—52.37(422) Charitable conservation contribution tax credit. Effective for tax years beginning on or after January 1, 2008, a charitable conservation contribution tax credit is available for corporation income tax which is equal to 50 percent of the fair market value of a qualified real property interest located in Iowa that is conveyed as an unconditional charitable donation in perpetuity by a taxpayer to a qualified organization exclusively for conservation purposes.

52.37(1) *Definitions.* The following definitions are applicable to this rule:

"Conservation purpose" means the same as defined in Section 170(h)(4) of the Internal Revenue Code, with the exception that a conveyance of land for open space for the purpose of fulfilling density requirements to obtain subdivision or building permits is not considered a conveyance for a conservation purpose.

"Qualified organization" means the same as defined in Section 170(h)(3) of the Internal Revenue Code.

"Qualified real property interest" means the same as defined in Section 170(h)(2) of the Internal Revenue Code. Conservation easements and bargain sales are examples of a qualified real property interest.

52.37(2) *Computation of the credit.* The credit equals 50 percent of the fair market value of the qualified real property interest. There are numerous federal revenue regulations, rulings, court cases and other provisions relating to the determination of the value of a qualified real property interest, and these are equally applicable in determining the amount of the charitable conservation contribution tax credit.

The maximum amount of the tax credit is $100,000. The amount of the contribution for which the tax credit is claimed shall not be claimed as a deduction for charitable contributions for Iowa income tax purposes.

52.37(3) *Claiming the tax credit.* The tax credit is claimed on Form IA 148, Tax Credits Schedule. The taxpayer must include a copy of federal Form 8283, Noncash Charitable Contributions, which reflects the calculation of the fair market value of the real property interest, with the Iowa return for the year in which the contribution is made. If a qualified appraisal of the property or other relevant information is required to be included with federal Form 8283 for federal tax purposes, the appraisal and other relevant information must also be included with the Iowa return.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following 20 years or until used, whichever is the earlier.

If the taxpayer claiming the credit is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

52.37(4) *Examples.* The following noninclusive examples illustrate how this rule applies:

EXAMPLE 1: A taxpayer conveys a real property interest with a fair market value of $150,000 to a qualified organization during 2008. The tax credit is equal to $75,000, or 50 percent of the $150,000 fair market value of the real property. The taxpayer cannot claim the $150,000 as a deduction for charitable contributions on the Iowa corporation income tax return for 2008.

EXAMPLE 2: A taxpayer conveys a real property interest with a fair market value of $500,000 to a qualified organization during 2009. The tax credit is limited to $100,000, which equates to $200,000 of the contribution being eligible for the tax credit. The remaining amount of $300,000 ($500,000 less $200,000) can be claimed as a deduction for charitable contributions on the Iowa corporation income tax return for 2009.

This rule is intended to implement Iowa Code Supplement section 422.33 as amended by 2008 Iowa Acts, House File 2700, section 63.

[**ARC 1744C**, IAB 11/26/14, effective 12/31/14]

701—52.38(422) School tuition organization tax credit. Effective for tax years beginning on or after July 1, 2009, a school tuition organization tax credit is available which is equal to 65 percent of the amount of the voluntary cash or noncash contribution made by a corporation taxpayer to a school tuition organization. For tax years beginning on or after January 1, 2013, the credit is available

for S corporations, partnerships, limited liability companies, estates and trusts where the income is taxed directly to the individual shareholders, partners, members or beneficiaries. The amount of credit claimed by an individual shall be based on the pro rata share of the individual's earnings of the corporation, partnership, limited liability company, estate or trust. For information on the initial registration, participation forms and reporting requirements for school tuition organizations, see rule 701—42.32(422).

52.38(1) *Amount of tax credit authorized.* Of the $7.5 million of school tuition organization tax credits authorized for the 2009 through 2011 calendar years, no more than 25 percent, or $1,875,000, can be authorized for corporation income tax taxpayers. Of the $8.75 million of school tuition organization tax credits authorized for 2012 and 2013, no more than 25 percent, or $2,187,500, can be authorized for corporation income tax taxpayers. Of the $12 million of school tuition organization tax credits authorized for 2014 and subsequent calendar years, no more than 25 percent, or $3 million, can be authorized for corporation income tax taxpayers.

52.38(2) *Issuance of tax credit certificates.* The school tuition organization shall issue tax credit certificates to each taxpayer who made a cash or noncash contribution to the school tuition organization. The tax credit certificate will contain the name, address and tax identification number of the taxpayer, the amount and date that the contribution was made, the amount of the credit, the tax year that the credit may be applied, the school tuition organization to which the contribution was made, and the tax credit certificate number.

52.38(3) *Claiming the tax credit.* The taxpayer must include the tax credit certificate with the tax return for which the credit is claimed. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier. The taxpayer may not claim a deduction for charitable contributions for Iowa corporation income tax purposes for the amount of the contribution made to the school tuition organization.

This rule is intended to implement Iowa Code section 422.33.

[**ARC 8589B**, IAB 3/10/10, effective 4/14/10; **ARC 9876B**, IAB 11/30/11, effective 1/4/12; **ARC 1102C**, IAB 10/16/13, effective 11/20/13; **ARC 1744C**, IAB 11/26/14, effective 12/31/14]

701—52.39(15,422) Redevelopment tax credit. The economic development authority is authorized by the general assembly and the governor to oversee the implementation and administration of the redevelopment tax credit program. Effective for tax years beginning on or after July 1, 2009, a taxpayer whose project has been approved by the Iowa brownfield redevelopment advisory council and the economic development authority may claim a redevelopment tax credit once the taxpayer has been issued a tax credit certificate for the project by the economic development authority. The credit is based on the taxpayer's qualifying investment in a brownfield or grayfield site. The administrative rules for the economic development authority's administration of this program, including definitions of brownfield and grayfield sites, may be found in rules 261—65.11(15) and 261—65.12(15).

52.39(1) *Eligibility for the credit.* The economic development authority is responsible for developing a system for registration and authorization of projects receiving redevelopment tax credits. For more information, see Iowa Administrative Code 261—Chapter 65.

52.39(2) *Amount of the credit.*

a. *Maximum credit total.* For the fiscal year beginning July 1, 2009, the maximum amount of tax credits allowed is $1 million, and the amount of credit authorized for any one redevelopment project cannot exceed $100,000. For the fiscal year beginning July 1, 2011, the maximum amount of tax credits allowed cannot exceed $5 million, and the amount of credit authorized for any one redevelopment project cannot exceed $500,000. For the fiscal year beginning July 1, 2012, the maximum amount of tax credits allowed cannot exceed $10 million, and the amount of credit authorized for any one redevelopment project cannot exceed $1 million. For the fiscal year beginning July 1, 2013, and for each subsequent fiscal year, the maximum amount of tax credits issued by the authority shall be an amount determined by the economic development authority board but not in excess of the amount established pursuant to Iowa Code section 15.119.

b. Maximum credit per project. The maximum amount of a tax credit for a qualifying investment in any one qualifying redevelopment project shall not exceed 10 percent of the maximum amount of tax credits available in any one fiscal year pursuant to paragraph 52.39(2)*"a."*

c. Percentage computation. The amount of the tax credit shall equal one of the following:

(1) Twelve percent of the taxpayer's qualifying investment in a grayfield site.

(2) Fifteen percent of the taxpayer's qualifying investment in a grayfield site if the qualifying redevelopment project meets the requirements of green development as defined in rule 261—65.2(15).

(3) Twenty-four percent of the taxpayer's qualifying investment in a brownfield site.

(4) Thirty percent of the taxpayer's qualifying investment in a brownfield site if the qualifying redevelopment project meets the requirements of green development as defined in rule 261—65.2(15).

52.39(3) *Claiming the credit.*

a. Certificate issuance. Upon completion of the project, the economic development authority will issue a tax credit certificate to the taxpayer. The tax credit certificate shall include the taxpayer's name, address and federal identification number, the tax type for which the credit will be claimed, the amount of the credit, the tax year for which the credit may be claimed and the tax credit certificate number. In addition, the tax credit certificate will include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 52.39(4). To claim the tax credit, the taxpayer must include the tax credit certificate with the tax return for the tax period set forth on the certificate.

b. Pro rata share. If a taxpayer claiming the tax credit is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

c. Carryforward. Except as provided in paragraph 52.39(3)*"d,"* any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier. The tax credit shall not be carried back to a tax year prior to the year in which the taxpayer redeems the credit.

d. Refundability. A tax credit in excess of the taxpayer's liability for the tax year is refundable if all of the conditions of economic development authority 261—paragraph 65.11(4)*"b"* are met.

52.39(4) *Transfer of the credit.* The redevelopment tax credit can be transferred to any person or entity. However, a certificate indicating that the credit is refundable is only transferrable to the extent permitted by economic development authority 261—paragraph 65.11(4)*"b."*

a. Submission of transferred tax credit certificate to the department—information required. Within 90 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department of revenue, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred, the amount of all consideration provided in exchange for the tax credit, and the names of recipients of any consideration provided in exchange for the tax credit. If a payment of money was any part of the consideration provided in exchange for the tax credit, the transferee shall list the amount of the payment of money in its statement to the department of revenue. If any part of the consideration provided in exchange for the tax credit included nonmonetary consideration, including but not limited to any promise, representation, performance, discharge of debt or nonmonetary rights or property, the transferee shall describe the nature of nonmonetary consideration and disclose any value the transferor and transferee assigned to the nonmonetary consideration. The transferee must indicate on its statement to the department of revenue if no consideration was provided in exchange for the tax credit. If the transferee is a partnership, limited liability company, S corporation, or estate or trust claiming the credit for individual or corporation income tax, the transferee shall provide a list of the partners, members, shareholders or beneficiaries and information on how the redevelopment tax credit should be divided among the partners, members, shareholders or beneficiaries. The transferee shall also provide the tax identification numbers and addresses of the partners, members, shareholders or beneficiaries.

b. Issuance of replacement certificate by the department. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department of revenue will issue a replacement tax credit certificate to the transferee.

c. Claiming the transferred tax credit. The replacement tax credit certificate must contain the same information as that on the original tax credit certificate and must have the same effective taxable year as the original tax credit certificate. The replacement tax credit certificate may reflect a different tax type than the original tax credit certificate. The transferee may use the amount of the tax credit for any tax year for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit certificate shall not be included in Iowa taxable income for individual income tax, corporation income tax, or franchise tax purposes. Any consideration paid for the transfer of the tax credit certificate shall not be deducted from Iowa taxable income for individual income tax, corporation income tax, or franchise tax purposes.

52.39(5) *Basis reduction of the redevelopment property.* The increase in the basis of the redevelopment property that would otherwise result from the qualified redevelopment costs shall be reduced by the amount of the redevelopment tax credit. For example, if a qualifying investment in a grayfield site totaled $100,000 for which a $12,000 redevelopment tax credit was issued, the increase in the basis of the property would total $88,000 for Iowa tax purposes ($100,000 less $12,000).

This rule is intended to implement Iowa Code sections 15.293A, 422.33 and 15.119.

[**ARC 8702B**, IAB 4/21/10, effective 5/26/10; **ARC 9876B**, IAB 11/30/11, effective 1/4/12; **ARC 1102C**, IAB 10/16/13, effective 11/20/13; **ARC 1949C**, IAB 4/1/15, effective 5/6/15]

701—52.40(15) High quality jobs program. Effective for tax periods beginning on or after July 1, 2009, a business which qualifies under the high quality jobs program is eligible to receive tax credits. The high quality jobs program replaces the high quality job creation program. An eligible business under the high quality jobs program must be approved by the Iowa department of economic development and meet the qualifications of Iowa Code section 15.329. The tax credits available under the high quality jobs program are based upon the number of jobs created or retained that pay a qualifying wage threshold and the amount of qualifying investment. The administrative rules for the high quality jobs program for the Iowa department of economic development may be found at 261—Chapter 68.

52.40(1) *Research activities credit.* An eligible business approved under the high quality jobs program is eligible for an additional research activities credit as described in subrule 52.7(4) for awards issued by the Iowa department of economic development prior to July 1, 2010. The eligible business is eligible for the research activities credit as described in subrule 52.7(6) for awards issued by the Iowa department of economic development on or after July 1, 2010.

Research activities allowable for the Iowa research activities credit include expenses related to the development and deployment of innovative renewable energy generation components manufactured or assembled in Iowa; such expenses related to the development and deployment of innovative renewable energy generation components are not eligible for the federal credit for increasing research activities. For purposes of this subrule, innovative renewable energy generation components do not include components with more than 200 megawatts in installed effective nameplate capacity. The research activities credit related to renewable energy generation components under the high quality jobs program and the enterprise zone program shall not exceed $2 million for the fiscal year ending June 30, 2010, and $1 million for the fiscal year ending June 30, 2011.

These expenses related to the development and deployment of innovative renewable energy generation components are applicable only to the additional research activities credit set forth in this subrule and in subrule 52.7(5) for businesses in enterprise zones, and are not applicable to the research activities credit set forth in subrule 52.7(3).

52.40(2) *Investment tax credit.* An eligible business can claim an investment tax credit equal to a percentage of the new investment directly related to new jobs created or retained by the location or expansion of an eligible business. The percentage is equal to the amount provided in Iowa department of economic development 261—subrule 68.4(7).

The determination of the new investment eligible for the investment tax credit, the eligibility of a refundable investment tax credit for value-added agricultural product or biotechnology-related projects and the repayment of investment tax credits for the high quality jobs program is the same as set forth in subrule 52.28(2) for the high quality job creation program.

52.40(3) *Repayment of benefits.* If an eligible business fails to maintain the requirements of the high quality jobs program, the taxpayer may be required to repay all or a portion of the tax incentives taken on Iowa returns. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the tax credits may have expired, the department may proceed to collect the tax incentives forfeited by failure of the eligible business to maintain the requirements of the high quality jobs program because the repayment is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability. Details on the calculation of the repayment can be found in 261—subrule 187.5(4) of the administrative rules of the economic development authority. If the business is a partnership, limited liability company, S corporation, estate or trust where the income of the taxpayer is taxed to the individual owner(s) of the business, the department may proceed to collect the tax incentives against the partners, members, shareholders or beneficiaries to whom the tax incentives were passed through. See Decision of the Administrative Law Judge in *Damien & Colette Trebilcock, et al.,* Docket No. 11DORF 042-044, June 11, 2012.

This rule is intended to implement Iowa Code chapter 15.

[**ARC 8589B**, IAB 3/10/10, effective 4/14/10; **ARC 9104B**, IAB 9/22/10, effective 10/27/10; **ARC 1744C**, IAB 11/26/14, effective 12/31/14]

701—52.41(15) Aggregate tax credit limit for certain economic development programs. Effective for the fiscal year beginning July 1, 2009, awards made under certain economic development programs cannot exceed $185 million during a fiscal year. Effective for fiscal years beginning on or after July 1, 2010, but beginning before July 1, 2012, awards made under these economic development programs cannot exceed $120 million during a fiscal year. Effective for fiscal years beginning on or after July 1, 2012, awards made under these economic development programs cannot exceed $170 million. For fiscal years beginning on or after July 1, 2010, but beginning before July 1, 2014, these programs include the assistive device tax credit program, the enterprise zone program, the housing enterprise zone program, the high quality jobs program, the redevelopment tax credit program, tax credits for investments in qualifying businesses and community-based seed capital funds, and the innovation fund tax credit program. For fiscal years beginning on or after July 1, 2014, these programs include the assistive device tax credit program, the workforce housing tax incentives program, the high quality jobs program, the redevelopment tax credit program, tax credits for investments in qualifying businesses and community-based seed capital funds, and the innovation fund tax credit program. The administrative rules for the aggregate tax credit limit for the economic development authority may be found at 261—Chapter 76.

This rule is intended to implement Iowa Code section 15.119 as amended by 2014 Iowa Acts, House File 2448.

[**ARC 8589B**, IAB 3/10/10, effective 4/14/10; **ARC 9104B**, IAB 9/22/10, effective 10/27/10; **ARC 1102C**, IAB 10/16/13, effective 11/20/13; **ARC 1744C**, IAB 11/26/14, effective 12/31/14]

701—52.42(16,422) Disaster recovery housing project tax credit. For tax years beginning on or after January 1, 2011, but before January 1, 2015, a disaster recovery housing project tax credit is available for corporation income tax. The credit is equal to 75 percent of the taxpayer's qualifying investment in a disaster recovery housing project and is administered by the Iowa finance authority. Qualifying investments are costs incurred on or after May 12, 2009, and prior to July 1, 2010, related to a disaster recovery housing project. Eligible properties must have applied for and received an allocation of federal low-income housing tax credits under Section 42 of the Internal Revenue Code to be eligible for the tax credit. The administrative rules of the Iowa finance authority for the disaster recovery housing project tax credit may be found at 265—Chapter 34. The tax credit is repealed effective January 1, 2015.

52.42(1) *Issuance of tax credit certificates.* Upon completion of the project and verification of the amount of investment made in the disaster recovery housing project, the Iowa finance authority will

issue a tax credit certificate to the taxpayer. The tax credit certificate shall include the taxpayer's name, address, tax identification number, amount of credit, and the tax year for which the credit may be claimed. The tax credit certificates will be issued on a first-come, first-served basis. The tax credit cannot be transferred to any other person or entity.

52.42(2) *Limitation of tax credits.* The tax credit shall not exceed 75 percent of the taxpayer's qualifying investment in a disaster recovery housing project. The maximum amount of tax credits issued by the Iowa finance authority shall not exceed $3 million in each of the five consecutive years beginning in the 2011 calendar year. A tax credit certificate shall be issued by the Iowa finance authority for each year that the credit can be claimed.

52.42(3) *Claiming the tax credit.* The amount of the tax credit earned by the taxpayer will be divided by five and an amount equal thereto will be claimed on the Iowa corporation income tax return commencing with the tax year beginning on or after January 1, 2011. A taxpayer is not entitled to a refund of the excess tax for any tax credit in excess of the tax liability, and also is not entitled to carry forward any excess credit to a subsequent tax year.

If the taxpayer is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

The increase in the basis of the property that would otherwise result from the disaster recovery housing investment shall be reduced by the amount of the tax credit allowed.

EXAMPLE: A corporation whose tax year ends on December 31 incurs $100,000 of costs related to an eligible disaster recovery housing project. The taxpayer receives a tax credit of $75,000, and $15,000 of credit can be claimed on each Iowa corporation income tax return for the periods ending December 31, 2011, through December 31, 2015. If the tax liability for the corporation for the period ending December 31, 2011, is $10,000, the credit is limited to $10,000, and the remaining $5,000 credit cannot be used. If the tax liability for the corporation for the period ending December 31, 2012, is $25,000, the credit is limited to $15,000, and the remaining $5,000 credit from 2011 cannot be used to reduce the tax for 2012.

52.42(4) *Potential recapture of tax credits.* If the taxpayer fails to comply with the eligibility requirements of the project or violates local zoning and construction ordinances, the Iowa finance authority can void the tax credit and the department of revenue shall seek recovery of the value of any tax credit claimed on a corporation income tax return.

This rule is intended to implement Iowa Code sections 16.211, 16.212 and 422.33 as amended by 2014 Iowa Acts, Senate File 2328.

[**ARC 8605B**, IAB 3/10/10, effective 4/14/10; **ARC 9104B**, IAB 9/22/10, effective 10/27/10; **ARC 1665C**, IAB 10/15/14, effective 11/19/14]

701—52.43(422) E-15 plus gasoline promotion tax credit. Effective for eligible gallons sold on or after July 1, 2011, a retail dealer of gasoline may claim an E-15 plus gasoline promotion tax credit. "E-15 plus gasoline" means ethanol blended gasoline formulated with a minimum percentage of between 15 percent and 69 percent of volume of ethanol, if the formulation meets the standards provided in Iowa Code section 214A.2. For purposes of this rule, tank wagon sales are considered retail sales. The credit is calculated on Form IA 138.

52.43(1) *Calculating the credit.*

a. *Amount of credit.* The tax credit is calculated by multiplying the total number of E-15 plus gallons sold by the retail dealer during the tax year by the following designated rates:

Gallons sold from July 1, 2011, through December 31, 2013	3 cents
Gallons sold from January 1 through May 31 and from September 16 through December 31 for the 2014-2024 calendar years	3 cents
Gallons sold from June 1 through September 15 for the 2014-2024 calendar years	10 cents

b. Claiming the credit with other credits. A taxpayer may claim the E-15 plus gasoline promotion tax credit even if the taxpayer also claims the ethanol promotion tax credit provided in rule 701—52.36(422) for gallons sold on or after January 1, 2011, but prior to January 1, 2021, for the same tax year for the same ethanol gallons.

c. Refundability. Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

d. Transferability. The credit may not be transferred to any other person.

52.43(2) *Fiscal year filers.* For taxpayers whose tax year is not on a calendar-year basis, the taxpayer may compute the tax credit on the gallons of E-15 plus gasoline sold during the year using the designated rates as shown above. Because the tax credit is repealed on January 1, 2025, a taxpayer whose tax year ends prior to December 31, 2024, may continue to claim the tax credit in the following tax year for any E-15 plus gallons sold through December 31, 2024. For a retail dealer whose tax year is not on a calendar-year basis and who did not claim the E-15 plus credit on the previous return, the dealer may claim the credit for the current tax year for gallons sold for the period beginning on July 1 of the previous tax year until the last day of the previous tax year. However, for taxpayers whose fiscal year ends prior to December 31, 2011, the dealer must claim the credit for the current tax year for gallons sold for the period beginning on July 1 of the previous tax year until the last day of the previous tax year.

EXAMPLE 1: A taxpayer who is a retail dealer of gasoline has a fiscal year ending October 31, 2011. The taxpayer sold 2,000 gallons of E-15 plus gasoline for the period from July 1, 2011, through October 31, 2011, and sold 7,000 gallons of E-15 plus gasoline for the period from November 1, 2011, through October 31, 2012. The taxpayer is entitled to a total E-15 plus gasoline promotion tax credit of $270 for the fiscal year ending October 31, 2012, which consists of a $60 credit (2,000 gallons multiplied by 3 cents) for the period from July 1, 2011, through October 31, 2011, and a credit of $210 (7,000 gallons multiplied by 3 cents) for the period from November 1, 2011, through October 31, 2012.

EXAMPLE 2: A taxpayer who is a retail dealer of gasoline has a fiscal year ending April 30, 2012. The taxpayer sold 4,000 gallons of E-15 plus gasoline between July 1, 2011, and April 30, 2012. The taxpayer sold 9,000 gallons of E-15 plus gasoline between May 1, 2012, and April 30, 2013. The taxpayer is entitled to claim an E-15 plus gasoline promotion tax credit of $120 (4,000 gallons multiplied by 3 cents) for the fiscal year ending April 30, 2012. In lieu of claiming the credit on the return for the period ending April 30, 2012, the taxpayer can claim the E-15 plus gasoline promotion tax credit on the tax return for the period ending April 30, 2013, for all E-15 plus gasoline gallons sold for the period from July 1, 2011, through April 30, 2013.

EXAMPLE 3: A taxpayer who is a retail dealer of gasoline has a fiscal year ending February 28, 2025. The taxpayer sold 20,000 total gallons of E-15 plus gasoline for the entire period from March 1, 2024, through February 28, 2025. For the period from March 1 through May 31, 2024, the taxpayer sold 4,000 gallons of E-15 plus gasoline, which entitles the taxpayer to a credit of $120 (4,000 gallons multiplied by 3 cents). For the period from June 1 through September 15, 2024, the taxpayer sold 6,000 gallons of E-15 plus gasoline, which entitles the taxpayer to a credit of $600 (6,000 gallons multiplied by 10 cents). For the period from September 16 through December 31, 2024, the taxpayer sold 6,000 gallons of E-15 plus gasoline, which entitles the taxpayer to a credit of $180 (6,000 gallons multiplied by 3 cents). For the period from January 1 through February 28, 2025, the taxpayer sold 4,000 gallons of E-15 plus gasoline, which occurred after expiration of the credit. The taxpayer is entitled to claim a total E-15 plus gasoline promotion tax credit of $900 ($120 plus $600 plus $180) on the taxpayer's Iowa income tax return for the period ending February 28, 2025.

52.43(3) *Allocation of credit to owners of a business entity or to beneficiaries of an estate or trust.* If a taxpayer claiming the E-15 plus gasoline promotion tax credit is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on

the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code sections 422.11Y and 422.33 as amended by 2016 Iowa Acts, Senate File 2309.

[**ARC 9821B**, IAB 11/2/11, effective 12/7/11; **ARC 1665C**, IAB 10/15/14, effective 11/19/14; **ARC 3043C**, IAB 4/26/17, effective 5/31/17]

701—52.44(422) Solar energy system tax credit. For tax years beginning on or after January 1, 2012, a solar energy system tax credit is available for business property described in Sections 48(a)(2)(A)(i)(II) and 48(a)(2)(A)(i)(III) of the Internal Revenue Code and located in Iowa. The credit is available according to the same requirements, conditions, and limitations as described in rule 701—42.48(422).

This rule is intended to implement Iowa Code section 422.33.

[**ARC 5590C**, IAB 4/21/21, effective 5/26/21]

701—52.45(422,85GA,SF452) From farm to food donation tax credit. Effective for tax years beginning on or after January 1, 2014, a taxpayer that donates a food commodity that the taxpayer produces may claim a tax credit for Iowa corporation income tax. The credit is equal to 15 percent of the value of the commodities donated during the tax year for which the credit is claimed or $5,000, whichever is less. The value of the commodities shall be determined in the same manner as a charitable contribution of food for federal tax purposes under Section 170(e)(3)(C) of the Internal Revenue Code.

To qualify for the tax credit, the taxpayer (1) must produce the donated food commodity; (2) must transfer title to the donated food commodity to an Iowa food bank or Iowa emergency feeding organization recognized by the department; and (3) shall not receive remuneration for the transfer. The donated food commodity cannot be damaged or out-of-condition and declared to be unfit for human consumption by a federal, state, or local health official. A food commodity that meets the requirements for donated foods pursuant to the federal Emergency Food Assistance Program satisfies this requirement.

To be recognized by the department, a food bank or emergency feeding organization must either be a recognized affiliate of one of the eight partner food banks with the Iowa Food Bank Association or must register with the department. To register with the department, the organization must meet the definition of "emergency feeding organization," "food bank," or "food pantry" as defined by the department of human services in 441—66.1(234). The department of revenue will make registration forms available on the department's website. The department will maintain a list of recognized organizations on the department's website.

Food banks and emergency feeding organizations that receive eligible donations shall be required to issue receipts in a format prescribed by the department for all donations received and must annually submit to the department a receipt log of all the receipts issued during the tax year. The receipt log must be submitted in the form of a spreadsheet with column specifications as provided by the department. Receipt logs showing the donations for the previous calendar year must be delivered electronically or mailed to the department postmarked by January 15 of each year. If a receipt for a taxpayer's claim is not provided by the organization, the taxpayer's claim will be denied.

To claim the credit, a taxpayer shall submit to the department the original receipts that were issued by the food bank or emergency feeding organization. The receipt must include quantity information completed by the food bank or emergency feeding organization, taxpayer information, and a donation valuation consistent with Section 170(e)(3)(C) of the Internal Revenue Code completed by the taxpayer. Claims must be postmarked on or before January 15 of the year following the tax year for which the claim is requested. Once the department verifies the amount of the tax credit, a letter will be sent to the taxpayer providing the amount of the tax credit and a tax credit certificate number.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is earlier. The tax credit shall not be carried back to a tax year prior to the year in which the owner redeems the credit.

If the producer is a partnership, limited liability company, S corporation, estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount

claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement 2013 Iowa Acts, Senate File 452, division XVIII.

[**ARC 1138C**, IAB 10/30/13, effective 12/4/13]

701—52.46(15) Workforce housing tax incentives program. A business which qualifies under the workforce housing tax incentives program is eligible to receive tax incentives for corporation income tax. The workforce housing tax incentives program replaced the eligible housing enterprise zone program. An eligible business under the workforce housing tax incentives program must be approved by the economic development authority. The administrative rules for the workforce housing tax incentives program for the economic development authority may be found at 261—Chapter 48. The general assembly has mandated that the economic development authority and the department of revenue adopt rules to jointly administer Iowa Code sections 15.351 to 15.356. In general, the economic development authority is responsible for evaluating whether projects meet the requirements for a workforce housing tax incentives program while the department of revenue administers tax credit claims and transfers.

52.46(1) *Definitions.*

"Costs directly related" means the same as defined in rule 261—48.3(15).

"Qualifying new investment" means the same as defined in rule 261—48.3(15).

52.46(2) *Workforce housing tax incentives.* The economic development authority will allocate no more than $20 million in tax incentives for this program for any fiscal year, $5 million of which shall be reserved for allocation to qualified housing projects in small cities, as defined in Iowa Code section 15.352(10), that are registered on or after July 1, 2017. A housing business that has entered into an agreement with the economic development authority is eligible to receive the tax incentives described in the following paragraphs:

a. Sales tax refund. A housing business may claim a refund of the sales and use tax described in rule 701—12.19(15).

b. Investment tax credit.

(1) Computation of the credit. A housing business may claim a tax credit in an amount not to exceed 10 percent of the qualifying new investment in a housing project not located in a small city, or 20 percent of the qualifying new investment in a housing project located in a small city.

(2) Allocation of the tax credit to the individual owners of the entity or beneficiaries of an estate or trust. An individual may claim a tax credit if the housing business is a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the partnership, limited liability company, S corporation, estate, or trust.

(3) Refundability. Any tax credit in excess of the taxpayer's liability for the tax year is not refundable.

(4) Carryforward. Any tax credit in excess of the taxpayer's liability may be credited to the tax liability for the following five years or until depleted, whichever is earlier.

52.46(3) *Claiming the tax credit—information required.* The taxpayer must receive a tax credit certificate from the economic development authority to claim the eligible housing business tax credit. The tax credit certificate shall include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the date the project was completed, the amount of the eligible housing business tax credit and the tax year for which the credit may be claimed. In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 52.46(5). The tax credit certificate must be included with the income tax return for the tax period in which the housing is ready for occupancy.

52.46(4) *Basis adjustment.* The increase in the basis of the property that would otherwise result from the qualifying new investment shall be reduced by the amount of the investment tax credit. For example, if a new housing project had qualifying new investment of $1 million which resulted in a $100,000 investment tax credit for Iowa tax purposes, the basis of the property for Iowa income tax purposes would be $900,000.

52.46(5) *Transfer of the credit.*

a. Submission of transferred tax credit certificate to the department—information required. Tax credit certificates issued under an agreement entered into pursuant to subrule 52.46(3) may be transferred to any person. Within 90 days of transfer, the transferee shall submit the transferred tax credit certificate to the department of revenue along with a statement containing the transferee's name, tax identification number, and address, the denomination that each replacement tax credit certificate is to carry, and any other information required by the department of revenue. However, tax credit certificate amounts of less than the minimum amount established in rule by the economic development authority shall not be transferable.

b. Issuance of replacement certificate by the department. Within 30 days of receiving the transferred tax credit certificate and the transferee's statement, the department of revenue shall issue one or more replacement tax credit certificates to the transferee. Each replacement tax credit certificate must contain the information required for the original tax credit certificate and must have the same expiration date that appeared on the transferred tax credit certificate.

c. Claiming the transferred tax credit. A tax credit shall not be claimed by a transferee under this rule until a replacement tax credit certificate identifying the transferee as the proper holder has been issued. The transferee may use the amount of the tax credit transferred for any tax year the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income, or franchise tax purposes.

d. Unlimited number of transferees and subsequent transfers. There is no limitation on the number of transferees to whom the credit may be transferred. There is no limitation on the number of times that the credit may be retransferred by a transferee. The transferor may divide the credit into multiple credits of alternate denominations so long as the resulting credits are for amounts of no less than the minimum amount established in rule by the economic development authority.

e. Carryforward limitations on transferees. The transferee may use the amount of the transferred tax credit for any tax year that the original transferor could have claimed the tax credit. The carryforward limitations described in subparagraph 52.46(2)*"b"*(4) shall apply.

52.46(6) *Repayment of benefits.* If the housing business fails to maintain the requirements of Iowa Code section 15.353, the taxpayer may be required to repay all or a portion of the tax incentives the taxpayer received. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the income tax credit may have expired, the department may proceed to collect the tax incentives forfeited by failure of the taxpayer to maintain the requirements of Iowa Code section 15.353. This repayment is required because it is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability. Details on the calculation of the repayment can be found in 261—subrule 187.5(4) of the administrative rules of the economic development authority. If the business is a partnership, limited liability company, S corporation, estate or trust where the income of the taxpayer is taxed to the individual owner(s) of the business, the department may proceed to collect the tax incentives against the partners, members, shareholders or beneficiaries to whom the tax incentives were passed through. See Decision of the Administrative Law Judge in *Damien & Colette Trebilcock, et al.,* Docket No. 11DORF 042-044, June 11, 2012.

This rule is intended to implement Iowa Code sections 15.354 and 15.355.

[**ARC 1744C**, IAB 11/26/14, effective 12/31/14; **ARC 3837C**, IAB 6/6/18, effective 7/11/18]

701—52.47(404A,422) Historic preservation and cultural and entertainment district tax credit for projects registered on or after July 1, 2014, and before August 15, 2016. For projects registered before August 15, 2016, the department of cultural affairs is authorized by the general assembly to award tax credits for a percentage of the qualified rehabilitation expenditures on a qualified rehabilitation project as described in the historic preservation and cultural and entertainment district tax credit program, Iowa Code chapter 404A. The program is administered by the department of cultural affairs with the assistance of the department of revenue. The general assembly has mandated that the department of

cultural affairs and the department of revenue adopt rules to jointly administer Iowa Code chapter 404A. In general, the department of cultural affairs is responsible for evaluating whether projects comply with the prescribed standards for rehabilitation while the department of revenue is responsible for evaluating whether projects comply with the tax aspects of the program.

2014 Iowa Acts, House File 2453, amended the historic preservation and cultural and entertainment district tax credit program effective July 1, 2014. The department of revenue's provisions for projects with Part 2 applications approved and tax credits reserved prior to July 1, 2014, are found in rule 701—52.18(404A,422). The department of revenue's provisions for projects registered on or after July 1, 2014, and before August 15, 2016, are found in this rule. The department of cultural affairs' rules related to this program may be found at 223—Chapter 48.

2016 Iowa Acts, House File 2443, amended the program and transferred primary responsibility for its administration to the economic development authority effective August 15, 2016. Effective August 15, 2016, the program is administered by the economic development authority with the assistance of the department of cultural affairs and the department of revenue. The department of revenue's provisions for projects registered on or after August 15, 2016, are found in rule 701—52.48(404A,422). The economic development authority's rules related to the program may be found at 261—Chapter 49. When adopted, the department of cultural affairs' rules related to the program will be found in 223—Chapter 48.

Notwithstanding anything contained herein to the contrary, the department of cultural affairs shall not reserve tax credits under 2013 Iowa Code chapter 404A as amended by 2013 Iowa Acts, chapter 112, section 1, for applicants that do not have an approved Part 2 application and a tax credit reservation on or before June 30, 2014. Projects with approved Part 2 applications and provisional tax credit reservations on or before June 30, 2014, shall be governed by 2013 Iowa Code chapter 404A as amended by 2013 Iowa Acts, chapter 112, section 1; by 223—Chapter 48, Division I; and by rule 701—52.18(404A,422). Projects registered on or after July 1, 2014, but before August 15, 2016, shall be governed by 2014 Iowa Acts, House File 2453; by 223—Chapter 48, Division II; and by this rule. Projects registered on or after August 15, 2016, shall be governed by 2016 Iowa Code chapter 404A as amended by 2016 Iowa Acts, House File 2443; by 261—Chapter 49; and by rule 701—52.48(404A,422).

52.47(1) *Application, registration, and agreement for the historic preservation and cultural and entertainment district tax credit.* Taxpayers that want to claim a corporation income tax credit for completing a qualified rehabilitation project must submit an application for approval of the project. The application forms and instructions for the historic preservation and cultural and entertainment district tax credit are available on the department of cultural affairs' website. Once a project is registered, the taxpayer must enter into an agreement with the department of cultural affairs to be eligible for the credit.

52.47(2) *Computation of the amount of the historic preservation and cultural and entertainment district tax credit.* The amount of the historic preservation and cultural and entertainment district tax credit is a maximum of 25 percent of the qualified rehabilitation expenditures verified by the department of cultural affairs and the department of revenue following project completion, up to the amount specified in the agreement between the taxpayer and the department of cultural affairs.

52.47(3) *Qualified rehabilitation expenditures.* "Qualified rehabilitation expenditures" means the same as defined in rule 223—48.22(404A) of the historical division of the department of cultural affairs. In general, the department of cultural affairs evaluates whether expenditures comply with the prescribed standards for rehabilitation while the department of revenue evaluates whether expenditures comply with the tax requirements to be considered qualified rehabilitation expenditures, including whether the expenditures are in accordance with the requirements of Internal Revenue Code Section 47 and its related regulations.

a. Type of property and services eligible. In accordance with Iowa Code section 404A.1(6), the types of property and services claimed for the state tax credit must be "qualified rehabilitation expenditures" in accordance with Internal Revenue Code Section 47. Notwithstanding the foregoing sentence, expenditures incurred by an eligible taxpayer that is a nonprofit organization as defined in Iowa Code section 404A.1(4) shall be considered "qualified rehabilitation expenditures" if they are for "structural components," as that term is defined in Treasury Regulation § 1.48-1(e)(2), and for amounts

incurred for architectural and engineering fees, site survey fees, legal expenses, insurance premiums, development fees and other construction-related costs.

b. Effect of financing sources on eligibility of expenditures. Qualified rehabilitation expenditures do not include expenditures financed by federal, state, or local government grants or forgivable loans unless otherwise allowed under Section 47 of the Internal Revenue Code. For an eligible taxpayer that is a nonprofit organization as defined in Iowa Code section 404A.1(4) that is not eligible for the federal rehabilitation credit, or another person that is not eligible for the federal rehabilitation credit, expenditures financed with federal, state, or local government grants or forgivable loans are not qualified rehabilitation expenditures.

52.47(4) *Completion of the qualified rehabilitation project and claiming the tax credit on the Iowa return.* After the taxpayer completes a qualified rehabilitation project, the taxpayer will be issued a certificate of completion of the project from the department of cultural affairs if the project complies with the federal standards, as defined in rule 223—48.22(404A). After the department of cultural affairs and the department of revenue verify the taxpayer's eligibility for the tax credit, the department of cultural affairs shall issue a tax credit certificate.

a. Claiming the credit. For the taxpayer to claim the credit, the certificate must be included with the taxpayer's corporation income tax return for the tax year in which the rehabilitation project is completed or the corporation income tax return for any tax year within the five years following the tax year of project completion. Taxpayers that elect to delay claiming the credit to a later tax year return as described in this paragraph are subject to the carryforward limitations described in paragraph 52.47(4)*"d"* below. The credit may be claimed on an amended return so long as the amended return is filed within the statute of limitations applicable to the tax year for which the amended return is being filed.

b. Information required. The tax credit certificate shall include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the address or location of the rehabilitation project, the date the project was completed, the amount of the historic preservation and cultural and entertainment district tax credit, and, if applicable, an indication of whether the credit is nonrefundable (see paragraph 52.47(4)*"c"* below). In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 52.47(5). In addition, if the taxpayer is a partnership, limited liability company, estate or trust, and the tax credit is allocated to the owners or beneficiaries of the entity, a list of the owners or beneficiaries and the amount of credit allocated to each owner or beneficiary shall be provided with the certificate.

c. Refundability. A historic preservation and cultural and entertainment district tax credit in excess of the taxpayer's tax liability is fully refundable with interest computed under Iowa Code section 422.25. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year. To receive a refundable credit, the taxpayer must elect to receive the credit as refundable at the Part 3 stage of the application process administered by the department of cultural affairs. See department of cultural affairs' 223—Chapter 48. Once the taxpayer elects to receive a nonrefundable credit, the taxpayer cannot select to change the credit to a refundable credit or vice versa. If the taxpayer is a transferee, the taxpayer may elect to receive the credit as refundable or nonrefundable when the taxpayer applies to the department of revenue for transfer of the tax credit as described in subrule 52.47(5).

d. Carryforward. If the taxpayer elects to receive a nonrefundable historic preservation and cultural and entertainment district tax credit as described in paragraph 52.47(4)*"b,"* the amount in excess of the taxpayer's tax liability may be carried forward for five years following the tax year in which the project is completed, or until it is depleted, whichever is earlier. A tax credit shall not be carried back to a tax year prior to the tax year in which the taxpayer is first eligible to claim the credit. Regardless of whether the taxpayer elects to claim the tax credit on a tax return for a year that is later than the year of project completion as described in paragraph 52.47(4)*"a,"* the taxpayer must utilize the entire credit within five years of project completion as described in this paragraph; any credit amount that is not utilized within the five-year carryforward period is forfeited. The five-year carryforward

limitation does not apply if the taxpayer elects to receive a refundable credit, the excess of which may be credited to future tax years as an overpayment.

e. Allocation of historic preservation and cultural and entertainment district tax credits to the individual owners of the entity or beneficiaries of an estate or trust. A partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder. The credit does not have to be allocated based on the pro rata share of earnings of the partnership, limited liability company or S corporation. For an individual claiming a tax credit of an estate or trust, the amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the estate or trust.

52.47(5) *Transfer of the historic preservation and cultural and entertainment district tax credit.* The historic preservation and cultural and entertainment district tax credit certificates may be transferred to any person or entity. The transferee may use the amount of the tax credit transferred against the taxes imposed in Iowa Code chapter 422, divisions II, III, and V, and in Iowa Code chapter 432, for any tax year the original transferor could have claimed the tax credit. Transferees must elect to receive either a refundable or nonrefundable tax credit. Once the transferee elects to receive a nonrefundable credit, the transferee cannot elect to change the credit to a refundable credit or vice versa. A tax credit certificate of less than $1,000 shall not be transferable.

a. Transfer process—information required. Within 90 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department of revenue along with a statement that contains the transferee's name, address and tax identification number, the amount of the tax credit being transferred, an election to receive either a refundable or nonrefundable tax credit, and the amount of all consideration provided in exchange for the tax credit and the names of recipients of any consideration provided in exchange for the tax credit. If a payment of money was any part of the consideration provided in exchange for the tax credit, the transferee shall list the amount of the payment of money in its statement to the department of revenue. If any part of the consideration provided in exchange for the tax credit included nonmonetary consideration, including but not limited to any promise, representation, performance, discharge of debt or nonmonetary rights or property, the tax credit transferee shall describe the nature of the nonmonetary consideration and disclose any value the transferor and transferee assigned to the nonmonetary consideration. The tax credit transferee must indicate on its statement to the department of revenue if no consideration was provided in exchange for the tax credit. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department of revenue will issue the replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members or shareholders and information on how the historic preservation and cultural and entertainment district tax credit should be divided among the partners, members or shareholders. The transferee shall also provide the tax identification numbers and addresses of the partners, members or shareholders. The certificate must have the same information required for the original tax certificate and must have the same expiration date as the original tax credit certificate. The transferee may not claim a tax credit until a replacement certificate identifying the transferee as the proper holder has been issued.

b. Consideration. Any consideration received for the transfer of the tax credit shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

c. Unlimited number of transferees and subsequent transfers. There is no limitation on the number of transferees to whom the credit may be transferred. There is no limitation on the number of times that the credit may be retransferred by a transferee. The transferor may divide the credit into multiple credits of alternate denominations so long as the resulting credits are for amounts of no less than $1,000.

d. Carryforward limitations on transferees. The transferee may use the amount of the transferred tax credit for any tax year the original transferor could have claimed the tax credit. The carryforward limitations described in paragraph 52.47(4)*"d"* shall apply.

52.47(6) *Appeals.* Challenges to an action by the department of revenue related to tax credit transfers, claiming tax credits, tax credit revocation, or repayment or recovery of tax credits must be brought pursuant to 701—Chapter 7.

This rule is intended to implement Iowa Code chapter 404A as amended by 2016 Iowa Acts, House File 2443, and Iowa Code section 422.33.

[**ARC 1968C**, IAB 4/15/15, effective 5/20/15; **ARC 2928C**, IAB 2/1/17, effective 3/8/17]

701—52.48(404A,422) Historic preservation and cultural and entertainment district tax credit for projects registered on or after August 15, 2016. The economic development authority is authorized by the general assembly to award tax credits for a percentage of the qualified rehabilitation expenditures on a qualified rehabilitation project as described in the historic preservation and cultural and entertainment district tax credit program, Iowa Code chapter 404A. The program is administered by the economic development authority with the assistance of the department of cultural affairs and the department of revenue. The general assembly has mandated that the economic development authority, the department of cultural affairs and the department of revenue adopt rules as necessary to administer Iowa Code chapter 404A. In general, the department of revenue is responsible for administering tax credit transfers and processing and auditing tax returns that include tax credits claimed on returns. For the economic development authority's rules on the credit program, see 261—Chapter 49. For the department of cultural affairs' rules on the credit program, see 223—Chapter 48.

52.48(1) *Program transition.* 2016 Iowa Acts, House File 2443, made several changes to the credit program, including transferring primary responsibility for the program's administration from the department of cultural affairs to the economic development authority. Projects registered prior to August 15, 2016, remain under the purview of the department of cultural affairs, with assistance from the department of revenue. For department of revenue rules related to projects registered prior to August 15, 2016, see rules 701—52.18(404A,422) and 701—52.47(404A,422).

52.48(2) *Application, registration, and agreement for the historic preservation and cultural and entertainment district tax credit.* For rules on the application, registration, and agreement process, see economic development authority rules, 261—Chapter 49.

52.48(3) *Computation of the amount of the historic preservation and cultural and entertainment district tax credit.* The amount of the historic preservation and cultural and entertainment district tax credit is a maximum of 25 percent of the qualified rehabilitation expenditures verified by the economic development authority following project completion, up to the amount specified in the agreement between the taxpayer and the economic development authority. For more information on the credit computation, see economic development authority rules, 261—Chapter 49. The amount remains subject to audit by the department of revenue when the credit is claimed on the taxpayer's tax return.

52.48(4) *Qualified rehabilitation expenditures.* "Qualified rehabilitation expenditures" means the same as defined in Iowa Code section 404A.1(7) and rule 261—49.5(404A) of economic development authority rules. In the event of an audit, the department of revenue evaluates whether expenditures comply with the agreement between the economic development authority and the eligible taxpayer, as well as with applicable statutes and rules, including Internal Revenue Code Section 47 and its related regulations.

52.48(5) *Completion of the qualified rehabilitation project and claiming the tax credit.* After the economic development authority verifies the taxpayer's eligibility for the tax credit, the economic development authority shall issue a tax credit certificate. For more information on credit certificate issuance, see economic development authority rules, 261—Chapter 49.

a. Claiming the credit. For the taxpayer to claim the credit, the certificate must be included with the taxpayer's corporation income tax return for the tax year in which the rehabilitation project is completed or the corporation income tax return for any year within the five years following the year of project completion. Taxpayers that elect to delay claiming the credit to a later year's return as described in this paragraph are subject to the carryforward limitations described in paragraph 52.48(5)*"d"* below. The credit may be claimed on an amended return so long as the amended return is filed within the statute of limitations applicable to the tax year for which the amended tax return is being filed.

b. Information required. The tax credit certificate shall include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the address or location of the rehabilitation project, the date the project was completed, the amount of the historic preservation and cultural and entertainment district tax credit, and, if applicable, an indication of whether the credit is nonrefundable (see paragraph 52.48(5)*"c"* below). In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 52.48(6). In addition, if the taxpayer is a partnership, limited liability company, estate or trust, and the tax credit is allocated to the owners or beneficiaries of the entity, a list of the owners or beneficiaries and the amount of credit allocated to each owner or beneficiary shall be provided with the certificate.

c. Refundability. A historic preservation and cultural and entertainment district tax credit in excess of the taxpayer's tax liability is fully refundable with interest computed under Iowa Code section 422.25. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year. To receive a refundable credit, the taxpayer must elect to receive the credit as refundable at the Part 3 stage of the application process administered by the economic development authority. See the economic development authority's rule 261—49.15(404A). Once the taxpayer elects to receive a nonrefundable credit, the taxpayer cannot elect to change the credit to a refundable credit or vice versa. If the taxpayer is a transferee, the taxpayer may elect to receive the credit as refundable or nonrefundable when the taxpayer applies to the department of revenue for transfer of the tax credit as described in subrule 52.48(6).

d. Carryforward. If the taxpayer elects to receive a nonrefundable historic preservation and cultural and entertainment district tax credit as described in paragraph 52.48(5)*"b,"* the amount in excess of the taxpayer's tax liability may be carried forward for five years following the tax year in which the project is completed, or until it is depleted, whichever is earlier. A tax credit shall not be carried back to a tax year prior to the tax year in which the taxpayer is first eligible to claim the credit. Regardless of whether the taxpayer elects to claim the tax credit on a tax return for a year that is later than the year of project completion as described in paragraph 52.48(5)*"a,"* the taxpayer must utilize the entire credit within five years following the tax year of the project completion as described in this paragraph; any credit that is not utilized within the five-year carryforward period is forfeited. The five-year carryforward limitation does not apply if the taxpayer elects to receive a refundable credit, the excess of which may be credited to future tax years as an overpayment.

e. Allocation of historic preservation and cultural and entertainment district tax credits to the individual owners of the entity or beneficiaries of an estate or trust. A partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder. The credit does not have to be allocated based on the pro rata share of earnings of the partnership, limited liability company or S corporation. For an individual claiming a tax credit of an estate or trust, the amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the estate or trust.

52.48(6) *Transfer of the historic preservation and cultural and entertainment district tax credit.* The historic preservation and cultural and entertainment district tax credit certificates may be transferred to any person or entity. The transferee may use the amount of the tax credit transferred against the taxes imposed in Iowa Code chapter 422, divisions II, III, and V, and in Iowa Code chapter 432, for any tax year that the original transferor could have claimed the tax credit. Transferees must elect to receive either a refundable or nonrefundable tax credit. Once the transferee elects to receive a nonrefundable credit, the transferee cannot elect to change the credit to a refundable credit or vice versa. A tax credit certificate of less than $1,000 shall not be transferable.

a. Transfer process—information required. Within 90 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department of revenue along with a statement that contains the transferee's name, address and tax identification number, the amount of the tax credit being transferred, an election to receive either a refundable or nonrefundable tax credit, and the amount of all consideration provided in exchange for the tax credit and the names of recipients of any consideration provided in exchange for the tax credit. If a payment of money was any part of the

consideration provided in exchange for the tax credit, the transferee shall list the amount of the payment of money in its statement to the department of revenue. If any part of the consideration provided in exchange for the tax credit included nonmonetary consideration, including but not limited to any promise, representation, performance, discharge of debt or nonmonetary rights or property, the tax credit transferee shall describe the nature of the nonmonetary consideration and disclose any value the transferor and transferee assigned to the nonmonetary consideration. The tax credit transferee must indicate on its statement to the department of revenue if no consideration was provided in exchange for the tax credit. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department of revenue will issue the replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members or shareholders and information on how the historic preservation and cultural and entertainment district tax credit should be divided among the partners, members or shareholders. The transferee shall also provide the tax identification numbers and addresses of the partners, members or shareholders. The certificate must have the same information required for the original tax certificate and must have the same expiration date as the original tax credit certificate. The transferee may not claim a tax credit until a replacement certificate identifying the transferee as the proper holder has been issued.

b. Consideration. Any consideration received for the transfer of the tax credit shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

c. Unlimited number of transferees and subsequent transfers. There is no limitation on the number of transferees to whom the tax credit may be transferred. There is no limitation on the number of times that the credit may be retransferred by a transferee. The transferor may divide the credit into multiple credits of alternate denominations so long as the resulting credits are for amounts of no less than $1,000.

d. Carryforward limitations on transferees. The transferee may use the amount of the transferred tax credit for any tax year that the original transferor could have claimed the tax credit. The carryforward limitations described in paragraph 52.48(4)*"d"* shall apply.

52.48(7) *Appeals.* Challenges to an action by the department of revenue related to tax credit transfers, the claiming of tax credits, tax credit revocation, or repayment or recovery of tax credits must be brought pursuant to 701—Chapter 7.

This rule is intended to implement Iowa Code chapter 404A as amended by 2016 Iowa Acts, House File 2443, and Iowa Code section 422.33.

[**ARC 2928C**, IAB 2/1/17, effective 3/8/17]

701—52.49(15,422) Renewable chemical production tax credit program. An eligible business that has received a renewable chemical production tax credit certificate from the economic development authority may claim a tax credit against corporation income tax. The credit is equal to the product of five cents multiplied by the number of pounds of renewable chemicals produced in Iowa from biomass feedstock by the eligible business during a given production year, subject to the limitations described in Iowa Code sections 15.315 through 15.322, 261—Chapter 81, and this rule. The economic development authority's rules on eligibility for the credit may be found in 261—Chapter 81.

52.49(1) *Application and agreement for the credit.* To be eligible for the tax credit, the eligible business must apply to and enter into an agreement with the economic development authority. The economic development authority's rules on the application and agreement process may be found in 261—Chapter 81.

52.49(2) *Computation of the amount of credit and certificate issuance.* Upon establishing that all requirements of the program and the agreement have been fulfilled and verifying the taxpayer's eligibility for the tax credit, the economic development authority calculates the credit. Then the economic development authority issues the related tax credit certificate to the eligible business stating the amount of the renewable chemical production tax credit that the eligible business may claim. A tax credit certificate shall not be issued by the economic development authority prior to July 1, 2018. The economic development authority's rules on credit certificate issuance may be found in 261—Chapter 81.

52.49(3) *Claiming the tax credit.*

a. Claiming the credit, generally. To claim the credit, a taxpayer must include one or more tax credit certificates with the taxpayer's tax return for the tax year during which the eligible business was issued the tax credit certificate or certificates. If the taxpayer claiming the credit has already filed a return for the tax year for which the credit certificate was issued, the taxpayer may claim the credit on an amended return. The taxpayer must file the amended return within the statute of limitations applicable to such amended return. No tax credit may be claimed under this program by a taxpayer prior to September 1, 2018.

b. Claiming the credit of a pass-through entity. To claim the credit of an eligible business that is a pass-through entity, an individual taxpayer must claim the credit on the tax return for the tax year during which the eligible business received the tax credit certificate. Such tax year may be either the tax year of the eligible business or of the individual.

EXAMPLE: A partnership has a fiscal year of September 2017 through August 2018. The partnership receives a renewable chemical production tax credit certificate under this program in July 2018, which is during the partnership's 2017 tax year. A partner in the partnership files individual returns on a calendar year basis, which means that the credit was issued in the partner's 2018 tax year. That partner may file an amended 2017 tax return to claim the credit based on the partnership's tax year, or that partner may claim the credit on the partner's 2018 tax return based on the partner's own tax year.

c. Information required. The tax credit certificate shall include the taxpayer's name, address, and tax identification number, the amount of the credit, the name of the eligible business, and any other information required by the department of revenue.

d. Allocation to the individual owners of the entity or beneficiaries of an estate or trust. An individual may claim the credit of a partnership, limited liability company, S corporation, cooperative organized under Iowa Code chapter 501 and filing as a partnership for tax purposes, estate, or trust electing to have income taxed directly to the individual. The amount claimed by the individual shall be based on the pro rata share of the individual's earnings from the partnership, limited liability company, S corporation, cooperative, estate, or trust.

e. Refundability. Any credit in excess of the tax liability is refundable. In lieu of claiming a refund, the taxpayer may elect to have the overpayment shown on the taxpayer's final, completed return credited to the tax liability for the following tax year.

f. Transferability. Tax credit certificates shall not be transferred to any other person.

g. Rescission and recapture. The tax credit certificate, unless rescinded by the economic development authority, shall be accepted by the department of revenue, subject to any conditions or restrictions placed upon the face of the tax credit certificate by the economic development authority and subject to the limitations of the program. Should the economic development authority reduce, terminate, or rescind any tax credits issued under the program, the eligible business may be subject to the repayment or recapture of any credits already claimed. The economic development authority's rules related to the program may be found in 261—Chapter 81. The repayment of tax credits or recapture by the department of revenue shall be accomplished in the same manner as provided in Iowa Code section 15.330(2).

This rule is intended to implement Iowa Code section 422.33(22)

[**ARC 3008C**, IAB 3/29/17, effective 5/3/17]

[Filed 12/12/74]
[Filed 12/10/76, Notice 9/22/76—published 12/29/76, effective 2/2/77]
[Filed 4/28/78, Notice 3/22/78—published 5/17/78, effective 6/22/78]
[Filed 12/7/79, Notice 10/31/79—published 12/26/79, effective 1/30/80]
[Filed emergency 6/6/80—published 6/25/80, effective 6/6/80]
[Filed emergency 7/17/80—published 8/6/80, effective 7/17/80]
[Filed 12/5/80, Notice 10/29/80—published 12/24/80, effective 1/28/81]
[Filed 9/11/81, Notice 8/5/81—published 9/30/81, effective 11/4/81]
[Filed 11/20/81, Notice 10/14/81—published 12/9/81, effective 1/13/82]
[Filed 12/31/81, Notice 11/25/81—published 1/20/82, effective 2/24/82]

[Filed 9/23/82, Notice 8/18/82—published 10/13/82, effective 11/17/82]
[Filed 10/22/82, Notice 9/15/82—published 11/10/82, effective 12/15/82]
[Filed 11/19/82, Notice 10/13/82—published 12/8/82, effective 1/12/83]
[Filed 2/10/84, Notice 1/4/84—published 2/29/84, effective 4/5/84]◊
[Filed 7/27/84, Notice 6/20/84—published 8/15/84, effective 9/19/84]
[Filed 10/19/84, Notice 9/12/84—published 11/7/84, effective 12/12/84]
[Filed 2/22/85, Notice 1/16/85—published 3/13/85, effective 4/17/85]
[Filed 3/8/85, Notice 1/30/85—published 3/27/85, effective 5/1/85]
[Filed 8/23/85, Notice 7/17/85—published 9/11/85, effective 10/16/85]◊
[Filed 9/6/85, Notice 7/31/85—published 9/25/85, effective 10/30/85]
[Filed 12/2/85, Notice 10/23/85—published 12/18/85, effective 1/22/86]
[Filed 6/27/86, Notice 5/7/86—published 7/16/86, effective 8/20/86]
[Filed 8/22/86, Notice 7/16/86—published 9/10/86, effective 10/15/86]
[Filed 9/5/86, Notice 7/30/86—published 9/24/86, effective 10/29/86]◊
[Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]
[Filed 9/18/87, Notice 8/12/87—published 10/7/87, effective 11/11/87]
[Filed 10/16/87, Notice 9/9/87—published 11/4/87, effective 12/9/87]
[Filed 2/5/88, Notice 12/30/87—published 2/24/88, effective 3/30/88]
[Filed 4/13/88, Notice 3/9/88—published 5/4/88, effective 6/8/88]
[Filed 8/19/88, Notice 7/13/88—published 9/7/88, effective 10/12/88]◊
[Filed 9/29/89, Notice 8/23/89—published 10/18/89, effective 11/22/89]
[Filed 10/27/89, Notice 9/20/89—published 11/15/89, effective 12/20/89]
[Filed 11/22/89, Notice 10/18/89—published 12/13/89, effective 1/17/90]
[Filed 1/19/90, Notice 12/13/89—published 2/7/90, effective 3/14/90]
[Filed 8/2/90, Notice 6/27/90—published 8/22/90, effective 9/26/90]
[Filed 9/13/90, Notice 8/8/90—published 10/3/90, effective 11/7/90]◊
[Filed 11/9/90, Notice 10/3/90—published 11/28/90, effective 1/2/91]
[Filed 1/4/91, Notice 11/28/90—published 1/23/91, effective 2/27/91]
[Filed 1/17/91, Notice 12/12/90—published 2/6/91, effective 3/13/91]
[Filed 9/13/91, Notice 8/7/91—published 10/2/91, effective 11/6/91]
[Filed 11/7/91, Notice 10/2/91—published 11/27/91, effective 1/1/92]
[Filed 12/6/91, Notice 10/30/91—published 12/25/91, effective 1/29/92]
[Filed 10/23/92, Notice 9/16/92—published 11/11/92, effective 12/16/92]
[Filed 11/6/92, Notice 9/30/92—published 11/25/92, effective 12/30/92]
[Filed 11/19/93, Notice 10/13/93—published 12/8/93, effective 1/12/94]
[Filed 9/23/94, Notice 8/17/94—published 10/12/94, effective 11/16/94]
[Filed 1/12/95, Notice 12/7/94—published 2/1/95, effective 3/8/95]
[Filed 2/24/95, Notice 1/4/95—published 3/15/95, effective 4/19/95]
[Filed 10/6/95, Notice 8/30/95—published 10/25/95, effective 11/29/95]
[Filed 1/12/96, Notice 12/6/95—published 1/31/96, effective 3/6/96]
[Filed 2/9/96, Notice 1/3/96—published 2/28/96, effective 4/3/96]
[Filed 3/22/96, Notice 2/14/96—published 4/10/96, effective 5/15/96]
[Filed 9/20/96, Notice 8/14/96—published 10/9/96, effective 11/13/96]
[Filed 11/15/96, Notice 10/9/96—published 12/4/96, effective 1/8/97]
[Filed 10/17/97, Notice 9/10/97—published 11/5/97, effective 12/10/97]
[Filed 2/20/98, Notice 1/14/98—published 3/11/98, effective 4/15/98]
[Filed 8/5/98, Notice 7/1/98—published 8/26/98, effective 9/30/98]
[Filed 11/13/98, Notice 10/7/98—published 12/2/98, effective 1/6/99]
[Filed 11/24/99, Notice 9/22/99—published 12/15/99, effective 3/29/00]
[Filed 2/3/00, Notice 12/29/99—published 2/23/00, effective 3/29/00]
[Filed 1/5/01, Notice 11/29/00—published 1/24/01, effective 2/28/01]
[Filed 3/2/01, Notice 1/24/01—published 3/21/01, effective 4/25/01]

[Filed 5/24/01, Notice 4/18/01—published 6/13/01, effective 7/18/01]
[Filed 8/30/01, Notice 7/25/01—published 9/19/01, effective 10/24/01]
[Filed 10/12/01, Notice 8/8/01—published 10/31/01, effective 12/5/01]
[Filed 12/7/01, Notice 10/3/01—published 12/26/01, effective 1/30/02]
[Filed 12/7/01, Notice 10/31/01—published 12/26/01, effective 1/30/02]
[Filed 2/14/02, Notice 1/9/02—published 3/6/02, effective 4/10/02]
[Filed 3/15/02, Notice 1/23/02—published 4/3/02, effective 5/8/02]
[Filed 3/15/02, Notice 2/6/02—published 4/3/02, effective 5/8/02]
[Filed 9/13/02, Notice 8/7/02—published 10/2/02, effective 11/6/02]
[Filed 10/11/02, Notice 9/4/02—published 10/30/02, effective 12/4/02]◊
[Filed 11/8/02, Notice 10/2/02—published 11/27/02, effective 1/1/03]
[Filed 1/17/03, Notice 12/11/02—published 2/5/03, effective 3/12/03]
[Filed 9/26/03, Notice 8/20/03—published 10/15/03, effective 11/19/03]◊
[Filed 10/24/03, Notice 9/17/03—published 11/12/03, effective 12/17/03]◊
[Filed 11/6/03, Notice 10/1/03—published 11/26/03, effective 12/31/03]◊
[Filed 12/5/03, Notice 10/15/03—published 12/24/03, effective 1/28/04]◊
[Filed 12/31/03, Notice 11/26/03—published 1/21/04, effective 2/25/04]
[Filed 1/30/04, Notice 12/24/03—published 2/18/04, effective 3/24/04]
[Filed 8/12/04, Notice 7/7/04—published 9/1/04, effective 10/6/04]
[Filed 9/24/04, Notice 8/18/04—published 10/13/04, effective 11/17/04]
[Filed 10/22/04, Notice 9/15/04—published 11/10/04, effective 12/15/04]
[Filed 11/4/04, Notice 9/29/04—published 11/24/04, effective 12/29/04]
[Filed 12/3/04, Notice 10/27/04—published 12/22/04, effective 1/26/05]
[Filed 1/14/05, Notice 12/8/04—published 2/2/05, effective 3/9/05]
[Filed 9/22/05, Notice 8/3/05—published 10/12/05, effective 11/16/05]◊
[Filed 10/20/05, Notice 9/14/05—published 11/9/05, effective 12/14/05]
[Filed 12/30/05, Notice 11/23/05—published 1/18/06, effective 2/22/06]◊
[Filed 1/27/06, Notice 12/21/05—published 2/15/06, effective 3/22/06]
[Filed 7/28/06, Notice 6/21/06—published 8/16/06, effective 9/20/06]
[Filed 10/5/06, Notice 8/30/06—published 10/25/06, effective 11/29/06]◊
[Filed 11/1/06, Notice 8/16/06—published 11/22/06, effective 12/27/06]
[Filed 12/13/06, Notice 11/8/06—published 1/3/07, effective 2/7/07]
[Filed 1/11/07, Notice 12/6/06—published 1/31/07, effective 3/7/07]◊
[Filed 10/5/07, Notice 8/15/07—published 10/24/07, effective 11/28/07]
[Filed 10/5/07, Notice 8/29/07—published 10/24/07, effective 11/28/07]
[Filed 10/19/07, Notice 9/12/07—published 11/7/07, effective 12/12/07]◊
[Filed 3/7/08, Notice 1/30/08—published 3/26/08, effective 4/30/08]
[Filed 5/2/08, Notice 3/26/08—published 5/21/08, effective 6/25/08]
[Filed 10/31/08, Notice 9/24/08—published 11/19/08, effective 12/24/08]◊
[Filed ARC 7761B (Notice ARC 7632B, IAB 3/11/09), IAB 5/6/09, effective 6/10/09]
[Filed ARC 8589B (Notice ARC 8430B, IAB 12/30/09), IAB 3/10/10, effective 4/14/10]
[Filed ARC 8605B (Notice ARC 8481B, IAB 1/13/10), IAB 3/10/10, effective 4/14/10]
[Filed ARC 8702B (Notice ARC 8512B, IAB 2/10/10), IAB 4/21/10, effective 5/26/10]
[Filed ARC 9104B (Notice ARC 8954B, IAB 7/28/10), IAB 9/22/10, effective 10/27/10]
[Filed ARC 9821B (Notice ARC 9741B, IAB 9/7/11), IAB 11/2/11, effective 12/7/11]
[Filed ARC 9820B (Notice ARC 9740B, IAB 9/7/11), IAB 11/2/11, effective 12/7/11]
[Filed ARC 9876B (Notice ARC 9796B, IAB 10/5/11), IAB 11/30/11, effective 1/4/12]
[Filed ARC 9966B (Notice ARC 9856B, IAB 11/16/11), IAB 1/11/12, effective 2/15/12]
[Filed ARC 0251C (Notice ARC 0145C, IAB 5/30/12), IAB 8/8/12, effective 9/12/12]
[Filed ARC 0337C (Notice ARC 0232C, IAB 7/25/12), IAB 9/19/12, effective 10/24/12]
[Filed ARC 0361C (Notice ARC 0253C, IAB 8/8/12), IAB 10/3/12, effective 11/7/12]
[Filed ARC 0398C (Notice ARC 0292C, IAB 8/22/12), IAB 10/17/12, effective 11/21/12]

[Filed ARC 1101C (Notice ARC 0976C, IAB 8/21/13), IAB 10/16/13, effective 11/20/13]
[Filed ARC 1102C (Notice ARC 0975C, IAB 8/21/13), IAB 10/16/13, effective 11/20/13]
[Filed ARC 1138C (Notice ARC 0998C, IAB 9/4/13), IAB 10/30/13, effective 12/4/13]
[Filed ARC 1303C (Notice ARC 1231C, IAB 12/11/13), IAB 2/5/14, effective 3/12/14]
[Filed ARC 1545C (Notice ARC 1469C, IAB 5/28/14), IAB 7/23/14, effective 8/27/14]
[Filed ARC 1665C (Notice ARC 1590C, IAB 8/20/14), IAB 10/15/14, effective 11/19/14]
[Filed ARC 1666C (Notice ARC 1589C, IAB 8/20/14), IAB 10/15/14, effective 11/19/14]
[Filed ARC 1744C (Notice ARC 1654C, IAB 10/1/14), IAB 11/26/14, effective 12/31/14]
[Filed ARC 1949C (Notice ARC 1857C, IAB 2/4/15), IAB 4/1/15, effective 5/6/15]
[Filed ARC 1968C (Notice ARC 1837C, IAB 1/21/15), IAB 4/15/15, effective 5/20/15]
[Filed ARC 2632C (Notice ARC 2547C, IAB 5/25/16), IAB 7/20/16, effective 8/24/16]
[Filed ARC 2772C (Notice ARC 2681C, IAB 8/17/16), IAB 10/12/16, effective 11/16/16]
[Filed ARC 2829C (Notice ARC 2737C, IAB 9/28/16), IAB 11/23/16, effective 1/1/17]
[Filed ARC 2925C (Notice ARC 2736C, IAB 9/28/16), IAB 2/1/17, effective 3/8/17]
[Filed ARC 2928C (Notice ARC 2806C, IAB 11/9/16), IAB 2/1/17, effective 3/8/17]
[Filed ARC 3008C (Notice ARC 2865C, IAB 12/21/16), IAB 3/29/17, effective 5/3/17]
[Filed ARC 3043C (Notice ARC 2896C, IAB 1/18/17), IAB 4/26/17, effective 5/31/17]
[Filed ARC 3085C (Notice ARC 2942C, IAB 2/15/17), IAB 5/24/17, effective 6/28/17]
[Filed ARC 3837C (Notice ARC 3724C, IAB 4/11/18), IAB 6/6/18, effective 7/11/18]
[Filed ARC 4143C (Notice ARC 4025C, IAB 9/26/18), IAB 11/21/18, effective 12/26/18]
[Filed ARC 5590C (Notice ARC 5470C, IAB 2/24/21), IAB 4/21/21, effective 5/26/21]

◊ Two or more ARCs

CHAPTER 58
FILING RETURNS, PAYMENT OF TAX, PENALTY AND INTEREST, AND TAX CREDITS

[Prior to 12/17/86, Revenue Department[730]]

701—58.1(422) Who must file. Every financial institution as defined in 701—subrule 57.1(2), regardless of net income, shall file a true and accurate return of its income or loss for the taxable period. The return shall be signed by the president or other duly authorized officer. If the financial institution was inactive or not doing business within Iowa, although qualified to do so, during the taxable year, the return must contain a statement to that effect.

58.1(1) *Income tax of financial institutions in liquidation.* When a financial institution is in the process of liquidation, or in the hands of a receiver, the franchise tax returns must be made under oath or affirmation of the persons responsible for the conduct of the affairs of such financial institutions, and must be filed at the same time and in the same manner as required of other financial institutions.

58.1(2) *Franchise tax returns for financial institutions dissolved.* Financial institutions which have been dissolved during the income year must file franchise tax returns for the period prior to dissolution which has not already been covered by previous returns. Officers and directors are responsible for the filing of the returns and for the payment of taxes, if any, for the audit period provided by law.

Where a financial institution dissolves and disposes of its assets without making provision for the payment of its accrued Iowa franchise tax, liability for the tax follows the assets so distributed and upon failure to secure the unpaid amount, suit to collect the tax may be instituted against the stockholders and other persons receiving the property, to the extent of the property received, except bona fide purchasers or others as provided by law.

This rule is intended to implement Iowa Code sections 422.60 and 422.61.

701—58.2(422) Time and place for filing return.

58.2(1) *Returns of financial institutions.* A return of income for all financial institutions must be filed on or before the delinquency date. The delinquency date for all financial institutions is the day following the last day of the fourth month following the close of the taxpayer's taxable year, whether the return is made on the basis of the calendar year or the fiscal year; or the day following the last day of the period covered by an extension of time granted by the director. When the last day prior to the delinquency date falls on a Saturday, Sunday or a legal holiday, the return will be timely if it is filed on the first business day following the Saturday, Sunday or legal holiday. If a return is placed in the mails, properly addressed and postage paid in ample time to reach the department on or before the delinquency date for filing, no penalty will attach should the return not be received until after that date. Mailed returns should be addressed to Franchise Tax Processing, P.O. Box 10413, Des Moines, Iowa 50306.

58.2(2) *Short period returns.* Where under a provision of the Internal Revenue Code, a financial institution is required to file a tax return for a period of less than 12 months, a short period Iowa franchise tax return must be filed for the same period. The delinquency date for the short period return is 45 days after the federal due date not considering any federal extension of time to file.

58.2(3) *Extension of time for filing returns for tax years beginning on or after January 1, 1991.* See 701—subrule 39.2(4).

58.2(4) *Extension of time for filing returns for tax years beginning on or after January 1, 1986.* Rescinded IAB 3/15/95, effective 4/19/95.

This rule is intended to implement Iowa Code sections 422.24, 422.62, and 422.66.

701—58.3(422) Form for filing.

58.3(1) *Use and completeness of prescribed forms.* Returns shall be made by financial institutions on forms supplied by the department. Taxpayers not supplied with the proper forms shall make application for same to the department in ample time to have their returns made, verified and filed on or before the delinquency date. Taxpayers shall carefully prepare their returns so as to fully and clearly set forth the data required. For lack of a prescribed form, a statement made by a taxpayer disclosing the taxpayer's

gross income and the deductions therefrom may be accepted as a tentative return, and if verified and filed within the prescribed time, will relieve the taxpayer from liability to penalties, provided that without unnecessary delay such a tentative return is replaced by a return made on the proper form. Each question shall be answered and each direction complied with in the same manner as if the forms and instructions were embodied in these rules.

Failure to receive the proper forms does not relieve the taxpayer from the obligation of making any return required by the statute.

Returns received which are not completed, but merely state "see schedule attached" are not considered to be a properly filed return and may be returned to the taxpayer for proper completion. This may result in the imposition of penalties and interest due to the return being filed after the due date.

58.3(2) *Form for filing—financial institutions.* Financial institutions as defined by Iowa Code section 422.61(1) shall include a true and accurate copy of their federal corporation income tax return as filed with the Internal Revenue Service with the filing of their Iowa return. At a minimum this return includes the following federal schedules: income statement, balance sheet, reconciliation of income per books with income per return, analysis of unappropriated retained earnings per books, dividend income and special deductions, capital gains, tax computation and tax deposits, work opportunity credit computation, foreign tax credit computation, alternative minimum tax computation, and statements detailing other income and other deductions.

When a financial institution whose income is included in a consolidated federal income tax return files an Iowa return, federal consolidating income statements as properly computed for federal income tax purposes showing the income and expenses of each member of the consolidated group shall be required together with the following additional schedules on a separate basis:

a. Capital gains.
b. Dividend income and special deductions.
c. Work opportunity credit computation.
d. Foreign tax credit computation.
e. Holding company tax computation.
f. Alternative minimum tax computation.
g. Schedules detailing other income and other deductions.

58.3(3) *Amended returns.* If it becomes known to the taxpayer that the amount of income reported to be federal net income or Iowa taxable income subject to franchise tax was erroneously stated on the Iowa return, or changed by Internal Revenue Service audit, or otherwise, the taxpayer shall file an amended Iowa return along with supporting schedules, to include the amended federal return and a copy of the federal revenue agent's report if applicable. A copy of the federal revenue agent's report and notification of final federal adjustments provided by the taxpayer will be acceptable in lieu of an amended return. The assessment or refund of tax shall be dependent on the statute of limitations as set forth in 701—subrule 57.2(1) and rule 701—60.3(422).

This rule is intended to implement Iowa Code sections 422.62, 422.66 and 422.73.

701—58.4(422) Payment of tax.

58.4(1) *Quarterly estimated payments.* Effective for taxable years beginning on or after July 1, 1977, financial institutions are required to make quarterly payments of estimated franchise tax. Rules pertaining to the estimated tax are contained in 701—Chapter 61.

58.4(2) *Full estimated payment prior to original delinquency date.* Rescinded IAB 3/15/95, effective 4/19/95.

58.4(3) *Penalty and interest on unpaid tax.* See rule 701—10.6(421) for penalty for tax periods beginning on or after January 1, 1991. See rule 701—10.8(421) for statutory exemptions to penalty for tax periods beginning on or after January 1, 1991.

Interest shall accrue on tax due from the original due date of the return. Interest on refunds of any portion of the tax imposed by statute which has been erroneously refunded and which is recoverable by the department shall bear interest as provided by law from the date of payment of the refund, with each

fraction of a month considered to be an entire month. See rule 701—10.2(421) for the statutory interest rate.

All payments shall be first applied to the penalty and then to the interest, and the balance, if any, to the amount of tax due.

58.4(4) *Payment of tax by uncertified checks.* The department will accept uncertified checks in payment of franchise taxes, provided such checks are collectible for their full amount without any deduction for exchange or other charges. The date on which the department receives the check will be considered the date of payment, so far as the taxpayer is concerned, unless the check is dishonored. If one check is remitted to cover two or more financial institutions' taxes, the remittance must be accompanied by a letter of transmittal stating:

a. The name of the drawer of the check;

b. The amount of the check;

c. The amount of any cash, money order or other instrument included in the same remittance;

d. The name of each financial institution whose tax is to be paid by the remittance; and

e. The amount of payment on account of each financial institution.

58.4(5) *Procedure with respect to dishonored checks.* If any check is returned unpaid, all expenses incidental to the collection thereof will be charged to the taxpayer. If any taxpayer whose check has been returned by the depository bank uncollected should fail at once to make the check good, the director will proceed to collect the tax as though no check had been given. A taxpayer who tenders a certified check in payment for taxes is not relieved from the taxpayer's obligation until the check has been paid.

This rule is intended to implement Iowa Code chapter 422.

701—58.5(422) Minimum tax.

58.5(1) Rescinded IAB 11/24/04, effective 12/29/04.

58.5(2) For tax years beginning after 1997, a small business corporation or a new corporation, that is a financial institution, for its first year of existence, that through the operation of Internal Revenue Code Section 55(e) is exempt from the federal alternative minimum tax, is not subject to Iowa alternative minimum tax. A small business corporation that is a financial institution may apply any alternative minimum tax credit carryforward to the extent of its regular Iowa franchise tax liability.

For tax years beginning on or after January 1, 1987, the minimum tax is imposed only to the extent that it exceeds the taxpayer's regular tax liability computed under Iowa Code section 422.63. The minimum tax rate is 60 percent of the maximum franchise tax rate rounded to the nearest one-tenth of 1 percent or 3 percent. Minimum taxable income is computed as follows:

	State taxable income as adjusted by Iowa Code sections 422.35 and 422.61(4)
Plus:	Tax preference items, adjustments and losses added back
Less:	Allocable income including allocable preference items
	Subtotal
Times:	Apportionment percentage
	Result
Plus:	Income allocable to Iowa including allocable preference items
Less:	Iowa alternative tax net operating loss deduction $40,000 exemption amount
Equals:	Iowa alternative minimum taxable income

For taxable years beginning on or after January 1, 1987, the items of tax preference are the same items of tax preference under Section 57 except for Subsections (a)(1) and (a)(5) of the Internal Revenue Code used to compute federal alternative minimum taxable income. The adjustments to state taxable income are those adjustments required by Section 56 except for Subsections (a)(4), (c)(1), (d), and (g) of the Internal Revenue Code used to compute federal alternative minimum taxable income computed without adjustments and the $40,000 exemption. The state alternative tax net operating loss deduction shall be

substituted for the amounts in Section 56(g)(1)(B) of the Internal Revenue Code. For tax years beginning on or after January 1, 1988, in making the adjustment under Section 56(c)(1) of the Internal Revenue Code, interest and dividends from state and other political subdivisions and from regulated investment companies exempt from federal income tax under the Internal Revenue Code shall be subtracted net of amortization of any discount or premium. Losses to be added are those losses required to be added by Section 58 of the Internal Revenue Code in computing federal alternative minimum taxable income.

a. Tax preference items are:

1. Intangible drilling costs;
2. Incentive stock options;
3. Reserves for losses on bad debts of financial institutions;
4. Appreciated property charitable deductions;
5. Accelerated depreciation or amortization on certain property placed in service before January 1, 1987.

b. Adjustments are:

1. Depreciation;
2. Mining exploration and development;
3. Long-term contracts;
4. Iowa alternative minimum net operating loss deduction;
5. Book income or adjusted earnings and profits.

c. Losses added back are:

1. Farm losses;
2. Passive activity losses.

Computation of Iowa alternative minimum tax net operating loss deduction.

Net operating losses computed under rule 701—59.2(422) carried forward from tax years beginning before January 1, 1987, are deductible without adjustment.

Net operating losses from tax years beginning after December 31, 1986, which are carried back or carried forward to the current tax year shall be reduced by the amount of tax preferences and adjustments taken into account in computing the net operating loss prior to applying allocation and apportionment. The deduction for a net operating loss from a tax year beginning after December 31, 1986, which is carried back or carried forward shall not exceed 90 percent of the alternative minimum taxable income computed without regard for the net operating loss deduction.

The exemption amount shall be reduced by 25 percent of the amount that the alternative minimum taxable income computed without regard to the $40,000 exemption exceeds $150,000. The exemption shall not be reduced below zero.

EXAMPLE: The following example shows the computation of the alternative minimum tax when there are net operating loss carryforwards and carrybacks including an alternative minimum tax net operating loss.

For tax year 1987, the following information is available:

Federal taxable income before NOL	$ 35,000
Interest exempt from federal tax	5,000
Tax preferences and adjustments	53,400
Iowa income tax expensed on federal	878
Iowa NOL carryforward	<25,000>

For tax year 1988, the following information is available:

Federal taxable income before NOL	$ <90,000>
Interest exempt from federal tax	4,000
Tax preferences and adjustments	20,000
Iowa franchise tax refund reported on federal	878

The alternative minimum tax for 1987 before the 1988 net operating loss carryback should be computed as follows:

Regular Iowa Tax	
Federal taxable income	$ 35,000
Add interest exempt from federal tax	5,000
Add Iowa franchise tax expensed	878
Iowa taxable income before NOL carryforward	$ 40,878
Less NOL carryforward	<25,000>
Iowa taxable income	$ 15,878
Iowa income tax	$ 794
Alternative Minimum Tax	
Iowa taxable income before NOL	$ 40,878
Add preferences and adjustments	53,400
Total	$ 94,278
Less NOL carryforward*	<25,000>
Iowa alternative taxable income	$ 69,278
Less exemption amount	<40,000>
Total	$ 29,278
Times 3%	878
Less regular tax	794
Alternative minimum tax	$ 84

*Net operating loss carryforwards from tax years beginning before January 1, 1987, are deductible at 100 percent without reduction for items of tax preference or adjustments arising in the tax year.

The alternative minimum tax for 1987 after the 1988 net operating loss carryback should be computed as follows:

Regular Iowa Tax	
Federal taxable income	$ 35,000
Add interest exempt from federal tax	5,000
Add Iowa franchise tax expensed	878
Iowa taxable income before NOL carryforward	$ 40,878
Less NOL carryforward	<25,000>
	$ 15,878
Less NOL carryback from 1988[1]	<86,878>
NOL carryforward	$ <71,000>
Alternative Minimum Tax	
Iowa taxable income before NOL	$ 40,878
Add preferences and adjustments	53,400
Total	$ 94,278
Less NOL carryforward from pre-1987 tax year	<25,000>
Total	$ 69,278
Less alternative minimum tax NOL[2]	<62,350>
Total	$ 6,928
Less exemption	<40,000>
Alternative minimum taxable income after NOL	$ -0-

[1]Computation of 1988 Iowa NOL	
Federal NOL	$ <90,000>
Add interest exempt from federal tax	4,000
Less Iowa refund in federal income	<878>
Iowa NOL	$ <86,878>
[2]Computation of 1988 Alternative Minimum Tax NOL	
Iowa NOL	$ <86,878>
Add preferences and adjustments	20,000
Total	$ <66,878>
NOL carryback limited to 90% of alternative minimum income before NOL and exemption*	$ <62,350>
Alternative minimum tax NOL carryforward	$ 4,528

*For purposes of the alternative minimum tax, net operating loss carryforward or carryback from tax years beginning after December 31, 1986, must be reduced by items of tax preference and adjustments, and are limited to 90 percent of alternative minimum taxable income before deduction of the post-1986 NOL and the $40,000 exemption amount ($69,278 × 90% = $62,350).

58.5(3) Effective for tax years beginning on or after January 1, 1986, estimated payments are required for minimum tax.

58.5(4) Alternative minimum tax credit for minimum tax paid in a prior tax year. Minimum tax paid in prior tax years commencing with tax years beginning on or after January 1, 1987, by a taxpayer can be claimed as a tax credit against the taxpayer's regular income tax liability in a subsequent tax year. Therefore, 1988 is the first tax year that the minimum tax credit is available for use, and the credit is based on the minimum tax paid by the taxpayer for 1987. The minimum tax credit may only be used against regular income tax for a tax year to the extent that the regular tax is greater than the tentative minimum tax for the tax year. If the minimum tax credit is not used up against the regular tax for a tax year, the remaining credit is carried to the following tax year to be applied against the regular income tax liability for that period.

a. Computation of minimum tax credit on Schedule IA 8827F. The minimum tax credit is computed on Schedule IA 8827F from information on Schedule IA 4626F for prior tax years, Form IA 1120F and Schedule IA 4626F for the current year and from Schedule IA 8827F for prior tax years.

b. Examples of computation of the minimum tax credit and carryover of the credit.

EXAMPLE 1. Taxpayer reported $5,000 of minimum tax for 2011. For 2012, taxpayer reported regular tax of $8,000, and the minimum tax liability is $6,000. The minimum tax credit is $2,000 for 2012 because, although the taxpayer had an $8,000 regular tax liability, the credit is allowed only to the extent that the regular tax exceeds the minimum tax. Since only $2,000 of the carryover credit from 2011 was used, there is a $3,000 minimum tax carryover credit to 2013.

EXAMPLE 2. Taxpayer reported $2,500 of minimum tax for 2011. For 2012, taxpayer reported regular tax of $8,000, and the minimum tax liability is $5,000. The minimum tax credit is $2,500 for 2012 because, although the regular tax exceeded the minimum tax by $3,000, the credit is allowed only to the extent of minimum tax paid for prior tax years. There is no minimum tax carryover credit to 2013.

c. Minimum tax credit after merger. When two or more financial institutions merge or consolidate into one financial organization, the minimum tax credit of the merged or consolidated operation is available for use by the survivor of the merger or consolidation.

This rule is intended to implement Iowa Code section 422.60.

[**ARC 1303C**, IAB 2/5/14, effective 3/12/14; **ARC 2829C**, IAB 11/23/16, effective 1/1/17]

701—58.6(422) Refunds and overpayments.

58.6(1) to **58.6(6)** Reserved.

58.6(7) *Computation of interest on refunds resulting from net operating losses or net capital losses for tax years or periods beginning on or after January 1, 1974, and ending after July 1, 1980.* Rescinded IAB 11/24/04, effective 12/29/04.

58.6(8) *Computation of interest on refunds resulting from net operating losses for tax years ending on or after April 30, 1981.* Rescinded IAB 11/24/04, effective 12/29/04.

58.6(9) *For refund claims received by the department after June 11, 1984.* If the amount of tax is reduced as a result of a net operating loss or net capital loss, interest shall accrue on the refund resulting from the loss carryback beginning on the date a claim for refund or amended return carrying back the net operating loss or net capital loss is filed with the department or the first day of the second calendar month following the actual payment date, whichever is later.

58.6(10) *Overpayment—interest accruing before July 1, 1980.* Rescinded IAB 11/24/04, effective 12/29/04.

58.6(11) *Interest commencing on or after January 1, 1982.* See rule 701—10.2(421) regarding the rate of interest charged by the department on delinquent taxes and the rate paid by the department on refunds commencing on or after January 1, 1982.

58.6(12) *Overpayment—interest accruing on or after July 1, 1980, and before April 30, 1981.* Rescinded IAB 11/24/04, effective 12/29/04.

58.6(13) *Overpayment—interest accruing on overpayments resulting from returns due on or after April 30, 1981.* If the amount of tax determined to be due by the department is less than the amount paid, the excess to be refunded will accrue interest from the first day of the second calendar month following the date of payment or the date the return was due to be filed or was filed, whichever is the later.

701—58.7(422) Allocation of franchise tax revenues. For fiscal years prior to July 1, 2004, each quarterly distribution shall be made up of the tax shown due on the franchise tax returns received during that quarter, net of all refunds of franchise tax established during that quarter. In determining the portion of franchise tax revenues to be distributed to cities and counties for fiscal years prior to July 1, 2004, each financial institution, as defined by Iowa Code section 422.61, is required to submit the appropriate allocation data with the filing of its Iowa franchise tax return. Each financial institution shall accumulate or maintain data to properly determine the business activity ratios as prescribed in subrules 58.7(1) and 58.7(2). The allocation shall be made on the basis of business activity for each office location. The word "office" shall mean a branch office, a drive-in bank depository or any other establishment whereby the business pertaining to the financial institution is carried on.

58.7(1) *Business activity determination for a production credit association.* A production credit association shall measure its business activity on the basis of loan volume. "Loan volume" shall mean total loans originated during the taxable period. The business activity for each office location shall be that percentage of loans originated by each office to total loans originated for all office locations during the taxable period.

58.7(2) *Business activity determination for a financial institution other than a production credit association.* A financial institution, other than a production credit association, shall measure its business activity on a basis of net deposits. The business activity of each office shall be that percentage of average "savings and demand deposits net of withdrawals" for each office location to the total average "savings and demand deposits net of withdrawals" for all office locations.

This rule is intended to implement Iowa Code section 422.61.

701—58.8(15E) Eligible housing business tax credit. For tax years beginning on or after January 1, 2000, a financial institution may claim on the franchise tax return the pro rata share of the Iowa eligible housing business tax credit from a partnership, limited liability company, estate or trust which has been approved as an eligible housing business by the economic development authority. The enterprise zone program was repealed on July 1, 2014, and the eligible housing business tax credit has been replaced with the workforce housing tax incentives program. See rule 701—58.22(15) for information on the tax incentives provided under the workforce housing tax incentives program. Any investment tax credit

earned by businesses approved under the enterprise zone program prior to July 1, 2014, remains valid and can be claimed on tax returns filed after July 1, 2014.

An eligible housing business may receive a tax credit of up to 10 percent of the new investment which is directly related to the building or rehabilitating of homes in an enterprise zone. The tax credit may be taken on the tax return for the tax year in which the home is ready for occupancy. The portion of the credit claimed by the taxpayer shall be in the same ratio as the taxpayer's pro-rata share of the earnings of the partnership, limited liability company, estate or trust, except for projects beginning on or after July 1, 2005, which used low-income housing tax credits authorized under Section 42 of the Internal Revenue Code to assist in the financing of the housing development. For these projects, the partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder. Any eligible housing business tax credit in excess of the franchise tax liability must be carried forward for seven years or until it is used, whichever is the earlier.

Prior to January 1, 2001, the tax credit cannot exceed 10 percent of $120,000 for each home or individual unit in a multiple dwelling unit building. Effective January 1, 2001, the tax credit cannot exceed 10 percent of $140,000 for each home or individual unit in a multiple dwelling unit building.

58.8(1) *Computation of credit.* New investment which is directly related to the building or rehabilitating of homes includes but is not limited to the following costs: land, surveying, architectural services, building permits, inspections, interest on a construction loan, building materials, roofing, plumbing materials, electrical materials, amounts paid to subcontractors for labor and materials provided, concrete, labor, landscaping, appliances normally provided with a new home, heating and cooling equipment, millwork, drywall and drywall materials, nails, bolts, screws, and floor coverings.

New investment does not include the machinery, equipment, hand or power tools necessary to build or rehabilitate homes.

If the eligible housing business fails to maintain the requirements of 2014 Iowa Code section 15E.193B to be an eligible housing business, the taxpayer may be required to repay all or a part of the tax incentives the business received. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the income tax credit may have expired, the department may proceed to collect the tax incentives forfeited by failure to maintain the requirements of 2014 Iowa Code section 15E.193B. This is because it is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability. Details on the calculation of the repayment can be found in 261—subrule 187.5(4) of the administrative rules of the economic development authority. If the business is a partnership, limited liability company, S corporation, estate or trust where the income of the taxpayer is taxed to the individual owner(s) of the business, the department may proceed to collect the tax incentives against the partners, members, shareholders or beneficiaries to whom the tax incentives were passed through. See Decision of the Administrative Law Judge in *Damien & Colette Trebilcock, et al.,* Docket No. 11DORF 042-044, June 11, 2012.

Effective for tax periods beginning on or after January 1, 2003, the taxpayer must receive a tax credit certificate from the economic development authority to claim the eligible housing business tax credit. The tax credit certificate shall include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the date the project was completed, the amount of the eligible housing business tax credit, and the tax year for which the credit may be claimed. In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 58.8(2). The tax credit certificate must be included with the income tax return for the tax period in which the home is ready for occupancy. The administrative rules for the eligible housing business tax credit for the economic development authority may be found under 261—Chapter 59.

58.8(2) *Transfer of the eligible housing business tax credit.* For tax periods beginning on or after January 1, 2003, the eligible housing business tax credit certificates may be transferred to any person or entity if low-income housing tax credits authorized under Section 42 of the Internal Revenue Code are used to assist in the financing of the housing development. In addition, the eligible housing business tax credit certificates may be transferred to any person or entity for projects beginning on or after July 1, 2005, if the housing development is located in a brownfield site as defined in Iowa Code section 15.291,

or if the housing development is located in a blighted area as defined in Iowa Code section 403.17. No more than $3 million of tax credits for housing developments located in brownfield sites or blighted areas may be transferred in a calendar year, with no more than $1.5 million being transferred for any one eligible housing business in a calendar year.

The excess of the $3 million limitation of tax credits eligible for transfer in the 2013 and 2014 calendar years for housing developments located in brownfield sites or blighted areas cannot be claimed by a transferee prior to January 1, 2016. The eligible housing business must have notified the economic development authority in writing before July 1, 2014, of the business's intent to transfer any tax credits for housing developments located in brownfield sites or blighted areas. If a tax credit certificate is issued by the economic development authority for a housing development approved prior to July 1, 2014, that is located in a brownfield site or blighted area, the tax credit can still be claimed by the eligible business, but the tax credit cannot be transferred by the eligible business if the economic development authority was not notified prior to July 1, 2014.

EXAMPLE 1: A housing development located in a brownfield site was completed in December 2013 and was issued a tax credit certificate totaling $250,000. The $3 million calendar cap for transferred tax credits for brownfield sites and blighted areas has already been reached for the 2013 and 2014 tax years. The $250,000 tax credit is going to be transferred to ABC Bank, and the economic development authority was notified of the transfer prior to July 1, 2014. Once a replacement tax credit certificate has been issued, ABC Bank cannot file an amended Iowa franchise tax return for the 2013 tax year until January 1, 2016, to claim the $250,000 tax credit.

EXAMPLE 2: A housing development located in a blighted area was completed in May 2014 and was issued a tax credit certificate totaling $150,000. The $3 million calendar cap for transferred tax credits for brownfield sites and blighted areas has already been reached for the 2014 tax year. The $150,000 tax credit is going to be transferred to XYZ Bank and the economic development authority was notified of the transfer prior to July 1, 2014. Once a replacement tax credit certificate has been issued, XYZ Bank cannot file an amended Iowa franchise tax return for the 2014 tax year until January 1, 2016, to claim the $150,000 tax credit.

Within 90 days of transfer of the tax credit certificate for transfers prior to July 1, 2006, the transferee must submit the transferred tax credit certificate to the economic development authority, along with a statement which contains the transferee's name, address and tax identification number, and the amount of the tax credit being transferred. For transfers on or after July 1, 2006, the transferee must submit the transferred tax credit certificate to the department of revenue. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee for transfers prior to July 1, 2006, the economic development authority will issue a replacement tax credit certificate to the transferee. For transfers on or after July 1, 2006, the department of revenue will issue the replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members or shareholders and information on how the housing business tax credit should be divided among the partners, members or shareholders. The transferee shall also provide the tax identification numbers and addresses of the partners, members or shareholders. The replacement tax credit certificate must contain the same information that was on the original certificate and must have the same expiration date as the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax period for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

This rule is intended to implement 2014 Iowa Code section 15E.193B.

[**ARC 1744C**, IAB 11/26/14, effective 12/31/14]

701—58.9(15E) Eligible development business investment tax credit. Effective for tax years beginning on or after January 1, 2001, a business which qualifies as an eligible development business may receive a tax credit of up to 10 percent of the new investment which is directly related to the

construction, expansion or rehabilitation of building space to be used for manufacturing, processing, cold storage, distribution, or office facilities.

An eligible development business must be approved by the Iowa department of economic development prior to March 17, 2004, and meet the qualifications of Iowa Code section 15E.193C. Effective March 17, 2004, the eligible development business program is repealed.

New investment includes the purchase price of land and the cost of improvements made to real property. The tax credit may be claimed by an eligible development business in the tax year in which the construction, expansion or rehabilitation is completed.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until used, whichever is the earlier.

If the business is a partnership, S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

If the eligible development business fails to meet and maintain any one of the requirements to be an eligible business, the business shall be subject to repayment of all or a portion of the amount of tax incentives received. For example, if within five years of project completion the development business sells or leases any space to any retail business, the development business shall proportionally repay the value of the investment credit. The proportion of the investment credit that would be due for repayment by an eligible development business for selling or leasing space to a retail business would be determined by dividing the square footage of building space occupied by the retail business by the square footage of the total building space.

An eligible business, which is not a development business, which operates in an enterprise zone cannot claim an investment tax credit if the property is owned, or was previously owned, by an approved development business that has already received an investment tax credit. An eligible business, which is not a development business, can claim an investment tax credit only on additional, new improvements made to real property that was not included in the development business's approved application for the investment tax credit.

This rule is intended to implement Iowa Code section 15E.193C.

701—58.10(404A,422) Historic preservation and cultural and entertainment district tax credit. For tax years beginning on or after January 1, 2001, a historic preservation and cultural and entertainment district tax credit, subject to the availability of the credit, may be claimed against a taxpayer's Iowa franchise tax liability for 25 percent of the qualified rehabilitation costs to the extent the costs were incurred for the rehabilitation of eligible property in Iowa. For information related to projects with Part 2 applications approved and tax credits reserved prior to July 1, 2014, see rule 701—52.18(404A,422). For information related to projects registered on or after July 1, 2014, and before August 15, 2016, see rule 701—52.47(404A,422). For information related to projects registered on or after August 15, 2016, see rule 701—52.48(404A,422). For projects registered before August 15, 2016, see also the administrative rules for the historic preservation and cultural and entertainment district tax credit for the historical division of the department of cultural affairs under 223—Chapter 48. For projects registered on or after August 15, 2016, see also the administrative rules for the historic preservation and cultural and entertainment district tax credit for the economic development authority under 261—Chapter 49.

This rule is intended to implement Iowa Code chapter 404A as amended by 2016 Iowa Acts, House File 2443, and Iowa Code section 422.60.

[**ARC 1968C**, IAB 4/15/15, effective 5/20/15; **ARC 2928C**, IAB 2/1/17, effective 3/8/17]

701—58.11(15E,422) Venture capital credits.

58.11(1) *Investment tax credit for an equity investment in a community-based seed capital fund or qualifying business.*

a. Equity investments in a qualifying business or community-based seed capital fund before January 1, 2011. See rule 123—2.1(15E) for the discussion of the investment tax credit for an equity

investment in a community-based seed capital fund or an equity investment made on or after January 1, 2004, in a qualifying business, along with the issuance of tax credit certificates by the Iowa capital investment board, for equity investments made before January 1, 2011.

b. Equity investments in a qualifying business or community-based seed capital fund on or after January 1, 2011, and before July 2, 2015. For equity investments made on or after January 1, 2011, see 261—Chapter 115 for information regarding eligibility for qualifying businesses and community-based seed capital funds, applications for the investment tax credit for equity investments in a qualifying business or community-based seed capital fund, and the issuance of tax credit certificates by the economic development authority.

(1) Certificate issuance. The department of revenue will be notified by the economic development authority when the tax credit certificates are issued.

(2) Amount of the tax credit. The credit is equal to 20 percent of the taxpayer's equity investment in a qualifying business or community-based seed capital fund.

(3) Year in which the tax credit may be claimed. An investment shall be deemed to have been made on the same date as the date of acquisition of the equity interest as determined by the Internal Revenue Code. For investments made prior to January 1, 2014, a taxpayer shall not claim the tax credit prior to the third tax year following the tax year in which the investment is made. For investments made in qualifying businesses on or after January 1, 2014, the credit can be claimed in the year of the investment, but these investments cannot be redeemed prior to January 1, 2016. For example, if a franchise taxpayer whose tax year ends on December 31, 2012, makes an equity investment during the 2012 calendar year, the franchise taxpayer cannot claim the tax credit until the tax year ending December 31, 2015. For fiscal years beginning July 1, 2011, the amount of tax credits authorized cannot exceed $2 million. The tax credit certificate must be included with the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

(4) Carried over tax credits. If a tax credit is carried over and issued for the tax year immediately following the year in which the investment was made because the $2 million cap has been reached, the tax credit may be claimed by the taxpayer for the third tax year following the tax year for which the credit is issued. For example, if a franchise taxpayer whose tax year ends on December 31, 2012, makes an equity investment in December 2012 and the $2 million cap for the fiscal year ending June 30, 2013, had already been reached, the tax credit will be issued for the tax year ending December 31, 2013, and cannot be redeemed until the tax year ending December 31, 2016.

(5) Limitations. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier. The tax credit cannot be carried back to a tax year prior to the tax year in which the taxpayer claims the tax credit. The tax credit is not transferable to any other taxpayer.

(6) Pro rata tax credit claims for certain business entities. For equity investments made in a community-based seed capital fund and equity investments made on or after January 1, 2004, in a qualifying business, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

c. Equity investments in a qualifying business on or after July 2, 2015. For equity investments made on or after July 2, 2015, see 261—Chapter 115 for information regarding eligibility for qualifying businesses, applications for the investment tax credit for equity investments in a qualifying business, and the issuance of tax credit certificates by the economic development authority.

(1) Certificate issuance. The department of revenue will be notified by the economic development authority when the tax credit certificates are issued.

(2) Amount of the tax credit. For fiscal years beginning July 1, 2011, the amount of the tax credits authorized cannot exceed $2 million. The credit is equal to 25 percent of the taxpayer's equity investment in a qualifying business. In any one calendar year, the amount of tax credits issued for any one qualifying business shall not exceed $500,000.

(3) Year in which the credit may be claimed. A taxpayer shall not claim a tax credit prior to September 1, 2016. The tax credit certificate must be included with the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate. For the purposes of this paragraph, an investment shall be deemed to have been made on the same date as the date of acquisition of the equity interest as determined by the Internal Revenue Code.

(4) Pro rata tax credit claims for certain business entities. An individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust. Any credits claimed by an individual are subject to the limitations provided in 701—paragraph 42.22(1)*"c."*

(5) Carryforward period. For a tax credit claimed against the taxes imposed in Iowa Code chapter 422, division V, any tax credit in excess of the taxpayer's liability for the tax year may be credited to the tax liability for the following three years or until depleted, whichever is earlier.

(6) Refunds, transfers, and carryback prohibited. The tax credit cannot be carried back to a tax year prior to the tax year in which the taxpayer claims the tax credit. The tax credit is not refundable and is not transferable to any other taxpayer.

58.11(2) *Investment tax credit for an equity investment in a venture capital fund.* See rule 123—3.1(15E) for the discussion of the investment tax credit for an equity investment in a venture capital fund, along with the issuance of tax credit certificates by the Iowa capital investment board. This credit is repealed for investments in venture capital funds made after July 1, 2010.

The department of revenue will be notified by the Iowa capital investment board when the tax credit certificates are issued. The tax credit certificate must be attached to the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier.

For equity investments made in a venture capital fund, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

58.11(3) *Contingent tax credit for investments in Iowa fund of funds.* See rule 123—4.1(15E) for the discussion of the contingent tax credit available for investments made in the Iowa fund of funds organized by the Iowa capital investment corporation. Tax credit certificates related to the contingent tax credits will be issued by the Iowa capital investment board.

The department of revenue will be notified by the Iowa capital investment board when these tax credit certificates are issued and, if applicable, when they are redeemed. If the tax credit certificate is redeemed, the certificate must be attached to the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

If the tax credit certificate is redeemed, any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until used, whichever is the earlier.

If the tax credit certificate is redeemed, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

58.11(4) *Innovation fund investment tax credit.* See 261—Chapter 116 for information regarding eligibility for an innovation fund, applications for the investment tax credit for investments in an innovation fund, and the issuance of tax credit certificates by the economic development authority.

The department of revenue will be notified by the economic development authority when the tax credit certificates are issued. The credit is equal to 20 percent of the taxpayer's equity investment in an innovation fund. An investment shall be deemed to have been made on the same date as the date

of acquisition of the equity interest as determined by the Internal Revenue Code. A taxpayer shall not claim the tax credit prior to the third tax year following the tax year in which the investment is made. For example, if a franchise taxpayer whose tax year ends on December 31, 2012, makes an equity investment during the 2012 calendar year, the franchise taxpayer cannot claim the tax credit until the tax year ending December 31, 2015. For fiscal years beginning July 1, 2011, the amount of tax credits authorized cannot exceed $8 million. The tax credit certificate must be attached to the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

If a tax credit is carried over and issued for the tax year immediately following the year in which the investment was made because the $8 million cap has been reached, the tax credit may be claimed by the taxpayer for the third tax year following the tax year for which the credit is issued. For example, if a franchise taxpayer whose tax year ends on December 31, 2012, makes an equity investment in December 2012 and the $8 million cap for the fiscal year ending June 30, 2013, had already been reached, the tax credit will be issued for the tax year ending December 31, 2013, and cannot be redeemed until the tax year ending December 31, 2016.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until depleted, whichever is the earlier. The tax credit cannot be carried back to a tax year prior to the tax year in which the taxpayer claims the tax credit. The tax credit is not transferable to any other taxpayer.

For equity investments made in an innovation fund, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

This rule is intended to implement Iowa Code sections 15E.42, 15E.66 and 422.60 and section 15E.43 as amended by 2015 Iowa Acts, chapter 138.

[**ARC 9104B**, IAB 9/22/10, effective 10/27/10; **ARC 9966B**, IAB 1/11/12, effective 2/15/12; **ARC 1665C**, IAB 10/15/14, effective 11/19/14; **ARC 2632C**, IAB 7/20/16, effective 8/24/16]

701—58.12(15) New capital investment program tax credits. Effective for tax periods beginning on or after January 1, 2003, a business which qualifies under the new capital investment program is eligible to receive tax credits. An eligible business under the new capital investment program must be approved by the Iowa department of economic development and meet the qualifications of 2003 Iowa Acts, chapter 125, section 4. The new capital investment program was repealed on July 1, 2005, and has been replaced with the high quality job creation program. See rules 701—52.28(15) and 701—58.17(15) for information on the tax credits available under the high quality job creation program. Any tax credits earned by businesses approved under the new capital investment program prior to July 1, 2005, remain valid, and can be claimed on tax returns filed after July 1, 2005.

This rule is intended to implement 2003 Iowa Acts, House File 677, sections 1 to 7, and Iowa Code section 15.333 as amended by 2003 Iowa Acts, House File 677, section 8.

701—58.13(15E,422) Endow Iowa tax credit. Effective for tax years beginning on or after January 1, 2003, a taxpayer who makes an endowment gift to an endow Iowa qualified community foundation may qualify for an endow Iowa tax credit, subject to the availability of the credit. For tax years beginning on or after January 1, 2003, but before January 1, 2010, the credit is equal to 20 percent of a taxpayer's endowment gift to an endow Iowa qualified community foundation approved by the Iowa department of economic development. For tax years beginning on or after January 1, 2010, the credit is equal to 25 percent of a taxpayer's endowment gift to an endow Iowa qualified community foundation approved by the Iowa department of economic development. For tax years beginning on or after January 1, 2010, a taxpayer cannot claim a deduction for charitable contributions under Section 170 of the Internal Revenue Code for the amount of the contribution for which the tax credit is claimed for Iowa tax purposes. The administrative rules for the endow Iowa tax credit for the Iowa department of economic development may be found under 261—Chapter 47.

The total amount of endow Iowa tax credits available is $2 million in the aggregate for the 2003 and 2004 calendar years. The total amount of endow Iowa tax credits is $2 million annually for the 2005-2007 calendar years, and $200,000 of these tax credits on an annual basis is reserved for endowment gifts of $30,000 or less. The maximum amount of tax credit granted to a single taxpayer shall not exceed $100,000 for the 2003-2007 calendar years. The total amount of endow Iowa tax credits annually for the 2008 and 2009 calendar years is $2 million plus a percentage of the tax imposed on the adjusted gross receipts from gambling games in accordance with Iowa Code section 99F.11(3). The total amount of endow Iowa tax credits annually for 2010 is $2.7 million plus a percentage of the tax imposed on the adjusted gross receipts from gambling games in accordance with Iowa Code section 99F.11(3). The total amount of endow Iowa tax credits annually for 2011 is $3.5 million plus a percentage of the tax imposed on the adjusted gross receipts from gambling games in accordance with Iowa Code section 99F.11(3). The maximum amount of tax credit granted to a single taxpayer shall not exceed 5 percent of the total endow Iowa tax credit amount authorized for 2008 and subsequent years. For calendar year 2012 and subsequent calendar years, the total amount of endow Iowa tax credits is $6 million; the maximum amount of tax credit authorized to a single taxpayer is $300,000 ($6 million multiplied by 5 percent). The endow Iowa tax credit cannot be transferred to any other taxpayer.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier.

If a taxpayer is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code section 15E.305 as amended by 2013 Iowa Acts, House File 620, and section 422.60.

[**ARC 8589B**, IAB 3/10/10, effective 4/14/10; **ARC 9104B**, IAB 9/22/10, effective 10/27/10; **ARC 9876B**, IAB 11/30/11, effective 1/4/12; **ARC 0398C**, IAB 10/17/12, effective 11/21/12; **ARC 1138C**, IAB 10/30/13, effective 12/4/13]

701—58.14(15I,422) Wage-benefits tax credit. Effective for tax years ending on or after June 9, 2006, a wage-benefits tax credit, subject to the availability of the credit, equal to a percentage of the annual wages and benefits paid for a qualified new job created by the location or expansion of the business in Iowa is available for eligible financial institutions. For information on the eligibility for the wage-benefits tax credit, how to file applications for the wage-benefits tax credit, how the wage-benefits tax credit is computed, the repeal of the wage-benefits credit effective July 1, 2008, and other details about the credit, see rule 701—52.25(15I,422).

This rule is intended to implement Iowa Code chapter 15I as amended by 2008 Iowa Acts, House File 2700, section 167, and Iowa Code Supplement section 422.60(10) as amended by 2008 Iowa Acts, House File 2700, section 164.

701—58.15(422,476B) Wind energy production tax credit. Effective for tax years beginning on or after July 1, 2006, owners of qualified wind energy production facilities approved by the Iowa utilities board may claim a wind energy production tax credit for qualified electricity sold by the owner against a taxpayer's Iowa franchise tax liability. For information on the application and review process for the wind energy production tax credit, how the wind energy production tax credit is computed, how the wind energy production tax credit can be transferred and other details about the credit, see rule 701—52.26(422,476B). See also the administrative rules for the wind energy production tax credit for the Iowa utilities board in rules 199—15.18(476B) and 199—15.20(476B).

This rule is intended to implement Iowa Code section 422.60 and chapter 476B.

701—58.16(422,476C) Renewable energy tax credit. Effective for tax years beginning on or after July 1, 2006, a purchaser or producer of renewable energy whose facility has been approved by the Iowa utilities board may claim a renewable energy tax credit for qualified renewable energy against a taxpayer's Iowa franchise tax liability. For information on the application and review process for the renewable energy tax credit, how the renewable energy tax credit is computed, how the renewable

energy tax credit can be transferred and other details about the credit, see rule 701—52.27(422,476C). See also the administrative rules for the renewable energy tax credit for the Iowa utilities board in rules 199—15.19(476C) and 199—15.21(476C).

This rule is intended to implement Iowa Code section 422.60 and chapter 476C.

701—58.17(15) High quality job creation program. Effective for tax periods ending on or after July 1, 2005, for programs approved on or after July 1, 2005, but before July 1, 2009, a business which qualifies under the high quality job creation program is eligible to receive tax credits. The high quality job creation program replaces the new jobs and income program and the new capital investment program. An eligible business under the high quality job creation program must be approved by the Iowa department of economic development and meet the qualifications of Iowa Code section 15.329.

The high quality job creation program was repealed on July 1, 2009, and has been replaced with the high quality jobs program. See rule 701—52.40(15) for information on the investment tax credit under the high quality jobs program. Any investment tax credit earned by businesses approved under the high quality job creation program prior to July 1, 2009, remains valid, and can be claimed on tax returns filed after July 1, 2009. The administrative rules for the high quality jobs program for the Iowa department of economic development may be found at 261—Chapter 68.

For information on what credits can be taken under this program, how the investment tax credit is computed and other details about this program, see rule 701—52.28(15). However, the research credit described in subrule 52.28(1) is not available for franchise tax filers.

This rule is intended to implement Iowa Code Supplement chapter 15.

[**ARC 8589B**, IAB 3/10/10, effective 4/14/10]

701—58.18(15E,422) Economic development region revolving fund tax credit. Effective for tax years ending on or after July 1, 2005, but beginning before January 1, 2010, a taxpayer who makes a contribution to an economic development region revolving fund may claim a tax credit, subject to the availability of the credit. The credit is equal to 20 percent of a taxpayer's contribution to the economic development region revolving fund approved by the Iowa department of economic development. The administrative rules for the economic development region revolving fund tax credit for the Iowa department of economic development may be found at 261—Chapter 32. The tax credit is repealed for tax years beginning on or after January 1, 2010.

The total amount of economic development region revolving fund tax credits available shall not exceed $2 million per fiscal year. The tax credit shall not be carried back to a tax year prior to the year in which the taxpayer redeems the credit. The economic development region revolving fund tax credit is not transferable to any other taxpayer.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following ten years or until used, whichever is the earlier.

This rule is intended to implement Iowa Code sections 15E.232 and 422.60 as amended by 2010 Iowa Acts, Senate File 2380.

[**ARC 9104B**, IAB 9/22/10, effective 10/27/10]

701—58.19(15,422) Film qualified expenditure tax credit. Effective for tax years beginning on or after January 1, 2007, but beginning before January 1, 2012, a film qualified expenditure tax credit is available for franchise tax. The tax credit is equal to 25 percent of the taxpayer's qualified expenditures in a film, television, or video project registered with the film office of the Iowa economic development authority (the authority). For information on the qualified expenditures eligible for the credit, how the film qualified expenditure tax credit is claimed, how the film qualified expenditure tax credit can be transferred and other details about the credit, see rule 701—52.34(15,422). See also the authority's administrative rules for the film qualified expenditure tax credit at 261—Chapter 36.

This rule is intended to implement Iowa Code section 422.60 as amended by 2012 Iowa Acts, House File 2337, section 36.

[**ARC 0398C**, IAB 10/17/12, effective 11/21/12]

701—58.20(15,422) Film investment tax credit. Effective for tax years beginning on or after January 1, 2007, but beginning before January 1, 2012, a film investment tax credit is available for franchise tax. The tax credit is equal to 25 percent of the taxpayer's qualified expenditures in a film, television, or video project registered with the film office of the Iowa economic development authority (the authority). For information on how the film investment tax credit is claimed, how the film investment tax credit can be transferred and other details about the credit, see rule 701—52.35(15,422). See also the authority's administrative rules for the film investment tax credit at 261—Chapter 36.

This rule is intended to implement Iowa Code section 422.60 as amended by 2012 Iowa Acts, House File 2337, section 36.

[**ARC 0398C**, IAB 10/17/12, effective 11/21/12]

701—58.21(15) High quality jobs program. Effective for tax periods beginning on or after July 1, 2009, a business which qualifies under the high quality jobs program is eligible to receive tax credits. The high quality jobs program replaces the high quality job creation program. An eligible business under the high quality jobs program must be approved by the Iowa department of economic development and meet the qualifications of Iowa Code section 15.329. The tax credits available under the high quality jobs program are based upon the number of jobs created or retained that pay a qualifying wage threshold and the amount of qualifying investment. The administrative rules for the high quality jobs program for the Iowa department of economic development may be found at 261—Chapter 68.

For information on the credits that may be taken under this program, how the investment tax credit is computed and other details about the program, see rule 701—52.40(15). NOTE: The research credit described in 701—subrule 52.40(1) is not available for franchise tax filers.

This rule is intended to implement Iowa Code chapter 15.

[**ARC 8589B**, IAB 3/10/10, effective 4/14/10]

701—58.22(422) Solar energy system tax credit. Effective for installations placed in service during tax years beginning on or after January 1, 2014, a solar energy system tax credit is available for business property described in Sections 48(a)(2)(A)(i)(II) and 48(a)(2)(A)(i)(III) of the Internal Revenue Code and located in Iowa. The credit is available to financial institutions according to the same requirements, conditions, and limitations as described in rule 701—42.48(422).

This rule is intended to implement Iowa Code section 422.60(12)*"a."*

[**ARC 1666C**, IAB 10/15/14, effective 11/19/14; **ARC 5590C**, IAB 4/21/21, effective 5/26/21]

701—58.23(15) Workforce housing tax incentives program. A business which qualifies under the workforce housing tax incentives program is eligible to receive tax incentives for franchise tax. For information on how the workforce housing tax incentives can be claimed, how the investment tax credit can be transferred and other details about the workforce housing tax incentives, see rule 701—52.46(15). The administrative rules for the workforce housing tax incentives program for the economic development authority may be found at 261—Chapter 48.

This rule is intended to implement Iowa Code sections 15.354 and 15.355.

[**ARC 1744C**, IAB 11/26/14, effective 12/31/14; **ARC 3837C**, IAB 6/6/18, effective 7/11/18]

[Filed 4/28/78, Notice 3/22/78—published 5/17/78, effective 6/22/78]
[Filed emergency 3/2/79—published 3/21/79, effective 3/2/79]
[Filed 12/7/79, Notice 10/31/79—published 12/26/79, effective 1/30/80]
[Filed emergency 6/6/80—published 6/25/80, effective 6/6/80]
[Filed 12/5/80, Notice 10/29/80—published 12/24/80, effective 1/28/81]
[Filed 9/11/81, Notice 8/5/81—published 9/30/81, effective 11/4/81]
[Filed 11/20/81, Notice 10/14/81—published 12/9/81, effective 1/13/82]
[Filed 12/31/81, Notice 11/25/81—published 1/20/82, effective 2/24/82]
[Filed 9/23/82, Notice 8/18/82—published 10/13/82, effective 11/17/82]
[Filed 10/22/82, Notice 9/15/82—published 11/10/82, effective 12/15/82]
[Filed 11/19/82, Notice 10/13/82—published 12/8/82, effective 1/12/83]
[Filed 2/10/84, Notice 1/4/84—published 2/29/84, effective 4/5/84]◊

[Filed 7/27/84, Notice 6/20/84—published 8/15/84, effective 9/19/84]
[Filed 10/19/84, Notice 9/12/84—published 11/7/84, effective 12/12/84]
[Filed 2/22/85, Notice 1/16/85—published 3/13/85, effective 4/17/85]
[Filed 8/23/85, Notice 7/17/85—published 9/11/85, effective 10/16/85]
[Filed 12/2/85, Notice 10/23/85—published 12/18/85, effective 1/22/86]
[Filed 8/22/86, Notice 7/16/86—published 9/10/86, effective 10/15/86]
[Filed 9/5/86, Notice 7/30/86—published 9/24/86, effective 10/29/86]◊
[Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]
[Filed 10/16/87, Notice 9/9/87—published 11/4/87, effective 12/9/87]
[Filed 10/27/89, Notice 9/20/89—published 11/15/89, effective 12/20/89]
[Filed 1/19/90, Notice 12/13/89—published 2/7/90, effective 3/14/90]
[Filed 8/2/90, Notice 6/27/90—published 8/22/90, effective 9/26/90]
[Filed 1/4/91, Notice 11/28/90—published 1/23/91, effective 2/27/91]
[Filed 12/6/91, Notice 10/30/91—published 12/25/91, effective 1/29/92]
[Filed 11/19/93, Notice 10/13/93—published 12/8/93, effective 1/12/94]
[Filed 2/24/95, Notice 1/4/95—published 3/15/95, effective 4/19/95]
[Filed 10/6/95, Notice 8/30/95—published 10/25/95, effective 11/29/95]
[Filed 9/20/96, Notice 8/14/96—published 10/9/96, effective 11/13/96]
[Filed 2/3/00, Notice 12/29/99—published 2/23/00, effective 3/29/00]
[Filed 10/12/01, Notice 8/8/01—published 10/31/01, effective 12/5/01]
[Filed 2/14/02, Notice 1/9/02—published 3/6/02, effective 4/10/02]
[Filed 3/15/02, Notice 2/6/02—published 4/3/02, effective 5/8/02]
[Filed 10/11/02, Notice 9/4/02—published 10/30/02, effective 12/4/02]
[Filed 11/8/02, Notice 10/2/02—published 11/27/02, effective 1/1/03]
[Filed 1/17/03, Notice 12/11/02—published 2/5/03, effective 3/12/03]
[Filed 10/24/03, Notice 9/17/03—published 11/12/03, effective 12/17/03]
[Filed 11/6/03, Notice 10/1/03—published 11/26/03, effective 12/31/03]
[Filed 12/5/03, Notice 10/15/03—published 12/24/03, effective 1/28/04]◊
[Filed 9/24/04, Notice 8/18/04—published 10/13/04, effective 11/17/04]
[Filed 10/22/04, Notice 9/15/04—published 11/10/04, effective 12/15/04]
[Filed 11/4/04, Notice 9/29/04—published 11/24/04, effective 12/29/04]
[Filed 1/14/05, Notice 12/8/04—published 2/2/05, effective 3/9/05]
[Filed 10/20/05, Notice 9/14/05—published 11/9/05, effective 12/14/05]
[Filed 12/30/05, Notice 11/23/05—published 1/18/06, effective 2/22/06]◊
[Filed 1/27/06, Notice 12/21/05—published 2/15/06, effective 3/22/06]
[Filed 7/28/06, Notice 6/21/06—published 8/16/06, effective 9/20/06]
[Filed 12/13/06, Notice 11/8/06—published 1/3/07, effective 2/7/07]
[Filed 1/11/07, Notice 12/6/06—published 1/31/07, effective 3/7/07]
[Filed 10/5/07, Notice 8/15/07—published 10/24/07, effective 11/28/07]
[Filed 3/7/08, Notice 1/30/08—published 3/26/08, effective 4/30/08]
[Filed 10/31/08, Notice 9/24/08—published 11/19/08, effective 12/24/08]
[Filed ARC 8589B (Notice ARC 8430B, IAB 12/30/09), IAB 3/10/10, effective 4/14/10]
[Filed ARC 8702B (Notice ARC 8512B, IAB 2/10/10), IAB 4/21/10, effective 5/26/10]
[Filed ARC 9104B (Notice ARC 8954B, IAB 7/28/10), IAB 9/22/10, effective 10/27/10]
[Filed ARC 9876B (Notice ARC 9796B, IAB 10/5/11), IAB 11/30/11, effective 1/4/12]
[Filed ARC 9966B (Notice ARC 9856B, IAB 11/16/11), IAB 1/11/12, effective 2/15/12]
[Filed ARC 0398C (Notice ARC 0292C, IAB 8/22/12), IAB 10/17/12, effective 11/21/12]
[Filed ARC 1138C (Notice ARC 0998C, IAB 9/4/13), IAB 10/30/13, effective 12/4/13]
[Filed ARC 1303C (Notice ARC 1231C, IAB 12/11/13), IAB 2/5/14, effective 3/12/14]
[Filed ARC 1665C (Notice ARC 1590C, IAB 8/20/14), IAB 10/15/14, effective 11/19/14]
[Filed ARC 1666C (Notice ARC 1589C, IAB 8/20/14), IAB 10/15/14, effective 11/19/14]
[Filed ARC 1744C (Notice ARC 1654C, IAB 10/1/14), IAB 11/26/14, effective 12/31/14]

[Filed ARC 1968C (Notice ARC 1837C, IAB 1/21/15), IAB 4/15/15, effective 5/20/15]
[Filed ARC 2632C (Notice ARC 2547C, IAB 5/25/16), IAB 7/20/16, effective 8/24/16]
[Filed ARC 2829C (Notice ARC 2737C, IAB 9/28/16), IAB 11/23/16, effective 1/1/17]
[Filed ARC 2928C (Notice ARC 2806C, IAB 11/9/16), IAB 2/1/17, effective 3/8/17]
[Filed ARC 3837C (Notice ARC 3724C, IAB 4/11/18), IAB 6/6/18, effective 7/11/18]
[Filed ARC 5590C (Notice ARC 5470C, IAB 2/24/21), IAB 4/21/21, effective 5/26/21]

◊ Two or more ARCs

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[Prior to 11/19/97, see Labor Services Division[347]]

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ELEVATORS, ESCALATORS, AND RELATED EQUIPMENT

CHAPTER 65
ELEVATOR SAFETY BOARD ADMINISTRATIVE AND REGULATORY AUTHORITY

875—65.1(89A) Definitions. The definitions contained in this rule apply to 875—Chapters 65 to 73.

"Board" means the elevator safety board.

"Board office" means the offices of the division of labor services of the department of workforce development.

"Commissioner" means the labor commissioner of the state of Iowa.

"Conveyance" means an elevator, construction personnel hoist, dumbwaiter, escalator, moving walk, lift or inclined or vertical wheelchair lift subject to regulation under Iowa Code chapter 89A, and includes hoistways, rails, guides, and all other related mechanical and electrical equipment.

[**ARC 8621B**, IAB 3/24/10, effective 4/28/10]

875—65.2(89A) Purpose and authority of board. The purpose of the board is to perform statutory duties pursuant to Iowa Code chapter 89A. The mission of the board is to protect the public health, safety and welfare relating to the safe and proper installation, repair, maintenance, alteration, use, and operation of conveyances in the state. The authority and responsibilities of the board include, but are not limited to:

65.2(1) Adopting rules necessary to protect public health, safety and welfare and to administer the duties of the board.

65.2(2) Hearing and deciding appeals concerning inspection reports that relate to the installation, alteration, operation, and maintenance of conveyances in the state.

65.2(3) Hearing and deciding appeals concerning actions by the commissioner to deny, suspend or revoke operating permits.

65.2(4) Establishing fees.

65.2(5) Establishing committees of the board.

65.2(6) Performing any other function authorized by law.

[**ARC 8621B**, IAB 3/24/10, effective 4/28/10; **ARC 5570C**, IAB 4/21/21, effective 6/1/21]

875—65.3(21,89A) Organization of board.

65.3(1) The board shall be composed of the commissioner or the commissioner's designee and eight additional members appointed by the governor and confirmed by the senate.

65.3(2) The eight appointed members of the board shall include:

a. Two representatives from an elevator manufacturing company or its authorized representative.

b. Two representatives from elevator servicing companies.

c. One building owner or manager.

d. One representative employed by a local government in this state who is knowledgeable about building codes in this state.

e. One representative of workers actively involved in the installation, maintenance, and repair of elevators.

f. One licensed mechanical engineer.

65.3(3) The board shall elect a chairperson, vice chairperson, and secretary from its membership at the first meeting after July 1 of each year. Neither the commissioner nor the commissioner's designee may serve as chairperson. The chairperson shall, when present, preside at meetings, appoint members and chairpersons of committees, and perform all duties and exercise all powers of the chairperson. The vice chairperson shall, in the absence or incapacity of the chairperson, perform all duties and exercise all powers of the chairperson.

[**ARC 8621B**, IAB 3/24/10, effective 4/28/10; **ARC 5570C**, IAB 4/21/21, effective 6/1/21]

875—65.4(21,89A) Public meetings.

65.4(1) The board shall hold at least one meeting each calendar quarter.

65.4(2) Board meetings shall be governed in accordance with Iowa Code chapter 21, and the board's proceedings shall be conducted in accordance with Robert's Rules of Order.

65.4(3) The chairperson or the chairperson's designee shall prepare an agenda listing all matters to be discussed at the meeting.

65.4(4) A majority of the members of the board shall constitute a quorum, and all final motions and actions must receive a majority of a quorum vote.

65.4(5) Members of the public may be present during board meetings unless the board votes to hold a closed session in accordance with Iowa Code chapter 21. The dates and locations of board meetings may be obtained from the division of labor services' website or the board office.

65.4(6) At every regularly scheduled board meeting, time will be designated for public comment. During the public comment period, any person may speak for up to two minutes. Requests to speak for two minutes per person when a particular topic comes before the board may be granted at the discretion of the chairperson. The chairperson may limit total public comment time to ten minutes.

65.4(7) The person presiding at a meeting of the board may exclude a person from an open meeting for behavior that obstructs the meeting.

65.4(8) Cameras and recording devices may be used at open meetings provided the cameras and recording devices do not obstruct the meeting. If the user of a camera or recording device obstructs the meeting by the use of such device, the person presiding at the meeting may request the user to discontinue use of the camera or device.

[**ARC 8621B**, IAB 3/24/10, effective 4/28/10; **ARC 5570C**, IAB 4/21/21, effective 6/1/21]

875—65.5(89A) Official communications. All official communications, including submissions and requests, shall be addressed to the Elevator Safety Board, Department of Workforce Development, Division of Labor Services, 150 Des Moines Street, Des Moines, Iowa 50309.

[**ARC 5570C**, IAB 4/21/21, effective 6/1/21]

These rules are intended to implement Iowa Code chapters 21 and 89A.

[Filed 6/16/06, Notice 5/10/06—published 7/5/06, effective 8/9/06]

[Filed ARC 8621B (Notice ARC 8322B, IAB 12/2/09), IAB 3/24/10, effective 4/28/10]

[Filed ARC 5570C (Notice ARC 5436C, IAB 2/10/21), IAB 4/21/21, effective 6/1/21]

CHAPTER 66
WAIVERS FROM ADMINISTRATIVE RULES BY THE ELEVATOR SAFETY BOARD

875—66.1(17A,89A) Waivers of rules. This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the board. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

66.1(1) *Authority.* Authority for the board to grant waivers is set forth in Iowa Code sections 17A.9A and 89A.11.

66.1(2) *Definition.* "Waiver" means a waiver pursuant to Iowa Code section 17A.9A or an exception or variance pursuant to Iowa Code section 89A.11.

[**ARC 5570C**, IAB 4/21/21, effective 6/1/21]

875—66.2(17A,89A) Applicability of rule. The board may grant a waiver from a rule only if the board has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The board may not waive requirements created or duties imposed by statute.

875—66.3(17A,89A) Criteria for waiver. In response to a petition completed pursuant to this chapter, the board may, in its sole discretion, issue an order waiving, in whole or in part, the requirements of a rule as applied to an identified person on the basis of the particular circumstances of that person if the board finds, based on clear and convincing evidence, all of the following:

66.3(1) The application of the rule would impose an undue hardship on the person for whom the waiver is requested;

66.3(2) The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;

66.3(3) The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law;

66.3(4) Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested; and

66.3(5) There is a reasonable relationship between the age of the conveyance and the waiver requested.

[**ARC 8621B**, IAB 3/24/10, effective 4/28/10; **ARC 5570C**, IAB 4/21/21, effective 6/1/21]

875—66.4(17A,89A) Filing of petition. A petition for a waiver must be submitted in writing to the board as follows:

66.4(1) *Contested cases.* If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case.

66.4(2) *Other.* If the petition does not relate to a pending contested case, the petition may be submitted with a caption containing the name of the person for whom the waiver is requested.

66.4(3) *Filing petition.* A petition is deemed filed when it is received in the board's office. A petition should be sent to the Elevator Safety Board, Department of Workforce Development, Division of Labor Services, 150 Des Moines Street, Des Moines, Iowa 50309. The petitioner shall submit the petition and all related materials for consideration at least three weeks prior to a scheduled board meeting for board review of the petition at the meeting.

[**ARC 8621B**, IAB 3/24/10, effective 4/28/10; **ARC 5570C**, IAB 4/21/21, effective 6/1/21]

875—66.5(17A,89A) Content of petition. The required form for a petition for waiver is available on the board's website at www.iowaelevators.gov. A petition for waiver shall include the following information where applicable and known to the petitioner:

66.5(1) The name, address, and telephone number of the entity or person for whom a waiver is being requested; the case number of or other reference to any related contested case; and the name, address, and telephone number of the petitioner's legal representative, if any.

66.5(2) A description of and citation to the specific rule from which a waiver is requested.

66.5(3) The specific waiver requested, including the precise scope and duration.

66.5(4) The relevant facts that the petitioner believes would justify a waiver under each of the five criteria described in rule 875—66.3(17A,89A). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver.

66.5(5) A history of any prior contacts between the board, other departments or agencies of the state of Iowa, or political subdivisions and the petitioner relating to the conveyance affected by the proposed waiver.

66.5(6) Information regarding the board's action in similar cases.

66.5(7) The name, address, and telephone number of any public agency or political subdivision which might be affected by the granting of a waiver.

66.5(8) The name, address, and telephone number of any entity or person who would be adversely affected by the granting of a petition.

66.5(9) The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

66.5(10) Signed releases of information authorizing persons with knowledge regarding the petition to furnish the board with information relevant to the petition for waiver.

66.5(11) The state identification number of the conveyance.

66.5(12) The age of the conveyance.

[**ARC 8621B**, IAB 3/24/10, effective 4/28/10; **ARC 3856C**, IAB 6/20/18, effective 8/1/18; **ARC 5570C**, IAB 4/21/21, effective 6/1/21]

875—66.6(17A,89A) Additional information. Prior to issuing an order granting or denying a waiver, the board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the board may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and a representative or representatives of the board related to the waiver request.

[**ARC 8621B**, IAB 3/24/10, effective 4/28/10]

875—66.7(17A,89A) Notice. The board shall acknowledge a petition within ten days of its receipt in the board office. The board shall ensure that notice of the pending petition has been provided to all persons to whom notice is required by any provision of law within 30 days of the receipt of the petition. In addition, the board may give notice to other persons. To accomplish this notice provision, the board may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and to provide a written statement to the board attesting that notice has been provided.

875—66.8(17A,89A) Board review procedures.

66.8(1) Unless the board makes other arrangements, petitions for waiver will be reviewed and may be granted or denied at the next scheduled board meeting following receipt of the petition. However, if the petition is received less than three weeks prior to the scheduled board meeting, the petition will be reviewed at the subsequent meeting.

66.8(2) The petitioner shall be provided a reasonable opportunity to make a presentation to the board. The length of time allotted for presentation shall be reasonable in light of the complexity and number of issues involved.

875—66.9(17A,89A) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case and shall otherwise apply to board proceedings for a waiver only when the board so provides by order or is required to do so by statute.

875—66.10(17A,89A) Ruling. An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person or legal entity and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

66.10(1) *Board discretion.* The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the board, upon consideration of all relevant factors. Each petition for a waiver shall be evaluated by the board based on the unique, individual circumstances set out in the petition.

66.10(2) *Burden of persuasion.* The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the board should exercise its discretion to grant a waiver from a rule.

66.10(3) *Narrowly tailored exception.* A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

66.10(4) *Administrative deadlines.* When the rule from which a waiver is sought establishes administrative deadlines, the board shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

66.10(5) *Conditions.* The board may place on a waiver any condition that the board finds desirable to protect the public health, safety, and welfare.

66.10(6) *Time period of waiver.* A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the board, a waiver may be renewed if the board finds that grounds for a waiver continue to exist.

66.10(7) *Time for ruling.* The board shall grant or deny a petition for a waiver as soon as practical but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the board shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

66.10(8) *When deemed denied.* Failure of the board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the board. However, the board shall remain responsible for issuing an order denying a waiver.

66.10(9) *Service of order.* Within 14 days of the ruling, any order issued under this rule shall be transmitted or delivered to the petitioner or the person to whom the order pertains, and to any other person entitled to such notice by any provision of law.

66.10(10) *Posting of orders granting waivers.* The order or a copy of the order granting a waiver shall be conspicuously and permanently posted in the machine room corresponding to the conveyance. The order or a copy of the order granting a waiver that relates to a conveyance that does not have a machine room shall be posted in a protective sleeve attached to the inside of the controller cabinet door corresponding to the conveyance.

[**ARC 0168C**, IAB 6/13/12, effective 7/18/12]

875—66.11(17A,89A) Public availability. All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying a waiver petition are public records under Iowa Code chapter 22. If petitions or orders contain information the board is authorized or required to keep confidential, the board may instruct the board office to accordingly redact confidential information from petitions or orders prior to public inspection.

875—66.12(17A,89A) Summary reports. Information about all orders granting or denying a waiver petition shall be submitted by the board staff to the legislative services agency through the designated Internet site within 60 days of granting or denying the petition. The information submitted is available to the public via the website.

[**ARC 5570C**, IAB 4/21/21, effective 6/1/21]

875—66.13(17A,89A) Cancellation of a waiver. A waiver issued by the board pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and review, the board issues an order finding any of the following:

66.13(1) The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or

66.13(2) The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or

66.13(3) The subject of the waiver order has failed to comply with all conditions contained in the order.

875—66.14(17A,89A) Violations. Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this rule who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

875—66.15(17A,89A) Defense. After the board issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein only for the specific conveyance to which the order pertains in any proceeding in which the rule in question is sought to be invoked.

875—66.16(17A,89A) Judicial review. Judicial review of the board's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

These rules are intended to implement Iowa Code chapters 17A, 22, and 89A.

[Filed 6/16/06, Notice 5/10/06—published 7/5/06, effective 8/9/06]
[Filed 7/3/07, Notice 4/25/07—published 8/1/07, effective 9/5/07]
[Filed 1/25/08, Notice 11/7/07—published 2/13/08, effective 3/19/08]
[Filed ARC 8621B (Notice ARC 8322B, IAB 12/2/09), IAB 3/24/10, effective 4/28/10]
[Filed ARC 0168C (Notice ARC 0011C, IAB 2/22/12), IAB 6/13/12, effective 7/18/12]
[Filed ARC 3856C (Notice ARC 3727C, IAB 4/11/18), IAB 6/20/18, effective 8/1/18]
[Filed ARC 5570C (Notice ARC 5436C, IAB 2/10/21), IAB 4/21/21, effective 6/1/21]

CHAPTER 67
ELEVATOR SAFETY BOARD PETITIONS FOR RULE MAKING

875—67.1(17A,89A) Petitions for rule making. Any person or agency may file a petition for rule making with the board requesting the adoption, amendment or repeal of a rule. The required form for a petition for rule making is available on the board's website at www.iowaelevators.gov. The petition shall be filed at the location specified in rule 875—65.5(89A). A petition is deemed filed when it is received by the board office. The board office shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition must be in writing and provide the following information where applicable and known to the petitioner:

67.1(1) A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation to and the relevant language of the particular portion or portions of the rule proposed to be amended or repealed.

67.1(2) A citation to any law deemed relevant to the board's authority to take the action urged or to the desirability of that action.

67.1(3) A brief summary of petitioner's arguments in support of the action urged in the petition.

67.1(4) A brief summary of any data supporting the action urged in the petition.

67.1(5) The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by or interested in the proposed action which is the subject of the petition.

67.1(6) The petition must be dated and signed by the petitioner or the petitioner's representative. The petition must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

67.1(7) The board may deny a petition because it does not provide the required information.

[**ARC 8621B**, IAB 3/24/10, effective 4/28/10; **ARC 3856C**, IAB 6/20/18, effective 8/1/18; **ARC 5570C**, IAB 4/21/21, effective 6/1/21]

875—67.2(17A,89A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The board may request a brief from the petitioner or from any other person concerning the substance of the petition.

875—67.3(17A,89A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to Elevator Safety Board, Department of Workforce Development, Division of Labor Services, 150 Des Moines Street, Des Moines, Iowa 50309.

[**ARC 5570C**, IAB 4/21/21, effective 6/1/21]

875—67.4(17A,89A) Board review procedures.

67.4(1) Unless the board makes other arrangements, petitions for rule making will be reviewed and may be granted or denied at the next scheduled board meeting following receipt of the petition. However, if the petition is received less than three weeks prior to the scheduled board meeting, the petition will be reviewed at the subsequent meeting. The board may request the petitioner to submit additional information or argument concerning the petition. The board may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the board by any person.

67.4(2) The petitioner shall be provided a reasonable opportunity to make a presentation to the board. The length of time allotted for presentation shall be reasonable in light of the complexity and number of issues involved.

67.4(3) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the board shall deny the petition in writing and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that the board will institute rule-making proceedings on the subject of the petition. Notice shall be sent by the board office to the petitioner by regular mail. Petitioner shall be deemed notified of the denial or granting of the petition on the date the

board office mails the required notification to the petitioner. Copies of the petition and the document granting or denying the petition shall be sent to the administrative rules review committee.

67.4(4) Denial of a petition because it does not contain the required information does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the board's rejection of the petition.

[**ARC 5570C**, IAB 4/21/21, effective 6/1/21]

These rules are intended to implement Iowa Code chapters 17A and 89A.

[Filed 6/16/06, Notice 5/10/06—published 7/5/06, effective 8/9/06]
[Filed ARC 8621B (Notice ARC 8322B, IAB 12/2/09), IAB 3/24/10, effective 4/28/10]
[Filed ARC 3856C (Notice ARC 3727C, IAB 4/11/18), IAB 6/20/18, effective 8/1/18]
[Filed ARC 5570C (Notice ARC 5436C, IAB 2/10/21), IAB 4/21/21, effective 6/1/21]

CHAPTER 69
CONTESTED CASES BEFORE THE ELEVATOR SAFETY BOARD

875—69.1(17A,89A) Reconsideration of inspection report. The owner or operator of a piece of equipment subject to a written inspection report may petition the commissioner for reconsideration of the report within 30 days of the issuance of the report. Failure to seek timely reconsideration of the inspection report from the commissioner shall be deemed a waiver of all appeal rights under Iowa Code section 89A.13(5). The burden of demonstrating compliance with all applicable statutory provisions, administrative rules, and codes adopted by reference rests upon the petitioning owner or operator.

69.1(1) A petition for reconsideration shall be in writing and must be signed by the requesting party or a representative of that party. The required form for a petition for reconsideration is available on the board's website at www.iowaelevators.gov. A petition for reconsideration shall specify:

a. The party seeking reconsideration, including mailing address and telephone number;

b. The location of the equipment subject to the challenged inspection report;

c. The inspection date;

d. The inspector who issued the challenged inspection report;

e. The specific findings or conclusions to which exception is taken;

f. The relief sought.

69.1(2) A copy of the challenged inspection report shall be attached to the petition for reconsideration. The petitioning party shall also include all relevant documents that the petitioning party desires the commissioner to consider when evaluating the petition.

69.1(3) The commissioner or a designee of the commissioner is authorized to seek additional information relating to a petition for reconsideration from the petitioning party or any other entity possessing information the commissioner deems relevant to the petition. This subrule, however, does not impose any responsibility or duty on the commissioner to discover documents or other information that was not submitted with the petition for reconsideration.

69.1(4) Any petition for reconsideration that is not received by the office of the commissioner within 30 days of the issuance of the challenged inspection report shall be deemed untimely and will not be considered by the commissioner.

69.1(5) The commissioner shall not consider any request for waiver of an administrative rule made as part of a petition for reconsideration. Requests for waivers of administrative rules may only be made to the board pursuant to the provisions of 875—Chapter 66.

69.1(6) The commissioner shall issue a written ruling on the petition for reconsideration. In ruling on a petition for reconsideration, the commissioner may:

a. Affirm the inspection report as issued;

b. Issue an amended inspection report;

c. Rescind the inspection report;

d. Deny the petition as untimely.

69.1(7) Any petition for reconsideration that is not ruled upon by the commissioner within 20 days of receipt by the office of the commissioner shall be deemed denied by the commissioner and the challenged inspection report shall be considered affirmed as issued.

[**ARC 8621B**, IAB 3/24/10, effective 4/28/10; **ARC 3856C**, IAB 6/20/18, effective 8/1/18; **ARC 5570C**, IAB 4/21/21, effective 6/1/21]

875—69.2(17A,89A) Appeal to the board.

69.2(1) A decision by the commissioner to deny, suspend, or revoke an operating permit; a deemed denial of a petition for reconsideration; and the commissioner's ruling on a petition for reconsideration are subject to appeal to the board.

69.2(2) An appeal to the board shall be a contested case proceeding subject to the provisions of Iowa Code chapter 17A.

69.2(3) The commissioner shall have an automatic right of intervention in any appeal and shall defend the ruling in a contested case proceeding.

69.2(4) Only those issues raised by the petitioner in the petition for reconsideration will be preserved for appeal to the board in an appeal from the deemed denial of a petition for reconsideration and an appeal from the commissioner's ruling on a petition for reconsideration.

69.2(5) At a minimum, an appeal shall include a short and concise statement of the basis for the appeal. The required form for an appeal to the board is available on the board's website at www.iowaelevators.gov.

69.2(6) The deadlines for filing an appeal are set forth below:

a. Reconsideration of an inspection report. An appeal must be filed in writing with the board within 30 calendar days of the earlier of either the issuance of the commissioner's written ruling on a petition for reconsideration or the deemed denial of a petition for reconsideration.

b. Notification of intent to deny, suspend, or revoke an operating permit. An appeal must be filed in writing with the board within 30 calendar days of the appellant's receipt of the notification of intent to deny, suspend, or revoke an operating permit.

[**ARC 8621B**, IAB 3/24/10, effective 4/28/10; **ARC 0168C**, IAB 6/13/12, effective 7/18/12; **ARC 3856C**, IAB 6/20/18, effective 8/1/18]

875—69.3(17A,89A) Informal review. If the appellant requests and the commissioner does not object, the board may conduct an informal review of the facts and circumstances subject to the provisions of this rule.

69.3(1) In order to preserve the ability of board members to participate in decision making, a party who elects an informal review under this rule waives the party's right to seek disqualification of a board member as a presiding officer in a later contested case proceeding based on the board member's participation in the informal review. A party who elects informal review retains the right to seek disqualification of board members on any other ground pursuant to subrule 69.14(4).

69.3(2) The board may propose a preliminary order at the time of informal review. If a party does not consent to the preliminary order, a party must submit a request to proceed with formal contested case proceedings, including hearing, within ten days of the informal review.

69.3(3) Rules 875—69.4(17A,89A) through 875—69.31(17A,89A) do not apply during informal review.

[**ARC 8621B**, IAB 3/24/10, effective 4/28/10; **ARC 0168C**, IAB 6/13/12, effective 7/18/12]

875—69.4(17A,89A) Delivery of notice. Delivery of the notice of hearing by the board constitutes the commencement of a contested case proceeding. Delivery may be executed by regular mail. The notice shall be delivered to the appellant, the appellant's attorney, if known, and the commissioner.

875—69.5(17A,89A) Contents of notice. The notice of hearing shall contain a statement of the time, place, and nature of the hearing. The notice shall contain a short and plain statement of the matters asserted. If the board is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished. The notice shall contain a statement that it is the appellant's burden on appeal to prove compliance with all applicable statutory provisions, administrative rules, and ASME code sections. The notice shall also contain a reference to the applicable statute and rules.

875—69.6(17A,89A) Scope of issues. Rescinded IAB 6/13/12, effective 7/18/12.

875—69.7(17A,89A) File transmitted to the board. Within 30 days of the issuance of a notice of hearing, the commissioner shall forward to each board member and all parties of record to the appeal copies of the applicable documents set forth below:

1. Inspection report,
2. Petition for reconsideration with the appellant's attachments,
3. Documents obtained by the commissioner in ruling on the petition for reconsideration,
4. Commissioner's ruling on the petition for reconsideration,
5. Commissioner's decision denying, suspending, or revoking an operating permit, and

6. Appeal to the board.

[**ARC 8621B**, IAB 3/24/10, effective 4/28/10; **ARC 0168C**, IAB 6/13/12, effective 7/18/12]

875—69.8(17A,89A) Legal representation. Any private party to a contested case shall be entitled to legal representation at the discretion and expense of that party.

875—69.9(17A,89A) Presiding officer.

69.9(1) The presiding officer in all contested cases shall be the board, a panel of board members, or an administrative law judge assigned by the department of inspections and appeals. When board members act as presiding officer, they shall conduct the hearing and issue either a final decision or, if a quorum of the board is not present, a proposed decision. As provided in subrule 69.9(4), the board may be assisted by an administrative law judge when the board acts as presiding officer.

69.9(2) Any party to a contested case that wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of a notice of hearing which identifies the presiding officer as the board. The board may deny the request only upon a finding that one or more of the following apply:

a. Neither the board nor any officer of the board under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.

b. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

c. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

d. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.

e. Funds are unavailable to pay the costs of an administrative law judge and an intra-agency appeal.

f. The request was not timely filed.

g. The request is not consistent with a specified statute.

69.9(3) The board shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed. If the ruling is granted, the administrative law judge assigned to act as presiding officer and to issue a proposed decision in a contested case shall have a J.D. degree unless this requirement is waived by the board.

69.9(4) The board or a panel of board members when acting as presiding officer may request that an administrative law judge perform certain functions as an aid to the board or board panel, such as ruling on prehearing motions, conducting the prehearing conference, ruling on evidentiary objections at hearing, assisting in deliberations, or drafting the written decision for review by the board or board panel.

69.9(5) All rulings by an administrative law judge who acts either as presiding officer or assistant to the board are subject to appeal to the board pursuant to rules 875—69.26(17A,89A) and 875—69.27(17A,89A). A party must timely seek intra-agency appeal of prehearing rulings or proposed decisions in order to exhaust adequate administrative remedies. While a party may seek immediate board or board panel review of rulings made by an administrative law judge when sitting with and acting as an aid to the board or board panel during a hearing, such immediate review is not required to preserve error for judicial review.

69.9(6) Unless otherwise provided by law, when reviewing a proposed decision of a panel of the board or an administrative law judge, board members shall have the powers of and shall comply with the provisions of this chapter that apply to presiding officers.

[**ARC 0168C**, IAB 6/13/12, effective 7/18/12]

875—69.10(17A,89A) Service and filing.

69.10(1) *Service—when required.* Except where otherwise provided by law, every document filed in a contested case proceeding shall be served upon each of the parties of record. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16, subsection 2, the party filing a document is responsible for service on all parties.

69.10(2) *Service—how made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by personal delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

69.10(3) *Filing—when required.* All documents that are required to be served upon a party shall be filed simultaneously with the board.

69.10(4) *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the board at the location set forth in rule 875—65.5(89A), delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

69.10(5) *Proof of mailing.* Proof of mailing includes either:

a. A legible United States Postal Service postmark on the envelope;

b. A certified mail return receipt;

c. A notarized affidavit; or

d. A certification in substantially the following form:

> I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Elevator Safety Board, Department of Workforce Development, Division of Labor Services, 150 Des Moines Street, Des Moines, Iowa 50309, and to the names and addresses of the parties listed below by depositing the same in a United States post office mailbox with correct postage properly affixed.
>
> (Date) (Signature)

[**ARC 8621B**, IAB 3/24/10, effective 4/28/10; **ARC 0168C**, IAB 6/13/12, effective 7/18/12; **ARC 5570C**, IAB 4/21/21, effective 6/1/21]

875—69.11(17A,89A) Time requirements.

69.11(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

69.11(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

875—69.12(17A,89A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the board in its discretion may refuse to give effect to such a waiver when the board deems the waiver to be inconsistent with the public interest.

875—69.13(17A,89A) Telephone and electronic proceedings. The presiding officer may, on the officer's own motion or as requested by a party, order hearings or argument to be held by telephone conference or other electronic means in which all parties have an opportunity to participate. The presiding officer will determine the location of the parties and witnesses for telephone or other electronic hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen. Parties shall disclose at or before the prehearing conference if any witness will be testifying by telephone. Objections, if any, shall be filed with the board and served on all parties at least three business days in advance of hearing.

875—69.14(17A,89A) Disqualification.

69.14(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

a. Has a personal bias or prejudice concerning a party or a representative of a party;

b. Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;

c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated, in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;

d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;

e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;

f. Has a spouse or relative within the third degree of relationship that (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or

g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

69.14(2) The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other board functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17(3) and subrule 69.25(7).

69.14(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

69.14(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 69.14(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

69.14(5) If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

69.14(6) If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 875—69.26(17A,89A) and seek a stay under rule 875—69.30(17A,89A).

875—69.15(17A,89A) Consolidation and severance.

69.15(1) *Consolidation.* The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where:

a. The matters at issue involve common parties or common questions of fact or law;

b. Consolidation would expedite and simplify consideration of the issues involved; and

c. Consolidation would not adversely affect the rights of any party to those proceedings.

69.15(2) *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

[**ARC 0168C**, IAB 6/13/12, effective 7/18/12]

875—69.16(17A,89A) Discovery.

69.16(1) Pursuant to Iowa Code chapter 17A, discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

69.16(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve with the opposing party the discovery issues involved. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened by order of the presiding officer. The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

875—69.17(17A,89A) Subpoenas in a contested case. Pursuant to Iowa Code section 17A.13, subsection 1, the board or the presiding officer acting on behalf of the board has the authority to issue subpoenas to compel the attendance of witnesses at depositions or hearings and to compel the production of professional records, books, papers, correspondence and other records which are deemed necessary as evidence in connection with a contested case. A subpoena issued in a contested case under the board's authority may seek evidence whether or not privileged or confidential under law.

69.17(1) Upon the written request of a party, the presiding officer shall issue a subpoena to compel the attendance of witnesses or to obtain evidence which is deemed necessary in connection with a contested case. A command to produce evidence may be joined with a command to appear at deposition or hearing or may be issued separately.

69.17(2) A request for a subpoena shall include the following information, as applicable:

a. The name, address and telephone number of the person requesting the subpoena;

b. The name and address of the person to whom the subpoena shall be directed;

c. The date, time, and location at which the person shall be commanded to attend and give testimony;

d. Whether the testimony is requested in connection with a deposition or hearing;

e. A description of the books, papers, records or other evidence requested;

f. The date, time and location for production, or inspection and copying.

69.17(3) Each subpoena shall contain, as applicable:

a. The caption of the case;

b. The name, address and telephone number of the person who requested the subpoena;

c. The name and address of the person to whom the subpoena is directed;

d. The date, time, and location at which the person is commanded to appear;

e. Whether the testimony is commanded in connection with a deposition or hearing;

f. A description of the books, papers, records or other evidence the person is commanded to produce;

g. The date, time and location for production, or inspection and copying;

h. The time within which a motion to quash or modify the subpoena must be filed;

i. The signature, address and telephone number of the presiding officer;

j. The date of issuance;

k. A return of service attached to the subpoena.

69.17(4) The presiding officer shall mail or otherwise provide copies of all subpoenas to the parties to the contested case. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena.

69.17(5) Any person who is aggrieved or adversely affected by compliance with the subpoena or any party to the contested case who desires to challenge the subpoena must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the board a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified, and may be accompanied by legal briefs or factual affidavits.

69.17(6) Upon receipt of a timely motion to quash or modify a subpoena, the board chairperson shall request an administrative law judge to hold a hearing and issue a decision. Oral argument may be

scheduled at the discretion of the board or the administrative law judge. The administrative law judge may quash or modify the subpoena or deny the motion.

69.17(7) A person aggrieved by a ruling of an administrative law judge who desires to challenge that ruling must appeal the ruling to the board by serving on the board, either in person or by certified mail, a notice of appeal within ten days after service of the decision of the administrative law judge. If the decision of the administrative law judge to quash or modify the subpoena or to deny the motion to quash or modify the subpoena is appealed to the board, the board may uphold or overturn the decision of the administrative law judge.

69.17(8) If the person contesting the subpoena is not the party whose appeal is the subject of the contested case, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is the party whose appeal is the subject of the contested case, the board's decision is not final for purposes of judicial review until there is a final decision in the contested case.
[**ARC 8621B**, IAB 3/24/10, effective 4/28/10; **ARC 0168C**, IAB 6/13/12, effective 7/18/12]

875—69.18(17A,89A) Motions.

69.18(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

69.18(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the board or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

69.18(3) The presiding officer may schedule oral argument on any motion.

69.18(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the board or an order of the presiding officer.

69.18(5) Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 1.981 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases. Motions for summary judgment must be filed and served at least 45 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 15 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 20 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 875—69.29(89A) and appeal pursuant to subrule 69.27(3).

875—69.19(17A,89A) Settlements. A contested case may be resolved by informal settlement, and settlements are encouraged. Settlement negotiations may be initiated at any stage of a contested case by any party. All settlements are subject to approval by a majority of the board. No settlement shall be presented to the board for approval except in final, written form executed by the parties. If the board fails to approve the settlement, the settlement shall be of no force or effect to either party.
[**ARC 0168C**, IAB 6/13/12, effective 7/18/12]

875—69.20(17A,89A) Prehearing conference.

69.20(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date. Written notice of the prehearing conference shall be given by the presiding officer to all parties. For good cause, the presiding officer may permit variances from this rule.

69.20(2) Each party shall bring to the prehearing conference:

a. A final list of the witnesses who the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names.

b. A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

c. Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

69.20(3) In addition to the requirements of subrule 69.20(2), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;

b. Enter into stipulations on the admissibility of exhibits;

c. Identify matters that the parties intend to request be officially noticed;

d. Enter into stipulations for waiver of any provision of law; and

e. Consider any additional matters that will expedite the hearing.

69.20(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

875—69.21(17A,89A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

69.21(1) A written application for a continuance shall:

a. Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;

b. State the specific reasons for the request; and

c. Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. The presiding officer may waive notice of such requests for a particular case or an entire class of cases.

69.21(2) In determining whether to grant a continuance, the presiding officer may consider:

a. Prior continuances;

b. The interests of all parties;

c. The likelihood of informal settlement;

d. The existence of an emergency;

e. Any objection;

f. Any applicable time requirements;

g. The existence of a conflict in the schedules of counsel, parties, or witnesses;

h. The timeliness of the request; and

i. Other relevant factors.

The presiding officer may require documentation of any grounds for continuance.

875—69.22(17A,89A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing. Unless otherwise provided, a withdrawal shall be with prejudice.

875—69.23(17A,89A) Hearing procedures.

69.23(1) The presiding officer shall have the authority to administer oaths, to admit or exclude testimony or other evidence, and to rule on all motions and objections.

69.23(2) All objections shall be timely made and stated on the record.

69.23(3) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Any party may be represented by an attorney at the party's own expense.

69.23(4) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

69.23(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

69.23(6) Witnesses may be sequestered during the hearing.

69.23(7) The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings.

b. The parties shall be given an opportunity to present opening statements.

c. The parties shall present their cases in the sequence determined by the presiding officer.

d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law.

e. When all parties and witnesses have been heard, the parties may be given the opportunity to present final arguments.

f. The presiding officer may enter a default judgment against a party who fails to appear at the hearing.

69.23(8) The presiding officer has the right to question a witness. Examination of witnesses by the presiding officer is subject to properly raised objections.

69.23(9) The hearing shall be open to the public, except as otherwise provided by law.

69.23(10) Oral proceedings shall be electronically recorded. Upon request, the board shall provide a copy of the whole or any portion of the audio recording at a reasonable cost. A certified shorthand reporter may be engaged to record the proceeding at the request of a party and at the expense of the party making the request. A transcription of the record of the hearing shall be made at the request of either party at the expense of the party making the request. The parties may agree to divide the cost of the transcription. A record of the proceedings, which may be either the original recording, a copy, or a transcript, shall be retained by the board for five years after the resolution of the case.

69.23(11) 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, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

b. Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

c. Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final board action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by subrule 69.27(3). A motion to vacate must state all facts relied upon by the moving party that establish good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact must be substantiated by at least one attached, sworn affidavit of a person with personal knowledge.

d. The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

e. Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue

of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

f. "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

g. A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding.

h. If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

i. A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues but, unless the defaulting party has appeared, it cannot exceed the relief demanded.

[**ARC 8621B**, IAB 3/24/10, effective 4/28/10]

875—69.24(17A,89A) Evidence.

69.24(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

69.24(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

69.24(3) Evidence in the proceeding shall be confined to the contested issues as identified in the notice of hearing.

69.24(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties. All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

69.24(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

69.24(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

875—69.25(17A,89A) Ex parte communication.

69.25(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. Nothing in this rule is intended to preclude board members from communicating with other board members or members of the board staff, other than those with a personal interest in, or those engaged in personally investigating, prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties, as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

69.25(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending before the board.

69.25(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

69.25(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

69.25(5) Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

69.25(6) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines.

a. If the presiding officer determines that disqualification is warranted, the following shall be submitted for inclusion in the record under seal by protective order:

(1) A copy of any prohibited written communication,

(2) All written responses to the communication,

(3) A written summary stating the substance of any prohibited oral or other communication not available in written form and all responses made, and

(4) The identity of each person from whom the presiding officer received a prohibited ex parte communication; or

b. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

69.25(7) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment, unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13, subsection 2, or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

69.25(8) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule. Violation of ex parte communication prohibitions by staff shall be reported to the board and to the commissioner.

[**ARC 8621B**, IAB 3/24/10, effective 4/28/10]

875—69.26(17A,89A) Interlocutory appeals.

69.26(1) Upon written request of a party or on its own motion, the board may review an interlocutory order of the administrative law judge. In determining whether to do so, the board shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of the interlocutory order at the time of the issuance of a final decision would provide an adequate remedy.

69.26(2) Any request for interlocutory review under this rule must be filed within 14 days of issuance of the challenged order, but no later than the date for compliance with the order or the date of hearing, whichever is earlier.

69.26(3) This rule does not apply to the ruling of an administrative law judge after hearing on a motion to quash or modify a subpoena. The procedures for challenging such a ruling are set forth in subrule 69.17(7).

[**ARC 0168C**, IAB 6/13/12, effective 7/18/12]

875—69.27(17A,89A) Decisions.

69.27(1) *Proposed decision.* Decisions issued by a panel of less than a quorum of the board or by an administrative law judge are proposed decisions. A proposed decision issued by a panel of the board

or an administrative law judge becomes a final decision if not timely appealed by any party or reviewed by the board.

69.27(2) *Final decision.* When a quorum of the board presides over the reception of evidence at the hearing, the decision is a final decision. A copy of the final decision and order shall immediately be sent by certified mail to the appellant's last-known post office address or may be served as in the manner of original notices. Copies shall be mailed by interoffice mail or first-class mail to the counsel of record.

69.27(3) *Appeals and review.*

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

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

c. *Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with the board. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

(1) The parties initiating the appeal;

(2) The proposed decision or order appealed from;

(3) The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;

(4) The relief sought;

(5) The grounds for relief.

d. *Requests to present additional evidence.* A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The board may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

e. *Scheduling.* The board shall issue a schedule for consideration of the appeal.

f. *Briefs and arguments.* Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs.

The board may resolve the appeal on the briefs or provide an opportunity for oral argument. The board may shorten or extend the briefing period as appropriate.

g. *Record.* The record on appeal or review shall be the entire record made before the hearing panel or administrative law judge.

875—69.28(17A,89A) Contested cases with no factual disputes. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

875—69.29(17A,89A) Applications for rehearing.

69.29(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

69.29(2) *Content of application.* The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought.

69.29(3) *Time of filing.* The application shall be filed with the board within 20 days after issuance of the final decision.

69.29(4) *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein.

69.29(5) *Disposition.* The board may meet telephonically to consider an application for rehearing. Any application for a rehearing shall be deemed denied unless the board grants the application within 20 days after its filing.

875—69.30(17A,89A) Stays of board actions.

69.30(1) *When available.*

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

b. Any party to a contested case proceeding may petition the board for a stay or other temporary remedies, pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.

69.30(2) *When granted.* In determining whether to grant a stay, the presiding officer or board shall consider the factors listed in Iowa Code section 17A.19(5)*"c."*

69.30(3) *Vacation.* A stay may be vacated by the issuing authority upon application of the board or any other party.

875—69.31(17A,89A) Judicial review. Judicial review of the board's decision may be sought in accordance with the terms of Iowa Code chapter 17A.

69.31(1) Consistent with Iowa Code section 17A.19(3), if a party does not file a timely application for rehearing, a judicial review petition must be filed with the district court within 30 days after the issuance of the board's final decision. The board's final decision is deemed issued on the date it is mailed or the date of delivery if service is by other means, unless another date is specified in the order.

69.31(2) If a party does file a timely application for rehearing, a judicial review petition must be filed with the district court within 30 days after the application for rehearing is denied or deemed denied. An application for rehearing is denied or deemed denied as provided in subrule 69.29(5).

These rules are intended to implement Iowa Code chapters 17A and 89A.

[Filed 6/16/06, Notice 5/10/06—published 7/5/06, effective 8/9/06]
[Filed ARC 8621B (Notice ARC 8322B, IAB 12/2/09), IAB 3/24/10, effective 4/28/10]
[Filed ARC 0168C (Notice ARC 0011C, IAB 2/22/12), IAB 6/13/12, effective 7/18/12]
[Filed ARC 3856C (Notice ARC 3727C, IAB 4/11/18), IAB 6/20/18, effective 8/1/18]
[Filed ARC 5570C (Notice ARC 5436C, IAB 2/10/21), IAB 4/21/21, effective 6/1/21]

CHAPTER 70
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES OF THE ELEVATOR SAFETY BOARD

875—70.1(22,89A) Definitions. As used in this chapter:

"Confidential record" in these rules means a record which is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include records or information contained in records that the board is prohibited by law from making available for examination by members of the public, and records or information contained in records that are specified as confidential by Iowa Code section 22.7, or other provision of law, but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record. Mere inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record.

"Custodian" in these rules means the elevator safety board.

"Personally identifiable information" in these rules means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system.

"Record" in these rules means the whole or a part of a "public record," as defined in Iowa Code section 22.1, that is owned by or in the physical possession of the board.

"Record system" in these rules means any group of records under the control of the board from which a record may be retrieved by a personal identifier such as the name of an individual, number, symbol, or other unique retriever assigned to an individual.

[**ARC 8621B**, IAB 3/24/10, effective 4/28/10]

875—70.2(22,89A) Statement of policy. The purpose of this chapter is to facilitate broad public access to open records and sound board determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. The board is committed to the policies set forth in Iowa Code chapter 22; the board shall cooperate with members of the public in implementing the provisions of that chapter.

[**ARC 8621B**, IAB 3/24/10, effective 4/28/10]

875—70.3(22,89A) Requests for access to records.

70.3(1) *Address.* The board's mailing address is Department of Workforce Development, Division of Labor Services, 150 Des Moines Street, Des Moines, Iowa 50309.

70.3(2) *Office hours.* Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m., Monday through Friday.

70.3(3) *Request for access.* Requests for access to open records may be made in writing, in person, by facsimile, email, or other electronic means, or by telephone. Requests shall identify the particular records sought by name or description in order to facilitate the location of the record. Mail, electronic, or telephone requests shall include the name, address, and telephone number of the person requesting the information to facilitate the board's response. A person shall not be required to give a reason for requesting an open record. While agencies are not required by Iowa Code chapter 22 to respond to requests for public records that are not made in person, the board will respond to such requests as reasonable under the circumstances.

70.3(4) *Response to requests.* Access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access infeasible. If the size or nature of the request for access to an open record requires time for compliance, the custodian shall comply with the request as soon as feasible. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). The custodian shall promptly give notice to the requester of the reason for any delay in access to an open record and an estimate of the length of that delay and, upon request, shall promptly provide that notice to the requester in writing.

The custodian of a record may deny access to the record by members of the public only on the grounds that such a denial is warranted under Iowa Code sections 22.8(4) and 22.10(4), or that it is a confidential record, or that its disclosure is prohibited by a court order. Access by members of the public

to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 875—70.4(22,89A) and other applicable provisions of law.

70.3(5) *Security of record.* No person may, without permission from the custodian, search or remove any record from board files. Examination and copying of board records shall be supervised by the custodian or a designee of the custodian. Records shall be protected from damage and disorganization.

70.3(6) *Copying.* A reasonable number of copies of an open record may be made in the board's office. If photocopy equipment is not available in the board office where an open record is kept, the custodian shall permit its examination in that office and shall arrange to have copies promptly made elsewhere.

70.3(7) *Fees.*

a. When charged. The board may charge fees in connection with the examination or copying of records only if the fees are authorized by law. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

b. Copying and postage costs. Price schedules for published materials and for photocopies of records supplied by the board shall be prominently posted in board offices. Copies of records may be made by or for members of the public on board photocopy machines or from electronic storage systems at cost as determined and posted in board offices by the custodian. When the mailing of copies of records is requested, the actual costs of such mailing may also be charged to the requester.

c. Supervisory fee. An hourly fee may be charged for actual board expenses in supervising the examination and copying of requested records when the supervision time required is in excess of 15 minutes. The custodian shall prominently post in board offices the hourly fees to be charged for supervision of records during examination and copying. The hourly fee shall be based upon the pay scale of the employee involved and other actual costs incurred. To the extent permitted by law, a search fee may be charged at the same rate as and under the same conditions as are applicable to supervisory fees.

d. Advance deposits.

(1) When the estimated total fee chargeable under this subrule exceeds $25, the custodian may require a requester to make an advance payment to cover all or a part of the estimated fee.

(2) When a requester has previously failed to pay a fee chargeable under this subrule, the custodian may require advance payment of the full amount of any estimated fee before the custodian processes a new request from that requester.

[**ARC 8621B**, IAB 3/24/10, effective 4/28/10; **ARC 3856C**, IAB 6/20/18, effective 8/1/18; **ARC 5570C**, IAB 4/21/21, effective 6/1/21]

875—70.4(22,89A) Access to confidential records. Under Iowa Code section 22.7 or other applicable provisions of law, the lawful custodian may disclose certain confidential records to one or more members of the public. Other provisions of law authorize or require the custodian to release specified confidential records under certain circumstances or to particular persons. In requesting the custodian to permit the examination and copying of such a confidential record, the following procedures apply and are in addition to those specified for requests for access to records in rule 875—70.3(22,89A).

70.4(1) *Proof of identity.* A person requesting access to a confidential record may be required to provide proof of identity or authority to secure access to the record.

70.4(2) *Requests.* The custodian may require a request to examine and copy a confidential record to be in writing. A person requesting access to such a record may be required to sign a certified statement or affidavit enumerating the specific reasons justifying access to the confidential record and to provide any proof necessary to establish relevant facts.

70.4(3) *Notice to subject of record and opportunity to obtain injunction.* After the custodian receives a request for access to a confidential record, and before the custodian releases such a record, the custodian may make reasonable efforts to notify promptly any person who is a subject of that record, is identified in that record, and whose address or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian may give the subject of such a confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa

Code section 22.8, and indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

70.4(4) *Request denied.* When the custodian denies a request for access to a confidential record, the custodian shall promptly notify the requester. If the requester indicates to the custodian that a written notification of the denial is desired, the custodian shall promptly provide such a notification that is signed by the custodian and that includes:

a. The name and title or position of the custodian responsible for the denial; and

b. A citation to the provision of law vesting authority in the custodian to deny disclosure of the record and a brief statement of the reasons for the denial to this requester.

70.4(5) *Request granted.* When the custodian grants a request for access to a confidential record to a particular person, the custodian shall notify that person and indicate any lawful restrictions imposed by the custodian on that person's examination and copying of the record.

875—70.5(22,89A) Requests for treatment of a record as a confidential record and its withholding from examination. The custodian may treat a record as a confidential record and withhold it from examination only to the extent that the custodian is authorized by Iowa Code section 22.7, another applicable provision of law, or a court order to refuse to disclose that record to members of the public.

70.5(1) *Persons who may request.* Any person who would be aggrieved or adversely affected by disclosure of a record and who asserts that Iowa Code section 22.7, another applicable provision of law, or a court order authorizes the custodian to treat the record as a confidential record may request the custodian to treat that record as a confidential record and to withhold it from public inspection.

70.5(2) *Request.* A request that a record be treated as a confidential record and be withheld from public inspection shall be in writing and shall be filed with the custodian. The request must set forth the legal and factual basis justifying such confidential record treatment for that record, and the name, address, and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request. A person requesting treatment of a record as a confidential record may also be required to sign a certified statement or affidavit enumerating the specific reasons justifying the treatment of that record as a confidential record and to provide any proof necessary to establish relevant facts. Requests for treatment of a record as a confidential record for a limited time period shall also specify the precise period of time for which that treatment is requested.

A person filing such a request shall, if possible, accompany the request with a copy of the record in question with those portions deleted for which such confidential record treatment has been requested. If the original record is being submitted to the board by the person requesting such confidential treatment at the time the request is filed, the person shall indicate conspicuously on the original record that all or portions of it are confidential.

70.5(3) *Failure to request.* Failure of a person to request confidential record treatment for a record does not preclude the custodian from treating it as a confidential record. However, if a person who has submitted business information to the board does not request that it be withheld from public inspection under Iowa Code sections 22.7(3) and 22.7(6), the custodian of records containing that information may proceed as if that person has no objection to its disclosure to members of the public.

70.5(4) *Timing of decision.* A decision by the custodian with respect to the disclosure of a record to members of the public may be made when a request for its treatment as a confidential record that is not available for public inspection is filed, or when the custodian receives a request for access to the record by a member of the public.

70.5(5) *Request granted or deferred.* If a request for confidential record treatment is granted, or if action on such a request is deferred, a copy of the record from which the matter in question has been deleted and a copy of the decision to grant the request or to defer action upon the request will be made available for public inspection in lieu of the original record. If the custodian subsequently receives a request for access to the original record, the custodian will make reasonable and timely efforts to notify any person who has filed a request for its treatment as a confidential record that is not available for public inspection of the pendency of that subsequent request.

70.5(6) *Request denied and opportunity to seek injunction.* If a request that a record be treated as a confidential record and be withheld from public inspection is denied, the custodian shall notify the requester in writing of that determination and the reasons therefor. On application by the requester, the custodian may engage in a good-faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief under the provisions of Iowa Code section 22.8, or other applicable provision of law. However, such a record shall not be withheld from public inspection for any period of time if the custodian determines that the requester had no reasonable grounds to justify the treatment of that record as a confidential record. The custodian shall notify requester in writing of the time period allowed to seek injunctive relief or the reasons for the determination that no reasonable grounds exist to justify the treatment of that record as a confidential record. The custodian may extend the period of good-faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief only if no request for examination of that record has been received, or if a court directs the custodian to treat it as a confidential record, or to the extent permitted by another applicable provision of law, or with the consent of the person requesting access.
[**ARC 8621B**, IAB 3/24/10, effective 4/28/10]

875—70.6(22,89A) Procedure by which additions, dissents, or objections may be entered into certain records. Except as otherwise provided by law, a person may file a request with the custodian to review, and to have a written statement of additions, dissents, or objections entered into, a record containing personally identifiable information pertaining to that person. However, this does not authorize a person who is a subject of such a record to alter the original copy of that record or to expand the official record of any board proceeding. Requester shall send the request to review such a record or the written statement of additions, dissents, or objections to the board at the Department of Workforce Development, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. The request to review such a record or the written statement of such a record of additions, dissents, or objections must be dated and signed by requester, and shall include the current address and telephone number of the requester or the requester's representative.
[**ARC 8621B**, IAB 3/24/10, effective 4/28/10]

875—70.7(22,89A) Consent to disclosure by the subject of a confidential record. To the extent permitted by any applicable provision of law, a person who is the subject of a confidential record may have a copy of the portion of that record concerning the subject disclosed to a third party. A request for such a disclosure must be in writing and must identify the particular record or records that may be disclosed, and the particular person or class of persons to whom the record may be disclosed and, where applicable, the time period during which the record may be disclosed. The person who is the subject of the record and, where applicable, the person to whom the record is to be disclosed, may be required to provide proof of identity. Additional requirements may be necessary for special classes of records. Appearance of an attorney before the board on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the board to disclose records about that person to the person's attorney.
[**ARC 8621B**, IAB 3/24/10, effective 4/28/10]

875—70.8(22,89A) Disclosures without the consent of the subject.

70.8(1) Open records are routinely disclosed without the consent of the subject.

70.8(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use as defined in rule 875—70.9(17A,89A) or in the notice for a particular record system.

b. To a recipient who has provided the board with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such government agency or instrumentality has submitted a written request to the board specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.

e. To the legislative services agency.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

[**ARC 8621B**, IAB 3/24/10, effective 4/28/10]

875—70.9(17A,89A) Routine use. "Routine use" means the disclosure of a record without the consent of the subject or subjects for a purpose which is compatible with the purpose for which the record was collected. "Routine use" includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22. To the extent allowed by law, the following uses are considered routine uses of all board records:

70.9(1) Disclosure to those officers, employees, and agents of the board who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer or employee, or on the custodian's own initiative, determine what constitutes a legitimate need to use confidential records.

70.9(2) Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

70.9(3) Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the board.

70.9(4) Transfers of information within the board, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

70.9(5) Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the board is operating a program lawfully.

70.9(6) Any disclosure specifically authorized by the statute under which the record was collected or maintained.

70.9(7) Disclosure to the public and news media of pleadings, motions, orders, final decisions, and informal settlement filed in appeal proceedings.

70.9(8) Transmittal to the district court of the record in judicial review proceedings pursuant to Iowa Code section 17A.19.

[**ARC 8621B**, IAB 3/24/10, effective 4/28/10]

875—70.10(22,89A) Consensual disclosure of confidential records.

70.10(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to board disclosure of confidential records as provided in rule 875—70.7(22,89A).

70.10(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the board may, to the extent permitted by law, be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

875—70.11(22,89A) Release to subject.

70.11(1) The subject of a confidential record may file a written request to review confidential records about that person. However, the board need not release the following records to the subject:

a. The identity of a person providing information to the board need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

b. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

c. Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code. (Iowa Code section 22.7(5))

d. Other records may be withheld from the subject as authorized by law.

70.11(2) When a record has multiple subjects with interest in the confidentiality of the record, the board may take reasonable steps to protect confidential information relating to another subject.
[**ARC 8621B**, IAB 3/24/10, effective 4/28/10]

875—70.12(21,22,89A) Availability of records.

70.12(1) *General.* Board records are open for public inspection and copying unless otherwise provided by rule or law.

70.12(2) *Confidential records.* The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Personal information in confidential personnel records of board members and licensees. (Iowa Code section 22.7(11))

b. Minutes and tapes of closed meetings of the board. (Iowa Code section 21.5(4))

c. Information or records received from a restricted source and any other information or records made confidential by law.

d. Records which constitute attorney work products or attorney-client communications or which are otherwise privileged pursuant to Iowa Code section 22.7, 622.10 or 622.11, state and federal rules of evidence or procedure, the Code of Professional Responsibility, and case law.

e. Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1)*"e."*

70.12(3) *Authority to release confidential records.* The board may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 875—70.4(22,89). If the board initially determines that it will release such records, the board may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 70.4(3).
[**ARC 8621B**, IAB 3/24/10, effective 4/28/10]

875—70.13(22,89A) Applicability. This chapter does not:

70.13(1) Require the board to index or retrieve records that contain information about individuals by a person's name or other personal identifier.

70.13(2) Make available to the general public records that would otherwise not be available under the public records law, Iowa Code chapter 22.

70.13(3) Govern the maintenance or disclosure of, notification of, or access to records in the possession of the board that are governed by the regulations of another agency.

70.13(4) Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.

70.13(5) Make available records compiled by the board in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable rules of the board.
[**ARC 8621B**, IAB 3/24/10, effective 4/28/10]

875—70.14(17A,22,89A) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the board by personal identifier in record systems. For each record system, this rule describes the legal authority for the collection of that information. The record systems maintained by the board are:

70.14(1) *Personnel records.* These records contain personal information about board members which may be confidential pursuant to Iowa Code section 22.7(11). The records may include but are not limited to biographical information, medical information relating to disability, and information required for expense reimbursement.

70.14(2) *Contested case records.* Contested case records are maintained and contain names of the people involved. Evidence and documents submitted as a result of a hearing are contained in the contested case records. These records are collected pursuant to Iowa Code section 89A.11.

[**ARC 8621B**, IAB 3/24/10, effective 4/28/10]

875—70.15(17A,21,22,89A) Other groups of records. This rule describes groups of records maintained by the board other than record systems. These records are routinely available to the public. However, the board's files of these records may contain confidential information. These records may contain information about individuals. These records include:

70.15(1) *Rule-making records.* Rule-making records may contain information about individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. These records are stored on paper and electronically.

70.15(2) *Board records.* Agendas, minutes, and materials presented to the board members in preparation for board meetings are available from the board office, except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5(4). Board records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. This information is stored on paper and electronically.

70.15(3) *Board decisions, findings of fact, final orders, and other statements of law, policy, or declaratory orders issued by the board in the performance of its functions.* These records are open to the public except for information that is confidential according to rule 875—70.12(21,22,89A). This information is stored on paper and electronically.

70.15(4) *Waivers.* Requests for waivers, board proceedings and rulings on requests are stored on paper and electronically.

70.15(5) *Publications.* News releases, project reports, newsletters, and other publications are available from the board office. These records may contain information about individuals. This information is stored on paper and electronically, and some publications may be found on the board's website.

70.15(6) *Other records.* Other records that are not exempted from disclosure by law may be stored on paper or electronically.

[**ARC 8621B**, IAB 3/24/10, effective 4/28/10; **ARC 5570C**, IAB 4/21/21, effective 6/1/21]

875—70.16(22,89A) Data processing system. Board records are not stored in a data processing system which matches, collates, or permits comparison of personally identifiable information in one record system with personally identifiable information in another record system.

875—70.17(22,89A) Notice to suppliers of information. Persons that are requested by the board to provide information to the board are notified pursuant to this rule of uses the board will make of the information.

70.17(1) The board may request names and affiliations from members of the public that attend board meetings. Except for closed sessions, the records of board meetings are public records and information supplied will be subject to records requests pursuant to this chapter and Iowa Code chapter 22. Provision of this information is voluntary, and there will be no consequences for failure to provide requested information unless the person is also covered by subrule 70.17(2).

70.17(2) The board will request name, contact information, and affiliation from persons requesting board action. This information will be used as needed to process the request for board action. Requests for board action are public records, and information supplied will be subject to open records requests pursuant to this chapter and Iowa Code chapter 22. Insufficient contact information provided with the request for board action could result in a denial of the request for board action.

These rules are intended to implement Iowa Code chapters 17A, 21, 22 and 89A.

[Filed 6/16/06, Notice 5/10/06—published 7/5/06, effective 8/9/06]
[Filed ARC 8621B (Notice ARC 8322B, IAB 12/2/09), IAB 3/24/10, effective 4/28/10]
[Filed ARC 3856C (Notice ARC 3727C, IAB 4/11/18), IAB 6/20/18, effective 8/1/18]
[Filed ARC 5570C (Notice ARC 5436C, IAB 2/10/21), IAB 4/21/21, effective 6/1/21]

CHAPTER 71
ADMINISTRATION OF THE CONVEYANCE SAFETY PROGRAM

875—71.1(89A) Definitions. The definitions contained in this rule shall apply to 875—Chapters 71, 72, and 73.

"Acceptance checklist" means a checklist available on the website of the division of labor services that includes a list of major systems and components of conveyances.

"AECO" means an elevator/escalator certification organization accredited pursuant to ASME A17.7.

"Approved" means approved by the division.

"CCD" means code compliance documentation as described in ASME A17.7, Section 2.10.

"CEI" means a person who is a certified elevator inspector or certified elevator inspector supervisor and who received the certification from a certifying organization that holds a valid document of accreditation issued by an accreditation body in accordance with ANSI/ISO/IEC 17024.

"Center of the elevator path" means a vertical line through the center point of an elevator car top beginning 2 feet below the lower landing and ending 10 feet above the highest landing of an elevator.

"Control" means the system governing the starting, stopping, direction of motion, acceleration, speed and deceleration of the moving member.

"Conveyance" means any elevator, escalator, material lift elevator installed on or after August 10, 2016, dumbwaiter, wind tower lift, CPH, or other equipment governed by Iowa Code chapter 89A.

"CPH" means a construction personnel hoist.

"CPH jump" means the addition or removal of mast or tower allowing a change in the hoist service elevation of a CPH.

"Division" means the labor services division of the workforce development department.

"Elevator" means a hoisting and lowering mechanism equipped with a car or platform which moves in guides in a substantially vertical direction and which serves two or more floors of a building or structure. "Elevator" does not include a CPH.

"Elevator mechanic" means a person who meets the standard for "elevator personnel" found in ASME A17.1.

"Hoistway-unit system" means a series of hoistway-door interlocks, hoistway-door electric contacts or hoistway-door combination mechanical locks and electric contacts, or a combination thereof, the function of which is to prevent operation of the driving machine by the normal operating device unless all hoistway doors are in the closed position and, if required, locked.

"Imminent danger" means one or more conditions or practices exist which are reasonably expected to cause death or serious physical harm immediately or before the danger can be eliminated through the procedures described in subrules 71.11(6) and 71.11(7).

"Seal off" means to place a conveyance controller in the off position and attach a wire seal with a tag warning that the conveyance must be rendered dormant or shall not be used pending repairs.

"Serious danger" means one or more conditions or practices exist which create a substantial probability that death or serious physical harm could result.

"Waiver" means a waiver pursuant to Iowa Code section 17A.9A or an exception or variance pursuant to Iowa Code section 89A.11.

"Wind tower lift" means a conveyance designed and utilized solely for movement of trained and authorized people and small loads in wind towers built for the production of electricity.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09; **ARC 9221B**, IAB 11/17/10, effective 12/22/10; **ARC 0168C**, IAB 6/13/12, effective 7/18/12; **ARC 0685C**, IAB 4/17/13, effective 5/22/13; **ARC 1159C**, IAB 10/30/13, effective 12/4/13; **ARC 2603C**, IAB 7/6/16, effective 8/10/16; **ARC 4212C**, IAB 1/2/19, effective 3/1/19; **ARC 5570C**, IAB 4/21/21, effective 6/1/21]

875—71.2(89A) Registration of conveyances. The owner or authorized agent of each operable conveyance not previously registered shall register the conveyance. An application to install a new conveyance shall constitute registration. All registrations shall be submitted to the commissioner on forms available from the division of labor services and shall include all information requested by the labor commissioner.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—71.3(89A) State identification number. The commissioner shall assign an identification number to each conveyance that shall be stamped on a metal tag permanently attached to the controller, to the electrical disconnecting switch, or in a wind tower lift cage.
[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—71.4(89A) Responsibility for obtaining permits. The procuring of all permits and the payment of all fees required by this chapter shall be the responsibility of the owner. Failure to obtain the appropriate permit prior to installation, alteration or operation may, at the discretion of the labor commissioner, result in a referral to the attorney general for prosecution of criminal penalties as described in Iowa Code section 89A.17.
[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—71.5(89A) Installation permits.

71.5(1) Installation shall not begin until an installation permit has been issued by the division. A separate installation permit shall be issued for each conveyance, except that a single installation permit shall cover all identical wind tower lifts installed as the result of one construction contract in identical wind towers in a single wind farm.

71.5(2) Application for an installation permit shall be accompanied by the fee specified in rule 875—71.16(89A), shall be in the format required by the labor commissioner, and shall include the following, as applicable:

a. Sectional plan of car and hoistway.

b. Sectional plan of machine room.

c. Sectional elevation of hoistway and machine room including the pit, bottom and top clearance of car and counterweights.

d. Size and weight of rails and guide rail bracket spacing.

e. The estimated maximum vertical forces on the guide rails on application of the safety device.

f. In the case of freight elevators for class B or class C loading, the horizontal forces on the guide rail faces during loading and unloading and the estimated maximum horizontal forces in a post-wise direction on the guide rail faces on the application of the safety device.

g. The size and weight per foot of any rail reinforcements where rail reinforcements are provided.

h. Job specifications.

i. For a conveyance covered by ASME A17.7, a complete copy of the CCD with attachments and a complete copy of the Certificate of Conformance with attachments as described by ASME A17.7, Appendix I, Section 4.5.

j. For a CPH, the number of CPH jumps planned, the planned dates for each CPH jump, and the change in the number of floors anticipated with each CPH jump.

71.5(3) A CPH installation permit issued in response to an application submitted in full compliance with this subrule permits each planned CPH jump. Each CPH jump shall be considered an alteration. The fee submitted for a CPH installation permit shall be the total of the CPH installation permit fee as set forth in subrule 71.16(3) and the CPH alteration permit fee as set forth in subrule 71.16(4).

71.5(4) Issuance of an installation permit shall not be construed as a waiver of any requirement of law.

71.5(5) The installation permit or a copy of the installation permit shall be conspicuously posted at the worksite. All the wind towers covered by a single installation permit shall be considered a single worksite, and posting one copy of the installation permit at the construction project office shall be sufficient compliance with this subrule.

71.5(6) Except as described in paragraphs 71.5(6)*"a"* and *"b,"* the installation permit shall expire upon the earlier of the completion of the installation as described in the permit application or one year after issuance.

a. For a CPH, the installation permit shall expire upon completion of the last CPH jump.

b. For any conveyance, during the tenth month after issuance, and upon submission to the labor commissioner of sufficient justification, the fee established by this chapter, and other required information, an extension may be granted at the discretion of the labor commissioner.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09; **ARC 9221B**, IAB 11/17/10, effective 12/22/10; **ARC 5570C**, IAB 4/21/21, effective 6/1/21]

875—71.6(89A) Construction permits. A construction permit authorizes the temporary, limited use of an elevator for purposes relating to construction or demolition.

71.6(1) Use of the elevator shall not begin until a construction permit has been issued by the division.

71.6(2) Application for a construction permit shall be in the format required by the labor commissioner and must include all the information requested by the labor commissioner and the fee specified by this chapter.

71.6(3) Upon submission of the completed application and fee, a state inspector shall be scheduled to inspect the elevator. Construction permits shall be issued only if the following criteria are met:

a. The elevator has been successfully tested pursuant to the requirements of ASME A17.1, Section 8.11.5.13; and

b. The applicable requirements of ASME A17.1, Section 5.10, are met.

71.6(4) The construction permit or a copy of the construction permit shall be posted conspicuously in a protective sleeve in the elevator car.

71.6(5) The construction permit shall expire 120 days after issuance. However, between 90 and 110 days after issuance and upon submission to the labor commissioner of sufficient justification, the fee established by this chapter, and other required information, an extension of up to 90 days may be granted at the discretion of the labor commissioner.

71.6(6) Elevators with a construction permit but without an operating permit shall not be accessible to the general public.

71.6(7) Failure to comply with these provisions may result in the revocation of the construction permit.

71.6(8) An operating permit shall not be issued before construction and an acceptance inspection are complete.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—71.7(89A) Operating permits.

71.7(1) Operation of equipment covered by this chapter without a current operating permit is prohibited, except as authorized by rules 875—71.6(89A), 875—71.8(89A), and 875—71.20(89A). If operation of a conveyance is prohibited under this rule, the labor commissioner may post notice on the conveyance that it is not to be used. The conveyance may be returned to service only after an operating permit for the conveyance has been issued or reissued.

71.7(2) Operating permits shall not be issued prior to successful completion of an inspection pursuant to rule 875—71.11(89A) and payment of all permit and inspection fees owed to the division.

71.7(3) Current operating permits or copies of current operating permits shall be conspicuously displayed as follows:

a. The operating permit for an elevator or CPH shall be posted in the car.

b. The operating permit for an escalator, dumbwaiter, wind tower lift, moving walk, or wheelchair lift shall be posted on or near the subject conveyance.

71.7(4) An operating permit shall expire 60 days after the first permit renewal inspection following the issuance of the operating permit, unless an earlier date is dictated by this rule.

71.7(5) An operating permit is automatically suspended when an alteration begins. The operating permit automatically resumes when the elevator passes an inspection pursuant to rule 875—71.11(89A).

71.7(6) An operating permit is automatically terminated when an imminent danger notice is posted on the conveyance.

71.7(7) Notwithstanding other provisions of this rule, at the discretion of the labor commissioner, a temporary operating permit may be issued for up to 30 days provided the inspection has been completed

and no code violations were identified. Issuance of a temporary operating permit does not extend the expiration date of the conveyance's operating permit.
[**ARC 7840B**, IAB 6/17/09, effective 7/22/09; **ARC 0318C**, IAB 9/5/12, effective 10/10/12; **ARC 0574C**, IAB 2/6/13, effective 3/13/13; **ARC 0685C**, IAB 4/17/13, effective 5/22/13]

875—71.8(89A) Controller upgrade permits. A controller upgrade permit may be issued to allow operation of an elevator while work to upgrade controls requires deactivation of the Phase I recall initiated by smoke sensing devices. Each elevator to be altered requires a separate controller upgrade permit. The duration of a controller upgrade permit shall not exceed 90 days. Each elevator in the group shall pass inspection pursuant to rule 875—71.11(89A) prior to being placed back into service.

71.8(1) A controller upgrade permit shall not be issued unless each of the following conditions is met:

a. Two or more elevators share a lobby at the level of the recall floor.

b. The project includes the installation of new elevator controllers in all of the elevators in the group.

c. Phase I fire recall initiated by a key-operated switch and all other controls shall be properly functioning for each elevator available for use.

d. There is a current alteration permit for the project.

e. A complete application for the controller upgrade permit and the fee established by this chapter have been submitted and accepted.

71.8(2) A controller upgrade permit shall not be construed to waive or excuse compliance with the requirements of any other governmental entity, including the department of public safety.

71.8(3) Upon the submission to the labor commissioner of sufficient justification, the fee established by this chapter, and other required information, an extension of the permit for up to 60 days may be granted.
[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—71.9(89A) Alteration permits.

71.9(1) Alteration shall not begin until an alteration permit has been issued by the division.

71.9(2) Application for an alteration permit shall be in the format required by the labor commissioner and shall include scope of work, drawings and specifications of all planned changes and the fee specified by rule 875—71.16(89A).

71.9(3) Issuance of an alteration permit shall not be construed as a waiver of any requirement of law.

71.9(4) The alteration permit or a copy of the alteration permit shall be conspicuously posted at the worksite.

71.9(5) If a complete installation permit application was submitted for a CPH pursuant to subrule 71.5(3), at least seven days' advance notice of each CPH jump shall be provided to the labor commissioner.

71.9(6) The alteration permit shall expire upon the earlier of the completion of the alteration as described in the permit application or one year after issuance. However, during the tenth month after issuance and upon submission to the labor commissioner of the fee set forth in this chapter, sufficient justification, and other required information, the labor commissioner may grant an extension of the alteration permit.
[**ARC 7840B**, IAB 6/17/09, effective 7/22/09; **ARC 9221B**, IAB 11/17/10, effective 12/22/10; **ARC 0685C**, IAB 4/17/13, effective 5/22/13; **ARC 2333C**, IAB 1/6/16, effective 2/10/16; **ARC 5570C**, IAB 4/21/21, effective 6/1/21]

875—71.10(89A) Alterations.

71.10(1) Alterations or changes shall comply with rule 875—72.13(89A) or rule 875—73.8(89A), as applicable.

71.10(2) A conveyance that is relocated shall be brought into compliance with all codes that are applicable at the time of relocation.

71.10(3) Alterations of conveyances other than escalators and elevators shall require that the entire conveyance be brought into compliance with the current code.

71.10(4) Work required by ASME A17.3 (2011) qualifies as normal maintenance and does not require an alteration permit except for work performed to comply with ASME A17.3 (2011) 2.3.3, 3.4.4.1(a), 3.4.4.2, 3.5.3, 3.5.5(a) and (b), 3.5.7, 3.6.1, 3.6.2, 3.8.1(a), 3.8.3(a), 3.10.1, 3.10.4(b) through (g), 3.10.4(i) through (k), 3.10.4(m), 3.10.4(r), 3.10.4(w), 3.10.7, 3.10.9, 3.10.10, 4.4.2, 4.4.3, and 4.7.3.
[**ARC 7840B**, IAB 6/17/09, effective 7/22/09; **ARC 0168C**, IAB 6/13/12, effective 7/18/12; **ARC 0685C**, IAB 4/17/13, effective 5/22/13; **ARC 2396C**, IAB 2/17/16, effective 3/23/16; **ARC 4376C**, IAB 3/27/19, effective 5/1/19]

875—71.11(89A) Inspections. Pursuant to Iowa Code section 89A.12, inspections by the labor commissioner's designee shall be permitted at reasonable times with or without prior notice.

71.11(1) *Scope of inspections.*

a. *Comprehensive.* Periodic inspections shall be comprehensive. Elevators being transferred from construction permits to operating permits, previously dormant conveyances being returned to service, relocated conveyances, and new conveyances shall be inspected in their entirety prior to operation.

b. *Limited.* The scope of an inspection after an alteration shall be determined by rule 875—72.13(89A) or 875—73.8(89A), as applicable. However, if the inspector notices a safety hazard in plain view outside the altered components, or if the periodic inspection is due, the entire conveyance shall be inspected.

71.11(2) *When inspections will occur.* When the timing of two different types of inspection on a single conveyance coincide, a state inspector may perform both inspections in one visit.

a. *Periodic inspections.*

(1) Each construction elevator and CPH shall be inspected at intervals not to exceed three months. All other periodic conveyance inspections by state inspectors shall be conducted annually unless the labor commissioner determines resources do not allow annual inspections. If the labor commissioner determines quarterly inspections of construction elevators and CPHs and annual inspections of other state-inspected conveyances are not feasible due to insufficient resources, the labor commissioner shall determine the inspection schedule.

(2) Conveyance inspections by special inspectors shall be conducted at least annually.

(3) The inspector shall arrange to perform the periodic inspection of a broadcast tower elevator when the maintenance company is on site to perform the periodic tests. If the inspection is to be performed by employees of the commissioner, the inspection shall occur during the division's normal business hours, unless otherwise agreed to by the commissioner pursuant to subrule 71.16(11).

b. *Acceptance inspections.* A CPH shall be inspected pursuant to the schedule in ANSI A10.4 – 2007, Chapter 26. For all other conveyances, an acceptance inspection shall occur:

(1) After each relocation,

(2) After each alteration,

(3) For a new installation, not less than two business days after a completed acceptance checklist is submitted by the conveyance installation company,

(4) Before an elevator subject to a construction permit receives an operating permit, and

(5) Before a previously dormant conveyance is returned to service.

c. *Other inspections.* Inspections may be made when the commissioner reasonably believes that a conveyance is not in compliance with the rules. Accidents, complaints, or requests for consultative inspections may result in inspections by the labor commissioner's designee.

71.11(3) *Who may perform inspections.*

a. The labor commissioner's designee shall inspect altered conveyances, construction elevators, CPHs, previously dormant conveyances being returned to service, relocated conveyances, and new conveyances.

b. Except as noted in 71.11(3)*"c,"* annual inspections may be performed by state inspectors or special inspectors authorized by the labor commissioner pursuant to rule 875—71.12(89A).

c. An inspection report by a special inspector shall not be accepted as the required, annual inspection if the conveyance is under contract for maintenance, installation or alteration by the special

inspector or the special inspector's employer, or if the property is owned or leased by the special inspector or the special inspector's employer.

71.11(4) *Inspection standards.* Inspections shall be performed in accordance with applicable safety codes or documents such as:

a. CCD;

b. ASME A17.1, Sections 8.10 and 8.11, except Section 8.11.1.1;

c. ANSI A10.4-2007; or

d. ASME A18.1.

71.11(5) *Inspection reports.*

a. All inspectors shall file inspection reports on forms approved by the commissioner within 30 days from the date of inspection and shall provide owners of conveyances with copies of completed inspection reports. The inspection report must separately list each unsafe condition and the applicable, specific code citation. Up to 30 days shall be allowed for correction of the unsafe conditions.

b. The owner may file a petition for reconsideration of an inspection report pursuant to 875—Chapter 69. The timely and proper filing of a petition for reconsideration extends the deadline for correction of the hazards that are subject to the petition for reconsideration.

71.11(6) *Extension of time.* The owner may petition the commissioner for up to 60 additional days to make the necessary corrections. The time frames set forth in subrule 71.11(7) may be adjusted by the labor commissioner as necessary to accommodate an extension of time.

71.11(7) *Correction of unsafe conditions.* In the absence of a determination on reconsideration or appeal that correction of hazards is not required, all unsafe conditions identified in the inspection report shall be corrected. The labor commissioner shall verify correction of all unsafe conditions identified in the inspection report by sending a state inspector to reinspect the conveyance for the fee set forth in rule 875—71.16(89A), or by reviewing appropriate documentation such as a photograph, invoice, other verifiable document, or subsequent inspection report. The time frames set forth in this subrule may be accelerated at the request of the owner.

a. Promptly upon receipt of an inspection report listing unsafe conditions, the labor commissioner will send to the owner and the special inspector, if any, an abatement order. A copy of the inspection report shall be attached to the abatement order. Unless a special inspector conducted the inspection, the order may specify a period that ends no more than 45 days after the inspection during which the owner may submit written evidence that the unsafe conditions have been corrected. The abatement order shall:

(1) Identify the equipment.

(2) Demand that the unsafe conditions be corrected within the period set forth in the inspection report.

(3) Set forth the consequences of failure to comply.

b. After the period specified on the inspection report has passed, the labor commissioner may cause a state inspector to verify correction of all unsafe conditions. If reinspection reveals no significant progress toward correcting the unsafe conditions, or the remaining unsafe conditions create significant safety concerns, the labor commissioner may serve a notice of intent to suspend, deny or revoke the operating permit.

If there is a serious danger, the labor commissioner may seal off the conveyance and shall post notice on the conveyance that it is not to be used pending repairs. Use of a conveyance prior to completion of the required repairs may result in additional legal proceedings. The conveyance may be returned to service only after the serious danger has been corrected and the conveyance has passed a comprehensive inspection.

c. The labor commissioner may issue an operating permit after receipt of the appropriate fee and verification that each unsafe condition identified in the inspection report has been corrected.

d. If written proof of correction was requested in the abatement order, but adequate proof was not received by the deadline set forth in the abatement order, the labor commissioner may send a second abatement order or cause a state inspector to inspect the conveyance. If the labor commissioner elects to send a second abatement order, it shall notify the owner that, if written proof of abatement is not received

within 20 days, a state inspector may be sent to the site. Copies of the abatement order and the inspection report shall be attached to the second abatement order.

e. If a special inspector conducted the inspection, more than 45 days have passed since the deadline for correction of hazards, and an inspection report indicating the hazards are corrected has not been filed, the labor commissioner may:

(1) Contact the special inspector,

(2) Send a second abatement order to the owner with copies of the inspection report and first abatement order, or

(3) Send a state inspector to inspect the conveyance. If there is a serious danger, the labor commissioner may seal off the conveyance and shall post notice on the conveyance that it is not to be used pending repairs. Use of a conveyance prior to completion of the required repairs may result in additional legal proceedings. The conveyance may be returned to service only after the serious danger has been corrected and the conveyance has passed a comprehensive inspection.

f. If an inspection as described in paragraph 71.11(7)*"d"* or *"e"* reveals no significant progress toward correcting the unsafe conditions, and the remaining unsafe conditions create no significant safety concerns, the labor commissioner may extend the time for abatement of the unsafe conditions an additional 10 days or may serve a notice of intent to suspend, deny or revoke the operating permit. The labor commissioner may also post a notice prohibiting use of the conveyance pending abatement of the unsafe conditions listed in the inspection report.

g. Procedures for appeal of a notice of intent to suspend, deny or revoke an operating permit are set forth in 875—Chapter 69.

h. If notice pursuant to paragraph 71.11(7)*"a"* was provided and a conveyance is not in use and the owner does not intend to use the conveyance, repair the conveyance, or make the conveyance dormant, the commissioner may seal off the conveyance.

71.11(8) *Imminent danger.* If the labor commissioner determines that continued operation of a conveyance pending correction of unsafe conditions creates an imminent danger, the labor commissioner may seal off the conveyance and shall post notice on the conveyance that it is not to be used pending repairs. Use of a conveyance contrary to posted notice by the labor commissioner may result in additional legal proceedings pursuant to Iowa Code section 89A.10(3) or 89A.18. The conveyance may be returned to service only after the imminent danger has been corrected and the conveyance has passed a comprehensive inspection.

71.11(9) *Interference prohibited.* No person shall interfere with, delay or impede an inspector employed by the state during an inspection.

71.11(10) *Escalator inspections.* The owner shall arrange for an escalator mechanic to be on site to assist with the inspection. The inspector shall work with the owner to arrange an inspection time.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09; **ARC 9221B**, IAB 11/17/10, effective 12/22/10; **ARC 0168C**, IAB 6/13/12, effective 7/18/12; **ARC 0685C**, IAB 4/17/13, effective 5/22/13; **ARC 1971C**, IAB 4/29/15, effective 6/3/15; **ARC 2607C**, IAB 7/6/16, effective 8/10/16; **ARC 3742C**, IAB 4/11/18, effective 5/16/18; **ARC 3856C**, IAB 6/20/18, effective 8/1/18; **ARC 5570C**, IAB 4/21/21, effective 6/1/21]

875—71.12(89A,252J,272D) Special inspector commissions.

71.12(1) *Definition.* As used in this rule, "certificate of noncompliance" means:

a. A certificate of noncompliance issued by the child support recovery unit, department of human services, pursuant to Iowa Code chapter 252J; or

b. A certificate of noncompliance issued by the centralized collection unit of the department of revenue pursuant to Iowa Code chapter 272D.

71.12(2) *Qualifications.*

a. Each applicant must possess a high school diploma or general equivalency degree.

b. Each applicant shall have at least three years of full-time work experience in the construction, installation, repair or inspection of conveyances.

c. Each applicant shall be a CEI.

d. Each applicant shall satisfactorily pass a division of labor services examination on Iowa procedures, Iowa policies, and all safety standards adopted by reference.

e. Each applicant shall submit proof of insurance coverage insuring the applicant against liability for injury or death for any act or omission on the part of the applicant. The insurance policy shall be in an amount of not less than $1,000,000 for bodily injury to or death of one person in any one accident, and in an amount of not less than $5,000,000 for bodily injury to or death of two or more persons in any one accident, and in an amount of not less than $100,000 for damage to or destruction of property in any one accident. The insurance coverage of the special inspector's employer shall be considered to comply with this requirement if the coverage provides equivalent coverage for each special inspector.

71.12(3) *Application.* An applicant for a commission shall complete, sign, and submit to the division the form provided by the division with the required fee. The applicant shall include with the application proof that the applicant is a CEI.

71.12(4) *Expiration.* The commission expires when the commission is suspended or revoked by the labor commissioner or one year from issuance, whichever occurs earlier.

71.12(5) *Changes.* The special inspector shall notify the division at the time any of the information on the form or attachments changes.

71.12(6) *Denials.* The labor commissioner may refuse to issue or renew a special inspector's commission for failure of the applicant to complete an application package, if the applicant is not a CEI, or for any reason listed in subrules 71.12(8) to 71.12(10).

71.12(7) *Investigations.* The labor commissioner may investigate for any reasonable cause related to special inspectors or special inspector applicants. The labor commissioner may conduct interviews and utilize other reasonable investigatory techniques. Investigations may be conducted without prior notice at the times and in the places the labor commissioner directs. The labor commissioner may notify the organization that certified the special inspector as a CEI of the findings of an investigation.

71.12(8) *Reasons for probation.* The labor commissioner may issue a notice of commission probation when an investigation reasonably reveals that the special inspector filed inaccurate reports.

71.12(9) *Reasons for suspension.* The labor commissioner may issue a notice of commission suspension when an investigation reasonably reveals any of the following:

a. The special inspector failed to submit and report inspections on a timely basis;

b. The special inspector abused the special inspector's authority;

c. The special inspector misrepresented self as a state inspector or a state employee;

d. The special inspector used commission authority for inappropriate personal gain;

e. The special inspector failed to follow the division's rules for inspection of object repairs, alterations, construction, installation, or in-service inspection;

f. The special inspector committed numerous violations as described in subrule 71.12(8);

g. The special inspector used fraud or deception to obtain or retain, or to attempt to obtain or retain, a special inspector commission whether for one's self or another;

h. The special inspector is no longer a CEI;

i. The division received a certificate of noncompliance; or

j. The special inspector failed to take appropriate disciplinary actions against a subordinate special inspector who has committed repeated acts or omissions listed in paragraphs 71.12(9)*"a"* to *"h."*

71.12(10) *Reasons for revocation.* The labor commissioner may issue a notice of revocation of a special inspector's commission when an investigation reveals any of the following:

a. The special inspector filed a misleading, false or fraudulent report;

b. The special inspector failed to perform a required inspection;

c. The special inspector failed to file a report or filed a report which was not in accordance with the provisions of applicable standards;

d. The special inspector committed repeated violations as described in subrule 71.12(9);

e. The special inspector used fraud or deception to obtain or retain, or to attempt to obtain or retain, a special inspector commission whether for one's self or another;

f. The special inspector instructed, ordered, or otherwise encouraged a subordinate special inspector to perform the acts or omissions listed in paragraphs 71.12(10)*"a"* to *"e"*;

g. The special inspector is no longer a CEI; or

h. The division received a certificate of noncompliance.

71.12(11) *Procedures.* The following procedures shall apply except in the event of revocation or suspension due to receipt of a certificate of noncompliance. In instances involving receipt of a certificate of noncompliance, the applicable procedures of Iowa Code chapter 252J or 272D shall apply.

a. *Notice of actions.* The labor commissioner shall serve a notice on the special inspector by certified mail to an address listed on the commission application form or by other service as permitted by Iowa Code chapter 17A.

b. *Contested cases.* The special inspector shall have 20 days to file a written notice of contest with the labor commissioner. If the special inspector does not file a written contest within 20 days of receipt of the notice, the action stated in the notice shall automatically be effective.

c. *Hearing procedures.* The hearing procedures in 875—Chapter 1 shall govern.

d. *Emergency suspension.* Pursuant to Iowa Code section 17A.18A, if the labor commissioner finds that the public health, safety or welfare imperatively requires emergency action because a special inspector failed to comply with applicable laws or rules, the special inspector's commission may be summarily suspended.

e. *Probation period.* A special inspector may be placed on probation for a period not to exceed one year for each incident causing probation.

f. *Suspension period.* A special inspector's commission may be suspended up to five years for each incident causing a suspension.

g. *Revocation period.* A special inspector's commission that has been revoked shall not be reinstated for five years.

h. *Concurrent actions.* Multiple actions may proceed at the same time against any special inspector.

i. *Revoked or suspended commissions.* Within five business days of final agency action revoking or suspending a special inspector commission, the special inspector shall surrender the special inspector's commission card to the labor commissioner. The labor commissioner may notify the special inspector's employer and the organization that certified the special inspector as a CEI of a revocation or suspension.
[**ARC 7841B**, IAB 6/17/09, effective 7/22/09; **ARC 5159C**, IAB 8/26/20, effective 9/30/20]

875—71.13(89A) State employees. Rescinded **ARC 1971C**, IAB 4/29/15, effective 6/3/15.

875—71.14(89A) Safety tests. Only safety test reports submitted on approved forms from elevator mechanics who are employed by authorized companies shall be considered to meet the requirements of this rule. The alternative test methods set forth at ASME A17.1, Rule 8.6.11.10, shall not be allowed as a substitute for a full-load safety test.

71.14(1) *When safety tests will be performed.*

a. Safety tests shall be performed on new and altered installations before they are placed in service.

b. Category 1 safety tests of wind turbine tower elevators shall be conducted after two years of operation, and category 5 safety tests of wind turbine tower elevators shall be performed after ten years of operation. Safety tests shall be made on all other conveyances pursuant to the schedules and procedures set forth in:

(1) The maintenance control plan for wind tower lifts exempted from ASME A17.1 by rule 875—72.12(89A);

(2) The CCD for conveyances covered by ASME A17.7-2007/CSA B44-07;

(3) The columns pertaining to "periodic tests" in Table N-1 in the edition of ASME A17.1 currently adopted for new conveyances at rule 875—72.1(89A);

(4) ASME A18.1(2003), Part 10; or

(5) ANSI A10.4-2007, Section 26.4.

71.14(2) *How safety tests will be reported.* Within 30 days after completion of a safety test, the elevator mechanic shall file with the labor commissioner a report on an approved form and shall provide a copy of the form to the owner and to the witness, if applicable.

71.14(3) *How safety tests will be recorded.* The elevator mechanic shall attach a tag showing the date of the test, the elevator mechanic's name, and the type of test performed.

a. On electric traction elevators, the elevator mechanic shall attach the tag to the safety-releasing carrier.

b. On hydraulic elevators, the elevator mechanic shall attach the tag to the disconnecting switch or the controller.

c. On wheelchair lifts, the elevator mechanic shall attach the tag to the disconnecting switch.

d. On other conveyances covered by these rules, the commissioner's designee witnessing the acceptance safety test shall indicate the proper location of the tag. Subsequent test tags shall be attached in the same location.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09; **ARC 9221B**, IAB 11/17/10, effective 12/22/10; **ARC 0168C**, IAB 6/13/12, effective 7/18/12; **ARC 1766C**, IAB 12/10/14, effective 1/14/15; **ARC 3742C**, IAB 4/11/18, effective 5/16/18]

875—71.15(89A) Authorized companies.

71.15(1) Each year, authorized companies shall train their elevator mechanics who perform safety tests on safety test procedures.

71.15(2) For each conveyance owned by an authorized company, the owner shall obtain the services of a CEI who is not employed by the authorized company or an inspector employed by the state to witness the safety test.

71.15(3) To become authorized to perform safety tests, a company shall submit a copy of its procedures for performing safety tests. The labor commissioner shall review the procedures for adequacy and shall request modifications to the procedures or grant or deny the authorization.

71.15(4) Every five years or within six months after the board adopts a new edition of ASME, whichever is earlier, authorized companies shall submit revised safety test procedures for renewal of authorization. The labor commissioner shall review the procedures for adequacy and shall request modifications to the procedures or grant or deny the authorization.

71.15(5) Investigations. Investigations shall take place at the times and in the places the labor commissioner directs. The labor commissioner may investigate for any reasonable cause. The labor commissioner may conduct interviews and utilize other reasonable investigatory techniques. Investigations may be conducted without prior notice.

71.15(6) Suspension. If the labor commissioner determines that a falsified safety test report was submitted by an elevator mechanic, the labor commissioner shall suspend the authorization of the elevator mechanic's employer for six months. During the suspension, all safety tests performed by any employee of the authorized company shall be witnessed by a state inspector or a CEI who is not employed by the suspended authorized company.

71.15(7) Suspension procedures.

a. The labor commissioner shall notify an authorized company of its suspension by certified mail or by other service as permitted by Iowa Code chapter 17A.

b. The authorized company shall have 20 days to file a written notice of contest with the labor commissioner. If the authorized company does not file a written notice of contest in a timely manner, the suspension shall automatically be effective. If the authorized company does file a written notice of contest in a timely manner, the hearing procedures in 875—Chapter 1 shall govern.

c. If the labor commissioner finds, pursuant to Iowa Code section 17A.18A, that public health, safety or welfare imperatively requires emergency action, the authorization may be summarily suspended.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—71.16(89A) Fees. Except as noted in this rule, all fees are nonrefundable and due in advance.

71.16(1) *Operating permits.* The annual operating permit fee shall be $75 per conveyance.

71.16(2) *Periodic inspections.* Fees shall be remitted to the division of labor services within 30 days of the date of inspection. The fees for periodic inspections shall be as follows:

a. Construction elevator: $200.

b. Wind tower lift: $225.

c. Hand-powered elevator: $90.

d. Television tower elevator: $500.

e. Handicapped restricted use elevator: $100.

f. Other hydraulic elevator: $100.

g. Other traction elevator: $150.

h. Escalator: $150.

i. Dumbwaiter: $90.

j. Wheelchair lift: $90.

k. CPH.

(1) Annual: $500.

(2) Quarterly: $200.

l. Moving walk: $150.

71.16(3) *Installation permits.* The fees in this subrule cover the initial print review, installation permit, initial inspection and first-year operating permit. Each print revision submitted to the division shall be subject to an additional fee of $100. The fees for new installations shall be as follows:

a. Wind tower lift: $500.

b. Material lift elevators: $500.

c. Other hydraulic elevators: $750.

d. Other traction elevators: $1000.

e. Escalator: $1000.

f. Dumbwaiter: $500.

g. Wheelchair lift: $500.

h. CPH: $500.

i. Moving walk: $500.

71.16(4) *Alteration permits.*

a. Except as set forth below, the fee for any elevator alteration permit shall be $500 and shall cover the initial print review, alteration permit, and initial inspection.

b. The fee for each CPH extension shall be $150. The total fee required for all planned CPH extensions shall be submitted with the installation permit application pursuant to subrule 71.5(3).

c. The fee for an alteration permit shall be $500 if the only alteration is the addition or replacement of an escalator skirt brush.

d. The fee for an initial print review, elevator alteration permit, and initial inspection shall be $250 if both of the following conditions are met:

(1) The only changes covered by the elevator alteration permit application are required by ASME A17.3 (2011) as adopted in 875—Chapters 72 and 73; and

(2) The elevator alteration permit application is submitted before or no later than 120 days after the issuance of an inspection report describing ASME A17.3 requirements.

e. For all other conveyances, the fees for new installations shall apply to alterations.

71.16(5) *Construction permits.* The construction permit fee shall be $200 per conveyance. This fee includes the fee for initial inspection.

71.16(6) *Controller upgrade permits.* The controller upgrade permit fee shall be $250. This fee includes one inspection.

71.16(7) *Consultative inspections.* Consultative inspections may be performed at the discretion of the labor commissioner for $125 per hour, including travel time, with a minimum charge of $250.

71.16(8) *Special inspector commission.* The special inspector commission fee shall be $60 annually.

71.16(9) *Witness of safety tests.* The fee for division employees to witness safety tests shall be $125 per hour, including travel time, with a minimum charge of $250.

71.16(10) *Permit extensions.* The fee to extend an installation permit, alteration permit, or construction permit shall be $100.

71.16(11) *Inspections outside of normal business hours.* Inspections outside the normal business hours may be performed at the discretion of the labor commissioner. If the owner or contractor requests an inspection outside of normal business hours and the labor commissioner agrees to the schedule, an additional fee will be charged. The additional fee will be calculated at a rate of $200 per hour, including travel time, with a minimum charge of $400.

71.16(12) *Reinspections.* The fees for reinspections are $400 for television tower elevators and CPHs, $200 for wind tower lifts, and $300 for all other conveyances.

71.16(13) *Inspection for temporary removal from service.* The inspection fee for temporary removal from service pursuant to rule 875—71.20(89A) shall be $125 per hour, including travel time, with a minimum charge of $250.

71.16(14) *Fee waiver.*

a. When a state inspector combines in one visit two different types of inspection on a single conveyance, the commissioner may waive the lesser of the fees.

b. The fee for an alteration permit shall be waived by the commissioner if the only alterations covered by the permit application are required by rule 875—72.26(89A) or 875—73.27(89A). The fee waiver set forth in this paragraph does not eliminate the requirement to pay for an acceptance inspection or for an operating permit.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09; **ARC 9221B**, IAB 11/17/10, effective 12/22/10; **ARC 0318C**, IAB 9/5/12, effective 10/10/12; **ARC 0685C**, IAB 4/17/13, effective 5/22/13; **ARC 1158C**, IAB 10/30/13, effective 12/4/13; **ARC 1972C**, IAB 4/29/15, effective 6/3/15; **ARC 1971C**, IAB 4/29/15, effective 6/3/15; **ARC 2603C**, IAB 7/6/16, effective 8/10/16; **ARC 4376C**, IAB 3/27/19, effective 5/1/19]

875—71.17(89A) Publications available for review. Standards, codes, and publications adopted by reference in these rules are available for review in the office of the Division of Labor Services, 1000 E. Grand Avenue, Des Moines, Iowa 50319.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—71.18(89A) Other regulations affecting elevators. Regulations concerning accessibility of buildings and conveyances available to the public are found at 661—Chapter 302. Regulations governing the safety and health of employees who work in and around elevators are found at 875—Chapters 2 to 26. Iowa Code chapter 91C and 875—Chapter 150 apply to companies that alter and install conveyances. No rule in 875—Chapters 71 to 73 shall be interpreted as creating a waiver from any otherwise applicable regulation or statute.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09; **ARC 5570C**, IAB 4/21/21, effective 6/1/21]

875—71.19(89A) Accidents and injuries.

71.19(1) This rule applies to a conveyance in the event one of the following occurs:

a. A personal injury accident that requires the service of a physician;

b. A personal injury accident that causes disability exceeding one day; or

c. Damage that will require more than one hour of mechanic's time (excluding travel) to repair.

71.19(2) The owner shall promptly notify the commissioner if one of the events listed in subrule 71.19(1) occurs. Notification shall be in writing and shall include the state identification number, owner, and description of accident.

71.19(3) The removal of any part of the damaged conveyance or operating mechanism from the premises is forbidden until permission is granted by the commissioner.

71.19(4) When an accident or injury involves the failure or destruction of any part of the conveyance or its operating mechanism, the use of the conveyance is forbidden until it has been inspected and approved by the commissioner.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09; **ARC 3856C**, IAB 6/20/18, effective 8/1/18]

875—71.20(89A) Temporary removal from service. The requirements for an annual inspection, annual inspection fee, safety test, operating permit, and operating permit fee shall be temporarily suspended for up to three years for an elevator in an unoccupied building if the requirements of this rule are met.

71.20(1) All elevator doors in unoccupied buildings shall be closed and locked. Hydraulic elevators shall be parked at the bottom of the hoistway. Traction elevators shall be parked at the top of the hoistway.

71.20(2) Upon request by the owner of an elevator in an unoccupied building, the labor commissioner shall send an inspector who is a state employee to confirm that the building is unoccupied and that the car and doors of the elevator have been properly secured. If the conditions set forth in

subrule 71.20(1) are met, the inspector shall apply to the elevator a seal and a red tag marked with the words "Do Not Operate."

71.20(3) One year after the inspection, the owner must file with the labor commissioner written confirmation that the status of the elevator and building have not changed, and the owner must file again two years after the inspection. Failure to comply with this requirement shall result in termination of the temporary suspension of the requirements for safety tests, inspections, and operating permits.

71.20(4) Prior to returning the elevator to service, and upon request of the owner, the labor commissioner may allow the elevator to be operated for 30 days for the sole purpose of performing safety tests and maintenance.

71.20(5) The owner must notify the labor commissioner at least two weeks before placing an elevator back into service and must arrange for an inspector who is a state employee to witness a safety test.

71.20(6) If at the end of three years the building is still unoccupied, suspension of the requirements for safety tests, inspections, and operating permits shall end without possibility of renewal.

[**ARC 0318C**, IAB 9/5/12, effective 10/10/12]

These rules are intended to implement Iowa Code chapters 89A, 252J, and 272D.

[Filed emergency 12/15/75, Notice 10/6/75—published 12/29/75, effective 12/15/75]
[Filed 7/28/82, Notice 5/26/82—published 8/18/82, effective 9/30/82]
[Filed emergency 9/5/86—published 9/24/86, effective 9/24/86]
[Filed emergency 12/4/92 after Notice 9/30/92—published 12/23/92, effective 12/23/92]
[Filed 2/15/01, Notice 10/18/00—published 3/7/01, effective 4/11/01]
[Filed 11/20/01, Notice 6/13/01—published 12/12/01, effective 1/16/02]
[Filed 11/7/03, Notice 10/1/03—published 11/26/03, effective 1/1/04]
[Filed 2/10/06, Notice 1/4/06—published 3/1/06, effective 4/5/06]
[Filed 7/3/07, Notice 4/25/07—published 8/1/07, effective 9/5/07]
[Filed 1/25/08, Notice 11/7/07—published 2/13/08, effective 3/19/08]
[Filed emergency 5/28/08—published 6/18/08, effective 5/28/08]
[Filed 5/29/08, Notice 4/23/08—published 6/18/08, effective 7/23/08]
[Filed emergency 6/24/08—published 7/16/08, effective 7/23/08]
[Filed 9/3/08, Notice 6/18/08—published 9/24/08, effective 10/29/08]
[Filed 9/3/08, Notice 7/16/08—published 9/24/08, effective 10/29/08]
[Filed ARC 7840B (Notice ARC 7696B, IAB 4/8/09), IAB 6/17/09, effective 7/22/09]
[Filed ARC 7841B (Notice ARC 7697B, IAB 4/8/09), IAB 6/17/09, effective 7/22/09]
[Filed ARC 9221B (Notice ARC 8996B, IAB 8/11/10), IAB 11/17/10, effective 12/22/10]
[Filed ARC 0168C (Notice ARC 0011C, IAB 2/22/12), IAB 6/13/12, effective 7/18/12]
[Filed ARC 0318C (Notice ARC 0171C, IAB 6/13/12), IAB 9/5/12, effective 10/10/12]
[Filed ARC 0574C (Notice ARC 0411C, IAB 10/31/12), IAB 2/6/13, effective 3/13/13]
[Filed ARC 0685C (Notice ARC 0597C, IAB 2/6/13), IAB 4/17/13, effective 5/22/13]
[Filed ARC 1159C (Notice ARC 0951C, IAB 8/21/13), IAB 10/30/13, effective 12/4/13]
[Filed ARC 1158C (Notice ARC 1009C, IAB 9/4/13), IAB 10/30/13, effective 12/4/13]
[Filed ARC 1766C (Notice ARC 1560C, IAB 7/23/14), IAB 12/10/14, effective 1/14/15]
[Filed ARC 1971C (Notice ARC 1849C, IAB 2/4/15), IAB 4/29/15, effective 6/3/15]
[Filed ARC 1972C (Notice ARC 1853C, IAB 2/4/15), IAB 4/29/15, effective 6/3/15]
[Filed ARC 2333C (Notice ARC 2163C, IAB 9/30/15), IAB 1/6/16, effective 2/10/16]
[Filed ARC 2396C (Notice ARC 2264C, IAB 11/25/15), IAB 2/17/16, effective 3/23/16]
[Filed ARC 2603C (Notice ARC 2355C, IAB 1/6/16), IAB 7/6/16, effective 8/10/16]
[Filed ARC 2607C (Notice ARC 2422C, IAB 3/2/16), IAB 7/6/16, effective 8/10/16]
[Filed ARC 3742C (Notice ARC 3503C, IAB 12/20/17), IAB 4/11/18, effective 5/16/18]
[Filed ARC 3856C (Notice ARC 3727C, IAB 4/11/18), IAB 6/20/18, effective 8/1/18]
[Filed ARC 4212C (Notice ARC 4088C, IAB 10/24/18), IAB 1/2/19, effective 3/1/19]
[Filed ARC 4376C (Notice ARC 4237C, IAB 1/16/19), IAB 3/27/19, effective 5/1/19]
[Filed ARC 5159C (Notice ARC 4940C, IAB 2/26/20), IAB 8/26/20, effective 9/30/20]
[Filed ARC 5570C (Notice ARC 5436C, IAB 2/10/21), IAB 4/21/21, effective 6/1/21]

CHAPTER 72
CONVEYANCES INSTALLED ON OR AFTER JANUARY 1, 1975

[Prior to 9/24/86, Labor, Bureau of [530]]
[Prior to 10/21/98, see 347—Ch 72]

875—72.1(89A) Purpose and scope. This chapter contains safety standards covering the design, construction, installation, operation, inspection, testing, maintenance, alteration and repair of conveyances installed on or after January 1, 1975. The rules of this chapter also apply to previously dormant conveyances that are being reactivated, and to reinstalled or moved conveyances. As used in this rule, the word "installation" refers to the date on which a conveyance contractor enters into a contractual agreement pertaining to a conveyance.

72.1(1) For installations between January 1, 1975, and December 31, 1982, ANSI A17.1 shall mean ANSI A17.1 (1971).

72.1(2) For installations between January 1, 1983, and December 31, 1992:

a. ANSI A17.1 shall mean ANSI A17.1 (1981); and

b. ANSI A117.1 shall mean ANSI A117.1 (1980).

72.1(3) For installations between January 1, 1993, and December 31, 2000:

a. ASME A17.1 shall mean ASME A17.1 (1990) and in addition shall mean the following:

(1) ASME A17.1b (1992), Rule 110.11h, for electric elevators installed between July 1, 1993, and December 31, 2000, and

(2) ASME A17.1b (1992), Rule 110.11h that is referenced by Rule 300.11, for hydraulic elevators installed between July 1, 1993, and December 31, 2000.

b. ANSI/NFPA 70 shall mean ANSI/NFPA 70 (1990); and

c. ANSI A117.1 shall mean ANSI A117.1 (1980).

72.1(4) For installations between January 1, 2001, and December 31, 2003:

a. ASME A17.1 shall mean ASME A17.1 (1996 through the 1999 addenda);

b. ASME A18.1 shall mean ASME A18.1 (1999), except Chapters 4, 5, 6, and 7;

c. ANSI A117.1 shall mean ANSI A117.1 (1998); and

d. ANSI/NFPA 70 shall mean ANSI/NFPA 70 (1999).

72.1(5) For installations between January 1, 2004, and April 4, 2006:

a. ASME A17.1 shall mean ASME A17.1 (2000 through the 2003 addenda);

b. ASME A18.1 shall mean ASME A18.1 (1999 through the 2001 addenda), except Chapters 4, 5, 6, and 7;

c. ANSI A117.1 shall mean ANSI A117.1 (1998); and

d. ANSI/NFPA 70 shall mean ANSI/NFPA 70 (2002).

72.1(6) For installations between April 5, 2006, and July 22, 2008:

a. ASME A17.1 shall mean ASME A17.1-2004, A17.1a-2005 and A17.1S-2005;

b. ASME A18.1 shall mean ASME A18.1 (2003), except Chapters 4, 5, 6, and 7;

c. ANSI A117.1 shall mean ANSI A117.1 (2003), except for Rule 407.4.6.2.2; and

d. ANSI/NFPA 70 shall mean ANSI/NFPA 70 (2005).

72.1(7) For installations between July 23, 2008, and July 18, 2012:

a. ASME A17.1 shall mean ASME A17.1-2007/CSA B44-07;

b. ASME A17.7 shall mean ASME A17.7-2007/CSA B44-07;

c. ASME A18.1 shall mean ASME A18.1 (2003), except Chapters 4, 5, 6, and 7;

d. ANSI A117.1 shall mean ANSI A117.1 (2003), except for Rule 407.4.6.2.2; and

e. ANSI/NFPA 70 shall mean ANSI/NFPA 70 (2005).

72.1(8) For installations between July 19, 2012, and January 30, 2014:

a. ASME A17.1 shall mean ASME A17.1-2010/CSA B44-10, except for Rule 2.27.1.1.6;

b. ASME A17.7 shall mean ASME A17.7-2007/CSA B44-07;

c. ASME A18.1 shall mean ASME A18.1 (2003), except Chapters 4, 5, 6, and 7;

d. ANSI A117.1 shall mean ANSI A117.1 (2003), except for Rule 407.4.6.2.2; and

e. ANSI/NFPA 70 shall mean ANSI/NFPA 70 (2008).

72.1(9) For installations between January 31, 2014, and January 14, 2015:

a. ASME A17.1 shall mean ASME A17.1-2010/CSA B44-10, except for Rule 2.27.1.1.6;

b. ASME A17.7 shall mean ASME A17.7-2007/CSA B44-07;

c. ASME A18.1 shall mean ASME A18.1 (2011), except Chapters 4, 5, 6, and 7;

d. ANSI A117.1 shall mean ANSI A117.1 (2003), except for Rule 407.4.6.2.2; and

e. ANSI/NFPA 70 shall mean ANSI/NFPA 70 (2008).

72.1(10) For installations between January 15, 2015, and May 16, 2018:

a. ASME A17.1 shall mean ASME A17.1-2013/CSA B44-13;

b. ASME A17.7 shall mean ASME A17.7-2007/CSA B44-07;

c. ASME A18.1 shall mean ASME A18.1 (2011), except Chapters 4, 5, 6, and 7;

d. ANSI A117.1 shall mean ANSI A117.1 (2003), except for Rule 407.4.6.2.2; and

e. ANSI/NFPA 70 shall mean ANSI/NFPA 70 (2011).

72.1(11) For installations between May 17, 2018, and May 31, 2021:

a. ASME A17.1 shall mean ASME A17.1-2016/CSA B44-16;

b. ASME A17.7 shall mean ASME A17.7-2012/CSA B44.7-12;

c. ASME A17.8 shall mean ASME A17.8-2016/CSA B44.8-16;

d. ASME A18.1 shall mean ASME A18.1 (2014), except Chapters 4, 5, 6, and 7;

e. ANSI A117.1 shall mean ANSI A117.1 (2017), except for requirement 407.4.7.1.2; and

f. ANSI/NFPA 70 shall mean ANSI/NFPA 70 (2017).

72.1(12) For installations on or after June 1, 2021:

a. ASME A17.1 shall mean ASME A17.1-2019/CSA B44-19, except that,

(1) Approaching object detection as described in 2.13.5 shall be optional; and

(2) ASME A17.1-2016/CSA B44-16, requirement 2.13.5, shall apply if approaching object detection is not installed;

b. ASME A17.7 shall mean ASME A17.7-2012/CSA B44.7-12;

c. ASME A17.8 shall mean ASME A17.8-2016/CSA B44.8-16;

d. ASME A18.1 shall mean ASME A18.1 (2014), except Chapters 4, 5, 6, and 7;

e. ANSI A117.1 shall mean ANSI A117.1 (2017), except for requirement 407.4.7.1.2; and

f. ANSI/NFPA 70 shall mean ANSI/NFPA 70 (2017).

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09; **ARC 8759B**, IAB 5/19/10, effective 6/23/10; **ARC 0168C**, IAB 6/13/12, effective 7/18/12; **ARC 1232C**, IAB 12/11/13, effective 1/31/14; **ARC 1766C**, IAB 12/10/14, effective 1/14/15; **ARC 1971C**, IAB 4/29/15, effective 6/3/15; **ARC 3742C**, IAB 4/11/18, effective 5/16/18; **ARC 3856C**, IAB 6/20/18, effective 8/1/18; **ARC 5570C**, IAB 4/21/21, effective 6/1/21]

875—72.2(89A) Definitions. The definitions contained in ASME A17.1, ASME A18.1, ANSI A117.1, and any other standard adopted herein by reference shall be applicable as used in this chapter to the extent that the definitions do not conflict with the definitions contained in Iowa Code chapter 89A and these rules. However, the definition of "building code" in ASME A17.1 is modified to exclude the Building Construction and Safety Code (NFPA 5000) and the National Building Code of Canada (NBCC) for any installation after March 1, 2008.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09]

875—72.3(89A) Accommodating the physically disabled. All passenger elevators installed between January 1, 1975, and December 31, 1982, which are available and intended for public use shall be usable by the physically disabled. All passenger elevators shall have control buttons with identifying features for the benefit of the blind and shall allow for wheelchair traffic. All passenger elevators and wheelchair lifts installed on or after January 1, 1983, which are accessible to the general public shall comply with Accessible and Usable Buildings and Facilities ANSI A117.1, sections 407 and 408.

875—72.4(89A) Electric elevators. The provisions contained in ASME A17.1, part 2, are adopted by reference.

875—72.5(89A) Hydraulic elevators. The provisions contained in ASME A17.1, part 3, are adopted by reference.

875—72.6(89A) Power sidewalk elevators. The provisions contained in ASME A17.1, section 5.5, are adopted by reference.

875—72.7(89A) Performance-based safety code. Conveyances may comply with ASME A17.7, in whole or in part, as an alternative to ASME A17.1.

875—72.8(89A) Hand and power dumbwaiters. The provisions contained in ASME A17.1, sections 7.1, 7.2, 7.3, and 7.8, are adopted by reference.

875—72.9(89A) Escalators and moving walks. The provisions contained in ASME A17.1, part 6, are adopted by reference, except for those portions that allow an operating or safety device to reset automatically.
[**ARC 1766C**, IAB 12/10/14, effective 1/14/15]

875—72.10(89A) General requirements.

72.10(1) The provisions contained in ASME A17.1, Part 8, are adopted by reference unless specifically excluded herein.

72.10(2) Except as noted in this rule, the American Society of Mechanical Engineers Safety Code for Existing Elevators and Escalators, A17.3 (2011), is adopted by reference with an enforcement date of May 1, 2021.

a. If a code provision that is more restrictive than A17.3 (2011) applied to a conveyance when the conveyance was installed, the more restrictive provision shall remain in effect.

b. A17.3 (2011) Part X applies to handicapped restricted use elevators without regard to the scope provisions set forth in A17.3 (2011) Part X.

c. Provisions of A17.3 (2011) that require installation of a new controller to implement Phase 1 and Phase 2 fire service or car top operation are not adopted by reference and shall not be enforced in Iowa.

d. A17.3 (2011), Rule 2.3.2, is intended to prevent the accumulation of sewer gas in an elevator pit and shall not be interpreted to require the addition of a drain pipe in an existing pit. An air gap in an existing drain pipe shall be considered adequate compliance.

e. An elevator that was legally installed with guide rails made of materials other than steel shall not be required to replace the guide rails due to the adoption of A17.3 (2011).

72.10(3) Permanent lighting shall be installed in the hoistway of an elevator contracted after March 1, 2019. Three-way switches to control the hoistway lighting shall be installed at the pit access door and the top landing access door. The lighting shall be sufficient to provide 10 foot-candles of light to the center of the elevator path measured when the car top lights are off. Engineering calculations that prove 10 foot-candles of light are provided to the center of the elevator path may be substituted for light meter measurements under circumstances such as a glass back car where use of a light meter is not practical.

72.10(4) For conveyances contracted after March 1, 2019, all electrical wiring in a machine room, control space, control room, machinery space, and hoistway shall comply with ANSI/NFPA 70 and shall be enclosed in metal conduit, flexible conduit, or metal raceways. However, this subrule shall not apply in applications such as traveling cables and car top work lights where movement is required for proper function, or to operating devices and control equipment where adjustment may be needed.
[**ARC 1891C**, IAB 3/4/15, effective 4/8/15; **ARC 4212C**, IAB 1/2/19, effective 3/1/19; **ARC 5089C**, IAB 7/15/20, effective 6/25/20]

875—72.11(89A) Acceptance and periodic tests and inspections of elevators, dumbwaiters, escalators and moving walks. Rescinded IAB 6/17/09, effective 7/22/09.

875—72.12(89A) Wind tower lifts. Wind tower lifts authorized by this rule shall not be installed in grain elevators, high-rise buildings, water towers, television towers or any facility other than a wind tower built for the production of electricity. This rule applies to all wind tower lifts, whether installed before or after May 28, 2008; however, this exception shall not apply to a wind tower lift if the contract for its installation is executed after an AECO is accredited.

72.12(1) Wind tower lifts that meet the requirements of subrules 72.12(2) through 72.12(10) are exempt from the requirements of ASME A17.1. This temporary exemption shall terminate for a wind tower lift upon the occurrence of at least one of the following events:

a. Three weeks have passed since the accreditation of at least one AECO, and the manufacturer of the wind tower lift has not filed with the labor commissioner an affidavit attesting that a request for Certificate of Conformance as described by ASME A17.7 (2007) was submitted to an AECO.

b. The AECO has reviewed a request pursuant to ASME A17.7 and refused to issue a Certificate of Conformance for the model or series of lifts.

c. The AECO has determined that modifications to the wind tower lift are necessary, and the modifications have not been made with reasonable diligence.

d. The AECO has determined that modifications to the wind tower lift are necessary, and the labor commissioner determines the wind tower lift is not safe to operate prior to completion of the modifications.

e. The AECO has reviewed an application pursuant to ASME A17.7 and issued a Certificate of Conformance for the model or series of lifts.

72.12(2) A wind tower lift placed in operation on or before May 28, 2008, shall be registered by the owner with the labor commissioner no later than July 1, 2008, and shall pass an installation inspection by inspectors employed by the labor commissioner according to the schedule set by the labor commissioner. The wind tower lift shall receive a periodic inspection by the labor commissioner's inspectors annually thereafter.

72.12(3) The owner of a wind tower lift installed after May 28, 2008, shall register the wind tower lift with the labor commissioner prior to its installation. A wind tower lift installed after May 28, 2008, shall pass an installation inspection by the labor commissioner's inspectors prior to its being placed into operation. The wind tower lift shall receive a periodic inspection by the labor commissioner's inspectors annually thereafter.

72.12(4) Registration pursuant to this rule requires submission of the following information to the labor commissioner:

a. The unique identifier of the wind tower.

b. The name of the wind tower owner and contact information for the owner's representative.

c. The name of the wind tower lift manufacturer and contact information for the manufacturer's representative.

d. The location of the wind farm.

e. Three copies of the prints and design documents that are certified by a professional engineer duly licensed in the state of Iowa and that bear the professional engineer's P.E. stamp for the lifts.

f. The manufacturer's complete test procedures, inspection checklists, operating manual, service manual, and related documents as determined necessary by the labor commissioner.

72.12(5) The owner shall notify the labor commissioner within 30 days of any change in the information provided pursuant to 72.12(4)*"b"* and *"c."*

72.12(6) This subrule establishes reporting requirements in addition to the requirements of rule 875—71.3(89A). The manufacturer of a lift must notify the labor commissioner in writing within one week if one of its wind tower lifts anywhere in the world is involved in a personal injury accident requiring the service of a physician, a personal injury accident causing disability exceeding one day or death, or an incident causing property damage exceeding $2,000. The notification shall specifically identify the model number, serial number, and owner of the lift, and a description of the incident or accident. The labor commissioner shall determine and require necessary inspections, tests, changes or enhancements to prevent a similar incident or accident in this state.

72.12(7) Wind tower lifts must comply with 29 CFR 1910.

72.12(8) The manufacturer shall notify the labor commissioner within seven days of notification to the manufacturer that an AECO has:

a. Issued a Certificate of Conformance for the model or series of wind tower lifts,

b. Refused to issue a Certificate of Conformance for the model or series of wind tower lifts, or

c. Determined that modifications to the wind tower lifts are necessary.

72.12(9) Wind tower lifts shall pass an inspection covering the following criteria:

a. Ascending speed, descending speed, and emergency descending speed shall not exceed the manufacturer's recommendations.

b. Stop switch, interior lighting, cage entry door, door contact, operating controls and remote operating controls shall operate according to manufacturer's recommendations.

c. Interior floor and cage framework shall appear to be structurally sound.

d. Enclosure signage recommended by the manufacturer shall be in place.

e. Manufacturer's data plate shall be visible.

f. Hoisting mechanism shall appear to be structurally sound and intact from inside and outside the car.

g. Guide shoes shall appear to be structurally sound and undamaged.

h. Suspended power cords and strain relief devices shall reveal no visible damage.

i. Upper and lower normal and final limits shall operate according to the manufacturer's recommendations.

j. Overspeed device shall successfully pass a full-load test.

k. Overload device shall successfully pass an overload test according to the manufacturer's recommendations.

l. Wire rope, safety rope, and guide rope shall show no evidence of wear.

m. Guide rope attachments, suspension attachment beam, beam tower attachments, suspension rope attachment, suspension rope secondary attachment (if present), and guide wire rope attachments shall show no evidence of wear or fatigue.

n. The wind tower lift shall not drift when subjected to a static full load.

o. Maintenance logs, tags, and other necessary documentation shall be available in sufficient detail to establish that maintenance is occurring pursuant to the manufacturer's schedule.

p. Guide rope tension device, safety rope tension device, and suspension rope tension device shall pass a visual test for proper tension.

q. Power cord catch basket shall pass a visual inspection.

r. Safety set distance, overspeed trip speed, overload limit setting, and maximum overload allowed shall not exceed manufacturer's recommendations.

s. A communication device, if installed in the car, shall be operable.

t. Any other items on the manufacturer's recommended inspection checklist shall pass inspection.

72.12(10) The owner or owner's representative shall provide weights as needed to perform necessary tests during inspections.

875—72.13(89A) Alterations, repairs, replacements and maintenance.

72.13(1) *General.* Except as set forth in this rule, all maintenance, repairs, replacements, and alterations shall comply with the edition of ASME A17.1 currently adopted for new conveyances at rule 875—72.1(89A) or ASME A17.7-2007/CSA B44-07, as applicable. Rule 875—71.10(89A) describes alterations which require that the entire conveyance be brought into compliance with the most current codes.

72.13(2) *Exemption for button renumbering.* All maintenance, repairs and alterations to devices covered by ANSI A117.1 shall comply with ANSI A117.1 (2017), except for requirement 407.4.7.1.2.

72.13(3) *Sump pump exemption.* The provisions of ASME A17.1 that require a pit sump or drain shall not apply to an elevator alteration when all of the following criteria are met:

a. No other code or rule requires that the pit be excavated or lowered.

b. The alteration plans do not include the excavation or lowering of the pit floor for any other reason.

c. There is evidence that groundwater has not entered the pit previously.

d. The location and geology of the building indicate a likelihood that groundwater would enter the pit if the foundation or pit floor were breached to install the pit sump or drain.

e. A description of alternative means to maintain the pit in a dry condition is provided to the labor commissioner with the alteration permit application.

f. The labor commissioner approves the alternative means to maintain the pit in a dry condition.

g. The alternative means to maintain the pit in a dry condition are installed or implemented as described in the alteration permit application.

72.13(4) *Pit excavation exemption.* For elevators altered before August 1, 2018, the full length of the platform guard set forth in ASME A17.1, Rule 2.15.9.2(a), shall not be required if all of the following criteria are met:

a. No other code or rule requires that the pit be excavated or lowered.

b. The alteration plans do not include the excavation or lowering of the pit floor for any other reason.

c. A full-length platform guard would strike the pit floor when the elevator is on its fully compressed buffer.

d. The clearance between the bottom of the platform guard and the pit floor is 2.5 centimeters (1 inch) when the elevator is on its fully compressed buffer.

72.13(5) *Sprinkler retrofits and shunt trip breakers.* When a sprinkler is added to a hoistway or machine room, the conveyance shall comply with the following:

a. The installation shall comply with the applicable version of ASME A17.1, Rule 2.8.3.3.

b. The elevator controls shall be arranged to comply with the phase I fire recall provisions of the applicable version of ASME A17.1, Rule 2.27.3.

c. The applicable version of ASME A17.1 shall be determined by reference to rule 875—72.1(89A). For purposes of subrule 72.13(5), the relevant subrule of 875—72.1(89A) shall apply based on the date the sprinkler is installed instead of the date the conveyance was installed.

72.13(6) *Alterations of handicapped restricted use elevators.* A component of a handicapped restricted use elevator being altered shall comply with the portions of ASME A17.1, section 5.3, applicable to the component. The edition of ASME A17.1 adopted by reference in rule 875—72.1(89A) shall be applied.

72.13(7) *Hoistway lighting.* If the controller for an elevator is being replaced, permanent lighting shall be installed in the hoistway of the elevator. Three-way switches to control the hoistway lighting shall be installed at the pit access door and the top landing access door. The lighting shall be sufficient to provide 10 foot-candles of light to the center of the elevator path measured when the car top lights are off. Engineering calculations that prove 10 foot-candles of light are provided to the center of the elevator path may be substituted for light meter measurements under circumstances such as a glass back car where use of a light meter is not practical.

[**ARC 7840B**, IAB 6/17/09, effective 7/22/09; **ARC 1766C**, IAB 12/10/14, effective 1/14/15; **ARC 2396C**, IAB 2/17/16, effective 3/23/16; **ARC 3742C**, IAB 4/11/18, effective 5/16/18; **ARC 3856C**, IAB 6/20/18, effective 8/1/18; **ARC 4212C**, IAB 1/2/19, effective 3/1/19]

875—72.14(89A) Design data and formulas. Rescinded IAB 11/26/03, effective 1/1/04.

875—72.15(89A) Power-operated special purpose elevators. The provisions contained in ASME A17.1, section 5.7, are adopted by reference.

875—72.16(89A) Inclined and vertical wheelchair lifts. The provisions contained in ASME Safety Standard for Platform Lifts and Stairway Chairlifts A18.1, sections 1, 2, 3, 8, 9, and 10, are adopted by reference for all inclined and vertical wheelchair lifts.

875—72.17(89A) Hand-powered elevators. Hand-powered elevators shall not be installed after January 1, 1983.

875—72.18(89A) Accommodating the physically disabled. Renumbered as 875—72.3(89A), IAB 11/26/03, effective 1/1/04.

875—72.19(89A) Limited-use/limited-application elevators. The provisions contained in ASME A17.1, section 5.2, are adopted by reference.

875—72.20(89A) Rack and pinion, screw-column elevators. The provisions contained in ASME A17.1, sections 4.1 and 4.2, are adopted by reference.

875—72.21(89A) Inclined elevators. The provisions contained in ASME A17.1, section 5.1, are adopted by reference.

875—72.22(89A) Material lift elevators. The provisions contained in ASME A17.1, Sections 7.4 through 7.7 and 7.9 through 7.11, are adopted by reference for material lift elevators installed on or after August 10, 2016.
[**ARC 2603C**, IAB 7/6/16, effective 8/10/16]

875—72.23(89A) Elevators used for construction. The provisions contained in ASME A17.1, section 5.10, are adopted by reference only as they pertain to elevators utilizing permanent equipment in a permanent location.

875—72.24(89A) Construction personnel hoists. The provisions of American National Standards Institute (ANSI) A10.4-2007 are adopted by reference for construction personnel hoists as defined by ANSI A10.4-2007. Notwithstanding the ANSI definition, these conveyances may be used only temporarily during construction.

875—72.25(89A) Alarm bell. An automatic passenger elevator shall be provided with an alarm bell that is activated by a switch marked "ALARM" located in or adjacent to the car operating panel. The alarm bell shall be audible inside the car and outside the hoistway.
[**ARC 0950C**, IAB 8/21/13, effective 9/25/13]

875—72.26(89A) Child entrapment safeguards. This rule applies to a passenger elevator unless it has a car door consisting of a solid panel.

72.26(1) For purposes of this rule, "distance with deflection between the doors or gates" means the distance between the closed car door or gate and the closed hoistway door or gate measured at the greatest perpendicular distance with deflection.

72.26(2) For purposes of this rule, measurements of door or gate deflection shall be made in the manner described by ASME A17.1, section 2.14.4.6.

72.26(3) Door or gate deflection shall not exceed .75 inch.

72.26(4) If the distance with deflection between the doors or gates exceeds 5 inches, a means shall be provided to disable the elevator if a person is in the space between the closed doors or gates.
[**ARC 1972C**, IAB 4/29/15, effective 6/3/15; **ARC 2455C**, IAB 3/16/16, effective 4/20/16]

875—72.27(89A) Handicapped restricted use elevators. All handicapped restricted use elevators must meet ANSI A17.1 (1981), Part V. Additionally, the elevators shall comply with the following limitations:

1. The elevator shall be used only by a maximum of one disabled person and one attendant at a time. Where a disabled person cannot operate the elevator in a manner which will ensure access to all operating controls and safety features, an attendant shall accompany the disabled person.
2. The elevator shall be key-operated and shall not be capable of being called by buttons or switches but may be called by a key operator.
3. Keys to operate the elevator shall be in the control of the disabled person, the attendant or persons in positions of responsibility at the location.
4. A list shall be maintained at the location indicating the persons holding keys for the operation of the elevator.
5. Each landing and the elevator car shall be posted to indicate that the elevator is only for the use of disabled persons.
6. The travel distance of the elevator shall not exceed 50 feet.

[**ARC 1971C**, IAB 4/29/15, effective 6/3/15]

875—72.28(89) Elevators in broadcast towers. This rule applies to special purpose elevators located in broadcast towers.

72.28(1) *Anchorages.* Anchorages compliant with 29 CFR 1926.502(d)(15) shall be attached inside the car and on the car top.

72.28(2) *Emergency stop switch.* An emergency stop switch compliant with ASME A17.1, Sections 2.26.2.8 and 5.7.19, shall be installed on the car top.

[**ARC 2607C**, IAB 7/6/16, effective 8/10/16]

These rules are intended to implement Iowa Code chapter 89A.

[Filed emergency 12/15/75, Notice 10/6/75—published 12/29/75, effective 12/15/75]
[Filed 7/28/82, Notice 5/26/82—published 8/18/82, effective 9/30/82]
[Filed emergency 9/5/86—published 9/24/86, effective 9/24/86]
[Filed emergency 4/17/87—published 5/6/87, effective 4/17/87]
[Filed emergency 12/4/92 after Notice 9/30/92—published 12/23/92, effective 12/23/92]
[Filed 2/15/01, Notice 10/18/00—published 3/7/01, effective 4/11/01]
[Filed 11/7/03, Notice 10/1/03—published 11/26/03, effective 1/1/04]
[Filed 2/10/06, Notice 1/4/06—published 3/1/06, effective 4/5/06]
[Filed 6/16/06, Notice 5/10/06—published 7/5/06, effective 8/9/06]
[Filed 7/3/07, Notice 4/25/07—published 8/1/07, effective 9/5/07]
[Filed 12/11/07, Notice 10/24/07—published 1/2/08, effective 2/6/08]
[Filed emergency 5/28/08—published 6/18/08, effective 5/28/08]
[Filed 5/29/08, Notice 4/23/08—published 6/18/08, effective 7/23/08]
[Filed 9/3/08, Notice 6/18/08—published 9/24/08, effective 10/29/08]
[Filed ARC 7840B (Notice ARC 7696B, IAB 4/8/09), IAB 6/17/09, effective 7/22/09]
[Filed ARC 8759B (Notice ARC 8622B, IAB 3/24/10), IAB 5/19/10, effective 6/23/10]
[Filed ARC 0168C (Notice ARC 0011C, IAB 2/22/12), IAB 6/13/12, effective 7/18/12]
[Filed ARC 0950C (Notice ARC 0753C, IAB 5/29/13), IAB 8/21/13, effective 9/25/13]
[Filed ARC 1232C (Notice ARC 1108C, IAB 10/16/13), IAB 12/11/13, effective 1/31/14]
[Filed ARC 1766C (Notice ARC 1560C, IAB 7/23/14), IAB 12/10/14, effective 1/14/15]
[Editorial change: IAC Supplement 2/18/15][1]
[Filed ARC 1891C (Notice ARC 1771C, IAB 12/10/14), IAB 3/4/15, effective 4/8/15]
[Filed ARC 1971C (Notice ARC 1849C, IAB 2/4/15), IAB 4/29/15, effective 6/3/15]
[Filed ARC 1972C (Notice ARC 1853C, IAB 2/4/15), IAB 4/29/15, effective 6/3/15]
[Filed ARC 2396C (Notice ARC 2264C, IAB 11/25/15), IAB 2/17/16, effective 3/23/16]
[Filed ARC 2455C (Notice ARC 2356C, IAB 1/6/16), IAB 3/16/16, effective 4/20/16]
[Filed ARC 2603C (Notice ARC 2355C, IAB 1/6/16), IAB 7/6/16, effective 8/10/16]
[Filed ARC 2607C (Notice ARC 2422C, IAB 3/2/16), IAB 7/6/16, effective 8/10/16]
[Filed ARC 3742C (Notice ARC 3503C, IAB 12/20/17), IAB 4/11/18, effective 5/16/18]
[Filed ARC 3856C (Notice ARC 3727C, IAB 4/11/18), IAB 6/20/18, effective 8/1/18]
[Filed ARC 4212C (Notice ARC 4088C, IAB 10/24/18), IAB 1/2/19, effective 3/1/19]
[Filed Emergency After Notice ARC 5089C (Notice ARC 5040C, IAB 5/20/20), IAB 7/15/20, effective 6/25/20]
[Filed ARC 5570C (Notice ARC 5436C, IAB 2/10/21), IAB 4/21/21, effective 6/1/21]

[1] Adopted language of rule 875—72.22(89A) [ARC 6854B, 6/18/08] editorially restored IAC Supplement 2/18/15.