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**STEPHANIE A. HOFF**  
ADMINISTRATIVE CODE EDITOR

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

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

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

# INSTRUCTIONS

## FOR UPDATING THE

# IOWA ADMINISTRATIVE CODE

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

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

### **Aging, Department on[17]**

- Replace Analysis
- Replace Chapter 1
- Replace Chapters 5 and 6

### **Agriculture and Land Stewardship Department[21]**

- Replace Analysis
- Replace Chapters 13 to 16
- Replace Chapter 76

### **Soil Conservation Division[27]**

- Replace Chapter 10
- Replace Chapter 12

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

- Replace Chapter 25

### **Racing and Gaming Commission[491]**

- Replace Analysis
- Replace Chapters 1 to 5
- Replace Chapter 8
- Replace Chapter 9 with Reserved Chapter 9
- Replace Chapters 10 and 11
- Remove Reserved Chapters 13 to 26

### **Iowa Public Information Board[497]**

- Insert Analysis
- Insert Chapters 1 to 7

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

- Replace Chapter 22

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

- Replace Chapter 90



## **AGING, DEPARTMENT ON[17]**

Prior to 5/20/87, see Commission on the Aging[20]  
 Delay: Effective date (June 24, 1987) of Chapters 1 to 18 delayed 70 days pursuant to Iowa Code section 17A.4(5) by the  
 Administrative Rules Review Committee at their June 9, 1987, meeting.  
 [Prior to 1/27/10, see Elder Affairs Department[321]]

### CHAPTER 1

#### INTRODUCTION, ABBREVIATIONS AND DEFINITIONS

- 1.1(231) Authority and purpose
- 1.2(231) Other regulations and order of precedence
- 1.3(231) Applicability
- 1.4(231) Abbreviations
- 1.5(231) Definitions

### CHAPTER 2

#### DEPARTMENT ON AGING

- 2.1(231) Mission statement
- 2.2(231) Definitions
- 2.3(231) Department established
- 2.4(231) Director
- 2.5(231) Organizational units of the department
- 2.6(231) Staffing
- 2.7(231) Discrimination
- 2.8(231) Affirmative action plans
- 2.9(231) Department complaint and appeal procedures
- 2.10(231) Severability

### CHAPTER 3

#### COMMISSION ON AGING

- 3.1(231) Definitions
- 3.2(231) Purpose of the commission
- 3.3(21,231) Organization of the commission and proceedings
- 3.4(231) Commission duties and authority

### CHAPTER 4

#### DEPARTMENT PLANNING RESPONSIBILITIES

- 4.1(231) Definitions
- 4.2(231) State plan on aging
- 4.3(231) Planning and service areas
- 4.4(231) Area agencies on aging
- 4.5(231) Continuity of services in the event of appeal of designation
- 4.6(231) Dededesignation of area agency on aging
- 4.7(231) Continuity of services in the event of dedesignation or appeal of dedesignation
- 4.8(231) Severability clause

### CHAPTER 5

#### DEPARTMENT FISCAL OPERATIONS

- 5.1(231) Funds to area agencies on aging
- 5.2(231) Distribution of Older Americans Act funds to area agencies on aging
- 5.3(231) Distribution of state funds
- 5.4(231) Posting of formulas for distribution
- 5.5(231) Priority service expenditures
- 5.6(231) Match requirements for Older Americans Act funds

- 5.7(231) Match requirements for state funds
- 5.8(231) Contributions
- 5.9(231) General reporting requirements
- 5.10(231) Redistribution
- 5.11(231) State reviews and audits
- 5.12(231) Acquisition of goods and services
- 5.13(231) Records—contract administration
- 5.14(231) Correction of deficiencies

#### CHAPTER 6

##### AREA AGENCY ON AGING PLANNING AND ADMINISTRATION

- 6.1(231) Definitions
- 6.2(231) Area plan
- 6.3(231) Area agency administration
- 6.4(231) Confidentiality and disclosure of AAA information
- 6.5(231) AAA contact information
- 6.6(231) Duties of AAA
- 6.7(231) AAA board of directors
- 6.8(231) AAA advisory council
- 6.9(231) Emergency situations
- 6.10(231) AAA procedures manual
- 6.11(231) Contracts and subgrants
- 6.12(231) Direct service
- 6.13(231) Waivers of priority service expenditures
- 6.14(231) Requirements for service providers
- 6.15(231) Entrepreneurial activities of AAA
- 6.16(231) Severability

#### CHAPTER 7

##### AREA AGENCY ON AGING SERVICE DELIVERY

- 7.1(231) Definitions
- 7.2(231) Service delivery
- 7.3(231) Outreach for greatest need
- 7.4(231) Delivery of service
- 7.5(231) Funding for services and program facilities
- 7.6(231) Compliance with health, safety and construction requirements
- 7.7(231) Term of use of an acquired or constructed facility
- 7.8(231) Restrictions
- 7.9(231) Information and assistance services
- 7.10(231) Legal assistance requirements
- 7.11(231) Disease prevention and health promotion under Title III-D of the Act
- 7.12(231) Nutrition services
- 7.13(231) AOA NSIP programs
- 7.14(231) Nutrition performance standards
- 7.15(231) Food standards
- 7.16(231) Food-borne illness
- 7.17(231) Menus
- 7.18(231) Special dietary needs
- 7.19(231) Congregate nutrition services
- 7.20(231) Eligibility for meals at congregate nutrition sites
- 7.21(231) Home-delivered meals
- 7.22(231) Noncompliance

- 7.23(231) Requirements for opening or closing congregate nutrition sites
- 7.24(231) Evaluation of sites

#### CHAPTER 8

##### LONG-TERM CARE RESIDENT'S ADVOCATE/OMBUDSMAN

- 8.1(231) Purpose
- 8.2(231) Definitions
- 8.3(231) Interference
- 8.4(231) Monetary civil penalties—basis
- 8.5(231) Monetary civil penalties—notice of penalty
- 8.6(231) Monetary civil penalties—appeals
- 8.7(231) Volunteer long-term care ombudsman program

#### CHAPTER 9

##### RESIDENT ADVOCATE COMMITTEES

- 9.1(231) Definitions
- 9.2(231) Resident advocate committees established
- 9.3(231) Application for committee membership
- 9.4(231) Appointment to resident advocate committees
- 9.5(231) Objection to and termination of appointments to resident advocate committees
- 9.6(231) Request for reconsideration of appointment or termination of appointment
- 9.7(231) Resident advocate committee structure and procedures
- 9.8(231) Duties of the committee
- 9.9(231) Committee access and assistance
- 9.10(231) Confidentiality
- 9.11(231) Committee response to complaints and grievances
- 9.12(231) Complaints referred from the department of inspections and appeals
- 9.13(231) Accountability measures
- 9.14(231) Reporting statistics
- 9.15(231) Severability

#### CHAPTER 10

##### SENIOR INTERNSHIP PROGRAM (SIP)

- 10.1(231) Scope and purpose
- 10.2(231) Definitions
- 10.3(231) Eligibility for service
- 10.4(231) Funding
- 10.5(231) Program requirements
- 10.6(231) Selection process to determine SIP subproject sponsors
- 10.7(231) Monitoring and record keeping
- 10.8(231) Severability

#### CHAPTER 11

##### WAIVERS OR VARIANCES FROM ADMINISTRATIVE RULES

- 11.1(17A,231,ExecOrd11) Definitions
- 11.2(17A,231,ExecOrd11) Scope of chapter
- 11.3(17A,231,ExecOrd11) Applicability of chapter
- 11.4(17A,231,ExecOrd11) Criteria for waiver or variance
- 11.5(17A,231,ExecOrd11) Filing of petition
- 11.6(17A,231,ExecOrd11) Content of petition
- 11.7(17A,231,ExecOrd11) Additional information
- 11.8(17A,231,ExecOrd11) Notice
- 11.9(17A,231,ExecOrd11) Hearing procedures

- 11.10(17A,231,ExecOrd11) Ruling
- 11.11(17A,22,231,ExecOrd11) Public availability
- 11.12(17A,22,231,ExecOrd11) Summary reports
- 11.13(17A,231,ExecOrd11) Cancellation of a waiver
- 11.14(17A,231,ExecOrd11) Violations
- 11.15(17A,231,ExecOrd11) Defense
- 11.16(17A,231,ExecOrd11) Judicial review
- 11.17(17A,231,ExecOrd11) Severability

## CHAPTER 12

Reserved

## CHAPTER 13

### RULES AND PRACTICES IN CONTESTED CASES

- 13.1(17A) Scope and applicability
- 13.2(17A) Definitions
- 13.3(17A) Time requirements
- 13.4(17A) Requests for contested case proceeding
- 13.5(17A) Notice of hearing
- 13.6(17A) Presiding officer
- 13.7(17A) Waiver of procedures
- 13.8(17A) Telephone proceedings
- 13.9(17A) Disqualification
- 13.10(17A) Consolidation—severance
- 13.11(17A) Pleadings
- 13.12(17A) Service and filing of pleadings and other papers
- 13.13(17A) Discovery
- 13.14(17A) Subpoenas
- 13.15(17A) Motions
- 13.16(17A) Prehearing conference
- 13.17(17A) Continuances
- 13.18(17A) Withdrawals
- 13.19(17A) Intervention
- 13.20(17A) Hearing procedures
- 13.21(17A) Evidence
- 13.22(17A) Default
- 13.23(17A) Ex parte communication
- 13.24(17A) Recording costs
- 13.25(17A) Interlocutory appeals
- 13.26(17A) Final decision
- 13.27(17A) Appeals and review
- 13.28(17A) Applications for rehearing
- 13.29(17A) Stays of department actions
- 13.30(17A) No factual dispute contested cases
- 13.31(17A) Emergency adjudicative proceedings
- 13.32(17A) Informal settlement

## CHAPTER 14

### IOWA FAMILY CAREGIVER SUPPORT PROGRAM

- 14.1(231,249H) Purpose
- 14.2(231,249H) Definitions
- 14.3(231,249H) Eligibility for services
- 14.4(231,249H) Priorities for service

14.5(231,249H)	Coordination
14.6(231,249H)	Service categories
14.7(231,249H)	Conflict of interest
14.8(231,249H)	Confidentiality
14.9(231,249H)	Quality standards
14.10(231,249H)	Reports
14.11(231,249H)	Failure to meet program requirements; waiver of standards
14.12(231,249H)	Severability

## CHAPTER 15

### ELDER ABUSE PREVENTION INITIATIVE AND DEPENDENT ADULT ABUSE MANDATORY REPORTER TRAINING

15.1(231)	Purpose
15.2(231)	Definitions
15.3(231)	Project administration
15.4(231)	Contractor responsibilities
15.5(231)	Funding restrictions
15.6(231)	Reallocation of funds
15.7(231)	Eligibility
15.8(231)	Assessment intake
15.9(231)	Release of information
15.10(231)	Assessment
15.11(231)	Monitoring and reassessment
15.12(231)	Purchase of service
15.13(231)	Case records
15.14(231)	Refusal of assistance
15.15(231)	Termination or limitation
15.16(231)	Confidentiality and disclosure
15.17(231)	Legal representatives
15.18(231)	Appeals
15.19(231)	Conflict of interest
15.20(235B)	Dependent adult abuse mandatory reporter training
15.21(231)	Severability

## CHAPTER 16

Reserved

## CHAPTER 17

### PETITION FOR RULE MAKING

(Uniform Rules)

17.1(17A)	Petition for rule making
17.3(17A)	Inquiries

## CHAPTER 18

### DECLARATORY ORDERS

18.1(17A)	Petition for declaratory order
18.2(17A)	Notice of petition
18.3(17A)	Intervention
18.4(17A)	Briefs
18.5(17A)	Inquiries
18.6(17A)	Service and filing of petitions and other papers
18.7(17A)	Consideration
18.8(17A)	Action on petition

- 18.9(17A) Refusal to issue order
- 18.10(17A) Contents of declaratory order—effective date
- 18.11(17A) Copies of orders
- 18.12(17A) Effect of a declaratory order

## CHAPTER 19

## PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

(Uniform Rules)

- 19.1(17A,22) Definitions
- 19.3(17A,22) Requests for access to records
- 19.9(17A,22) Disclosures without consent of the subject
- 19.10(17A,22) Routine use
- 19.11(17A,22) Consensual disclosure of confidential records
- 19.12(17A,22) Release to subject
- 19.13(17A,22) Availability of records
- 19.14(17A,22) Personally identifiable information
- 19.15(17A,22) Other groups of records
- 19.16(17A,22) Data processing systems
- 19.17(17A,22) Applicability

## CHAPTER 20

Reserved

## CHAPTER 21

## CASE MANAGEMENT PROGRAM FOR FRAIL ELDERERS

- 21.1(231) Authority
- 21.2(231) Purpose
- 21.3(231) Definitions
- 21.4(231) Program administration
- 21.5(231) Eligibility for CMPFE services
- 21.6(231) Admission into the case management program
- 21.7(231) Discharge from CMPFE
- 21.8(231) Organizational requirements
- 21.9(231) Personnel qualifications
- 21.10(231) Covered services
- 21.11(231) Assessment of consumer needs
- 21.12(231) Service plan development
- 21.13(231) Monitoring
- 21.14(231) Reassessment
- 21.15(231) Confidentiality
- 21.16(231) Contracting for case management services
- 21.17(231) Severability

## CHAPTER 22

## OFFICE OF SUBSTITUTE DECISION MAKER

- 22.1(231E,633) Purpose
- 22.2(231E,633) Definitions
- 22.3(231E,633) Substitute decision maker qualifications
- 22.4(231E,633) Ethics and standards of practice
- 22.5(231E,633) Staffing ratio
- 22.6(231E,633) Conflict of interest—state office
- 22.7(231E,633) Consumers eligible for services

- 22.8(231E,633) Application and intake process—guardianship, conservatorship, representative payee and personal representative
- 22.9(231E,633) Application and intake process—power of attorney
- 22.10(231E,633) Case records
- 22.11(231E,633) Confidentiality
- 22.12(231E,633) Termination or limitation
- 22.13(231E,633) Service fees
- 22.14(231E,633) Fee schedule
- 22.15(231E,633) Denial of services—appeal
- 22.16(231E,633) Contesting the actions of a guardian or conservator
- 22.17(231E,633) Contesting the actions of an attorney-in-fact
- 22.18(231E,633) Severability

#### CHAPTER 23

##### AGING AND DISABILITY RESOURCE CENTER

- 23.1(231) General
- 23.2(231) Authority
- 23.3(231) Aging and disability resource center
- 23.4(231) ADRC coordination centers
- 23.5(231) ADRC local access points
- 23.6(231) Population served

#### CHAPTERS 24 to 28

Reserved

#### CHAPTER 29

##### REDUCTION OF AREA AGENCIES ON AGING

- 29.1(231) General
- 29.2(231) Definitions
- 29.3(231) Dedesignation—identification of organization
- 29.4(231) Cooperation mandated
- 29.5(231) Assumption of services provided to individuals
- 29.6(231) Transfer of assets
- 29.7(231) Transfer of client files and records
- 29.8(231) Closing audit and interim financial statements



CHAPTER 1  
INTRODUCTION, ABBREVIATIONS AND DEFINITIONS

[Prior to 5/20/87, see Aging, Commission on the[20] Ch 1]

[Prior to 1/27/10, see Elder Affairs Department[321] Ch 1]

**17—1.1(231) Authority and purpose.** The rules of the Iowa department on aging are based on the authority of Iowa Code chapters 231, 231E, 235B and 249H. These rules prescribe requirements:

1. That agencies shall meet to receive grants under the Older Americans Act and other funds administered through the Iowa department on aging;
2. For planning, administration and service delivery for the department as well as the area agencies on aging;
3. Of the department's fiscal policy;
4. To request waivers or variances from administrative rules;
5. For monitoring, complaint investigation and penalties for programs under the department's jurisdiction; and
6. For operation, administration and planning of the long-term care resident's advocate/ombudsman office and other entities under the department's purview which assist in ensuring quality care and protection of Iowa's older individuals.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—1.2(231) Other regulations and order of precedence.** These agency rules are based on the following federal and state regulations that are listed in the order of precedence which shall prevail in the event of conflicting or inconsistent requirements:

1. Older Americans Act of 1965.
2. Code of Federal Regulations, 5 CFR 900, Subpart F, August 14, 1979; 7 CFR 250, January 9, 1985; 28 CFR 89, March 2, 1976; 45 CFR Parts: 74, June 7, 1981; 80, December 4, 1964; 81, November 7, 1971; 84, May 4, 1977; 90, June 12, 1979; and 1321, April 1, 1985.
3. Federal Administration on Aging policy issuances and administration on aging program instructions.
4. Iowa Code chapter 231 and other Iowa Code chapters as given in 17—1.1(231) and other chapters as determined by the Iowa legislature.
5. Administrative rules published in the Iowa Administrative Code, promulgated under agency number 17.
6. Iowa aging program instructions issued by the department and signed by the director or the director's designee.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—1.3(231) Applicability.** The rules set forth in the chapters under the jurisdiction of the department on aging apply to all grants awarded to any recipient through the department and to any entities regulated by the department. Compliance with these rules shall be mandatory, unless a waiver is granted in accordance with the procedure in 17—Chapter 11.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—1.4(231) Abbreviations.** Abbreviations used in rules under agency number 17 are as given below unless defined and used differently in various chapters under the department's jurisdiction:

“AAA” means Area Agency on Aging, singular or plural dependent on context.

“AOA” means the Administration on Aging, the federal agency established to administer the provisions of the Act.

“CFR” means the Code of Federal Regulations.

“CMPFE” means the case management program for the frail elderly as provided in Iowa Code section 231.23A.

“DIA” means the department of inspections and appeals established in Iowa Code chapter 10A.

“IADL” means instrumental activities of daily living.

“*IAPI*” means the Iowa aging program instruction, the documents issued by the department under a system of numbering and reference regarding operating and reporting methods for AAA.

“*IDA*” means the Iowa department on aging established in Iowa Code chapter 231.

“*NAPIS*” means the National Aging Program Information System, the data collection and assimilating process used for preparation of the annual uniform state performance report under the OAA.

“*OAA*” means the Older Americans Act.

“*RDA/AI*” means recommended daily allowances/adequate intakes for purposes of nutrition standards.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—1.5(231) Definitions.** Words and phrases used in rules under agency number 17 are defined as below unless defined and used differently in the various chapters under the department’s jurisdiction. The appearance of an acronym after a defined term indicates that the definition was taken from that source.

“*Accessible*” means without physical, cultural, financial, or psychological barriers to service.

“*Act*” or “*federal act*” or “*OAA*” means the Older Americans Act, 42 U.S.C. § 3001 et seq.

“*Administration costs*” means all direct and indirect costs incurred by a grantee in managing a grant, including but not limited to all audit and board expenses incurred in the support of an area agency on aging director.

“*Administration on Aging*” or “*AOA*” means the federal agency established to administer the provisions of the Act.

“*Administrative action*” means an action or decision made by an owner, employee, or agent of a long-term care facility, or by a governmental agency, which affects the service provided to residents of long-term care facilities.

“*ADRC coordination center*” means an entity designated by the department that carries out duties and functions as mandated in rule promulgated by the department.

“*ADRC local access point*” means an entity designated by an ADRC coordination center that carries out duties and functions as mandated in rules promulgated by the department.

“*Aggrieved party*” means an individual or organization that alleges that the individual’s or organization’s rights have been denied by action of the department, AAA or AAA subcontractor.

“*Aging and disability resource center*” or “*ADRC*” means the same as “Aging and Disability Resource Center” as defined in the federal Act.

“*Area agency on aging,*” “*area agency*” or “*AAA*” means the grantee agency(ies) designated by the commission in a planning and service area to develop and administer the multiyear area plan for a comprehensive and coordinated system of services for elders and to carry out the duties specified in Iowa Code chapter 231 and rules promulgated by the department on aging. These terms may be interpreted as either singular or plural form as determined by context.

“*Area plan*” or “*multiyear area plan*” means a document, developed in accordance with the uniform area plan format and IAPI issued by the department, that is submitted to the department every four years, with annual updates, by an AAA in order to receive subgrants from the department’s grants.

“*Cognitive disorder*” means a disorder characterized by cognitive dysfunction presumed to be the result of illness that does not meet criteria for dementia, delirium, or amnesic disorder.

“*Commission*” means the commission on aging.

“*Complaint*” means a report of an alleged violation of requirements of federal and state laws, rules or regulations, or a report of practices and procedures related to admission or to an individual’s entitlement to care and services under federal and state laws and regulations.

“*Comprehensive and coordinated system*” means a system for providing all necessary supportive services, including nutrition services, in a manner designed to:

1. Facilitate accessibility to and utilization of all supportive and nutrition services provided within the geographic area served by the system by any public or private agency or organization.
2. Develop and make the most efficient use of supportive services and nutrition services to meet the needs of older individuals with a minimum of duplication.

3. Use available resources efficiently and with a minimum of duplication; and
4. Encourage and assist public and private entities that have unrealized potential for meeting the service needs of older individuals to assist the elders on a voluntary basis.

“*Continuum of care*” means a full range of economic, physical, psychological, social and support programs and services necessary to maintain or restore older individuals to their optimal environment.

“*Contract*” means an agreement between two or more persons which creates an obligation to do or not to do a permissible or an impermissible action. Its essentials are competent parties, subject matter, legal consideration, mutuality of agreement and mutuality of obligation.

“*Dementia*” means an illness characterized by multiple cognitive deficits which represent a decline from previous levels of functioning and include memory impairment and one or more of the following cognitive disturbances: aphasia, apraxia, agnosia, and disturbance in executive functioning.

“*Dementia-specific*” means a program certified under the law and regulations governing the particular program which either serves five or more persons with dementia between Stages 4 and 7 on the Global Deterioration Scale or holds itself out as providing specialized care for persons with a cognitive disorder or dementia, such as Alzheimer’s disease, in a dedicated setting.

“*Department on aging*” or “*department*” means the sole state agency responsible for administration of the Older Americans Act and Iowa Code chapters 231 and 231E and other applicable laws or rules.

“*Dietitian*” or “*licensed dietitian*” means a person who maintains a license granted by the Iowa board of dietetic examiners.

“*Direct costs*” means those costs that can be identified specifically with a particular final cost objective.

“*Director*” means the director of the Iowa department on aging.

“*Disability*” (OAA) means (except when such term is used in the phrase “severe disability,” “developmental disabilities,” “physical and mental disability,” “physical and mental disabilities,” or “physical disabilities”) a disability attributable to mental or physical impairment, or a combination of mental or physical impairments, that results in substantial functional limitations in one or more of the following areas of major life activity: (1) self-care, (2) receptive and expressive language, (3) learning, (4) mobility, (5) self-direction, (6) capacity for independent living, (7) economic self-sufficiency, (8) cognitive functioning, and (9) emotional adjustment.

“*Elder abuse*” (OAA) means abuse, neglect, or exploitation of an older individual (elder) including the willful:

1. Infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical harm, pain, or mental anguish; or
2. Deprivation by a person, including a caregiver, of goods or services that are necessary to avoid physical harm, mental anguish, or mental illness.

“*Eligible individual*” means any person who meets the federal definition of this term for the program being utilized.

“*Exploitation*” (OAA or 235B; dependent on the rule content, the source of the appropriate definition will be referenced in the individual chapter) means:

1. (OAA) The illegal or improper act or process of an individual, including a caregiver, using the resources of an older individual for monetary or personal benefit, profit, or gain; or
2. “Exploitation” as defined in Iowa Code chapter 235B.

“*Fiscal year*” or “*FY*” means the state fiscal year, July 1 through June 30, numbered according to the year in which the fiscal year ends.

“*Focal point*” means a facility established to encourage the maximum collocation and coordination of services for older individuals.

“*Frail*” (AOA Title III-D) means having a physical or mental disability, including Alzheimer’s disease or a related disorder with neurological or organic brain dysfunction, that restricts the ability of an individual to perform normal daily tasks or that threatens the capacity of an individual to live independently.

“*Grantee*” means the legal entity to which a grant is awarded and which is accountable to the department for the use of the funds provided. The grantee is the entire legal entity even if only a particular

component of the entity is designated in the award document. The term “grantee” does not include any secondary recipients such as subgrantees or subcontractors that may receive funds from a grantee pursuant to a grant.

“*Greatest economic need*” means the need resulting from an annual income level at or below the official poverty guideline as defined in IAPI issued by the department.

“*Greatest social need*” means the need caused by noneconomic factors, which include physical and mental disabilities, language barriers, and cultural, geographic or social isolation including isolation caused by racial or ethnic status, that restrict an individual’s ability to perform normal daily tasks or that threaten the older individual’s capacity to live independently.

“*Grievance*” means a report of an administrative action alleged to affect tenants or participants in an adverse manner.

“*Indirect costs*” means those costs that are: (1) incurred for a common or joint purpose benefiting more than one cost objective, and (2) not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved.

“*In-home services*” means:

1. Services of homemakers and home health aides;
2. Visiting and telephone reassurance;
3. Chore maintenance;
4. In-home respite care for families, and adult day care as a respite service for families;
5. Minor modification of homes that is necessary to facilitate the ability of older individuals to remain at home and that is not available under another program (other than another program carried out under the Act);

6. Personal care services; and
7. Other in-home services as defined by the IDA in the state plan submitted in accordance with Section 307 of the Act and by the AAA in the area plan submitted in accordance with Section 306 of the Act.

“*Instrumental activities of daily living*” or “*IADL*” means those activities that reflect the older individual’s ability to perform household and other tasks necessary to meet the older individual’s needs within the community, which may include but are not limited to shopping, housekeeping, chores, and traveling within the community.

“*Iowa Aging Program Instruction*” or “*IAPI*” means a document issued by the department under a system of numbering and reference regarding operating and reporting methods for AAA or instructions which change frequently.

“*Legal assistance*” means provision of legal advice, counseling and representation by an attorney or other person acting under the supervision of an attorney.

“*Legal representative*” means a person appointed by the court to act on behalf of a participant or tenant, or a person acting pursuant to a power of attorney.

“*Local sources*” means the equivalent cash value of third-party in-kind contributions (e.g., property or services which benefit a grant-supported project or program and which are contributed by nonfederal third parties without a charge to the grantee or subgrantee under the grant or subgrant) and cash resources, or both, made available by local sources (e.g., local public funds, other local cash, and program income) representing that portion of the costs of a project or program receiving funds from state appropriations.

“*Long-term care facility*” means a long-term care unit of a hospital, a licensed hospice program, a foster group home, a group living arrangement, or a facility licensed under Iowa Code section 135C.1 whether the facility is public or private.

“*Long-term care resident’s advocate program*” or “*LTCRAP*” means the statewide long-term care ombudsman program operated by the department on aging pursuant to the federal Act and Iowa Code chapter 231.

“*National Aging Program Information System*” or “*NAPIS*” means the reporting system in which the Older Americans Act requires participation by providers receiving funding from the provisions of the Act.

“*Neglect*” (OAA) means the failure:

1. To provide for oneself the goods or services that are necessary to avoid physical harm, mental anguish, or mental illness; or
2. Of a caregiver to provide the goods or services that are necessary to avoid physical harm, mental anguish, or mental illness.

*“Nurse-delegated assistance”* means those delegated tasks or activities for which a professional nurse has assumed responsibility for assessing, planning, implementing, or evaluating, and for which the nurse remains legally accountable.

*“Nutrition Services Incentive Program”* or *“NSIP”* means the Nutrition Services Incentive Program established under the Older Americans Act.

*“Older Americans Act”* or *“OAA”* means the same as “Act” defined herein.

*“Older individual”* means a person aged 60 or older.

*“Options counseling”* means the service of providing an interactive process whereby individuals receive guidance in their deliberations to make informed choices about long-term supports. The process is directed by the individual and may include others whom the individual chooses or those who are legally authorized to represent the individual. Options counseling may include but is not limited to the following: (1) a personal interview and assessment to discover strengths, values, and preferences of the individual and screenings for entitlement program eligibility, (2) a facilitated decision-making process which explores resources and service options and supports the individual in weighing pros and cons, (3) developing action steps toward a goal or a long-term support plan and assistance in applying for and accessing support options, and (4) follow-up to ensure supports and decisions are assisting the individual.

*“Options counselor”* means the person(s) responsible for providing the service of options counseling.

*“Person”* means the same as that defined in Iowa Code section 4.1(20).

*“Planning and service area”* or *“PSA”* means a geographic area of the state that is designated by the commission for purposes of planning, development, delivery and overall administration of services under a multiyear area plan. “PSA” may be interpreted as either singular or plural dependent on context.

*“Plan of correction”* means a plan developed by an area agency on aging and approved by the department which describes the actions the area agency on aging shall take to correct deficiencies arising from the agency’s failure to perform and specifies the date by which those deficiencies shall be corrected.

*“Priority services”* means access services (including case management, transportation, outreach, and information and assistance), in-home services, and legal assistance services.

*“Program income”* or *“contributions”* means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award. Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under state-funded or federally funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Except as otherwise provided in the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, or discounts or interest earned on any of them. Furthermore, program income does not include taxes, special assessments, levies, and fines raised by governmental recipients.

*“Provider”* means any person, company, firm, association or other legal entity that provides services as delineated in any chapter under agency number 17.

*“Public or private nonprofit service provider”* means any government agency or private organization certified to be nonprofit by the U.S. Internal Revenue Service or an agency which was established pursuant to Iowa Code chapter 28E or chapter 504A and is composed solely of public agencies or governmental units as defined in those chapters.

*“Resident”* means any person residing in a long-term care facility and shall also include individuals seeking admission to a long-term care facility.

*“Routine”* means regular, customary or not occasional or intermittent.

*“Therapeutic diet”* means meals served that are soft, low-fat, low-sodium or controlled calorie.

*“Title III”* means Title III of the federal Act for state and community programs on aging.

1. “Title III-B” means requirements and funding for supportive services.

2. “Title III-C” means requirements and funding for nutrition services.
3. “Title III-C(1)” means requirements and funding for congregate nutrition services.
4. “Title III-C(2)” means requirements and funding for home-delivered nutrition services.
5. “Title III-D” means requirements and funding for disease prevention and health promotion.
6. “Title III-E” means requirements and funding for the National Family Caregiver Support program.

“*Title V*” means Title V of the federal Act for the Senior Community Service Employment Program for Older Americans.

“*Title VII*” means Title VII of the federal Act for allotments for vulnerable elder rights protection activities.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 0619C, IAB 3/6/13, effective 4/10/13; ARC 0742C, IAB 5/15/13, effective 6/19/13]

These rules are intended to implement Iowa Code chapters 231, 231B, 231C, 231D, 235B and 249H.

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<sup>1</sup> Effective date of Ch 1 delayed 70 days by the Administrative Rules Review Committee.

<sup>2</sup> Two ARCs

CHAPTER 5  
DEPARTMENT FISCAL OPERATIONS  
[Prior to 5/20/87, see Aging, Commission on the [20], rule 4.9 and Ch 9]  
[Prior to 1/27/10, see Elder Affairs Department[321] Ch 5]

**17—5.1(231) Funds to area agencies on aging.**

**5.1(1)** The department shall distribute funds to each area agency on aging pursuant to federal and state laws, rules, and regulations.

**5.1(2)** The area agencies on aging shall use funds distributed by the department for the designated purpose and pursuant to federal and state laws, rules, and regulations.  
[ARC 0743C, IAB 5/15/13, effective 6/19/13]

**17—5.2(231) Distribution of Older Americans Act funds to area agencies on aging.** On and after July 1, 2013, the following shall apply:

**5.2(1)** The department shall review the formula for distribution within the state of funds received under the Older Americans Act and required to be distributed by funding formula every four years, at a minimum. The department, in its discretion, shall determine whether to maintain the existing formula or develop a new formula based on the criteria outlined in the Older Americans Act and on other relevant factors.

**5.2(2)** The department shall comply with all federal and state laws, rules, and regulations in developing a formula for distribution within the state of funds received under the Older Americans Act.

**5.2(3)** The department shall adhere to the following process to develop and adopt a formula for distribution within the state of funds received under the Older Americans Act:

*a.* The department shall hold a minimum of one meeting with area agencies on aging to facilitate discussion and receive comment regarding the proposed formula for distribution.

*b.* The department shall publish the proposed formula for distribution for review and comment by posting the information on the department's Web site. The publication shall comply with all criteria outlined in the Older Americans Act. The publication shall be posted on the department's Web site for a minimum of 30 calendar days prior to the date set for commission consideration of the proposed formula for distribution. The publication shall provide the method and time frame for acceptance of public comment.

*c.* The department shall distribute a press release containing the proposed funding formula to all newspapers within the state.

*d.* The information published pursuant to paragraph 5.2(3) "b" shall be mailed, via standard postal delivery or electronic mail, to the executive director and board chairperson of each area agency on aging a minimum of 30 calendar days prior to the date set for commission action to approve the formula for distribution.

*e.* The department shall accept written public comment in response to publication of the proposed formula for a minimum of 14 calendar days following publication. The method and time frame for acceptance of public comment shall be provided in the information published pursuant to paragraphs 5.2(3) "b" and "c."

*f.* The department shall submit the proposed formula for distribution to the Assistant Secretary of the U.S. Department of Health and Human Services for approval pursuant to the Older Americans Act.

*g.* The department shall review all public comments received and provide a summary for the commission's review.

*h.* The department shall submit to the commission for consideration a proposed formula to distribute funds within the state.

*i.* The commission may, in its discretion, approve or disapprove the department's proposed formula for distribution of funds within the state. If the commission disapproves the department's proposed formula, the department shall develop an alternate formula for distribution of funds within the state after following all procedures provided in rule 17—5.2(231).

*j.* The commission's final decision shall be posted on the department's Web site, [www.aging.iowa.gov](http://www.aging.iowa.gov).

*k.* The department shall distribute federal funds proportionately based on a state fiscal year.

**5.2(4) NSIP.** Each area agency on aging shall receive a portion of the NSIP allotment to the department based on the proportion of an area agency on aging's eligible meals related to the total of NSIP-eligible meals for all area agencies on aging.

[ARC 0743C, IAB 5/15/13, effective 6/19/13]

**17—5.3(231) Distribution of state funds.** On and after July 1, 2013, the following shall apply:

**5.3(1)** The department shall review the formula for distribution within the state of funds received from state appropriations every four years, at a minimum. The department, in its discretion, shall determine whether to maintain the existing formula or develop a new formula based on the criteria outlined in the Older Americans Act and other relevant factors.

**5.3(2)** The department shall comply with all federal and state laws, rules, and regulations in developing a formula for distribution within the state of funds received from state appropriations.

**5.3(3)** The department shall adhere to the following process to develop and adopt a formula for distribution within the state of funds received from state appropriations:

*a.* The department shall hold a minimum of one meeting with area agencies on aging to facilitate discussion and receive comment regarding the proposed formula for distribution.

*b.* The department shall publish the proposed formula for distribution for review and comment by posting the information on the department's Web site. The publication shall comply with all criteria outlined in the Older Americans Act and state law. The publication shall be posted on the department's Web site for a minimum of 30 calendar days prior to the date set for commission action to approve the proposed formula for distribution. The publication shall provide the method and time frame for acceptance of public comment.

*c.* The department shall distribute a press release containing the proposed funding formula to all newspapers within the state.

*d.* The information published pursuant to paragraph 5.3(3) "b" shall be mailed, via standard postal delivery or electronic mail, to the executive director and board chairperson of each area agency on aging a minimum of 30 calendar days prior to the date set for commission action to approve the formula for distribution.

*e.* The department shall accept written public comment in response to publication of the proposed formula for a minimum of 14 calendar days following publication. The method and time frame for acceptance of public comment shall be provided in the information published pursuant to paragraphs 5.3(3) "b" and "c."

*f.* The department shall review all public comments received and provide a summary for the commission's review.

*g.* The department shall submit to the commission for consideration a proposed formula to distribute funds within the state.

*h.* The commission may, in its discretion, approve or disapprove the department's proposed formula for distribution of funds within the state. If the commission disapproves the department's proposed formula, the department shall develop an alternate formula for distribution of funds within the state after following all procedures provided in rule 17—5.3(231).

*i.* The commission's final decision shall be posted on the department's Web site, [www.aging.iowa.gov](http://www.aging.iowa.gov).

[ARC 0743C, IAB 5/15/13, effective 6/19/13]

**17—5.4(231) Posting of formulas for distribution.** The department shall maintain a posting of the current formulas used for distribution of state or federal funds on the department's Web site, [www.aging.iowa.gov](http://www.aging.iowa.gov).

[ARC 0743C, IAB 5/15/13, effective 6/19/13]

**17—5.5(231) Priority service expenditures.** Each area agency on aging shall expend a specified minimum percentage of Older Americans Act Title III-B funds, less administration costs, for priority

services. The minimum percentage to be expended on priority services shall be established by the commission and posted on the department's Web site, [www.aging.iowa.gov](http://www.aging.iowa.gov).  
[ARC 0743C, IAB 5/15/13, effective 6/19/13]

**17—5.6(231) Match requirements for Older Americans Act funds.**

**5.6(1)** Area agencies on aging shall comply with all match requirements established by and outlined in the Older Americans Act and federal rules and regulations.

**5.6(2)** Older Americans Act match requirements shall be met with the use of nonfederal sources, as defined by the Older Americans Act. The match used to meet Older Americans Act requirements shall be separate and independent of the match used to meet the state match requirements.

**5.6(3)** If an area agency on aging fails to appropriately match Older Americans Act funds pursuant to the match requirements of the Older Americans Act, the department may take any action necessary to correct the deficiency, including but not limited to the remedies provided in rule 17—5.14(231).  
[ARC 0743C, IAB 5/15/13, effective 6/19/13]

**17—5.7(231) Match requirements for state funds.**

**5.7(1)** Area agencies on aging shall comply with all match requirements mandated by federal and state laws, rules, and regulations.

**5.7(2)** The match requirement for state funds of \$15 for every \$85 of state funds distributed shall be met with the use of local sources. The local sources used to meet state match requirements shall be separate and independent of the match used to meet the Older Americans Act match requirements.

**5.7(3)** If an area agency on aging fails to appropriately match state funds pursuant to the match requirements established in state law and rule, the department may take any action necessary to correct the deficiency, including but not limited to the remedies provided in rule 17—5.14(231).  
[ARC 0743C, IAB 5/15/13, effective 6/19/13]

**17—5.8(231) Contributions.** Each area agency on aging shall be allowed to receive voluntary contributions in compliance with federal and state laws, rules, and regulations.

[ARC 0743C, IAB 5/15/13, effective 6/19/13]

**17—5.9(231) General reporting requirements.**

**5.9(1)** Each area agency on aging shall submit program and financial reports to comply with federal and state program requirements.

**5.9(2)** Each area agency on aging shall be responsible for the following:

*a.* Gathering accurate information necessary to complete reports;

*b.* Completing reports on forms or in a format prescribed by the department; and

*c.* Submitting reports or data to the department on or before the established due dates. The established due dates for reports shall be listed in the area plan, the department's service and fiscal reporting manual, or in an IAPI.

**5.9(3)** Each area agency on aging shall be solely responsible for obtaining and reporting necessary information from subgrantees, contractors and subcontractors.

**5.9(4)** Failure to submit complete and accurate program or financial reports by the established due dates, even if waiver is granted, may subject the area agency on aging to remedies provided in rule 17—5.14(231).  
[ARC 0743C, IAB 5/15/13, effective 6/19/13]

**17—5.10(231) Redistribution.**

**5.10(1)** *Redistribution of federal funds.*

*a.* Funds distributed pursuant to the Older Americans Act which are not expended for goods or services or both to be provided by the last day of the award period shall be available to the department for redistribution unless a written application for carryover is approved pursuant to paragraph 5.10(1) "b."

*b.* Funds distributed pursuant to the Older Americans Act may be carried over upon department approval of a written application. The written application must be received by the department on or before the final report due date for that fiscal year. The written application must contain the amount

of funds requested for carryover. The department, in its discretion, shall approve or deny the written application.

*c.* Any unexpended funds distributed for administration costs pursuant to the Older Americans Act, as shown in the department's annual allotment tables, may be used only for program service expenditures in the subsequent fiscal year.

**5.10(2) Redistribution of state funds.**

*a.* If the department determines prior to the end of a fiscal year that an area agency on aging will not expend its state funds for goods or services or both to be provided by the last day of the fiscal year, the department may redistribute the funds to one or more area agencies on aging in accordance with demonstrated utilization or by a redistribution method specified in IAPI.

*b.* The department may, in its discretion, redistribute funds to one or more area agencies on aging based on expenditure estimates for that fiscal year. The department may redistribute funds as early as January of that fiscal year.

*c.* The area agencies on aging receiving the redistributed funds shall expend them by the end of the fiscal year in which they are redistributed for goods or services or both to be provided by the last day of the fiscal year.

**5.10(3) Failure to expend federal or state funds.** Failure to expend federal or state funds in accordance with the area plan may subject the area agency on aging to remedies provided in rule 17—5.14(231).

[ARC 0743C, IAB 5/15/13, effective 6/19/13]

**17—5.11(231) State reviews and audits.**

**5.11(1)** Each area agency on aging shall complete an annual audit report and submit the audit report to the department for review as directed in the guidelines issued by the department.

**5.11(2)** The audit costs shall be negotiated and paid for by the grantee from the applicable grants.

**5.11(3)** The department shall provide the grantee with guidelines to be followed by the auditor.

**5.11(4)** Failure to fully comply with state review and audit requirements by the due dates, even if waiver is granted, may subject the area agency on aging to remedies provided in rule 17—5.14(231).

[ARC 0743C, IAB 5/15/13, effective 6/19/13]

**17—5.12(231) Acquisition of goods and services.** All area agency on aging acquisitions of goods and services shall be in compliance with state and federal laws, rules and regulations.

[ARC 0743C, IAB 5/15/13, effective 6/19/13]

**17—5.13(231) Records—contract administration.** The department and each area agency on aging shall maintain records and reports for purchases and contracts that utilize state or federal funds. The records and reports shall be maintained pursuant to federal and state laws, rules, and regulations.

[ARC 0743C, IAB 5/15/13, effective 6/19/13]

**17—5.14(231) Correction of deficiencies.**

**5.14(1) Remedies.** The purpose of remedies is to ensure prompt action is taken by an area agency on aging to correct deficiencies arising from failure to perform as identified by this rule. The department shall determine the remedies to be applied to the area agency on aging for failure to perform.

**5.14(2) Number of remedies.** The department may apply one or more remedies for each deficiency constituting failure to perform or for all deficiencies constituting failure to perform.

**5.14(3) Notification requirements.** The department shall give the area agency on aging written notice of remedy at least 15 calendar days before the effective date of the remedy. The written notice of remedy shall include the following:

- a.* The nature of the failure to perform.
- b.* The remedy imposed.
- c.* The effective date of the remedy.
- d.* The right to appeal the determination leading to the remedy.

**5.14(4) Factors to be considered in selecting remedies.**

*a.* In order to select the appropriate remedy, the department shall determine the seriousness of the failure to perform. To determine the seriousness of the failure to perform, the department shall consider whether the area agency on aging's failure(s) to perform:

- (1) Is isolated.
- (2) Constitutes a pattern.
- (3) Is broad in scope.
- (4) Creates a financial burden for the department, other area agencies on aging, or the aging network.
- (5) Creates an administrative burden for the department, other area agencies on aging, or the aging network.

*b.* In selecting an appropriate remedy, the department may also consider the area agency on aging's prior history of failure to perform in general and specifically with reference to the cited failure to perform.

**5.14(5) Available remedies.** The department may select one or more of the following remedies with reference to a cited failure to perform:

*a. Directed in-service training.* The department may require the staff of an area agency on aging to attend an in-service training program if education is likely to correct the failure to perform. The area agency on aging is responsible for the payment for the directed in-service training.

*b. Department monitoring.* The department may require an area agency on aging to receive increased monitoring by the department. The frequency and duration of the monitoring is within the discretion of the department.

*c. Directed plan of correction.* The department may develop a plan of correction and require an area agency on aging to take action within specified time frames.

*d. Reduction of funding.* The department may reduce the amount of funding distributed.

*e. Investigative audit.* The department may require an area agency on aging receive an investigative audit. The area agency on aging is responsible for the payment for this investigative audit.

*f. Other remedies.* The department may also impose other remedies, as appropriate.

*g. Dededesignation.* The department may request dedesignation of an area agency on aging pursuant to rule 17—4.6(231).

**5.14(6) Duration of remedies.** Remedies shall continue until:

*a.* The area agency on aging has achieved substantial compliance as determined by the department or based upon a revisit or after an examination of credible written evidence that the department can verify without an on-site visit; or

*b.* The area agency on aging is dedesignated.

**5.14(7) Mandatory plan of correction.** Each area agency on aging that has been cited for a failure to perform shall submit a plan of correction for approval by the department regardless of which remedies are applied.

**5.14(8) Procedures for plan of correction.** Within 30 calendar days following receipt of the written notice of remedy pursuant to subrule 5.14(3), the area agency on aging shall submit a plan of correction to the department.

*a. Contents of plan.* The plan of correction shall contain the following information:

- (1) How the area agency on aging will correct the failure to perform;
- (2) How the area agency on aging will act to protect consumers within the affected area;
- (3) The measures the area agency on aging will take or the systems it will alter to ensure that the problem does not reoccur;
- (4) How the area agency on aging plans to monitor its performance to make sure that solutions are sustained; and
- (5) The date(s) when corrective action will be completed.

*b. Review of plan.* The department shall review the plan of correction within 30 calendar days of receipt. The department may request additional information or revisions to the plan, which shall be provided by the area agency on aging as requested.

**5.14(9)** *Appeal of a determination of failure to perform.*

*a.* An area agency on aging may request a hearing on a determination of a failure to perform that leads to a remedy citation. The affected area agency on aging shall file the request for hearing in writing to the department within 60 calendar days from receipt of the written notice of remedy.

*b.* Hearings shall be conducted pursuant to 17—Chapter 13, with an administrative law judge appointed as the presiding officer and with the department as the final decision maker with subject matter jurisdiction.

*c.* An area agency on aging may not appeal the choice of remedy, including the factors considered by the department in choosing the remedy.

[ARC 0743C, IAB 5/15/13, effective 6/19/13]

These rules are intended to implement Iowa Code chapter 231.

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<sup>1</sup> Effective date of 20—9.22(2) delayed 70 days by the Administrative Rules Review Committee.

<sup>2</sup> Effective date of Ch 5 delayed 70 days by the Administrative Rules Review Committee.

CHAPTER 6  
AREA AGENCY ON AGING PLANNING AND ADMINISTRATION

[Prior to 5/20/87, see Aging, Commission on the[20] Ch 5]

[Prior to 1/27/10, see Elder Affairs Department[321] Ch 6]

**17—6.1(231) Definitions.** Words and phrases as used in this chapter are as defined in 17—Chapter 1 unless the context indicates otherwise. The following definitions also apply to this chapter:

“*Access*” or “*access services*” means case management, transportation, outreach, information and assistance.

“*Entrepreneurial activities*” means the manufacturing, processing, selling, offering for sale, renting, leasing, delivering, dispensing, distributing or advertising of goods or services for profit; or a contract or agreement that an AAA will provide specific named service(s) for third-party payees.

“*Priority services*” means access, in-home and legal assistance services.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—6.2(231) Area plan.**

**6.2(1) *Area plan.*** Each AAA shall develop and administer an area plan.

**6.2(2) *Duration and format of the area plan.***

*a.* The area plan shall be for a minimum of a two-year and a maximum of a four-year period specified by the department, with annual updates.

*b.* Uniform area plan format. All AAA shall submit an area plan or plan amendment to the department in accordance with the uniform area plan format, other instructions issued by the department, this chapter, and the federal Act.

**6.2(3) *Comprehensive and coordinated delivery system.*** The multiyear area plan shall provide for the development of a comprehensive and coordinated service delivery system for all supportive and nutrition services needed by older individuals in the planning and service area to:

*a.* Facilitate access to and utilization of all existing services; and

*b.* Develop supportive and nutrition services effectively and efficiently to meet the needs of older individuals.

**6.2(4) *Requirements.*** An area plan shall provide for a comprehensive and coordinated service delivery system as defined in:

*a.* The federal Act;

*b.* Older Americans Act Title III Regulations; Code of Federal Regulations, Title 45, Volume 4, Part 1200 (45 CFR 117);

*c.* This chapter;

*d.* IAPI issued by the department.

**6.2(5) *Plan content.*** The area plan shall, at a minimum, contain the following information:

*a.* Assurance that the AAA agrees to abide by the requirements of the federal Act and all other applicable laws and rules; and

*b.* Objectives and budget for each year of the designated period and methods to obtain those objectives; and

*c.* Client estimates. Area agencies shall estimate the number of older individuals with the characteristics identified in Form 3 A 1 of an IAPI.

**6.2(6) *Area plan amendments and revisions.***

*a.* *Amendments.* The AAA shall amend the area plan and submit it to the commission for approval when:

(1) A new or amended state or federal statute, rule or regulation requires new information or conflicts with any existing plan provisions;

(2) A United States Supreme Court decision changes the interpretation of a statute or rule;

(3) Local law, organization, policy or agency operations change and are no longer accurately reflected in the area plan;

(4) The department requires amendments;

(5) The grantee proposes to change the designation of the single organizational unit or component unit responsible for programs under the federal Act or state law; or

(6) The area agency proposes to add or delete a service category.

*b. Revision.* The AAA may be required to revise the plan and submit it to the department for approval if:

(1) A department funding source to the area agency changes; or

(2) A program requirement changes.

**6.2(7) Procedures for area plans, plan amendments and revisions.**

*a. Public hearing(s).* The AAA shall hold at least one public hearing on the area plan and all plan amendments as required in this chapter. Priority services shall appear as a distinct agenda item for any hearing.

(1) The public hearing(s) shall be held prior to submission of the area plan or amendment(s) at a time which permits older individuals, public officials, and other interested parties reasonable opportunity to participate. The hearing(s) shall be held at a barrier-free, fully accessible location.

(2) The AAA shall advertise the hearing by sending notice to all known groups of older individuals, PSA public officials, and other interested parties. The AAA shall also publish a notice in the official newspapers as designated for each county served by the PSA. The notice shall include the time, date, and location of the public hearing.

(3) The hearing on the area plan shall include the priority services and priority services requirement as a distinct agenda item with a specific time set for the beginning of that portion of the hearing.

*b. Review and comment by the advisory council.*

(1) The AAA shall submit the area plan, amendments and revisions for review and comment to the AAA advisory council.

(2) The official representative of the AAA shall sign the plan, amendment or revision to signify that the AAA has completed all of the requirements of this chapter. The AAA shall then submit the area plan, amendment or revision to the department for review.

**6.2(8) Commission review.** Plans and plan amendments may be approved by the commission after they have been processed in accordance with the process given in this chapter. Revisions may be approved by the department after they have been processed in accordance with the process given in this chapter.

**6.2(9) Appeals.** Any person may appeal a denial of approval of an area plan, plan amendment or revision as provided in 17—Chapter 4.

**6.2(10) Area profile.** Each AAA shall submit to the department a profile in accordance with the time frame and procedures as issued in department IAPI. The profile shall contain, but not be limited to, the following AAA information:

*a.* Affirmative action plan;

*b.* Table of organizational structure;

*c.* Inventory of nutrition sites and senior centers;

*d.* Listing of the area agency's designated community focal points; and

*e.* Listing of the officers of the AAA board of directors.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 0744C, IAB 5/15/13, effective 6/19/13]

### **17—6.3(231) Area agency administration.**

**6.3(1) Director.** The AAA shall employ a qualified director and may employ other staff as necessary to manage and monitor the area plan.

**6.3(2) Director's responsibility.** It is the responsibility of the AAA director to:

*a.* Ensure that all AAA duties as outlined in the federal Act, state law, this chapter and other rules promulgated by any agency having jurisdiction are performed;

*b.* Develop the area plan;

*c.* Implement organizational operations;

*d.* Budget for services and operations;

*e.* Coordinate implementation of services; and

*f.* Monitor and evaluate services.

**6.3(3) *Discrimination.*** The AAA shall offer equal opportunities for employment or promotion to all employees and to applicants who meet the qualifications of the open position. Discrimination against any person because of gender, race, national origin, age, political affiliation, creed, color, religion, physical or mental disability, or other nonmerit factors is prohibited during any aspect of personnel administration and during employment.

**6.3(4) *Affirmative action plans.*** Each AAA shall develop an employment affirmative action plan which shall be submitted as part of the profile required in this chapter. All affirmative action plans shall comply with the requirements as given in IAPI.

**6.3(5) *Training and development requirements.*** Each AAA shall have a plan and procedures that will support a broad program of staff development activities to ensure training of volunteers, paid personnel and providers of services to Iowa's older individual population.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 0744C, IAB 5/15/13, effective 6/19/13]

#### **17—6.4(231) Confidentiality and disclosure of AAA information.**

**6.4(1) *Confidentiality.*** AAA shall implement procedures to ensure that no information in possession of an AAA, or an entity providing services under programs funded by the department, is disclosed in a form identifiable with an individual without that individual's informed consent regardless of the source of the information.

**6.4(2) *Public accessibility to manuals, guidelines, and standards.*** Copies of all manuals, guidelines, and standards referred to by these rules shall be maintained by the AAA and available for public inspection.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—6.5(231) AAA contact information.** Information on how to contact the appropriate AAA office may be obtained by sending a request to the Department on Aging, Jessie Parker Building, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319; or by telephone at (515)725-3333; or by visiting the department's Web site [www.aging.iowa.gov](http://www.aging.iowa.gov).

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

#### **17—6.6(231) Duties of AAA.**

**6.6(1) General.** Each AAA shall fulfill the AAA duties specified in the federal Act, Iowa Code section 231.33 and this chapter. AAA shall:

*a.* Carry out functions related to advocacy, planning, coordination, interagency linkages, information sharing, brokering, monitoring and evaluation designed to lead to and maintain a comprehensive and coordinated community-based system. This system shall serve the PSA so that older individuals may lead independent, meaningful and dignified lives in their own homes and communities for as long as possible;

*b.* Strive to offer a range of services which are readily accessible to all older individuals by utilizing public, private and voluntary entities and personal resources of the client;

*c.* Encourage collaborative decision making among public, private, voluntary, religious and fraternal organizations, as well as older individuals;

*d.* Assist in determining and providing special assistance or resources to the most vulnerable older individuals who are in danger of losing their independence; and

*e.* Perform all functions as delineated in the area plan.

**6.6(2) Additional duties include:**

*a.* Attempt to involve the private bar and legal services corporation in the PSA in legal assistance activities;

*b.* Submit all reports in accordance with IAPI of the department;

*c.* Coordinate AAA activities with mental health services provided by community health centers and other nonprofit private or public organizations;

*d.* Compile and summarize information on institutions of higher education in the PSA which offer courses of study to older individuals at a no- or reduced-tuition rate and disseminate the information to older individuals at their gathering places;

*e.* Seek out older individuals who may be eligible to receive Supplemental Security Income benefits under Title XVI of the Social Security Act, medical assistance under Titles XVIII and XIX of the Social Security Act, and benefits under the Food Stamp Act of 1977. The AAA shall provide information on the requirements for eligibility to receive these benefits and assist in applying for appropriate assistance and benefits;

*f.* Coordinate planning by individuals, agencies and organizations interested in the prevention of abuse, neglect and exploitation of older individuals and assist in implementation of educational and awareness activities, in coordination with the long-term care resident's advocate program;

*g.* Coordinate planning with other agencies and organizations to provide health promotion activities for older individuals.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

#### **17—6.7(231) AAA board of directors.**

**6.7(1)** Each designated AAA shall establish a board of directors in accordance with its individual articles of incorporation and bylaws.

**6.7(2)** The AAA board membership shall be representative of the geographic planning and service area.

**6.7(3)** Each AAA board of directors shall have board nominating and election procedures specified in its bylaws.

**6.7(4)** Each AAA shall specify in its bylaws the scope, function and responsibilities of the board, board committees and individual board members.

**6.7(5)** Each AAA shall provide an orientation process for newly elected board members that includes, at a minimum, the scope, function and responsibilities of the AAA and the responsibilities of the board, board committees and individual board members.

**6.7(6)** The department shall provide a minimum of four hours of training annually to AAA board members.

**6.7(7)** The AAA board of directors shall comply with Iowa Code chapter 504, "Revised Iowa Nonprofit Corporation Act."

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

#### **17—6.8(231) AAA advisory council.**

**6.8(1) *Member requirements.*** The AAA shall establish an advisory council composed of members, at least one-half of whom are aged 60 and older, which shall include:

*a.* Recipients of services under the Act, including minority older individuals and older individuals residing in rural areas;

*b.* Representatives of older individuals;

*c.* Current local elected officials;

*d.* The general public;

*e.* Representatives of health care provider organizations, including providers of veterans' health care, if appropriate;

*f.* Representatives of supportive and nutrition service providers; and

*g.* Persons with leadership experience in private and volunteer sectors.

**6.8(2) *Duties.*** It shall be the specific responsibility of the advisory council to advise the AAA and:

*a.* Advocate for older individuals in the PSA by keeping informed of all activities and proposals concerning the older individuals;

*b.* Review and make recommendations on the content, formulation, administration and priorities of the area plan and participate in public hearings on the area plan;

*c.* Serve as an information link between the AAA and providers of services to older individuals in the PSA;

*d.* Review and comment on community policies, programs and actions which affect older individuals;

*e.* Assist in generating local support for development of programs for older individuals in the area.

**6.8(3) Frequency of meetings.** The AAA advisory council shall meet at least quarterly.

**6.8(4) Staff support.** The AAA shall provide staff and assistance to the AAA advisory council.

**6.8(5) Bylaws.** The AAA advisory council bylaws shall contain at least the basic bylaws: name, purpose, members, officers, meetings, committees, parliamentary authority and procedure for amendment of bylaws. The bylaw on membership shall include, but is not limited to, the number of, selection process and length of terms for members.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

### **17—6.9(231) Emergency situations.**

**6.9(1)** Prior to and after a natural disaster or other safety-threatening situation, each AAA shall plan and coordinate with other public and private entities for safe and timely continuity of service and the restoration of normal living conditions for older individuals. This shall include:

- a.* Alerting older individuals of the impending danger;
- b.* Assessing the needs of older individuals after the event occurs; and
- c.* Ensuring that identified needs are met through collaboration with other agencies.

**6.9(2)** To further this purpose, each AAA shall:

- a.* Include in the procedures manual established as required in this chapter procedures to respond to emergency or disaster situations;
- b.* Include in the development and training plan methods of training for staff, contractors, and other interested parties in response to emergency or disaster situations; and
- c.* Include in subgrants or contracts provisions for responding to emergency or disaster situations including, but not limited to, shifting funds from one activity to another or from one contractor to another.

**6.9(3) Services.** As a part of emergency response, the AAA may plan, coordinate and provide services funded under other programs consistent with responsibilities of an AAA.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—6.10(231) AAA procedures manual.** A procedures manual shall be developed and kept current by the AAA. The manual shall, at a minimum, establish procedures to be followed in:

**6.10(1)** Establishing and maintaining information and assistance availability to ensure that older individuals within the PSA will have convenient access to services;

**6.10(2)** Conducting periodic evaluations, which may include participant satisfaction surveys of activities carried out under the area plan;

**6.10(3)** Furnishing appropriate technical assistance to providers of supportive services, nutrition services, or multipurpose senior centers;

**6.10(4)** Establishment of a request for proposal process that includes methods of selection of providers and methods for award of grants or contracts under the area plan, including stipulations that all subcontractors or subgrantees comply with all applicable local, state and federal laws, rules or regulations, and, if applicable, all requirements for nonprofit entities;

**6.10(5)** Resolving complaints by any aggrieved party directly affected by an action or omission of the AAA. AAA appeal procedures shall be in compliance with the relevant federal and state statutes, regulations and rules and shall contain at least the following procedures and time frames for complaint resolution:

- a.* Acknowledgment of the complaint;
- b.* Process for attempting to informally resolve the complaint;
- c.* Time frame for sending a hearing notice;
- d.* Process for holding a hearing;
- e.* Notification of the outcome of the hearing;
- f.* Appeal to the next higher authority;

**6.10(6)** Ensuring confidentiality, so that no information about or obtained from an older individual is disclosed in a form that identifies the person without the person's informed consent;

**6.10(7)** The assessment and monitoring methods for programs and subcontracts funded by the AAA. This shall include documentation of quarterly monitoring of performance and on-site assessment and report at least annually;

**6.10(8)** Response to emergency or disaster situations;

**6.10(9)** Development of methods by which priority for delivery of services is determined;

**6.10(10)** Obtaining comments or suggestions from recipients about services provided by the AAA;

**6.10(11)** Determination of an individual's eligibility for home-delivered nutrition services, including specific criteria established by the AAA for:

*a.* Initial and subsequent six-month assessments of the individual's eligibility for home-delivered meals;

*b.* Determination of the number of days per week the individual has a need for home-delivered meals;

*c.* Determination of the individual's need for other home-delivered nutrition services;

**6.10(12)** Assurance that any facility housing a service will fully comply with all current federal, state or local health, fire, safety, sanitation, accessibility and licensure requirements;

**6.10(13)** Methods of monitoring service providers to ensure their performance is in accordance with terms, conditions and specifications for funding, including length of funding period, and the use of project income and methods of providing service;

**6.10(14)** If appropriate, offering a meal to individuals providing volunteer services during meal times on the same basis as meals are offered to eligible individuals;

**6.10(15)** Offering a meal to nonelderly individuals with disabilities who reside at home with and accompany eligible older individuals to a meal site;

**6.10(16)** Offering home-delivered meals to nonelderly individuals with disabilities when their elderly caregiver is eligible for a home-delivered meal;

**6.10(17)** Increasing public education and awareness in the prevention of abuse, neglect and exploitation of older individuals;

**6.10(18)** Identifying the public and private nonprofit entities involved in the prevention, identification, and treatment of abuse, neglect, and exploitation of older individuals and determining methods to respond to the needs of older individuals at risk; and

**6.10(19)** Offering health promotion activities and information to eligible individuals.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

#### **17—6.11(231) Contracts and subgrants.**

**6.11(1)** A contract or agreement between an AAA and a provider of a specific service in the PSA shall not restrict the AAA from contracting with other provider(s) of similar services.

**6.11(2)** Contract file. AAA shall maintain a file of all current contracts with service-providing agencies or organizations. These files shall be made available for monitoring and assessment by the department.

**6.11(3)** Contracts with for-profit organizations. An AAA must request prior approval from the department of any proposed service contracts with for-profit organizations under an area plan.

*a.* A separate approval request, using the request form provided by the department, shall be filed for each contract between the AAA and a provider for a service that is proposed to be delivered by a for-profit organization.

(1) The request for approval shall be submitted to the department at least 30 days prior to the signing of the contract.

(2) All applicants to provide services for which the contract is proposed shall be listed on the request form.

*b.* The department may approve the contracts only if the AAA demonstrates that the for-profit organization can provide services that are consistent with the goals of the AAA as stated in the area plan.

*c.* Services shall mean the services described in the uniform definitions of services contained in IAPI issued by the department.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—6.12(231) Direct service.**

**6.12(1)** An AAA must submit a request to provide direct service as part of the area plan. The request may be approved by the department based on documentation of the criteria given in subrule 6.12(3). The following services may be furnished directly by the AAA and are exempt from the requirements in subrule 6.12(3):

- a. Information and assistance;
- b. Outreach;
- c. Case management;
- d. Advocacy representation;
- e. Public education;
- f. Employment services;
- g. Mental health outreach;
- h. Coordination of efforts concerning the prevention of elder abuse.

**6.12(2)** Public hearing. Prior to the submission of the area plan, the AAA shall hold a public hearing to obtain comments regarding direct service(s) planned by the AAA. This hearing may be held separately or as a part of the hearing for the area plan.

a. Notice of the hearing shall be published at least 30 days prior to the hearing and shall specify the direct service(s) which the AAA plans to provide.

b. The AAA shall prepare and submit to the department a written record of the public hearing.

**6.12(3)** Criteria. The commission may approve an AAA request to provide direct service.

a. Approval will be based upon documentation of the following as submitted by the AAA:

(1) Direct provision of service is necessary to ensure an adequate supply of the service, and no potential provider was identified during the public hearing process; or

(2) The proposed service will be of comparable quality in the view of the AAA advisory council, and will meet or exceed service standards developed by the AAA; and

(3) The AAA can provide a service of equal quality at lower cost than another provider.

b. The department may consider other factors including:

(1) The demonstrated capacity of the AAA to deliver services consistently and reliably;

(2) The economic impact of transition from a contract provider to the AAA;

(3) Consideration of any possible disruption of service;

(4) Input from the AAA advisory council; and

(5) Comments from the public.

**6.12(4)** Conditional approval. If the criteria for approval of a request to provide direct services are not met, a condition may be placed on the area plan approval.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

**17—6.13(231) Waivers of priority service expenditures.**

**6.13(1)** An AAA shall request a waiver from the priority service expenditures in rule 17—5.5(231) if it does not propose sufficient funding to allow older individuals to have convenient access to a service. The waiver request shall be submitted with the plan or plan amendment pursuant to applicable procedures under 17—Chapter 11.

**6.13(2)** The commission, in approving an area plan or a plan amendment, may, upon recommendation of the director, waive the requirement of rule 17—5.5(231) for any category of service for which the AAA demonstrates the following:

a. That the services being furnished by other providers meet the needs of older individuals in the PSA for that category of service; or

b. That the AAA has made every reasonable effort to meet the need for a specific category of service.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 0744C, IAB 5/15/13, effective 6/19/13]

**17—6.14(231) Requirements for service providers.**

**6.14(1)** *Contributions.* The AAA shall consult with the relevant service providers and older individuals in the PSA to determine the best method for accepting voluntary contributions. As

established by contract with the AAA, each service provider, including an AAA providing direct service, shall:

- a. Provide each older individual with a voluntary opportunity to contribute to the cost of the service by displaying a suggested contribution schedule that takes into consideration income ranges of eligible individuals in local communities;
- b. Clearly inform each recipient that there is no obligation to contribute and that the contribution is purely voluntary;
- c. Protect the privacy and confidentiality of each older individual with respect to the person's contributions;
- d. Utilize appropriate procedures to safeguard and account for all contributions against loss, mishandling or theft by obtaining bonding for all employees and volunteers in accordance with instructions issued by the department in an IAPI;
- e. Use all contributions to expand the service for which such contribution is given. Nutrition service providers shall use all contributions to increase the number of meals served.

**6.14(2) *Failure to contribute.*** A provider that receives department funds may not deny any older individual a service because the person will not or cannot contribute to the cost.

**6.14(3) *Obtain views of older individuals.*** Each provider shall utilize procedures determined by the AAA for obtaining the views of participants about the services they receive. A report of procedures utilized and findings shall be issued by the AAA within six months of the signing of the contract.

**6.14(4) *Seek other sources of funding.*** Prior to requesting Title III funding, service providers shall demonstrate efforts to seek funds from other federal, state, and local sources.

**6.14(5) *Compliance by service providers.*** The AAA shall incorporate in its contract with each service provider an assurance that funds are used in compliance with federal guidelines.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 0744C, IAB 5/15/13, effective 6/19/13]

**17—6.15(231) Entrepreneurial activities of AAA.** An AAA considering entrepreneurial activities must carefully examine the activity to ensure compatibility with its designation as an AAA. The following shall apply to all AAA, unless otherwise prohibited by statute, rule or order:

**6.15(1) *Demonstrated need—use of funds.*** An AAA may engage in entrepreneurial activities if the activity is in response to a demonstrated need and the funds raised by such activities are used for one of the following purposes:

- a. To further extend services and opportunities for older individuals; or
- b. To fund new services and opportunities for older individuals provided that these services or opportunities are compatible with the AAA functions and goals.

**6.15(2) *Restrictions.*** The following restrictions shall apply to an AAA's engagement in entrepreneurial activities:

- a. Entrepreneurial activities shall not be undertaken until they have been reviewed by the advisory council and approved by the AAA governing board.
- b. An AAA that engages in entrepreneurial activities shall not create the impression that the activity is being carried on under governmental authority.
- c. Funds received as a result of entrepreneurial activities shall be monitored and accounted for according to generally accepted accounting and auditing practices commensurate with the activities.
- d. Entrepreneurial activities shall be pursued only if the duties and responsibilities required of AAA in this chapter are consistently provided by the AAA in a capable manner.
- e. Entrepreneurial activities pursued by an AAA and groups or organizations funded by an AAA shall not have, nor present the appearance of, a conflict of interest.

*f.* Entrepreneurial activities shall not utilize funds received from the department for direct costs.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 0744C, IAB 5/15/13, effective 6/19/13]

**17—6.16(231) Severability.** Should any rule, subrule, paragraph, phrase, sentence or clause of this chapter be declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected thereby.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 0744C, IAB 5/15/13, effective 6/19/13]

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<sup>1</sup> Effective date of Ch 6 delayed 70 days by the Administrative Rules Review Committee.



# AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

[Created by 1986 Iowa Acts, chapter 1245]  
[Prior to 7/27/88, Agriculture Department[30]]  
Rules under this Department “umbrella” also include  
Agricultural Development Authority[25] and Soil Conservation Division[27]

## CHAPTER 1 ADMINISTRATION

- 1.1(159) Organization
- 1.2(159) Consumer protection and industry services division
- 1.3(159) Administration division
- 1.4(159) Soil conservation division
- 1.5(159) Food safety and animal health

## CHAPTER 2 CONTESTED CASE PROCEEDINGS AND PRACTICE (Uniform Rules)

- 2.1(17A,159) Scope and applicability
- 2.2(17A,159) Definitions
- 2.3(17A,159) Time requirements
- 2.4(17A,159) Requests for contested case proceeding
- 2.5(17A,159) Notice of hearing
- 2.6(17A,159) Presiding officer
- 2.12(17A,159) Service and filing of pleadings and other papers
- 2.15(17A,159) Motions
- 2.16(17A,159) Prehearing conference
- 2.17(17A,159) Continuances
- 2.22(17A,159) Default
- 2.23(17A,159) Ex parte communication
- 2.24(17A,159) Recording costs
- 2.25(17A,159) Interlocutory appeals
- 2.26(17A,159) Final decision
- 2.27(17A,159) Appeals and review
- 2.28(17A,159) Applications for rehearing
- 2.29(17A,159) Stays of agency action

## CHAPTER 3 PETITIONS FOR RULE MAKING (Uniform Rules)

- 3.1(17A) Petition for rule making
- 3.3(17A) Inquiries
- 3.5(17A) Petitions for related entities

## CHAPTER 4 DECLARATORY ORDERS (Uniform Rules)

- 4.1(17A,159) Petition for declaratory order
- 4.2(17A,159) Notice of petition
- 4.3(17A,159) Intervention
- 4.4(17A,159) Briefs
- 4.5(17A,159) Inquiries
- 4.6(17A,159) Service and filing of petitions and other papers
- 4.7(17A,159) Consideration

- 4.8(17A,159) Action on petition
- 4.9(17A,159) Refusal to issue order
- 4.12(17A,159) Effect of a declaratory order

CHAPTER 5  
AGENCY PROCEDURE FOR RULE MAKING  
(Uniform Rules)

- 5.1(17A,159) Applicability
- 5.3(17A,159) Public rule-making docket
- 5.4(17A,159) Notice of proposed rule making
- 5.5(17A,159) Public participation
- 5.6(17A,159) Regulatory analysis
- 5.10(17A,159) Exemptions from public rule-making procedures
- 5.11(17A,159) Concise statement of reasons
- 5.13(17A,159) Agency rule-making record

CHAPTER 6  
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES  
(Uniform Rules)

- 6.1(17A,22) Definitions
- 6.3(17A,22) Requests for access to records
- 6.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records
- 6.9(17A,22) Disclosures without the consent of the subject
- 6.10(17A,22) Routine use
- 6.11(17A,22) Consensual disclosure of confidential records
- 6.12(17A,22) Release to subject
- 6.13(17A,22) Availability of records
- 6.14(17A,22) Personally identifiable information
- 6.15(17A,22) Other groups of records
- 6.16(17A,22) Data processing systems
- 6.17(159,252J,272D) Release of confidential licensing information for collection purposes

CHAPTER 7  
COLLECTION PROCEDURES

- 7.1(159,252J,272D) Licensing actions
- 7.2(159,252J,272D) Collection procedures

CHAPTER 8  
WAIVER OR VARIANCE OF RULES

- 8.1(17A,159) Definition
- 8.2(17A,159) Scope of chapter
- 8.3(17A,159) Applicability
- 8.4(17A,159) Criteria for waiver or variance
- 8.5(17A,159) Filing of petition
- 8.6(17A,159) Content of petition
- 8.7(17A,159) Additional information
- 8.8(17A,159) Notice
- 8.9(17A,159) Hearing procedures
- 8.10(17A,159) Ruling
- 8.11(17A,159) Public availability
- 8.12(17A,159) Summary reports
- 8.13(17A,159) Cancellation of a waiver
- 8.14(17A,159) Violations

- 8.15(17A,159) Defense
- 8.16(17A,159) Judicial review

## CHAPTERS 9 to 11

Reserved

## CHAPTER 12

## RENEWABLE FUELS AND COPRODUCTS

- 12.1(159A) Purpose
- 12.2(159A) Definitions
- 12.3(159A) General provisions
- 12.4(159A) Renewable fuels motor vehicle fuels decals

## CHAPTER 13

## RENEWABLE FUEL INFRASTRUCTURE BOARD—ORGANIZATION

- 13.1(159A) Definitions
- 13.2(159A) Renewable fuel infrastructure board

## CHAPTER 14

RENEWABLE FUEL INFRASTRUCTURE PROGRAM FOR  
RETAIL MOTOR FUEL SITES

- 14.1(159A) Purpose
- 14.2(159A) Eligible applicants

## CHAPTER 15

RENEWABLE FUEL INFRASTRUCTURE PROGRAM FOR  
BIODIESEL TERMINAL GRANTS

- 15.1(159A) Purpose
- 15.2(159A) Eligible applicants

## CHAPTER 16

## RENEWABLE FUEL INFRASTRUCTURE PROGRAM ADMINISTRATION

- 16.1(159A) Allocation of awards by congressional district
- 16.2(159A) Form of award available; award amount
- 16.3(159A) Application process
- 16.4(159A) Review process
- 16.5(159A) Contract administration

## CHAPTERS 17 to 19

Reserved

## CHAPTER 20

## REFERENDUM

- 20.1(159) Purpose
- 20.2(159) Definitions
- 20.3(159) Voter eligibility
- 20.4(159) Referendum methods and procedures
- 20.5(159) Contesting referendum results
- 20.6(159) Official certification

## CHAPTER 21

Reserved

## CHAPTER 22

## APIARY

22.1(160)	Diseases
22.2(160)	Parasites
22.3(160)	Requirement for the sale of bees
22.4(160)	Certificate of inspection required
22.5(160)	Certificate of inspection expiration
22.6(160)	American Foulbrood treatment
22.7(160)	Varroa mite treatment
22.8(160)	Undesirable subspecies of honeybees
22.9(160)	European honeybee certification
22.10(160)	Prohibit movement of bees from designated states
22.11(160)	Inspection required for the sale of bees, comb, or used equipment

## CHAPTERS 23 to 35

## Reserved

## CHAPTER 36

## EGG HANDLERS

36.1(196)	Definitions
36.2(196)	Licensing
36.3(196)	Minimum sanitation and operating requirements
36.4(196)	Egg grading or candling area
36.5(196)	Water supply
36.6(196)	Egg storage
36.7(196)	Eggs used in food preparation
36.8(196)	Labeling and packaging
36.9(196)	Restricted eggs
36.10(196)	Inspections and records
36.11(196)	Enforcement
36.12(196)	Health and hygiene of personnel
36.13(196)	Iowa grades

## CHAPTERS 37 to 39

## Reserved

## CHAPTER 40

## AGRICULTURAL SEEDS

40.1(199)	Agricultural seeds
40.2(199)	Seed testing
40.3(199)	Labeling
40.4 and 40.5	Reserved
40.6(199)	Classes and sources of certified seed
40.7(199)	Labeling of seeds with secondary noxious weeds
40.8(199)	Germination standards for vegetable seeds
40.9(199)	White sweet clover
40.10(199)	Labeling of conditioned seed distributed to wholesalers
40.11(199)	Seeds for sprouting
40.12(199)	Relabeling
40.13(199)	Hermetically sealed seed
40.14(199)	Certification of seed and potatoes
40.15(199)	Federal regulations adopted

CHAPTER 41  
COMMERCIAL FEED

41.1(198)	Definitions and terms
41.2(198)	Label format
41.3(198)	Label information
41.4(198)	Expression of guarantees
41.5(198)	Suitability
41.6(198)	Ingredients
41.7(198)	Directions for use and precautionary statements
41.8(198)	Nonprotein nitrogen
41.9(198)	Drug and feed additives
41.10(198)	Adulterants
41.11(198)	Good manufacturing practices
41.12(198)	Cottonseed product control

CHAPTER 42  
PET FOOD

42.1(198)	Definitions and terms
42.2(198)	Label format and labeling
42.3(198)	Brand and product names
42.4(198)	Expression of guarantees
42.5(198)	Ingredients
42.6(198)	Drugs and pet food additives
42.7(198)	Statements of calorie content
42.8(198)	Descriptive terms

CHAPTER 43  
FERTILIZERS AND AGRICULTURAL LIME

43.1(200)	Additional plant food elements besides N, P and K
43.2(200)	Warning required
43.3(200)	Specialty fertilizer labels
43.4(200)	Pesticides in fertilizers
43.5(200)	Cancellation or suspension of registration or license
43.6(200)	Standard for the storage and handling of anhydrous ammonia
43.7(200)	Groundwater protection fee
43.8 to 43.19	Reserved
43.20(201)	Agricultural lime
43.21(200)	Minimum requirements for registration of fertilizer and soil conditioners
43.22(200)	Provisional product registration
43.23(200)	Review of product registrations
43.24(200)	Product claims
43.25 to 43.29	Reserved
43.30(201A)	Definitions
43.31(201A)	Determination of ECCE
43.32(201A)	Sample procedure
43.33(201A)	Sample analysis
43.34(201A)	Sample fee
43.35(201A)	Certification
43.36(201A)	Compliance with certification
43.37(201A)	Labeling
43.38(201A)	Toxic materials prohibited

- 43.39(201A) Added materials
- 43.40(201A) Egg shells

CHAPTER 44  
ON-SITE CONTAINMENT  
OF PESTICIDES, FERTILIZERS AND SOIL CONDITIONERS

PESTICIDES

- 44.1(206) Definitions
- 44.2(206) On-site containment of pesticides
- 44.3(206) Design plans and specifications
- 44.4(206) Certification of construction
- 44.5(206) New pesticide storage and mixing site location
- 44.6(206) Pesticide storage and mixing site
- 44.7(206) Secondary containment for nonmobile bulk pesticide storage and mixing
- 44.8(206) Pesticide storage and mixing site containers
- 44.9(206) Transportation of bulk pesticides
- 44.10(206) Mixing, repackaging and transfer of pesticides
- 44.11(206) Distribution of bulk pesticides
- 44.12(206) Secondary containment for aerial applicator aircraft
- 44.13 to 44.49 Reserved

FERTILIZERS AND SOIL CONDITIONERS

- 44.50(200) On-site containment of fertilizers and soil conditioners
- 44.51(200) Definitions
- 44.52(200) Design plans and specifications
- 44.53(200) New fertilizer or soil conditioner storage site location
- 44.54(200) Certification of construction
- 44.55(200) Secondary containment for liquid fertilizers and liquid soil conditioner storage
- 44.56(200) Secondary containment for nonliquid fertilizers and soil conditioners
- 44.57(200) Fertilizer loading, unloading, and mixing area
- 44.58(200) Wash water and rinsates

CHAPTER 45  
PESTICIDES

DIVISION I

- 45.1(206) Definitions and standards
- 45.2(206) Methods of analysis
- 45.3(206) Registration required
- 45.4(206) Registration of products
- 45.5(206) Registration, general application of
- 45.6(206) Revocation, suspension or denial of registration
- 45.7(206) Changes in labeling or ingredient statement
- 45.8(206) Label requirements
- 45.9(206) Directions for use—when necessary
- 45.10(206) Other claims
- 45.11(206) Name of product
- 45.12(206) Brand names, duplication of, or infringement on
- 45.13(206) Ingredient statement
- 45.14(206) Net contents
- 45.15(206) Coloration of highly toxic materials
- 45.16(206) Illegal acts
- 45.17(206) Guarantee of pesticide

45.18(206)	Shipments for experimental use
45.19(206)	Enforcement
45.20(206)	Hazardous rodenticides
45.21(206)	Highly toxic
45.22(206)	License and certification standards for pesticide applicators
45.23(206)	Sale or possession of thallium
45.24(206)	Warning, caution and antidote statements
45.25(206)	Declaration of pests
45.26(206)	Record-keeping requirements
45.27(206)	Use of high volatile esters
45.28(206)	Emergency single purchase/single use of restricted pesticide
45.29(206)	Application of general use pesticide by nonlicensed commercial applicator
45.30(206)	Restricted use pesticides classified
45.31(206)	Application of pesticides toxic to bees
45.32(206)	Use of DDT and DDD
45.33(206)	Use of inorganic arsenic
45.34(206)	Use of heptachlor
45.35(206)	Use of lindane
45.36(206)	Reports of livestock poisoning
45.37(206)	Approval of use of inorganic arsenic formulation
45.38 to 45.44	Reserved
45.45(206)	Ethylene dibromide (EDB) residue levels in food
45.46(206)	Use of pesticide Command 6EC
45.47(206)	Reporting of pesticide sales
45.48(206)	Dealer license fees
45.49(206)	Pesticide use recommendations
45.50(206)	Notification requirements for urban pesticide applications
45.51(206)	Restrictions on the distribution and use of pesticides containing the active ingredient atrazine or any combination of active ingredients including atrazine
45.52(206)	Continuing instructional courses for pesticide applicator recertification

## DIVISION II

45.53 to 45.99	Reserved
----------------	----------

DIVISION III  
CIVIL PENALTIES

45.100(206)	Definitions
45.101(206)	Commercial pesticide applicator peer review panel
45.102(206)	Civil penalties—establishment, assessment, and collection
45.103(206)	Review period
45.104(206)	Review by peer review panel
45.105(206)	Response by peer review panel

CHAPTER 46  
CROP PESTS

46.1(177A)	Nursery stock
46.2(177A)	Hardy
46.3(177A)	Person
46.4(177A)	Nursery growers
46.5(177A)	Nursery
46.6(177A)	Nursery dealer
46.7(177A)	Out-of-state nursery growers and nursery dealers
46.8(177A)	Nursery inspection
46.9(177A)	Nursery dealer certificate

46.10(177A)	Proper facilities
46.11(177A)	Storage and display
46.12(177A)	Nursery stock viability qualifications
46.13(177A)	Certificates
46.14(177A)	Miscellaneous and service inspections
46.15(177A)	Insect pests and diseases
46.16(177A)	Firewood labeling

## CHAPTER 47

## IOWA ORGANIC PROGRAM

47.1(190C)	Iowa organic program
47.2(190C)	Exempt operations
47.3(190C)	Crops
47.4(190C)	Livestock
47.5(190C)	Use of state seal
47.6(190C)	General requirements
47.7	Reserved
47.8(190C)	Certification agent

## ADMINISTRATIVE

47.9(190C)	Fees
47.10(190C)	Compliance
47.11(190C)	Regional organic associations (ROAs)

## CHAPTER 48

## PESTICIDE ADVISORY COMMITTEE

48.1(206)	Function
48.2(206)	Staff
48.3(206)	Advisors
48.4(206)	Meetings
48.5(206)	Open records
48.6(206)	Budget
48.7(206)	Review of pesticide applicator instructional course and examination

## CHAPTER 49

## BULK DRY ANIMAL NUTRIENTS

49.1(200A)	Definitions
49.2(200A)	License
49.3(200A)	Registration
49.4(200A)	Additional plant elements
49.5(200A)	Distribution statement
49.6(200A)	Distribution reports
49.7(200A)	Storage of bulk dry animal nutrients
49.8(200A)	Manure management plans

## CHAPTER 50

WOMEN, INFANTS, AND CHILDREN/FARMERS' MARKET NUTRITION PROGRAM  
AND SENIOR FARMERS' MARKET NUTRITION PROGRAM

50.1(159)	Authority and scope
50.2(159)	Severability
50.3(159)	Definitions
50.4(159)	Program description and goals
50.5(159)	Administration and agreements
50.6(159)	Distribution of benefits

- 50.7(159) Recipient responsibilities
- 50.8(159) Farmers' market, farmstand, and community supported agriculture (CSA) authorization and priority
- 50.9(159) Vendor certification
- 50.10(159) Certified vendor obligations
- 50.11(159) Certified vendor noncompliance sanctions
- 50.12(159) Appeal
- 50.13(159) Deadlines
- 50.14(159) Discrimination complaints

## CHAPTER 51

## REMEDIATION OF AGRICHEMICAL SITES

- 51.1(161) Definitions
- 51.2(161) Agrichemical remediation board

## CHAPTER 52

## GRAPE AND WINE DEVELOPMENT FUNDING PROGRAM

- 52.1(175A) Authority and scope
- 52.2(175A) Severability
- 52.3(175A) Goals and purpose
- 52.4(175A) Definitions
- 52.5(175A) Administration
- 52.6(175A) Grape and wine development programs
- 52.7(175A) Appeal

## CHAPTERS 53 to 57

Reserved

## CHAPTER 58

## NOXIOUS WEEDS

- 58.1(317) Definition
- 58.2(317) Purple loosestrife
- 58.3(317) Records

## CHAPTER 59

Reserved

## CHAPTER 60

## POULTRY

- 60.1(168) Egg-type chickens, meat-type chickens, turkeys, domestic waterfowl, domestic game birds and exhibition poultry
- 60.2(168) License for dealers of baby chicks or domestic fowls
- 60.3(163) Turkeys
- 60.4(163) Registration of exhibitions involving poultry

## CHAPTER 61

## DEAD ANIMAL DISPOSAL

- 61.1(167) Dead animal disposal—license
- 61.2(167) Animal disposal—persons defined
- 61.3(167) Disposing of dead animals by cooking
- 61.4(167) License fee
- 61.5(167) Certificate issuance
- 61.6(167) Filing certificate
- 61.7(167) License renewal

61.8 to 61.10	Reserved
61.11(167)	Disposal plant plans
61.12(167)	Disposal plant specifications
61.13 and 61.14	Reserved
61.15(167)	Conveyances requirements
61.16(167)	Disposal plant trucks
61.17(167)	Disposal employees
61.18(167)	Tarpaulins
61.19(167)	Disposal vehicles—disinfection
61.20 to 61.22	Reserved
61.23(167)	Rendering plant committee
61.24(167)	Rendering plant—spraying
61.25(167)	Penalty
61.26 and 61.27	Reserved
61.28(167)	Anthrax
61.29(167)	Anthrax—disposal
61.30(167)	Classical swine fever—carcasses
61.31(167)	Noncommunicable diseases—carcasses
61.32(167)	Carcass disposal—streams
61.33(167)	Improper disposal

CHAPTER 62  
REGISTRATION OF IOWA-FOALED  
HORSES AND IOWA-WHELPEP DOGS

62.1(99D)	Definitions
62.2(99D)	Iowa horse and dog breeders' fund and Iowa thoroughbred horse breeders' promotion fund
62.3(99D)	Forms
62.4(99D)	Disciplinary actions
62.5(99D)	Access to premises and records
62.6(99D)	Registration fees
62.7 to 62.9	Reserved

THOROUGHBRED DIVISION

62.10(99D)	Iowa thoroughbred stallion requirements
62.11(99D)	Notification requirements
62.12(99D)	Stallion qualification and application procedure
62.13(99D)	Application information
62.14(99D)	Breeding record—report of mares bred
62.15(99D)	Iowa-foaled horses and brood mares
62.16(99D)	Iowa-foaled horse status
62.17 to 62.19	Reserved

STANDARD BRED DIVISION

62.20(99D)	Iowa standardbred stallion requirements
62.21(99D)	Notification requirements
62.22(99D)	Stallion qualification and application procedure
62.23(99D)	Application information
62.24(99D)	Breeding record—report of mares bred
62.25(99D)	Iowa-foaled horses and brood mares
62.26(99D)	Iowa-foaled horse status
62.27 to 62.29	Reserved

## QUARTER HORSE DIVISION

62.30(99D)	Iowa quarter horse stallion requirements
62.31(99D)	Notification requirements
62.32(99D)	Stallion qualification and application procedure
62.33(99D)	Application information
62.34(99D)	Breeding record—report of mares bred
62.35(99D)	Iowa-foaled horses and brood mares
62.36(99D)	Iowa-foaled horse status
62.37(99D)	Embryo transfer for Iowa-foaled status
62.38 and 62.39	Reserved

## GREYHOUND DOG DIVISION

62.40(99D)	Iowa-whelped dog requirements
62.41(99D)	Procedures for registration

CHAPTER 63  
BRANDING

63.1(169A)	Location of brands on livestock
63.2(169A)	Brands in conflict

CHAPTER 64  
INFECTIOUS AND CONTAGIOUS DISEASES

64.1(163)	Reporting disease
64.2(163)	Disease prevention and suppression
64.3(163)	Duties of township trustees and health board
64.4(163)	“Exposed” defined
64.5(163)	Sale of vaccine
64.6(163)	“Quarantine” defined
64.7(163)	Chiefs of Iowa and U.S. animal industries to cooperate
64.8(163)	Animal blood sample collection
64.9	Reserved

## GLANDERS AND FARCY CONTROL

64.10(163)	Preventing spread of glanders
64.11(163)	Disposal of diseased animal
64.12(163)	Glanders quarantine
64.13(163)	Tests for glanders and farcy
64.14	Reserved

## BLACKLEG CONTROL

64.15(163)	Blackleg
64.16	Reserved

## DEPARTMENT NOTIFICATION OF DISEASES

64.17(163)	Notification of chief of animal industry
64.18 to 64.22	Reserved

## RABIES CONTROL

64.23(163)	Rabies—exposed animals
64.24(163)	Rabies quarantine
64.25(351)	Control and prevention of rabies
64.26 to 64.29	Reserved

## SCABIES OR MANGE CONTROL

64.30(163)	Scabies or mange quarantine
64.31	Reserved

## DISEASE CONTROL AT FAIRS AND EXHIBITS

- 64.32(163) State fairgrounds—disinfection of livestock quarters
- 64.33(163) County fairs—disinfection of livestock quarters
- 64.34(163) Health requirements for exhibition of livestock, poultry and birds at the state fair, district shows and exhibitions
- 64.35(163) Health requirements for exhibition of livestock, poultry and birds at exhibitions
- 64.36 and 64.37 Reserved

## DISEASE CONTROL BY CONVEYANCES

- 64.38(163) Transportation companies—disinfecting livestock quarters
- 64.39(163) Livestock vehicles—disinfection
- 64.40 Reserved

## INTRASTATE MOVEMENT OF LIVESTOCK

- 64.41(163) General
- 64.42(163) Veterinary inspection
- 64.43(163) Swine
- 64.44 to 64.46 Reserved

## BRUCELLOSIS

- 64.47(163) Definitions as used in these rules
- 64.48 Reserved
- 64.49(163) Certified brucellosis-free herd
- 64.50(163) Restraining animals
- 64.51(163) Quarantines
- 64.52(163) Identification of bovine animals
- 64.53(163) Cleaning and disinfection
- 64.54(163) Disposal of reactors
- 64.55(163) Brucellosis tests and reports
- 64.56(163) Suspect animals designated as reactors
- 64.57(163) Indemnity not allowed
- 64.58(163) Area testing
- 64.59 to 64.62 Reserved

## BOVINE BRUCELLOSIS

- 64.63(164) Back tagging in bovine brucellosis control
- 64.64(164) Fee schedule
- 64.65(163) Definitions
- 64.66 Reserved

## ERADICATION OF SWINE BRUCELLOSIS

- 64.67(163A) Brucellosis test
- 64.68(163A) Veterinarians to test
- 64.69 and 64.70 Reserved
- 64.71(163A) Fee schedule
- 64.72 Reserved

## ERADICATION OF BOVINE TUBERCULOSIS

- 64.73(163) Tuberculin tests classified
- 64.74(163) Acceptance of intradermic test
- 64.75(163) Adoption of intradermic test
- 64.76(163) Ophthalmic test
- 64.77(163) Tuberculin test deadline
- 64.78(163) Health certificate
- 64.79(163) Ear tags
- 64.80(163) Cattle importation

64.81(163)	Tuberculin reactors
64.82(163)	Steers—testing
64.83(163)	Female cattle—testing
64.84(163)	Certificates and test charts
64.85(163)	Slaughtering reactors
64.86(163)	Agriculture tuberculin rules
64.87(163)	“Tuberculosis-free accredited herd” defined
64.88(163)	Retesting
64.89(163)	Accredited herd
64.90(163)	Selection of cattle for tuberculin tests
64.91(163)	Identification for test
64.92(163)	Removing cattle from herd
64.93(163)	Milk
64.94(163)	Sanitary measures
64.95(163)	Interstate shipment
64.96(163)	Reactors—removal
64.97(163)	Certificate
64.98(163)	Violation of certificate
64.99(163)	Tuberculin—administration
64.100(163)	Sale of tuberculin
64.101(165)	Fee schedule
64.102 and 64.103	Reserved

#### CHRONIC WASTING DISEASE (CWD)

64.104(163)	Definitions
64.105(163)	Supervision of the cervid CWD surveillance identification program
64.106(163)	Surveillance procedures
64.107(163)	Official cervid tests
64.108(163)	Investigation of CWD affected animals identified through surveillance
64.109(163)	Duration of quarantine
64.110(163)	Herd plan
64.111(163)	Identification and disposal requirements
64.112(163)	Cleaning and disinfecting
64.113(163)	Methods for obtaining certified CWD cervid herd status
64.114(163)	Recertification of CWD cervid herds
64.115(163)	Movement into a certified CWD cervid herd
64.116(163)	Movement into a monitored CWD cervid herd
64.117(163)	Recognition of monitored CWD cervid herds
64.118(163)	Recognition of certified CWD cervid herds
64.119 to 64.132	Reserved

#### ERADICATION OF SWINE TUBERCULOSIS

64.133(159)	Indemnity
64.134(159)	Fee schedule
64.135 to 64.146	Reserved

#### PSEUDORABIES DISEASE

64.147(163,166D)	Definitions. As used in these rules:
64.148 to 64.150	Reserved
64.151(163,166D)	Quarantines
64.152(163,166D)	Nondifferentiable pseudorabies vaccine disapproved
64.153(166D)	Pseudorabies disease program areas
64.154(163,166D)	Identification
64.155(163,166D,172B)	Certificates of inspection

64.156(166D)	Noninfected herds
64.157(166D)	Herd cleanup plan for infected herds (eradication plan)
64.158(166D)	Feeder pig cooperators plan for infected herds
64.159(166D)	Herds of unknown status
64.160(166D)	Approved premises
64.161(166D)	Sales to approved premises
64.162(166D)	Certification of veterinarians to initiate approved herd cleanup plans and approved feeder pig cooperators plan agreements and fee basis
64.163(166D)	Nondifferentiable pseudorabies vaccine disapproved
64.164 to 64.169	Reserved

#### PARATUBERCULOSIS (JOHNE'S) DISEASE

64.170(165A)	Definitions
64.171(165A)	Supervision of the Johne's disease program
64.172(165A)	Official Johne's disease tests
64.173(165A)	Vaccination allowed
64.174(165A)	Herd plan
64.175(165A)	Identification and disposal requirements
64.176(165A)	Segregation, cleaning, and disinfecting
64.177(165A)	Intrastate movement requirements
64.178(165A)	Import requirements
64.179 to 64.184	Reserved

#### LOW PATHOGENIC AVIAN INFLUENZA (LPAI)

64.185(163)	Definitions
64.186(163)	Supervision of the low pathogenic avian influenza program
64.187(163)	Surveillance procedures
64.188(163)	Official LPAI tests
64.189(163)	Investigation of LPAI affected poultry identified through surveillance
64.190(163)	Duration of quarantine
64.191(163)	Flock plan
64.192(163)	Cleaning and disinfecting
64.193 to 64.199	Reserved

#### SCRAPIE DISEASE

64.200(163)	Definitions
64.201(163)	Supervision of the scrapie eradication program
64.202(163)	Identification
64.203(163)	Restrictions on the removal of official identification
64.204(163)	Records
64.205(163)	Responsibility of persons handling animals in commerce to ensure the official identification of animals
64.206(163)	Veterinarian's responsibilities when identifying sheep or goats
64.207(163)	Flock plans
64.208(163)	Certificates of Veterinary Inspection
64.209(163)	Requirements for shows and sales
64.210(163)	Movement restrictions for animals and flocks
64.211(163)	Approved terminal feedlots

### CHAPTER 65

#### ANIMAL AND LIVESTOCK IMPORTATION

65.1(163)	Definitions
65.2(163)	Pre-entry permits
65.3(163)	General requirements and limitations

65.4(163)	Cattle and bison
65.5(163,166D)	Swine
65.6(163)	Goats
65.7(163)	Sheep
65.8(163)	Equine
65.9(163)	Cervidae
65.10(163)	Dogs and cats
65.11(163)	Poultry, domestic fowl, and hatching eggs
65.12(163)	Swine production health plan (SPHP)
65.13(163)	Penalties

#### CHAPTER 66 LIVESTOCK MOVEMENT

66.1(163)	Definitions and permits
66.2(163)	Animal health sanitation and record-keeping requirements
66.3(163)	Duties and responsibilities of the livestock market management
66.4(163)	Duties and responsibilities of the livestock market veterinary inspector
66.5(163)	Classification of livestock markets and permitholders
66.6(163)	Requirements for state-federal (specifically) approved markets
66.7(163)	Requirements for sale of all bovine animals
66.8(163)	Testing
66.9(163)	Order of sale through auction markets
66.10(163)	Releasing cattle
66.11(163,172B)	Movement of livestock within the state
66.12(189,189A)	Movement of food-producing animals and their products into the state
66.13(163,202C)	Feeder pig dealer bonding/letter of credit requirement and claims procedures
66.14(163)	Intrastate movement requirements
66.15 to 66.19	Reserved
66.20(163)	Revocation or denial of permit

#### CHAPTER 67 ANIMAL WELFARE

67.1(162)	Animals included in rules
67.2(162)	Housing facilities and primary enclosures
67.3(162)	General care and husbandry standards
67.4(162)	Transportation
67.5(162)	Purchase, sale, trade and adoption
67.6(162)	Public health
67.7(162)	Kennels, shelters and other facilities—access, seizure and impoundment
67.8(162)	Applicability to commercial establishments with federal licenses
67.9(162)	Acceptable forms of euthanasia
67.10(162)	Loss of license or denial of license
67.11(162)	Dog day care
67.12(162)	Fostering oversight organizations and foster care homes
67.13(162)	Greyhound breeder or farm fee

#### CHAPTER 68 DAIRY

68.1(192,194)	Definitions
68.2(192)	Licenses and permits required
68.3	Reserved
68.4(192)	Certification of personnel
68.5(190,192,194)	Milk tests

- 68.6(190,192,194) Test bottles
- 68.7 and 68.8 Reserved
- 68.9(192,194) Tester's license
- 68.10(192,194) Contaminating activities prohibited in milk plants
- 68.11(192,194) Suspension of dairy farm permits

## GRADE A MILK

- 68.12(192) Milk standards
- 68.13(192,194) Public health service requirements
- 68.14(190,192,194,195) Laboratories

## GRADE B MILK

- 68.15(192,194) Milk standards
- 68.16(194) Legal milk
- 68.17(194) New producers
- 68.18(194) Testing and exclusion of Class III milk
- 68.19(194) Unlawful milk
- 68.20(194) Price differential
- 68.21(194) Penalties for plants and producers
- 68.22(192,194) Farm requirements for milk for manufacturing
- 68.23 to 68.25 Reserved
- 68.26(190,192,194) Tests for abnormal milk
- 68.27(192,194) Standards for performing farm inspections

## DAIRY FARM WATER

- 68.28 to 68.34 Reserved
- 68.35(192) Dairy farm water supply
- 68.36(192) Antibiotic testing
- 68.37(192,194) Milk truck approaches
- 68.38 and 68.39 Reserved

## MILK TANKER, MILK HAULER, MILK GRADER, CAN MILK TRUCK BODY

- 68.40(192) Definitions
- 68.41(192) Bulk milk tanker license required
- 68.42(192) Bulk milk tanker construction
- 68.43(192) Bulk milk tanker cleaning and maintenance
- 68.44(192) Bulk tanker sanitization
- 68.45(192) Bulk milk tanker cleaning facility
- 68.46(192) Bulk milk tanker cleaning tag
- 68.47(192) Dairy plant, receiving station or transfer station records
- 68.48(192) Milk hauler license required
- 68.49(192) New milk hauler license applicant
- 68.50(192) Supplies required for milk collection and sampling
- 68.51(192) Milk hauler sanitization
- 68.52(192) Examining milk by sight and smell
- 68.53(192) Milk hauler hand washing
- 68.54(192) Milk temperature
- 68.55(192) Connecting the milk hose
- 68.56(192) Measuring the milk in the bulk tank
- 68.57(192) Milk sample for testing
- 68.58(192) Milk collection record
- 68.59(192) Loading the milk from the bulk tank to the milk tanker
- 68.60(192) Milk samples required for testing
- 68.61(192) Bulk milk sampling procedures

68.62(192)	Temperature control sample
68.63(192)	Producer sample identification
68.64(192)	Care and delivery of producer milk samples
68.65(192)	Milk sample carrying case
68.66(192)	Bulk milk delivery
68.67(192)	False samples or records
68.68(192)	Violations prompting immediate suspension
68.69(192)	Milk grader license required
68.70(192)	New milk grader license applicant
68.71(192,194)	Can milk truck body

## CHAPTER 69

## MILK ROOM AND BULK TANKS FOR MANUFACTURING MILK

69.1(192)	Milk room
69.2(192)	Drainage
69.3(192)	Walls and ceilings
69.4(192)	Milk room windows
69.5(192)	Doors
69.6(192)	Ventilation
69.7(192)	Bulk tank location
69.8(192)	Hose port
69.9(192)	Safety regulations
69.10(192)	Properly located tank

## CHAPTER 70

Reserved

## CHAPTER 71

## STANDARDS FOR DAIRY PRODUCTS

71.1(190)	Dairy products
71.2(189,210)	Requirements for packaging and labeling
71.3(210)	Requirements for the method of sale of commodities
71.4(210)	Requirements for unit pricing
71.5(189,190)	Flavors
71.6(190)	Standard for light butter

## CHAPTERS 72 to 75

Reserved

## CHAPTER 76

## MEAT AND POULTRY INSPECTION

76.1(189A)	Federal Wholesome Meat Act regulations adopted
76.2(189A)	Federal Wholesome Meat Act regulations adopted
76.3(189A)	Federal Poultry Products Inspection Act regulations adopted
76.4(189A)	Inspection required
76.5(189A)	Custom/exempt facilities sanitation standard operating procedures
76.6(189A)	Forms and marks
76.7(189A,167)	Registration
76.8(189A,167)	Dead, dying, disabled or diseased animals
76.9(189A)	Denaturing and identification of livestock or poultry products not intended for use as human food
76.10(189A,167)	Transportation of decharacterized inedible meat or carcass parts
76.11(189A)	Records

76.12	Reserved
76.13(189A)	Voluntary inspections of exotic animals
76.14(189A)	Federal Wholesome Meat Act regulations adopted for the regulation of farm deer

## CHAPTER 77

## DANGEROUS WILD ANIMALS

77.1(82GA,SF564,SF601)	Definitions
77.2(82GA,SF564,SF601)	Prohibitions
77.3(82GA,SF564,SF601)	Continued ownership—requirements of the individual
77.4(82GA,SF564,SF601)	Continued ownership—insurance required
77.5(82GA,SF564,SF601)	Continued ownership—electronic identification device
77.6(82GA,SF564,SF601)	Continued ownership—registration form
77.7(82GA,SF564,SF601)	Continued ownership—registration fee
77.8(82GA,SF564,SF601)	Continued ownership—records required
77.9(82GA,SF564,SF601)	Continued ownership—enclosure required
77.10(82GA,SF564,SF601)	Continued ownership—signs required
77.11(82GA,SF564,SF601)	Escape notification required
77.12(82GA,SF564,SF601)	Relinquishment
77.13(82GA,SF564,SF601)	Seizure, custody and disposal
77.14(82GA,SF564,SF601)	Exemptions

## CHAPTERS 78 to 84

Reserved

## CHAPTER 85

## WEIGHTS AND MEASURES

## WEIGHTS

85.1(215)	“Sensibility reciprocal” defined
85.2	Reserved
85.3(215)	For vehicle, axle-load, livestock, animal, crane and railway track scales
85.4	Reserved
85.5(215)	“Counter scale” defined
85.6(215)	“Spring and computing scales” defined
85.7(215)	“Automatic grain scale” defined
85.8(215)	“Motor truck scales” defined
85.9(215)	“Livestock scales” defined
85.10(215)	“Grain dump scales” defined
85.11(215)	Scale pit
85.12(215)	Pitless scales
85.13(215)	Master weights
85.14(215)	Scale design
85.15(215)	Weighbeams
85.16(215)	Beam box
85.17	Reserved
85.18(215)	Weight capacity
85.19(215)	Provision for sealing coin slot
85.20(215)	Stock racks
85.21(215)	Lengthening of platforms
85.22(215)	Accessibility for testing purposes
85.23(215)	Assistance in testing operations
85.24(215)	Beam scale
85.25(215)	Spring scale

85.26(215) Weighbeam or beam  
85.27(215) Livestock scale

#### SCALES

85.28(215) Wheel-load weighers and axle-load scales  
85.29 to 85.32 Reserved

#### MEASURES

85.33(214A,208A) Motor fuel and antifreeze tests and standards  
85.34(215) Tolerances on petroleum products measuring devices  
85.35(215) Meter adjustment  
85.36(215) Recording elements  
85.37(215) Air eliminator  
85.38(215) Delivery outlets  
85.39(189,215) Weights and measures  
85.40(215) Inspection tag or mark  
85.41(215) Meter repair  
85.42(215) Security seal  
85.43(215) LP-gas meter repairs  
85.44(215) LP-gas delivery  
85.45(215) LP-gas meter registration  
85.46(215) Reporting new LP-gas meters  
85.47 Reserved  
85.48(214A,215) Advertisement of the price of liquid petroleum products for retail use  
85.49(214A,215) Gallonage determination for retail sales  
85.50(214,214A,215) Blender pumps  
85.51 Reserved

#### MOISTURE-MEASURING DEVICES

85.52(215A) Testing devices  
85.53(215A) Rejecting devices  
85.54(215,215A) Specifications and standards for moisture-measuring devices  
85.55 and 85.56 Reserved  
85.57(215) Testing high-moisture grain  
85.58 to 85.62 Reserved

#### HOPPER SCALES

85.63(215) Hopper scales

#### CHAPTERS 86 to 89

Reserved

#### CHAPTER 90

#### STATE LICENSED WAREHOUSES AND WAREHOUSE OPERATORS

90.1(203C) Application of rules  
90.2(203C) Definitions  
90.3(203C) Types of products to be warehoused  
90.4(203C,203D) Application for a warehouse operator license  
90.5(203C) Warehouse operator license  
90.6(203C) Posting of license  
90.7(203C) Renewal, expiration and reinstatement of license—payment of license fee  
90.8(203C) Financial statements  
90.9(203C) Bonds and irrevocable letters of credit  
90.10(203C) Insurance

90.11(203C)	Notice to the warehouse bureau
90.12(203C)	Issuance of warehouse receipts
90.13(203C)	Cancellation of warehouse receipts
90.14(203C)	Lost or destroyed receipt
90.15(203C)	Warehouse receipts
90.16(203C)	Tariffs
90.17(203C)	Records
90.18(203C)	Adjustment of records
90.19(203C)	Shrinkage due to moisture
90.20(203C)	Monthly grain statements
90.21(203C)	Grain stored in another warehouse
90.22(203C)	Warehouse operator's obligation and storage
90.23(203C)	Storing of products
90.24(203C)	Facilities
90.25(203C)	Maintenance of storage facilities
90.26(203C)	Temporary grain storage facilities
90.27(203C)	Emergency ground pile storage space
90.28(203C)	Polyethylene (polyvinyl) bag storage space
90.29(203C)	Prioritization of inspections of warehouse operators
90.30(203C)	Department of agriculture and land stewardship enforcement procedures
90.31(203C)	Review proceedings

## CHAPTER 91

## LICENSED GRAIN DEALERS

91.1(203)	Application of rules
91.2(203)	Definitions
91.3(203,203D)	Application for a grain dealer license
91.4(203)	Grain dealer license not transferable
91.5(203)	Posting of license
91.6(203)	Surrender of license
91.7(203)	Renewal, expiration and reinstatement of license—payment of license and indemnity fund fees
91.8(203)	Financial statements
91.9(203)	Bonds and irrevocable letters of credit
91.10(203)	Payment
91.11(203)	Books and records
91.12(203)	Assignment of contracts
91.13(203)	Filing of monthly grain statement and reports
91.14(203)	Notice to the warehouse bureau
91.15(203)	Shrinkage due to moisture
91.16(203)	Requirements for Class 2 licensees
91.17(203)	Requirements for licensees authorized to issue credit-sale contracts
91.18(203)	Department of agriculture and land stewardship enforcement procedures
91.19(203)	Review proceedings
91.20(203)	Prioritization of inspections of grain dealers
91.21(203)	Claims against credit-sale contract bond
91.22(203)	Electronic grain contracts
91.23(203)	Electronic grain contract providers and provider agreements
91.24(203)	Electronic grain contract users and user agreements
91.25(203)	Electronic grain contracts—issuance and form
91.26(203)	Security of a provider's electronic central filing system or a licensee's electronic database

## CHAPTER 92

## PARTICIPATION IN GRAIN INDEMNITY FUND

92.1(203D)	Mandatory participation in fund
92.2(203D)	Required fees
92.3(203D)	New license applicants
92.4(203D)	Due date for payment of the per-bushel and participation fees
92.5(203D)	Penalty for delinquent submission of per-bushel and participation fees
92.6(203D)	Penalty for delinquent payment of per-bushel fee discovered during examination

## CHAPTER 93

## GRAIN INDEMNITY FUND BOARD—ORGANIZATION AND OPERATIONS

93.1(203D)	Location
93.2(203D)	The board
93.3(203D)	Authority of the board
93.4(203D)	Meetings
93.5(203D)	Minutes
93.6(203D)	Board decisions
93.7(203D)	Records
93.8(203D)	Waiver of per-bushel and participation fees

## CHAPTER 94

CLAIMS AGAINST THE GRAIN DEPOSITORS  
AND SELLERS INDEMNITY FUND

94.1(203D)	Definitions
94.2(203D)	By whom claims can be made
94.3(203D)	Procedure for filing claims
94.4(203D)	Time limitations
94.5(203D)	Claims by depositors where bureau is receiver
94.6(203D)	Notice of claims
94.7(203D)	Report by bureau
94.8(203D)	Determination of claims
94.9(203D)	Appeal from determination
94.10(203D)	Payment of valid claims—conflicting interests

## CHAPTER 95

## CIVIL PENALTIES

95.1(203,203C)	Definitions
95.2(203,203C)	Grain industry peer review panel
95.3(203,203C)	Organization and location
95.4(203,203C)	Membership
95.5(203,203C)	Staff
95.6(203,203C)	Meetings
95.7(203,203C)	Criteria for assessing civil penalties
95.8(203,203C)	Notice of civil penalty assessment—informal settlement
95.9(203,203C)	Panel review
95.10(203,203C)	Scope of panel review
95.11(203,203C)	Panel response
95.12(203,203C)	Civil penalty assessment
95.13(203,203C)	Judicial assessment
95.14(203,203C)	Civil penalty payment



CHAPTER 13  
RENEWABLE FUEL INFRASTRUCTURE BOARD—ORGANIZATION

**21—13.1(159A) Definitions.** As used in these rules, unless the context otherwise requires, the definitions in Iowa Code section 159A.11 shall apply to this chapter and to 21—Chapters 14, 15, and 16. The following definitions shall also apply:

“*Agreement*” means the cost-share agreement executed by the department after approval of the grant by the board.

“*Applicant*” means a person, as defined in this rule, who owns or operates a site.

“*Biodiesel*,” for the purpose of this rule, must be at least B99.

“*Biodiesel blended fuel*,” as defined in Iowa Code section 214A.1, means a blend of biodiesel with petroleum-based diesel fuel which meets the standards, including separately the standard for its biodiesel component. For the purpose of these rules, biodiesel blended fuel must contain at least 2 percent biodiesel at a terminal site and at least 1 percent at a retail site.

“*Biofuel*” means ethanol or biodiesel as defined in Iowa Code section 214A.1.

“*Blender pump*,” for the purpose of these rules, means blending biofuel. When blending ethanol, the pump must dispense E-85 gasoline at all times.

“*Board*” means the renewable fuel infrastructure board established by Iowa Code section 159A.13.

“*Checklist*” or “*IDNR checklist*” means the most recent version of the Underground Storage Tank System Checklist for Equipment Compatibility with E-Blend Fuels (greater than 10 percent by volume) issued by the Iowa department of natural resources.

“*Grant*” or “*cost-share grant*” means moneys awarded by the board on a cost-share basis from the renewable fuel infrastructure fund created by Iowa Code chapter 15G to help pay for a project.

“*Person*” means an individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity as defined in Iowa Code section 4.1(20).

“*Project*” means the installation of equipment for motor fuel storage, dispensing and distribution of E-85 gasoline, biodiesel or biodiesel blend.

“*Rack*” means a metered motor fuel, special fuel or renewable fuel loading facility with the capacity to pump fuel at a rate of at least 100 gallons per minute (100 gpm); whether from an overhead, lateral, or underneath position, into a transportation vessel for further delivery.

“*Renewable fuel*,” as defined in Iowa Code section 214A.1, means a combustible liquid derived from grain starch, oilseed, animal fat, or other biomass; or produced from a biogas source, including any nonfossilized decaying organic matter which is capable of powering machinery, including but not limited to an engine or power plant. Renewable fuel includes but is not limited to biofuel, ethanol blended gasoline, or biodiesel blended fuel meeting the standards provided in Iowa Code section 214A.2.

“*Retail*” means offered for sale to the public for final consumption.

“*Retail motor fuel site*” means a site at which motor fuel is offered for sale to the public for final consumption. A retail motor fuel site may include a tank vehicle or transport.

“*Tank vehicle*” means a motor vehicle designed to transport liquid or gaseous materials within a tank having a rated capacity of 1,001 or more gallons either permanently or temporarily attached to the vehicle or chassis.

[ARC 9584B, IAB 6/29/11, effective 7/1/11; ARC 9816B, IAB 11/2/11, effective 12/7/11; ARC 0738C, IAB 5/15/13, effective 6/19/13]

**21—13.2(159A) Renewable fuel infrastructure board.**

**13.2(1) Duties.** The board shall make awards for renewable fuel infrastructure programs and perform other functions as necessary.

**13.2(2) Board structure.** The board shall consist of 11 voting members appointed for five-year terms by the governor. The board shall annually elect a chairperson, on a rotating basis, from among its members. Six voting members shall constitute a quorum. An affirmative vote of a majority of voting members, excluding any member who has a conflict of interest, is necessary for the board to take substantive action.

**13.2(3) Staff.** Staff assistance shall be provided through the department. The department will market the renewable fuel infrastructure program throughout the state.

**13.2(4) Meetings.** Board meetings will generally be held by telephone or at the department's offices. All meetings shall comply with Iowa Code chapter 21.

[ARC 9584B, IAB 6/29/11, effective 7/1/11; ARC 9816B, IAB 11/2/11, effective 12/7/11; ARC 0738C, IAB 5/15/13, effective 6/19/13]

These rules are intended to implement Iowa Code section 159A.13.

[Filed Emergency ARC 9584B, IAB 6/29/11, effective 7/1/11]

[Filed ARC 9816B (Notice ARC 9583B, IAB 6/29/11), IAB 11/2/11, effective 12/7/11]

[Filed ARC 0738C (Notice ARC 0645C, IAB 3/20/13), IAB 5/15/13, effective 6/19/13]

CHAPTER 14  
RENEWABLE FUEL INFRASTRUCTURE PROGRAM FOR  
RETAIL MOTOR FUEL SITES

**21—14.1(159A) Purpose.** The purpose of the renewable fuel infrastructure program is to install, replace and convert infrastructure to store, blend, and dispense renewable fuels at a retail fuel site.

[ARC 9584B, IAB 6/29/11, effective 7/1/11; ARC 9816B, IAB 11/2/11, effective 12/7/11; ARC 0738C, IAB 5/15/13, effective 6/19/13]

**21—14.2(159A) Eligible applicants.** To be eligible to receive a retail motor fuel site infrastructure grant, an applicant shall:

**14.2(1)** Be an owner or operator of a retail motor fuel site.

**14.2(2)** Submit an application to the department in form and content acceptable to the department and the board.

**14.2(3)** Meet the following eligibility requirements established by the board:

*a.* The fuel storage and dispensing infrastructure may include either an aboveground or belowground storage tank and ancillary equipment.

*b.* The fuel storage tank may be on a tank vehicle or transport if regularly parked overnight in Iowa.

*c.* The storage tank must, however, be used exclusively for retail delivery to the final consumer.

*d.* If a tank has multiple compartments, at least one of the compartments must be used exclusively for the storage and dispensing of E-85 gasoline, biodiesel or biodiesel blended fuel at retail. The compartment used exclusively for the storage of E-85 gasoline, biodiesel or biodiesel blended fuel is considered the tank for purposes of this program.

*e.* The tank and ancillary equipment must be approved for E-85 gasoline, biodiesel or biodiesel blended fuel use by either the Iowa department of natural resources or the state fire marshal, as evidenced by the most recent IDNR checklist.

*f.* The dispenser must be described by type and model in a written statement by the manufacturer of the dispenser. The manufacturer's written statement must be signed by a responsible official on behalf of the manufacturer and must be provided either to the applicant or to the Iowa department of natural resources or the state fire marshal. If provided to the applicant, the statement must be kept on file on the premises of the applicant for the five-year term of the agreement. The written statement must state that:

(1) The dispenser is, in the opinion of the manufacturer, not incompatible with E-85 gasoline; and

(2) The manufacturer has initiated the process of applying to an independent testing laboratory for listing of the equipment used in dispensing E-85 gasoline.

*g.* Conversion kits. If a UL-listed E-85 dispenser conversion kit is used, it must be approved by the state fire marshal to be eligible for the E-85 grant.

[ARC 9584B, IAB 6/29/11, effective 7/1/11; ARC 9816B, IAB 11/2/11, effective 12/7/11; ARC 0738C, IAB 5/15/13, effective 6/19/13]

These rules are intended to implement Iowa Code section 159A.14.

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[Filed ARC 9816B (Notice ARC 9583B, IAB 6/29/11), IAB 11/2/11, effective 12/7/11]

[Filed ARC 0738C (Notice ARC 0645C, IAB 3/20/13), IAB 5/15/13, effective 6/19/13]



CHAPTER 15  
RENEWABLE FUEL INFRASTRUCTURE PROGRAM FOR  
BIODIESEL TERMINAL GRANTS

**21—15.1(159A) Purpose.** The purpose of the renewable fuel infrastructure program for biodiesel terminal grants is to provide grants to a terminal facility which stores, blends, or distributes biodiesel fuel, including B2 through B98 and B99/B100, to dealers and retailers.

[ARC 9584B, IAB 6/29/11, effective 7/1/11; ARC 9816B, IAB 11/2/11, effective 12/7/11; ARC 0738C, IAB 5/15/13, effective 6/19/13]

**21—15.2(159A) Eligible applicants.** To be eligible to receive a biodiesel terminal grant, an applicant shall:

**15.2(1)** Be an owner or operator of a biodiesel terminal.

**15.2(2)** Submit an application to the department in form and content acceptable to the department and the board.

**15.2(3)** Meet the following eligibility requirements established by the board:

- a. The terminal must not be a retail motor fuel site.
- b. The terminal must not be a facility at which fuel or blend stocks are used in the manufacture of products other than motor fuel and from which no fuel is removed.
- c. The terminal must have at least one storage tank of at least a 10,000-gallon capacity, used exclusively for or dedicated exclusively to the storage of biodiesel fuel. The terminal may also have storage for one or more biodiesel blends. The terminal must have facilities for the dispensing of either biodiesel, biodiesel blends, or both.
- d. The dispensing of motor fuel at the terminal must be done at a rack in excess of 100 gpm pumping capacity.

[ARC 9584B, IAB 6/29/11, effective 7/1/11; ARC 9816B, IAB 11/2/11, effective 12/7/11; ARC 0738C, IAB 5/15/13, effective 6/19/13]

These rules are intended to implement Iowa Code section 159A.15.

[Filed Emergency ARC 9584B, IAB 6/29/11, effective 7/1/11]

[Filed ARC 9816B (Notice ARC 9583B, IAB 6/29/11), IAB 11/2/11, effective 12/7/11]

[Filed ARC 0738C (Notice ARC 0645C, IAB 3/20/13), IAB 5/15/13, effective 6/19/13]



CHAPTER 16  
RENEWABLE FUEL INFRASTRUCTURE PROGRAM ADMINISTRATION

**21—16.1(159A) Allocation of awards by congressional district.** The board shall use the boundaries of the state's congressional districts and shall prorate and equally distribute the amount available each fiscal year for each district. The board shall have at its discretion a prorated amount (up to \$500,000) to distribute to any congressional district. On April 1 of each year, if funds allocated to a district have not been committed, the unobligated balance shall revert to the reserve fund and be available for other projects approved by the board.

[ARC 9584B, IAB 6/29/11, effective 7/1/11; ARC 9816B, IAB 11/2/11, effective 12/7/11; ARC 0738C, IAB 5/15/13, effective 6/19/13]

**21—16.2(159A) Form of award available; award amount.**

**16.2(1) Form of award.** Eligible applicants may apply for financial incentives on a cost-share basis. Funding shall be available in the form of a grant.

**16.2(2) Timing of application.** A grant may be awarded for an eligible project not yet commenced. However, a grant for an initial application may not be awarded more than one year after the project is put in service.

**16.2(3) Amount of award.**

*a. Retail award site.*

(1) Three-year cost-share agreement for a retail site. The maximum award amount is 50 percent of the actual cost of making the improvements or \$30,000, whichever is less.

(2) Five-year cost-share agreement for a retail site. The maximum award amount is 70 percent of the actual cost of making the improvements or \$50,000, whichever is less.

(3) Supplemental financial incentives. A person may be granted supplemental financial incentives as an amendment to the cost-share agreement.

1. Supplemental award for Underwriters Laboratories upgrade. The purpose of an award for Underwriters Laboratories (UL) is to upgrade to UL-certified dispensers, blender pumps and dispensing infrastructure, UL-approved conversion kits and approved and insurable installation projects. The maximum amount available as a supplemental financial incentive is 75 percent of the actual cost of making the improvements or \$30,000, whichever is less. The dispenser can be listed by an independent certified testing laboratory or Underwriters Laboratories (UL) as compatible with ethanol blended gasoline classified as E-9 or higher.

2. Supplemental award for additional tank and associated infrastructure. A person may request a supplemental financial incentive for tank and associated infrastructure, as an amendment to the subsequent cost-share agreement(s). The purpose of an award for an additional tank(s) and associated infrastructure is to accelerate the installation of an additional tank(s) and associated infrastructure at an additional retail motor fuel site after an initial grant award is provided. To be eligible, the initial grant award must be awarded to the person on or after May 12, 2008. The maximum award amount available as a supplemental financial incentive is \$6,000 per supplemental site. The person is limited to four supplemental financial incentive awards within the 12-month period following the completion of the initial retail motor fuel site project.

*b. Terminal facility award for biodiesel B2 through B98 and B99/B100 for year-round distribution.*

(1) Biodiesel fuel B2 through B98.

1. Duration. The duration of the cost-share agreement shall be five years.

2. Maximum award. The maximum award amount is 50 percent of the actual cost of making the improvements or \$50,000, whichever is less.

(2) Biodiesel fuel B99/B100 for year-round distribution.

1. Duration. The duration of a cost-share agreement is five years.

2. Maximum award amount. The maximum award amount is 50 percent of the actual cost of making the improvements or \$100,000, whichever is less.

3. Application acceptance begins January 1, 2009. Grant applications for B99/B100 projects will be accepted beginning January 1, 2009.

4. Lifetime cap amount. The maximum or lifetime cap for B99/B100 biodiesel terminal grants is \$800,000 per person.

*c. Tank vehicle.*

(1) December 31, 2008, deadline. A tank vehicle application must be postmarked no later than December 31, 2008, to be eligible.

(2) Duration. The duration of the cost-share agreement is three years. The maximum award amount is 50 percent of the actual cost of making the improvements or \$30,000, whichever is less.

(3) Limitation on number of grants. A person may receive one grant for one tank vehicle used to store and dispense E-85 gasoline and one grant for one tank vehicle used to store and dispense biodiesel or biodiesel blend. If a person received an award for a tank vehicle(s) prior to May 12, 2008, that person is eligible to apply for an additional tank vehicle.

**16.2(4) *Time of payment.*** The grant shall be paid only upon timely completion of the project and upon the board's receipt of records satisfying the board of the applicant's qualifying expenditures.

*a.* The applicant must deliver to the board prior to payment a certificate of completion on the board's form.

*b.* The certificate of completion must include the IDNR checklist completed and signed by an Iowa-certified installer showing review and approval of the completed project.

*c.* The certificate of completion must be accompanied by proof of financial responsibility as necessary to meet federal requirements for underground storage tank installation.

**16.2(5) *Deadline for completion.*** The project must be completed within eight months of the board's approval of the award. An extension may be granted by the board upon application showing demonstrable progress toward completion.

**16.2(6) *Multiple awards for multiple fuel types.***

*a. At a single fuel site.* A person must file a separate application form for an ethanol infrastructure improvement grant and a biodiesel infrastructure improvement grant, respectively, at a single fuel site. The board may approve multiple improvements to the same retail motor fuel site for the full amount available for ethanol infrastructure and biodiesel infrastructure. Applications for ethanol and biodiesel infrastructure improvements must be written in separate cost-share agreements.

*b. At multiple fuel sites.* A person may receive multiple grants as described in paragraph 16.2(6) "a" for more than one motor fuel site. When considering multiple grants for multiple fuel sites, the board will make awards fairly and properly among applicants and geographic areas.

**16.2(7) *Exhaustion of funds.*** In the event funding is exhausted at the end of the fiscal year or June 30, 2012, the board shall approve remaining applications based on criteria implemented by the board.

[ARC 9584B, IAB 6/29/11, effective 7/1/11; ARC 9816B, IAB 11/2/11, effective 12/7/11; ARC 0139C, IAB 5/30/12, effective 7/4/12; ARC 0738C, IAB 5/15/13, effective 6/19/13]

**21—16.3(159A) Application process.**

**16.3(1) *Application procedures.***

*a.* Applications may be submitted at any time, but will be reviewed on a first-come, first-served basis as established by the date stamp on the filed application.

*b.* Applications shall be submitted to: Renewable Fuel Infrastructure Board, Iowa Department of Agriculture and Land Stewardship, 502 East Ninth Street, Des Moines, Iowa 50309. Application forms and instructions are available at this address.

**16.3(2) *Contents of application.***

*a.* Statutory requirements. An application shall include the information required in Iowa Code section 15G.203.

*b.* Other information required by the board:

(1) Assurance that the project will be for the purpose of installing, replacing, or converting equipment for the storage or dispensing of the renewable fuel under consideration.

(2) Assurance that all equipment funded by the grant is designed and will be used exclusively to store or dispense E-85 gasoline, biodiesel or biodiesel blended fuel, respectively, for the period specified in the agreement.

- (3) An IDNR checklist indicating the current status of the site.
- (4) Assurance of compliance with any and all federal requirements for financial responsibility.
- (5) Assurance of compliance with any and all state and federal laws and regulations.
- (6) A cost proposal from an Iowa-licensed underground storage tank installer (for underground storage projects) and a qualified aboveground storage tank installer (for aboveground storage projects).
- (7) Documentation of initiation of the process of applying to an independent laboratory and the manufacturer's written statement that the dispenser is "not incompatible."

[ARC 9584B, IAB 6/29/11, effective 7/1/11; ARC 9816B, IAB 11/2/11, effective 12/7/11; ARC 0738C, IAB 5/15/13, effective 6/19/13]

#### **21—16.4(159A) Review process.**

**16.4(1)** The underground storage tank fund board has chosen not to review the applications. The renewable fuel infrastructure board will review an application for final approval or disapproval. The renewable fuel infrastructure board shall determine the amount of financial incentives to be awarded to an applicant.

**16.4(2)** Completed applications, including supporting documentation of meeting eligibility requirements, will be reviewed on a first-come, first-served basis. If the amount of funding requests exceeds available funds, the board shall evaluate applications based upon criteria that include, but are not limited to, the following:

- a. Submittal of a completed application, including supporting documentation.
- b. Location factors such as demographics, proximity to major transportation corridors, and proximity to existing renewable fuel retail and storage facilities.
- c. Projected annual sales volume.
- d. Other sources of funding.
- e. Previous grants awarded.

[ARC 9584B, IAB 6/29/11, effective 7/1/11; ARC 9816B, IAB 11/2/11, effective 12/7/11; ARC 0738C, IAB 5/15/13, effective 6/19/13]

#### **21—16.5(159A) Contract administration.**

**16.5(1)** *Notice of award.* The department shall notify approved applicants in writing of the board's award of grants, including any conditions and terms of the approval.

**16.5(2)** *Contract required.* The board shall direct the department to prepare a cost-share agreement which shall include terms and conditions of the grant established by the board. The agreement shall:

- a. Describe the project in sufficient detail to demonstrate the eligibility of the project.
- b. State the total cost of the project expressed in a project budget that contains sufficient detail to meet the requirements of the infrastructure board.
- c. State the project completion deadline.
- d. State the project completion requirements which are preconditions for payment of the grant by the board.
- e. Recite the penalty for the storage or dispensing of motor fuel other than the type of renewable fuel for which the grant was awarded.

(1) Awards for projects under construction or not yet started. The three- or five-year obligation to continue dispensing renewable fuel begins on the date the project is completed.

(2) Awards for projects already completed. The three- or five-year obligation to continue dispensing renewable fuel begins on the date the department issues the first disbursement of grant funds, not on the date of project completion.

f. Be amended to include a supplemental financial incentive, if a supplemental financial incentive is awarded by the board.

**16.5(3)** *Repayment penalty for nonexclusive renewable fuel use.* In the absence of a waiver from the board, the department may impose a 25 percent penalty due to a grant recipient's use of infrastructure equipment for which a grant was awarded, for the storage or dispensing, within the time frame stated in the agreement, of motor fuel other than the type of renewable fuel for which the grant was awarded.

**16.5(4)** *Repayment or board waiver.* A grant recipient may not use the infrastructure to store and dispense motor fuel other than the type approved by the board, unless one of the following applies: (1)

the grantee is granted a waiver by the board, or (2) the grantee pays back the moneys awarded including a 25 percent penalty.

**16.5(5) Waiver criteria.** The board may waive repayment of grant funds plus the 25 percent penalty. A grant recipient seeking a waiver during the time period in which a cost-share agreement is in effect shall submit a written waiver request to the board. The board will consider waiver requests under the following circumstances:

*a. Permanent waiver.*

(1) Waiver due to demonstration of good cause (no repayment and no 25 percent penalty). A grant recipient may request a permanent waiver during the time period in which a cost-share grant agreement is in effect if the grant recipient can demonstrate good cause for failure to continue using the approved renewable fuel. "Good cause" includes, but is not limited to, events such as the following:

1. Permanent business closure due to bankruptcy.
2. Permanent closure of underground or aboveground storage tanks.

(2) Waiver due to demonstration of financial hardship (repayment on a sliding scale and no 25 percent penalty). A grant recipient may seek a permanent waiver of exclusive use of the approved renewable fuel during the time period in which a cost-share agreement is in effect due to financial hardship. The grant recipient must demonstrate that continuing to dispense the renewable fuel at a project site will cause a financial hardship. A request for waiver due to financial hardship shall include documentation to show a "good faith" effort to market the fuel, specifically the most recent six-month history of gallons of approved renewable fuel sold by month, marketing/advertising efforts, retail price comparison of E-85 to E-10 (or regular gasoline) or of biodiesel to regular diesel. If a waiver is granted, the 25 percent penalty will not be assessed, but the grant funds shall be repaid as follows:

1. Three-year cost-share agreement: Months 1 through 11 of the cost-share agreement, 100 percent of grant amount. Months 12 through 36 of cost-share agreement, 4 percent of grant amount for each month remaining on the cost-share agreement.

2. Five-year cost-share agreement: Months 1 through 10 of the cost-share agreement, 100 percent of grant amount. Months 11 through 60 of the cost-share agreement, 2 percent of grant amount for each month remaining on the cost-share agreement.

*b. Temporary waiver (temporary suspension of repayment and 25 percent penalty).* A grant recipient may request a temporary suspension of the obligation to use only the approved renewable fuel and a temporary waiver of the repayment plus penalty requirement. A request for a temporary waiver, or an extension of a temporary waiver, will only be considered by the board if the recipient can document to the board's satisfaction that market forces are not allowing for advantageous sales of the approved renewable fuel. A grant recipient shall submit documentation of the previous six-month sales history and marketing attempts to substantiate the grant recipient's request for a temporary waiver. The following conditions apply to requests for a temporary waiver:

(1) A temporary waiver will not be granted during the first six months of a cost-share agreement.

(2) A temporary waiver will not shorten the grant recipient's obligation to use the infrastructure to store and dispense the approved renewable fuel for a minimum of three years or five years. If the board approves a temporary waiver, the duration of the cost-share agreement will be extended by the length of the approved waiver period.

(3) A grant recipient may request a temporary waiver of up to six months. The board may approve one or more six-month waivers, provided the total cumulative time period allowed for temporary waivers shall not exceed two years.

(4) If a state executive order suspending the Iowa Renewable Fuel Standard (RFS) schedule is issued, the board may decide to grant a temporary waiver to all grant recipients. The board will establish the duration of the waiver and provide written notice to all grant recipients of the board's action. When the board determines that a temporary waiver is necessary due to suspension of the Iowa RFS schedule, the three-year or five-year duration of the cost-share agreement will not be extended by the length of the temporary waiver.

[ARC 9584B, IAB 6/29/11, effective 7/1/11; ARC 9816B, IAB 11/2/11, effective 12/7/11; ARC 0738C, IAB 5/15/13, effective 6/19/13]

These rules are intended to implement Iowa Code sections 159A.11 to 159A.16.

[Filed Emergency ARC 9584B, IAB 6/29/11, effective 7/1/11]

[Filed ARC 9816B (Notice ARC 9583B, IAB 6/29/11), IAB 11/2/11, effective 12/7/11]

[Filed ARC 0139C (Notice ARC 0069C, IAB 4/4/12), IAB 5/30/12, effective 7/4/12]

[Filed ARC 0738C (Notice ARC 0645C, IAB 3/20/13), IAB 5/15/13, effective 6/19/13]



CHAPTER 76  
MEAT AND POULTRY INSPECTION  
[Prior to 7/27/88 see Agriculture Department 30—Ch 43]

**21—76.1(189A) Federal Wholesome Meat Act regulations adopted.** Part 301 of Title 9, Chapter III, of the Code of Federal Regulations, revised as of January 1, 2013, is hereby adopted in its entirety by reference; and in addition thereto, the following subsections shall be expanded to include:

1. Sec. 301.2(a) therein defining the term “Act” shall include the Iowa meat and poultry inspection Act, Iowa Code chapter 189A.

2. Sec. 301.2(b) therein defining the term “department” shall include the Iowa department of agriculture and land stewardship.

3. Sec. 301.2(c) therein defining the term “secretary” shall include the secretary of agriculture of the state of Iowa.

4. Sec. 301.2(e) therein defining the term “administrator” shall include the supervisor of the Iowa meat and poultry inspection service or any officer or employee of the Iowa department of agriculture and land stewardship.

5. Sec. 301.2(t) therein defining the term “commerce” shall include intrastate commerce in the state of Iowa.

6. Sec. 301.2(u) therein defining the term “United States” shall include the state of Iowa.

[ARC 9012B, IAB 8/25/10, effective 9/29/10; ARC 0733C, IAB 5/15/13, effective 6/19/13]

**21—76.2(189A) Federal Wholesome Meat Act regulations adopted.** Part 303, Part 304, Part 305, Part 306, Parts 308 through 320, Part 329, Part 416, Part 417, Part 418, Part 424, Part 430, Part 441 and Part 442 of Title 9, Chapter III, of the Code of Federal Regulations, revised as of January 1, 2013, are hereby adopted in their entirety by reference. Part 307 except Sections 307.5 and 307.6 and Part 325 except Sections 325.3 and 325.12 of Title 9, Chapter III, of the Code of Federal Regulations, revised as of January 1, 2013, are hereby adopted in their entirety by reference. Part 500 of Title 9, Chapter III, of the Code of Federal Regulations, revised as of January 1, 2013, is adopted by reference, except that references in Sections 500.5, 500.6, 500.7, and 500.8 to the federal Uniform Rules of Practice are not adopted.

[ARC 9012B, IAB 8/25/10, effective 9/29/10; ARC 0733C, IAB 5/15/13, effective 6/19/13]

**21—76.3(189A) Federal Poultry Products Inspection Act regulations adopted.** Part 381, Title 9, Chapter III, of the Code of Federal Regulations, revised as of January 1, 2013, is hereby adopted in its entirety with the following exceptions: 381.96, 381.97, 381.99, 381.101, 381.102, 381.104, 381.105, 381.106, 381.107, 381.128, Subpart R, Subpart T, Subpart V, Subpart W; and in addition thereto, the following subsections shall be expanded to include:

1. Sec. 381.1(b)(2) therein defining the term “Act” shall include the Iowa meat and poultry inspection Act, Iowa Code chapter 189A.

2. Sec. 381.1(b)(3) therein defining the term “administrator” shall include the supervisor of the Iowa meat and poultry inspection service, or any officer or employee of the Iowa department of agriculture and land stewardship.

3. Sec. 381.1(b)(10) therein defining the term “commerce” shall include intrastate commerce in the state of Iowa.

4. Sec. 381.1(b) therein defining the term “department” shall include the Iowa department of agriculture and land stewardship.

5. Sec. 381.1(b)(47) therein defining the term “secretary” shall include the secretary of agriculture of the state of Iowa.

6. Sec. 381.1(b)(53) therein defining the term “United States” shall include the state of Iowa.

[ARC 9012B, IAB 8/25/10, effective 9/29/10; ARC 0733C, IAB 5/15/13, effective 6/19/13]

These rules are intended to implement Iowa Code sections 189A.3 and 189A.7(8).

**21—76.4(189A) Inspection required.** Every establishment except as provided in Section 303.1(a), (b), (c) and (d) of Title 9, Chapter III, Subchapter A, of the Code of Federal Regulations, revised as of January 1, 2013, in which slaughter of livestock or poultry, or the preparation of livestock products or poultry products is maintained for transportation or sale in commerce, shall be subject to the inspection and other requirements of those parts of Title 9, Chapter III, Subchapter A, of the Code of Federal Regulations, revised as of January 1, 2013, enumerated in rules 21—76.1(189A), 21—76.2(189A) and 21—76.3(189A).

This rule is intended to implement Iowa Code sections 189A.4 and 189A.5.  
[ARC 9012B, IAB 8/25/10, effective 9/29/10; ARC 0733C, IAB 5/15/13, effective 6/19/13]

**21—76.5(189A) Custom/exempt facilities sanitation standard operating procedures.** Iowa inspected custom/exempt facilities shall develop and implement a sanitation standard operating procedure (SSOP) in a manner consistent with Section 416.12, Title 9, Chapter III, Code of Federal Regulations.

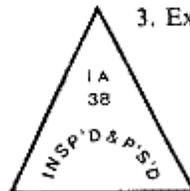
**21—76.6(189A) Forms and marks.** Whenever an official form is designated by federal regulation, the appropriate Iowa form will be substituted and whenever an official mark is designated, the following official Iowa marks will be substituted:

1. IOWA INSP'D AND  
CONDEMNED

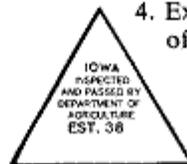
2.



3. Exotic Carcass Brand



4. Exotic product label mark  
of inspection



This rule is intended to implement Iowa Code section 189A.5(2).

**21—76.7(189A,167) Registration.** Every person engaged in business in or for intrastate commerce as a broker, renderer, animal food manufacturer, or wholesaler or public warehouse of livestock or poultry products, or engaged in the business of buying, selling or transporting in intrastate commerce any dead, dying, disabled or diseased livestock or poultry or parts of the carcasses of such animals, including

poultry, that died otherwise than by slaughter, shall register with the meat and poultry section, department of agriculture and land stewardship, indicating the name and address of each place of business and all trade names.

This rule is intended to implement Iowa Code section 189A.7(7).

**21—76.8(189A,167) Dead, dying, disabled or diseased animals.** Persons shall not engage in the business of buying, selling, transporting in intrastate commerce, dead, dying, disabled or diseased animals, or any parts of the carcasses of any animal, unless they have been licensed for the purpose of disposing of the bodies of dead animals pursuant to Iowa Code section 167.2. All persons so engaged are subject to the provisions of Iowa Code chapter 167 and regulations of 21—Chapter 61, “Dead Animal Disposal,” Iowa Administrative Code.

**76.8(1)** All rendering plants engaged in processing fallen or dead animals into pet food and pet food processing plants shall be inspected by the meat and poultry section in accordance with Iowa Code chapter 167 before registration is approved.

**76.8(2)** The plant shall engage the services of a licensed veterinarian, approved by the department, to inspect carcasses for the presence of communicable disease or harmful contamination or adulteration and evidence of decomposition. Any of these conditions shall be cause for the carcass to be condemned as unfit for processing into pet animal food.

All compensation for the veterinarian employed by the rendering plant and pet animal food processing plants processing inedible meat and carcass parts for pet food shall be paid by the plant.

**76.8(3)** Fallen or dead animals which are recovered and transported to the processing plant shall be immediately skinned and eviscerated, except the lungs, heart, kidneys and liver, which shall be left attached to the carcass, and the carcasses shall be stored in a chill room with attached viscera until inspected and approved by a veterinary inspector. The stomach or stomachs, together with the entire intestinal tract, shall be tagged immediately with serially numbered tags and stamped with the word “inedible.” The word “inedible” shall be not less than one-half inch high. Condemned carcasses shall be deeply slashed on the round, rump, loin and shoulder, denatured with a ten percent solution of cresylic acid or other decharacterizing agent approved by the department of agriculture and land stewardship and removed to a rendering plant prior to the close of the working day.

**76.8(4)** The department shall inspect each place registered under Iowa Code chapter 189A or licensed under Iowa Code chapter 167 at least once a year, and as often as it deems necessary and shall see that the registrant conducts the business in conformity to both chapters and these rules.

**76.8(5)** Rendering plants and pet animal food processing plants may process fallen or dead animals into pet food where the animals are recovered and transported to a processing plant within a reasonable time following the death of an animal and before decomposition occurs.

**76.8(6)** Processing facilities, when located in or operated in conjunction with a rendering plant, shall be in a separate area equipped and used only for skinning, eviscerating, deboning, grinding, decharacterizing, packaging and labeling of inedible meat and carcass parts to be used in pet animal food. Rendering facilities approved by the department shall be available to process materials not suitable for pet animal food.

**76.8(7)** These rules shall also govern the collection, transportation and processing of other inedible material such as lungs, livers, hearts, spleens, poultry and poultry parts obtained from slaughterhouses, packing plants or other sources, to be used in the processing and manufacture of pet animal food.

This rule is intended to implement Iowa Code sections 189A.8, 167.5 and 167.14.

**21—76.9(189A) Denaturing and identification of livestock or poultry products not intended for use as human food.** No person shall buy, sell, transport, or offer for sale or transportation, or receive for transportation, in intrastate commerce any livestock products or poultry products which are not intended for use as human food unless they are denatured or otherwise identified.

**76.9(1)** All inedible meat and carcass parts shall be adequately decharacterized with charcoal or with other suitable agent acceptable to the Iowa department of agriculture and land stewardship. Inedible material shall be cut into pieces or chunks no more than four inches in any dimension. Following

decharacterization, inedible meat and carcass parts shall be packed in suitable containers approved by the department.

**76.9(2)** Decharacterizing shall be done to an extent acceptable to the department. Decharacterization shall be done in such a manner that each piece of material shall be decharacterized so as to preclude its being used for, or mistaken for, product for human consumption.

**76.9(3)** All containers for decharacterized inedible meat or carcass parts shall be plainly marked with the word “inedible” in letters no less than two inches high.

**76.9(4)** Decharacterized inedible meat and carcass parts shall be frozen or held at a temperature of 40°F or less in the processing plant or during transportation to the final processor.

This rule is intended to implement Iowa Code section 189A.8.

**21—76.10(189A,167) Transportation of decharacterized inedible meat or carcass parts.** No person engaged in the business of buying, selling or transporting in intrastate commerce, dead, dying, disabled or diseased animals, or any parts of the carcasses of any animals that died otherwise than by slaughter, or any other inedible product not intended for use as human food, shall buy, sell, transport, offer for sale or transportation or receive for transportation in such commerce, any dead, dying, disabled or diseased livestock or poultry or the products of any such animals that died otherwise than by slaughter, or any other inedible product not intended for use as human food, unless such transaction or transportation is made in accordance with Iowa Code chapters 167 and 189A and 21—Chapters 61 and 76.

**76.10(1)** All carcasses and other inedible material received for processing, and all decharacterized inedible material shipped from the plant, shall be transported and delivered in closed conveyances. The conveyance shall be constructed in such a manner as to prevent the spillage of liquids and material and in accordance with rules 21—61.15(167) and 61.16(167), Iowa Administrative Code.

**76.10(2)** Rendering plants and pet animal food processing plants outside the state of Iowa, from which decharacterized inedible meat or carcass parts are shipped into the state of Iowa, shall be certified by the proper public officials of the state of origin that the processing plants meet at least the minimum standards as set forth in these rules.

This rule is intended to implement Iowa Code sections 189A.8 and 167.15.

**21—76.11(189A) Records.** Records which fully and correctly disclose all transactions involved in their business shall be kept and retained for a period of no less than two years by the following classes of persons:

Any person that engages in intrastate commerce in the business of slaughtering any livestock or poultry, or preparing, freezing, packaging or labeling, buying or selling, transporting or storing any livestock or poultry products for human or animal food;

Any person that engages in intrastate commerce in business as a renderer or in the business of buying, selling or transporting any dead, dying, disabled or diseased carcasses of such animals or parts of carcasses of any such animals, including poultry, that died otherwise than by slaughter.

**76.11(1)** All such persons shall afford the secretary and authorized representatives access to such business and opportunity at all reasonable times to examine the facilities, inventory and records thereof, to copy the records and to take reasonable samples of the inventory, upon payment of the reasonable value therefor.

**76.11(2)** Records shall include the following:

*a.* The name and address of the owner, the approximate time of death of the animal and the date the animal was received for processing shall be recorded for all animals to be inspected for processing into pet animal food.

*b.* The number of cartons or containers and the approximate weight of other material received from slaughterhouses, packing plants and other sources to be used in the processing of pet animal food.

*c.* The number of cartons, packages or containers of processed inedible meat and carcass parts and the weight of each carton stored.

*d.* Date of shipment, number of containers or boxes, weight of each shipment and name and address of the consignee of all inedible and decharacterized material shipped from the plant.

This rule is intended to implement Iowa Code section 189A.4(7).

**21—76.12(189,189A) Movement of meat products into the state.** Rescinded IAB 2/26/97, effective 4/2/97.

**21—76.13(189A) Voluntary inspections of exotic animals.** Every person wishing to obtain voluntary inspection of exotic animals shall comply with the regulations adopted in this rule.

Part 352 of Title 9, Chapter III, of the Code of Federal Regulations, revised as of January 1, 2013, is hereby adopted in its entirety by reference.

This rule is intended to implement Iowa Code chapter 189A.

[ARC 9012B, IAB 8/25/10, effective 9/29/10; ARC 0733C, IAB 5/15/13, effective 6/19/13]

**21—76.14(189A) Federal Wholesome Meat Act regulations adopted for the regulation of farm deer.**

1. All federal regulations adopted in 21—76.1(189A).

2. All federal regulations adopted in 21—76.2(189A), except Part 303 and Part 307.4(c) of Title 9, Chapter III, of the Code of Federal Regulations, revised as of January 1, 2013.

This rule is intended to implement Iowa Code chapters 170 and 189A.

[ARC 9012B, IAB 8/25/10, effective 9/29/10; ARC 0733C, IAB 5/15/13, effective 6/19/13]

**21—76.15(189A) Fees.** Rescinded IAB 7/21/04, effective 7/2/04.

[Filed 7/12/66; amended 11/14/66, 9/26/67, 2/20/71, 4/20/72, 7/30/73]

[Filed 4/13/76, Notice 2/9/76—published 5/3/76, effective 6/7/76]

[Filed 6/29/76, Notice 5/17/76—published 7/12/76, effective 8/17/76]

[Filed without Notice 8/19/76—published 9/8/76, effective 10/13/76]

[Filed 2/15/83, Notice 1/5/83—published 3/2/83, effective 4/6/83]

[Filed 1/13/84, Notice 12/7/83—published 2/1/84, effective 3/7/84]

[Filed emergency 5/22/85—published 6/19/85, effective 5/22/85]

[Filed 7/25/85, Notice 6/19/85—published 8/14/85, effective 9/18/85]

[Filed emergency 7/8/88 after Notice 6/1/88—published 7/27/88, effective 7/8/88]

[Filed emergency 10/9/91—published 10/30/91, effective 10/9/91]

[Filed 11/8/91, Notice 9/18/91—published 11/27/91, effective 1/1/92]

[Filed 11/3/95, Notice 9/27/95—published 11/22/95, effective 12/27/95]

[Filed 2/7/97, Notice 12/4/96—published 2/26/97, effective 4/2/97]

[Filed 12/24/98, Notice 11/4/98—published 1/13/99, effective 2/17/99]

[Filed 3/30/01, Notice 1/24/01—published 4/18/01, effective 5/23/01]

[Filed emergency 9/5/03—published 10/1/03, effective 9/5/03]

[Filed 11/7/03, Notice 10/1/03—published 11/26/03, effective 12/31/03]

[Filed emergency 7/2/04—published 7/21/04, effective 7/2/04]

[Filed 8/11/04, Notice 5/26/04—published 9/1/04, effective 10/6/04]

[Filed 10/2/08, Notice 8/13/08—published 10/22/08, effective 11/26/08]

[Filed ARC 9012B (Notice ARC 8842B, IAB 6/16/10), IAB 8/25/10, effective 9/29/10]

[Filed ARC 0733C (Notice ARC 0634C, IAB 3/6/13), IAB 5/15/13, effective 6/19/13]



CHAPTER 10  
IOWA FINANCIAL INCENTIVE PROGRAM FOR SOIL EROSION CONTROL  
[Prior to 12/28/88, see Soil Conservation Department, 780—Ch 5]

**27—10.1 to 10.9** Reserved.

PART 1

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

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

**27—10.12 to 10.19** Reserved.

PART 2

**27—10.20(161A) Definitions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[ARC 8766B, IAB 5/19/10, effective 7/1/10; ARC 0224C, IAB 7/25/12, effective 8/29/12]

## PART 3

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

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

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

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

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

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

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

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

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

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

*c.* In the event that properly maintained practices that were installed with the assistance of Iowa financial incentive program funds are damaged due to natural disasters, completing the maintenance/performance agreement shall not constitute an action or intent on the part of the division to prevent the owner of the land on which the practices were installed from receiving federal emergency conservation program assistance to repair or replace the practices.

**27—10.32(161A) Noncompliance.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**27—10.34 to 10.39** Reserved.

PART 4

**27—10.40** Reserved.

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

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

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

Up to 30 percent of a district's original and supplemental allocation may be used for the establishment of practices listed in subrules 10.82(1) and 10.82(2).

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

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

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

**10.41(4)** Special watershed projects. Iowa Code section 161A.7 permits cost sharing up to 60 percent of the cost of a project including five or more contiguous farm units which have at least 500 or more acres of farmland and which constitute at least 75 percent of the agricultural land lying within a watershed or subwatershed, where the owners jointly agree to a watershed conservation plan in conjunction with their respective farm unit soil conservation plan.

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

This rule is intended to implement Iowa Code chapter 161A; 1994 Iowa Acts, chapter 1198, section 1, subsection 4, paragraphs "b," "c," and "d"; 1995 Iowa Acts, chapter 216, section 1, subsection 4, paragraphs "b," "c," and "d"; 1996 Iowa Acts, chapter 1214, section 1, subsection 4, paragraphs "b,"

“c,” and “d”; and 1997 Iowa Acts, House File 708, section 1, subsection 4, paragraphs “b,” “c,” and “d.”

[ARC 7722B, IAB 4/22/09, effective 4/1/09; ARC 8766B, IAB 5/19/10, effective 7/1/10; ARC 0737C, IAB 5/15/13, effective 7/1/13]

**27—10.42 to 10.49** Reserved.

PART 5

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

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

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

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

Individual Soil and Water Conservation District

Percentage Allocation Factors

<u>W(%) District</u>	<u>W(%) District</u>	<u>W(%) District</u>	<u>W(%) District</u>
1.7 Adair	1.2 Davis	1.0 Jefferson	0.2 Pocahontas*
1.1 Adams	1.4 Decatur	1.2 Johnson	0.8 Polk
1.5 Allamakee	0.8 Delaware	1.2 Jones	1.4 E. Pottawattamie
1.1 Appanoose	0.5 Des Moines	1.4 Keokuk	1.2 W. Pottawattamie
1.3 Audubon	0.4 Dickinson	0.5 Kossuth	1.6 Poweshiek
1.2 Benton	1.8 Dubuque	1.0 Lee	1.6 Ringgold
0.3 Black Hawk*	0.4 Emmet	1.0 Linn	0.7 Sac
0.6 Boone	1.1 Fayette	0.5 Louisa	0.8 Scott
0.3 Bremer*	0.3 Floyd*	1.1 Lucas	1.8 Shelby
0.3 Buchanan*	0.6 Franklin	0.9 Lyon	1.0 Sioux
0.5 Buena Vista	1.0 Fremont	1.2 Madison	0.6 Story
0.6 Butler	0.5 Greene	1.2 Mahaska	1.5 Tama
0.3 Calhoun*	0.5 Grundy	1.3 Marion	1.7 Taylor
1.2 Carroll	1.5 Guthrie	1.5 Marshall	1.1 Union
1.5 Cass	0.4 Hamilton	1.1 Mills	1.2 Van Buren
1.2 Cedar	0.4 Hancock	0.2 Mitchell*	1.0 Wapello
0.4 Cerro Gordo	0.7 Hardin	1.3 Monona	1.2 Warren
1.0 Cherokee	1.7 Harrison	1.0 Monroe	1.1 Washington

<u>W(%) District</u>	<u>W(%) District</u>	<u>W(%) District</u>	<u>W(%) District</u>
0.4 Chickasaw	0.9 Henry	1.2 Montgomery	1.4 Wayne
1.2 Clarke	0.4 Howard	0.5 Muscatine	0.3 Webster*
0.4 Clay	0.2 Humboldt*	0.5 O'Brien	0.5 Winnebago
2.0 Clayton	1.3 Ida	0.3 Osceola*	2.0 Winneshiek
1.2 Clinton	1.4 Iowa	1.5 Page	2.2 Woodbury
2.5 Crawford	1.7 Jackson	0.4 Palo Alto	0.2 Worth*
0.8 Dallas	1.8 Jasper	2.4 Plymouth	0.4 Wright

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

**10.51(2) Supplemental allocation.** The remaining balance of the fiscal year funds plus recalled funds from the mandatory program as distributed in subrule 10.41(3), and from the public lakes fund as distributed in subrule 10.41(2) that were not obligated, from the reserve fund established in subrule 10.57(1), and from districts as specified in subrule 10.51(3) will be provided to the districts in a supplemental allocation. The districts shall identify valid applications and cost estimates, if any, for supplemental allocations to the division by September 1. The allocation to any district will be the lesser amount of:

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

*b.* Three times the original allocation to the district.

**10.51(3) Recall of funds.** Any funds allocated in the current fiscal year that the districts have not spent or obligated by June 30 may be recalled by the division.

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

**10.51(5) Eligibility for supplemental allocations.** A district must have obligated 75 percent of current fiscal year funds to qualify for a supplemental allocation.

**10.51(6) Recall and reallocation of funds by division director.** When the unspent balance of funds allocated to a district exceeds that district's annual allocation by more than 150 percent for a period of 12 months or more, the division director may recall these unspent funds and reallocate them to a district or districts that can demonstrate a need.

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

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

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

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

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

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

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

**10.52(6) Applications and agreements.** Applications and agreements for 75 percent cost sharing under this program will be handled by the districts as described in Part 7 of these rules except that the division will allocate funds to districts on an as-needed and first-come, first-served basis.  
[ARC 0737C, IAB 5/15/13, effective 7/1/13]

**27—10.53** Reserved.

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

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

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

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

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

**27—10.55** Reserved.

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

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

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

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

**27—10.57(161A) Reserve fund.**

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

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

**27—10.58 and 10.59** Reserved.

#### PART 6

**27—10.60(161A) Funding rates.** The purpose of this division is to establish the funding rates at which the state will fund or share the cost for approved soil conservation practices under the various incentive

programs. In all cases, except for the mandatory program, the state's share will be computed using the percentages specified below and the estimated cost, the amended estimated cost, or the actual cost of implementing the practice, whichever is less. Payments under the mandatory program will be based on actual costs. Funds distributed to annual programs for permanent practices may be used in combination with other public funds as long as the maximum cost-share rate realized by the district cooperator does not exceed 75 percent of the total eligible costs.

**10.60(1) Voluntary.**

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

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

(1) Fifty percent of the actual cost, not to exceed \$450 per acre, including the following:

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

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

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

c. For currently funded fiscal years, the division will make one-time payments of up to \$10 per acre for no-tillage, ridge-till and strip-till; \$6 per acre for contour farming; \$25 per acre for establishing a cover crop; and 50 percent of the cost up to \$25 per acre for strip-cropping, field borders and filter strips. Not more than 30 percent of the district's original allocation and supplemental allocation may be used for the establishment of management practices to control soil erosion on land that is now row-cropped.

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

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

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

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

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

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

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

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

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

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

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

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

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

**27—10.61 to 10.69** Reserved.

#### PART 7

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

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

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

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

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

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

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

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

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

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

**10.73(4) Ineligible lands.**

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

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

*c.* Tracts of land used for agricultural production which are less than ten acres in size and from which less than \$2500 of agricultural products are sold annually shall not qualify for financial incentives funds, unless approved by the commissioners as part of a group project or as a continuation of an adjacent system.

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

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

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

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

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

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

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

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

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

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

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

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

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

*a. District personnel responsible for design.* The technician of the district shall design and lay out proposed soil and water conservation practices for which financial incentives funds have been obligated.

The certifying technician of the district shall be responsible for determining compliance with applicable design standards and specifications.

*b. Cost estimate adjustments.*

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

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

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

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

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

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

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

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

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

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

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

*a. Maintenance/performance agreement required.* As a condition for receipt of any financial incentive funds for permanent soil and water conservation practices, the owner of the land on which the practices have been installed shall agree to maintain those practices for a minimum term as required by the division.

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

*c. Filing of agreements.*

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

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

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

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

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

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

**27—10.75 to 10.79** Reserved.

#### PART 8

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

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

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

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

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

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

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

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

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

**10.81(5) Existing practices.**

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

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

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

**10.81(7) Seeding.**

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

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

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

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

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

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

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

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

- a.* No-till planting.
- b.* Ridge-till planting.
- c.* Strip-till planting.
- d.* Cover crops.

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

- a.* Critical area planting.
- b.* Contour farming.
- c.* Strip-cropping.
- d.* Field border.
- e.* Filter strips.
- f.* Pasture and hay planting. Pasture and hay planting will be eligible for funding only when land that has been planted to row crop for three out of the last five years is being converted to permanent vegetative cover.

**10.82(3) Permanent practices.**

- a.* Reserved.
- b.* Diversion. Diversions are eligible for funding only when used to prevent downstream erosion.
- c.* Windbreak and shelterbelt establishment. A strip or belt of trees or shrubs established within or adjacent to a field to reduce sediment damage and soil depletion caused by wind.
- d.* Grade stabilization structure.
- e.* Reserved.
- f.* Grassed waterway.
- g.* Reserved.
- h.* Terrace.
- i.* Underground outlet. Underground outlets are eligible for Iowa financial incentive funding only when used as a component of eligible permanent practices contained in subrule 10.82(3).
- j.* Water and sediment control basin.
- k.* Reserved.
- l.* Conservation cover.
- m.* Tree and shrub planting. The minimum eligible area is three acres.

[ARC 8766B, IAB 5/19/10, effective 7/1/10; ARC 0331C, IAB 9/19/12, effective 8/24/12; ARC 0477C, IAB 11/28/12, effective 1/2/13]

**27—10.83(161A) Designation of eligible practices.** District commissioners may designate which soil and water conservation practices will be eligible for Iowa financial incentive payments in their district. The selected practices must be from the state-approved practices contained in rule 27—10.82(161A).

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

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

**27—10.85 to 10.89** Reserved.

PART 9

**27—10.90** Reserved.

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

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

**27—10.93 and 10.94** Reserved.

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

**27—10.96 to 10.99** Reserved.

Rules in Chapter 10 are intended to implement Iowa Code chapter 161A; 1994 Iowa Acts, chapter 1198, section 1, subsection 4, paragraphs “b,” “c,” and “d”; 1995 Iowa Acts, chapter 216, section 1, subsection 4, paragraphs “b,” “c,” and “d”; 1996 Iowa Acts, chapter 1214, section 1, subsection 4, paragraphs “b,” “c,” and “d”; and 1997 Iowa Acts, House File 708, section 1, subsection 4, paragraphs “b,” “c,” and “d.”

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

CHAPTER 12  
WATER PROTECTION PRACTICES—WATER PROTECTION FUND

27—12.1 to 12.9 Reserved.

PART 1

**27—12.10(161C) Authority and scope.** This chapter establishes procedures and standards to be followed by soil and water conservation districts and the division of soil conservation of the Iowa department of agriculture and land stewardship, in accordance with the policies of the state soil conservation committee in implementing water protection practices through the water protection fund created in Iowa Code section 161C.4, unnumbered paragraph 1, and subsection 2. This account shall be used to establish water protection practices with individual landowners including, but not limited to, woodland establishment and protection, establishment of native grasses and forbs, sinkhole management, agricultural drainage well management, streambank stabilization, grass waterway establishment, stream buffer strip establishment, and erosion control structure construction. Twenty-five percent of funds appropriated to the water protection practices account plus any additional appropriations for reforestation shall be used for woodland establishment and protection and establishment of native grasses and forbs.

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

27—12.12 to 12.19 Reserved.

PART 2

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

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

27—12.21 to 12.29 Reserved.

PART 3

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

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

27—12.31 to 12.39 Reserved.

PART 4

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

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

27—12.41 to 12.49 Reserved.

## PART 5

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

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

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

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

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

**12.51(3) Supplemental allocations.** The districts shall identify valid applications and cost estimates, if any, for supplemental allocations to the division by September 1. The allocation to any district will be the lesser amount of:

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

*b.* Three times the original allocation to the district.

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

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

*a.* **Original allocation.** Seventy-five percent of the funds distributed to this program will be allocated equally to districts at the beginning of each fiscal year.

*b.* **Supplemental allocation.** The districts shall identify valid applications and cost estimates, if any, for supplemental allocations to the division by September 1. The allocation to any district will be the lesser amount of:

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

(2) Three times the original allocation to the district.

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

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

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

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

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

**27—12.52 to 12.59** Reserved.

## PART 6

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

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

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

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

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

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

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

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

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

**12.63(3) Ineligible lands.**

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

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

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

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

**27—12.64 to 12.69** Reserved.

PART 7

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

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

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

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

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

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

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

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

**12.72(2)** Contour buffer strips.

**12.72(3)** Field border.

**12.72(4)** Filter strips.

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

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

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

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

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

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

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

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

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

**12.73(1)** Grassed waterway.

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

**12.73(3)** Terrace.

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

**12.73(5)** Diversion.

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

*a.* Portable pumps and pumping equipment.

*b.* Waste disposal equipment.

*c.* Building, modification of a building, that portion of the animal waste structure that serves as part of the building, or its foundation.

*d.* That portion of the cost of animal waste control structures attributed to expansion of an animal waste management system.

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

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

**12.74(1) Eligible practices.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**12.77(1) Cost-share rates.** Cost-share rates for practices designated in rule 27—12.72(161C) shall be 50 percent of the eligible or estimated cost of installation, whichever is less, except for contour buffer strips and field borders. Cost-share rates for 12.72(2), contour buffer strips, and 12.72(3), field borders,

shall be a one-time payment of 50 percent of the eligible or estimated cost of installation, whichever is less, up to \$25 per acre.

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

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

*a.* 50 percent of the eligible or estimated cost, whichever is less, of agricultural drainage well plugging and cistern removal, not to exceed \$500.

*b.* 50 percent of the eligible or estimated cost, whichever is less, of establishing a tile outlet from the plugged agricultural drainage well to a suitable, legal outlet, not to exceed \$2000.

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

**27—12.78 and 12.79** Reserved.

#### PART 8

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**12.82(9) Conservation cover.**

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

**27—12.83(161C) Practice standards and specifications.** Soil and water conservation practices shall meet Natural Resources Conservation Service conservation standards and specifications where

applicable. These standards may be accessed through the electronic field office technical guide at [http://efotg.nrcs.usda.gov/efotg\\_locator.aspx?map=IA](http://efotg.nrcs.usda.gov/efotg_locator.aspx?map=IA).

Tree planting, forest stand improvement, site preparation for natural regeneration and rescue treatment standards may be accessed through the department of natural resource's forestry technical guide found at <http://www.iowadnr.com/forestry/pdf/techguide.pdf>.

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

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

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

**12.84(1) Windbreaks.** 75 percent of the eligible or estimated cost, whichever is less, not to exceed \$1500 for the total cost of the establishment or restoration of the windbreak.

**12.84(2) Field windbreaks.** 75 percent of the eligible or estimated cost, whichever is less, not to exceed \$450 per acre.

**12.84(3) Forest stand improvement.** 75 percent of the eligible or estimated cost, whichever is less, not to exceed \$120 per acre for prescribed woodland burning, thinning, pruning crop trees, or releasing seedlings or young trees.

**12.84(4) Tree planting.**

a. 75 percent of the eligible or estimated cost, whichever is less, not to exceed \$450 per acre, for tree planting including the following:

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

b. 75 percent of the eligible or estimated cost, whichever is less, not to exceed \$150 per acre for woody plant competition control.

**12.84(5) Site preparation for natural regeneration.** 75 percent of the eligible or estimated cost, whichever is less, not to exceed \$120 per acre of site preparation.

**12.84(6) Riparian forest buffer.** 75 percent of the eligible or estimated cost, whichever is less.

**12.84(7) Rescue treatment.**

a. 75 percent of the eligible or estimated cost, whichever is less, not to exceed \$60 per acre to establish alternate cover for competition control.

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

c. 75 percent of the eligible or estimated cost, whichever is less, not to exceed \$450 per acre, for plantation replanting including the following:

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

**12.84(8) Prescribed grazing.** 75 percent of the eligible or estimated cost, whichever is less. Systems must include at least two paddocks of native species grasses. Development of a water source is not eligible. Boundary fences or road fences are not included.

**12.84(9) Conservation cover.** 75 percent of the eligible or estimated cost, whichever is less.

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

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

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

**12.85(1) District designation.** Districts shall submit to the SSCC the description of their intentions which could include:

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

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

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

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

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

This rule is intended to implement Iowa Code chapters 161A and 161C.

**27—12.86 to 12.89** Reserved.

#### PART 9

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

These rules are intended to implement Iowa Code chapters 161A and 161C, Iowa Code section 99E.34 and 1989 Iowa Acts, chapter 236.

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

[Filed emergency 7/6/90 after Notice 5/30/90—published 7/25/90, effective 7/6/90]

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[Filed ARC 0737C (Notice ARC 0655C, IAB 3/20/13), IAB 5/15/13, effective 7/1/13]

CHAPTER 25  
DISABILITY SERVICES MANAGEMENT

PREAMBLE

This chapter provides for reporting of county expenditures, development and submission of management plans, data collection, and applications for funding as they relate to county service systems for people with mental illness, chronic mental illness, intellectual disabilities, developmental disabilities, or brain injury.

[ARC 0576C, IAB 2/6/13, effective 1/8/13; ARC 0735C, IAB 5/15/13, effective 8/1/13]

DIVISION I  
DETERMINATION OF STATE PAYMENT AMOUNT  
[Rescinded IAB 1/16/08, effective 2/20/08]

**441—25.1 to 25.10** Reserved.

DIVISION II  
COUNTY MANAGEMENT PLAN

PREAMBLE

These rules define the standards for county management plans for mental health, mental retardation, and developmental disability services, including the single point of entry process for accessing services and supports paid from the county mental health, mental retardation, and developmental disability services fund (Iowa Code section 331.424A). Each county must complete a plan in order to meet the requirements of Iowa Code section 331.439. The single point of entry process is hereinafter called the central point of coordination (CPC). The CPC is an administrative gatekeeper to the service's fund and is not meant to replace case management or service coordination. The county management plan describes how persons with disabilities receive appropriate services and supports within the financial limitations of federal, state, and county resources. In partnership with the state, the county develops a management plan that describes the capacities of the county to manage the county mental health, mental retardation, and developmental disability services fund in a manner that is cost-efficient. These rules are designed to give counties maximum flexibility to manage the public mental health and developmental disabilities (MH/DD) system themselves or, if a county so chooses, to contract with a private managed care company to manage all or part of the county's system. However, even when a county contracts with a private entity to manage its system, the county must approve the county management plan in which it defines the parameters of consumer eligibility and service criteria to be used by the contractor. The county management plan shall be guided by the following principles: choice, empowerment, and community.

**441—25.11(331) Definitions.**

*“Access point”* means a part of the service system or the community that shall be trained to complete applications for persons with a disability and forward them to the central point of coordination. Access points may include, but need not be limited to, providers, public or private institutions, advocacy organizations, legal representatives, and educational institutions.

*“Applicant”* means a person who applies to receive services and supports from the service system.

*“Assistive technology account”* means funds in contracts, savings, trust or other financial accounts, financial instruments, or other arrangements with a definite cash value that are set aside and designated for the purchase, lease, or acquisition of assistive technology, assistive technology services, or assistive technology devices. Assistive technology accounts must be held separately from other accounts. Funds must be used to purchase, lease, or otherwise acquire assistive technology services or devices for a working person with a disability. Any withdrawal from an assistive technology account other than for the designated purpose becomes a countable resource.

*“Authorized representative”* means a person designated by the consumer or by Iowa law to act on the person’s behalf in specified affairs to the extent prescribed by law.

*“Board”* means a county board of supervisors.

*“Central point of coordination (CPC)”* means the administrative entity designated by a board, or the boards of a consortium of counties, to act as the single entry point to the service system as required in Iowa Code section 331.440.

*“Clinical assessment”* means those activities conducted by a qualified professional to identify the consumer’s current level of functioning and to identify the appropriate type and intensity of services and supports.

*“Commission”* means the mental health, mental retardation, developmental disabilities, and brain injury commission established in Iowa Code section 225C.5.

*“Consortium”* means two or more counties that join together to carry out the responsibilities of this division.

*“Consumer”* means a person who is eligible to receive services and supports from the service system.

*“Countable resource”* means real or personal property that has a cash value that is available to the owner upon disposition and is capable of being liquidated.

*“Countable value”* means the equity value of a resource, which is the current fair market value minus any legal debt on the item.

*“County”* means a single county or a consortium of counties legally organized to develop and implement the county management plan.

*“County management plan”* means the county plan, developed pursuant to Iowa Code section 331.439, for organizing, financing, delivering, and evaluating mental health, mental retardation, and developmental disabilities services and supports in a manner that deliberately seeks to control costs while delivering high-quality mental health, mental retardation, and developmental disabilities services and supports. The plan shall consist of three parts: (1) a policies and procedures manual, (2) a three-year strategic plan, and (3) an annual plan review.

*“County of residence”* means the county in Iowa where, at the time an adult applies for or receives services, the adult is living and has established an ongoing presence with the declared, good-faith intention of living permanently or for an indefinite period. The county where a person is “living” does not mean the county where a person is present for the purpose of receiving services in a hospital, a correctional facility, a halfway house for community corrections or substance abuse treatment, a nursing facility, an intermediate care facility for persons with mental retardation, or a residential care facility or for the purpose of attending a college or university. For an adult who is an Iowa resident and who falls within the exclusion for county where a person is “living” as described in this rule, the county where the adult is physically present and receiving services shall be the county of residence. The county of residence of an adult who is a homeless person is the county where the adult usually sleeps.

*“CPC administrator”* means a person who possesses a baccalaureate degree from an accredited school and has demonstrated competency in human services program administration and planning and has two years of experience working with people with disabilities. A person continually employed by a county to implement a central point of coordination process or to perform similar duties, prior to April 1, 1996, shall be considered to be a qualified CPC administrator. This exemption shall only be valid for a person initially appointed as CPC administrator for fiscal year 1997. An individual employed under this exemption and continually employed as a CPC administrator may be employed by any county as a CPC administrator.

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

*“Director”* means the director of the Iowa department of human services.

*“Emergency service”* means a service needed immediately to protect the life or safety of a consumer or others.

*“Evaluation”* means evaluation services as described in 441—subrule 24.4(16).

*“Exempt resource”* means a resource that is disregarded in the determination of eligibility for public funding assistance and in the calculation of client participation amounts.

*“Household,”* for consumers who are 18 years of age or over, means the consumer, the consumer’s spouse or domestic partner, and any children, stepchildren, or wards under the age of 18 who reside with the consumer. For consumers under the age of 18, *“household”* means the consumer, the consumer’s parents (or parent and domestic partner), stepparents or guardians, and any children, stepchildren, or wards under the age of 18 of the consumer’s parents (or parent and domestic partner), stepparents, or guardians who reside with the consumer.

*“Income”* means all gross income received by the consumer’s household, including but not limited to wages, income from self-employment, retirement benefits, disability benefits, dividends, annuities, public assistance, unemployment compensation, alimony, child support, investment income, rental income, and income from trust funds.

*“Individualized services”* means services and supports that are tailored to meet the individual needs of the consumer.

*“Legal settlement”* is as defined in Iowa Code sections 252.16 and 252.17.

*“Liquid assets”* means assets that can be converted to cash in 20 days. These include but are not limited to cash on hand, checking accounts, savings accounts, stocks, bonds, cash value of life insurance, individual retirement accounts, certificates of deposit, and other investments.

*“Managed care”* means a system that provides the coordinated delivery of services and supports that are necessary and appropriate, delivered in the least restrictive settings and in the least intrusive manner. Managed care seeks to balance three factors:

1. Achieving high-quality outcomes for participants.
2. Coordinating access.
3. Containing costs.

*“Managed system”* means a system that integrates planning, administration, financing, and service delivery. The system consists of the financing or governing organization, the entity responsible for care management, and the network of service providers.

*“Management organization”* means an organization contracted to manage part or all of the service system for a county.

*“Medical savings account”* means an account that is exempt from federal income taxation pursuant to Section 220 of the United States Internal Revenue Code (26 U.S.C. §220) as supported by documentation provided by the bank or other financial institution. Any withdrawal from a medical savings account other than for the designated purpose becomes a countable resource.

*“Nonliquid assets”* means assets that cannot be converted to cash in 20 days. Nonliquid assets include, but are not limited to, real estate, motor vehicles, motor vessels, livestock, tools, machinery, and personal property.

*“Provider”* means a person or group of persons or agency providing services for people with disabilities.

*“Qualified professional”* means a person who has education, training, licensure, certification, or experience to make the particular decision at issue as required by federal or state law.

*“Resources”* means all liquid and nonliquid assets owned in part or in whole by the consumer household that could be converted to cash to use for support and maintenance and that the consumer household is not legally restricted from using for support and maintenance.

*“Retirement account”* means any retirement or pension fund or account listed in Iowa Code section 627.6(8)“f.”

*“Retirement account in the accumulation stage”* means a retirement account into which a deposit was made in the previous tax year. Any withdrawal from a retirement account becomes a countable resource.

*“Screening”* means the process used by the central point of coordination to determine eligibility for the service system.

*“Service coordinator”* means a person as defined in rule 441—22.1(225C). For purposes of these rules this may include department social workers providing social casework as defined in rule 441—130.6(234), county caseworkers, county social workers, or qualified case managers as defined in rule 441—24.1(225C).

“*Services fund*” means the county mental health, mental retardation, and developmental disability services fund created in Iowa Code section 331.424A, subsection 2.

“*Service system*” refers to the services and supports administered and paid from the county mental health, mental retardation, and developmental disability services fund.

“*State case status*” is the status of a person who does not have a county of legal settlement as defined in Iowa Code sections 252.16 and 252.17.

“*System principles*” means:

1. “*Choice*” which means the consumer or authorized representative chooses the services, supports, and goods needed to best meet the consumer’s individual goals and accepts the responsibility and consequences of those choices.

2. “*Community*” which means that the system ensures the rights and abilities of all consumers to live, learn, work, and recreate in natural communities of their choice.

3. “*Consumer empowerment*” which means that the service system ensures the rights, dignity, and ability of consumers and their families to exercise choices, take risks, provide input, and accept responsibility.

“*Unique identifier*” means the social security number or the personal identifier for a consumer determined using a methodology adopted by the state-county management committee.

[ARC 7768B, IAB 5/20/09, effective 7/1/09]

**441—25.12(331) County management plan—general criteria.** A county shall develop a plan for providing an array of cost-effective, individualized services and supports that assist the consumers to be as independent, productive, and integrated into the community as possible within the constraints of the services fund.

**25.12(1) Geographical area.** The plan shall define the geographical area covered by the plan.

**25.12(2) Three-part plan.** The plan shall consist of three parts:

- a. A policies and procedures manual.
- b. A management plan annual review.
- c. A three-year strategic plan.

**441—25.13(331) Policies and procedures manual.** The policies and procedures manual shall describe system management and plan administration.

**25.13(1) System management section.** The system management section of the manual shall describe, but shall not be limited to, the following:

a. *Plan development.* The process for the development of the policies and procedures manual, the strategic plan, and amendments to those documents shall involve the various stakeholders in a meaningful way. These stakeholders shall include, but not be limited to, consumers, family members, county officials, advocates, and providers. The process used to involve the stakeholders shall be documented in the strategic plan including how stakeholder input was considered in the development of the final plan. Each process shall include at least one public hearing.

b. *Plan administration.* A statement that the county will directly administer the plan or a description of the management organization responsible for plan administration shall be included in the plan. If the county contracts for plan administration, the plan shall contain a description of how the county will monitor the management organization’s performance through designated county staff or through another contractor independent of the management organization. The management organization shall comply with Iowa Code section 331.439(1) “c.”

c. *The financial accountability process.* The process to ensure the ongoing financial accountability of the plan shall be included. Financial accountability shall include the rate-setting and reimbursement methods used to reimburse service and support providers, which may include vouchers and other nontraditional payment mechanisms.

d. *Risk-bearing managed care contracts.* A county that enters a risk-bearing contract shall include the methodology used to determine the solvency of any plan administered by a management organization in its policies and procedures manual. This shall include, but not be limited to:

(1) A required annual independent audit of the management organization responsible for plan administration.

(2) The rate-setting and reimbursement methods used by the county to reimburse the management organization.

(3) Description of contract requirements prohibiting a management organization from achieving administrative costs or profit from elimination or reduction of services appropriate to consumer needs.

*e. Funding policy.* A policy shall be included indicating that the county is responsible for funding only those services and supports that are authorized in accordance with the process described in the county management plan (including those that are required by law).

*f. Conflict of interest policy.* The manual shall describe a conflict of interest policy that shall, at a minimum, ensure that service authorization decisions are either made by individuals or organizations which have no financial interest in the services or supports to be provided, or that such interest is fully disclosed to consumers, counties, and other stakeholders. The process for this disclosure shall be described in the manual.

*g. Provider network selection.* The manual shall require that providers that are subject to license, accreditation or approval meet established standards. The manual shall detail the approval process, including criteria, developed to select providers that are not currently subject to license, accreditation or approval standards. The manual shall identify the process the county will use to contract with providers.

*h. Delegated functions.* A county may contract with providers to perform functions of the central point of coordination for persons coming to the designated provider for service or may contract with a management organization to carry out the functions of the central point of coordination. When delegation is made, the county shall be responsible for ensuring that the contractor complies with Iowa Code section 331.440 as well as 441—Chapter 25 for any delegated duties and responsibilities.

*i. Access points.* The county shall designate access points and their function in the enrollment process. A process shall be included to ensure that applications received by an access point are forwarded by the end of the working day during which they are received to the consumer's county of residence. The county shall provide training to designated access points on the intake process and use of the application form.

*j. Staffing plan.* The county shall employ, directly or through contract, an adequate number of staff persons to administer the plan. At least one person who meets the qualifications of a central point of coordination administrator shall be designated to implement the central point of coordination process. Elected county or state officials shall not be hired or appointed as the central point of coordination administrator.

*k. Application form.* The policies and procedures manual shall designate the use of an application form, which shall be available in formats and languages appropriate to consumers' needs.

*l. Consumer access.* The manual shall describe how the county will provide access to appropriate, flexible, cost-effective community services and supports to meet the consumer needs in the least restrictive environment possible. This may include guidelines for individualized services and supports and may vary by eligibility group and type of service and support. The manual shall describe how the county of residence will ensure access to services and supports while legal settlement is determined or in dispute.

*m. Consumer eligibility.* The manual shall describe the eligibility criteria for services and supports. This description shall include, but not be limited to, a description of who is eligible to receive services and supports by eligibility group and type of service or support. Financial eligibility and copayment criteria shall meet the requirements of rule 441—25.20(331).

*n. Confidentiality.* The manual shall describe a confidentiality policy that shall ensure compliance with all applicable state and federal statutes on confidentiality.

*o. Emergency services.* The manual shall specify the policy for accessing emergency services, including the county's protocol for voluntary and involuntary commitments. The policy shall include the criteria and time frames for application for emergency services.

*p. Waiting lists.* The policies and procedures manual shall specify if the county will use waiting lists, when needed. If the policies and procedures manual specifies the use of waiting lists for funding

services and supports, it shall specify criteria for the use and review of each waiting list, including the criteria to be used to determine how and when a consumer will be placed on a waiting list. The manual shall specify how waiting list data will be used in future planning. If the county enters into a risk-bearing contract with a management organization, the contract shall specify that the management organization shall not use waiting lists.

*q. Quality assurance.* The policies and procedures manual shall describe a detailed quality improvement process that provides for ongoing and periodic evaluation of the service system and of the providers of services and supports in the system. The stakeholders shall be involved in the development and implementation of the quality assurance process and evaluation of the system with emphasis on consumer input. The quality assurance policies shall include, but not be limited to, the following:

(1) *System evaluation.* The system evaluation shall include, but not be limited to, an evaluation of consumer satisfaction, including empowerment and quality of life; provider satisfaction; patterns of service utilization; responsiveness to consumer needs and desires; the number and disposition of consumer appeals and the implementation of corrective action plans based on these appeals; and cost-effectiveness.

(2) *Quality of provider services.* The services and supports evaluation shall include, but not be limited to, an evaluation of the quality of provider services and supports based on consumer satisfaction and achievement of desired consumer outcomes; the number and disposition of appeals of provider actions and the implementation of corrective action plans based on these appeals; and the cost-effectiveness of the services and supports developed and provided by individual providers. The evaluation shall ensure that services and supports are provided in accordance with provider contracts.

*r. Collaboration.* The policies shall describe the county's collaboration with other funders, service providers, consumers and their families or authorized representatives, and advocates to ensure that authorized services and supports are responsive to consumers' needs and desires and are cost-efficient. The manual shall specifically describe the process for collaboration with the court to ensure that the court is aware of the services and supports available through the county management plan as alternatives to commitment and to coordinate funding for services to persons who are under court-ordered commitment pursuant to Iowa Code chapter 222 or 229.

*s. The ongoing education process.* The plan shall include the process the county will use to provide ongoing education, in various accessible formats, on its planning process and the intake and service authorization process to the community, including consumers, family members, and providers.

**25.13(2) Plan administration section.** The plan administration section of the policies and procedures manual shall specifically outline procedures for administering the plan at the consumer level. These procedures shall include, but shall not be limited to:

*a. Application (intake) procedure.* The plan administration section of the manual shall describe an application process that is readily accessible to applicants and their families or authorized representatives. This procedure shall describe where applicants can apply for services and how and when the applications will reach the CPC office. It shall outline an application review process including, but not limited to, how additional needed information shall be gathered to complete an application, a timeline for the review process, and qualifications of the professional reviewing the application.

(1) Applications shall be accepted and processed by the applicant's county of residence. If an applicant applies to the CPC of the county of residence and has legal settlement in another county, the application process shall be performed by the CPC of the applicant's county of residence in accordance with the county of residence's management plan, and the applicant's county of legal settlement shall be responsible for the cost of the services or other supports authorized at the rates reimbursed by the county of residence.

(2) If the county of legal settlement has implemented a waiting list in accordance with Iowa Code section 331.439(5), the services and other supports for the person shall be authorized by the county of residence in accordance with the county of legal settlement's waiting list provisions.

(3) If the county of residence has implemented a waiting list, the services and other supports for the person shall be authorized by the county of residence in accordance with the county of residence's waiting list provisions.

*b. Eligibility determination.* Eligibility determination shall include, but not be limited to, the criteria used to authorize or deny funding for services and supports. This may include guidelines for individualized services and supports and may vary by eligibility group and type of service and support. The procedure shall specify the time frames for conducting eligibility determination that provides for timely access to services, including necessary and immediate services.

*c. Notice of decision.* The review process shall ensure a prompt screening for eligibility and initial decision to approve or reject the application or to gather more information. The policies and procedures manual shall include the process for development of a written notice of decision. The time frame for sending a written notice of decision shall be included.

- (1) The notice of decision shall:
  1. Explain the action taken on the application and the reasons for that action;
  2. State what services are approved and name the service providers;
  3. Outline the applicant's right to appeal; and
  4. Describe the appeal process.
- (2) If the applicant is placed on the county of residence's waiting list for funding, the notice issued by the county of residence shall also include:
  1. An explanation of waiting-list status;
  2. An estimate of how long the applicant is expected to be on the waiting list; and
  3. The process for the applicant or authorized representative to obtain information regarding the applicant's status on the waiting list.
- (3) The county of residence shall send the notice of decision to:
  1. The applicant (or the family in the case of a minor) or the applicant's authorized representative;
  2. The applicant's county of legal settlement (if different from the county of residence); and
  3. The listed service providers.
- (4) If the applicant's county of legal settlement is different from the county of residence, the county of legal settlement shall sign the notice of decision accepting legal settlement and return it to:
  1. The county of residence; and
  2. The listed service providers.
- (5) If the applicant is placed on the county of legal settlement's waiting list for funding, the county of legal settlement shall add to the notice of decision:
  1. An explanation of waiting-list status;
  2. An estimate of how long the applicant is expected to be on the waiting list; and
  3. The process for the applicant or authorized representative to obtain information regarding the consumer's status on the waiting list.

*d. Referral.* The plan administration section of the manual shall describe to whom and for what purpose referral of the application is made. This may include, but is not limited to, description of referral directly to a provider for services and supports, referral for service coordination, or referral for clinical assessment.

*e. Consumer plan development.* The plan administration section of the manual shall describe the role of the service coordinator in consumer plan development and how the service coordinator will interface with the CPC. If review of the service request is deemed necessary, a qualified professional shall do the review.

*f. Request for funding.* The plan administration section shall indicate the process and format for a funding request.

*g. Service funding authorization and reauthorization.* The plan administration section of the manual shall describe who makes the funding authorization and reauthorization decisions and the qualifications of that individual. The procedures shall describe the criteria for authorization and reauthorization of funding and a timeline for responding to the request for funding. For consumers whose county of residence differs from the county of legal settlement, the following procedures shall be used:

(1) The county of legal settlement may continue to authorize services for any consumer receiving services on or before June 30, 2007, even if the service is not in the management plan of the county of residence.

(2) The consumer shall apply for additional services with the CPC of the county of residence. The same procedure shall be followed as for a new applicant.

(3) Once an applicant has been enrolled with the county of legal settlement, the county of legal settlement shall manage reauthorizations of enrollment, such as gathering annual updates of income and resources to confirm continuing eligibility.

(4) The county of legal settlement may also work directly with the consumer or service provider to do periodic service reauthorizations. Services and supports funding must be reauthorized in accordance with the management plan of the county of residence.

(5) A written notice of reauthorization for service funding shall be sent to:

1. The consumer;
2. The county of residence; and
3. The listed service providers.

*h. Service and cost tracking.* The plan administration section of the manual shall include a description of a system to track services and supports and payments made on behalf of all approved consumers. The tracking system shall provide an unduplicated consumer count and expenditure data. The tracking system shall also record denials of services and supports and indicate the reason why the applications were denied.

*i. Service monitoring.* The plan administration section of the manual shall outline the process of service and funding monitoring.

*j. Appeals.* The county shall develop and implement a process for appealing the decisions of the county or its agent. This appeal process shall be based on objective criteria, specify time frames, provide for notification in accessible formats of the decisions to all parties, and provide some assistance to consumers in using the process. Responsibility for the final administrative decision on an appeal shall not rest with the county board of supervisors. If the appellant has state case status, responsibility for the final administrative decision on an appeal shall rest with the department, following the procedures established in 441—Chapter 7.

**25.13(3) Management plan annual review.** The policies and procedures manual shall address the process for preparation and distribution of the management plan annual review.

**25.13(4) Three-year strategic plan.** The policies and procedures manual shall address the process for development and approval of the three-year strategic plan.

[ARC 7768B, IAB 5/20/09, effective 7/1/09]

**441—25.14(331) Policies and procedures manual review.** The policies and procedures manual shall be submitted by April 1, 2000, as a part of the county's management plan for the fiscal year beginning July 1, 2000. The director, in consultation with the commission, shall review all county management plans submitted by the dates specified. Based on the recommendations of the commission, and if the director finds the county policies and procedures manual in compliance with these rules and state and federal laws, the director may approve the manual. A manual approved by the director for the fiscal year beginning July 1, 2000, shall remain in effect subject to amendment.

**25.14(1) Criteria for acceptance.** The director shall determine a manual is acceptable when it contains all the required information, meets the criteria described in this division, and is in compliance with all applicable state and federal laws. The director may request additional information to determine whether or not the manual contains all the required information and meets criteria described in this division.

**25.14(2) Notification.** Except as specified in subrule 25.14(3), the director shall notify the county in writing of the decision on the manual by June 1, 2000. The decision shall specify that either:

*a.* The manual is approved as it was submitted, either with or without supplemental information already requested and received.

b. The manual will not be approved until revisions are made. The letter will specify the nature of the revisions requested and the time frames for their submission. The director may authorize a county to continue operation, for up to 90 days, using the previously approved county management plan. The extension begins on July 1, 2000.

**25.14(3) Review of late submittals.** The director may review manuals not submitted by April 1, 2000, after all manuals submitted by that date have been reviewed. The director will proceed with the late submittals in a timely manner.

[ARC 7768B, IAB 5/20/09, effective 7/1/09]

**441—25.15(331) Amendments.** An amendment to the manual shall be submitted to the department at least 45 days before the date of implementation. Before implementation of any amendment to the manual, the director must approve the amendment. When an amendment substantially changes a county's policies and procedures manual, the department shall present the amendment to the commission.

**25.15(1) Criteria for acceptance.** The director shall determine an amendment is acceptable when it contains all the required information and meets the criteria described in this division for the applicable part of the policies and procedures manual and is in compliance with all applicable state and federal laws. The director may request additional information to determine whether or not the amendment contains all the required information and meets criteria described in this division.

**25.15(2) Notification.** The director shall notify the county, in writing, of the decision on the amendment within 45 days of receipt of the amendment. The decision shall specify either that:

a. The amendment is approved as it was submitted, either with or without supplemental information already requested and received.

b. The amendment is not approved. The notification will include why the amendment is not approved.

[ARC 7768B, IAB 5/20/09, effective 7/1/09]

**441—25.16(331) Reconsideration.** Counties dissatisfied with the director's decision on a manual or an amendment may file a letter with the director requesting reconsideration. The letter of reconsideration must be received within 30 working days of the date of the notice of decision and shall include a request for the director to review the decision and the reasons for dissatisfaction. Within 30 working days of the receipt of the letter requesting reconsideration, the director, in consultation with the commission, will review both the reconsideration request and evidence provided. The director shall issue a final decision in writing.

[ARC 7768B, IAB 5/20/09, effective 7/1/09]

**441—25.17(331) Management plan annual review.** The county shall prepare a management plan annual review for the county stakeholders, the department of human services and the commission. The management plan annual review shall be submitted to the department for informational purposes by December 1. The management plan annual review shall incorporate an analysis of the data associated with the services managed during the preceding fiscal year by the county or by a managed care entity on behalf of the county. The management plan annual review shall include, but not be limited to:

1. Progress toward goals and objectives.
2. Documentation of stakeholder involvement.
3. Actual provider network.
4. Actual expenditures.
5. Actual scope of services.
6. Number, type, and resolution of appeals.
7. Quality assurance implementation, findings and impact on plan.
8. Waiting list information.

[ARC 7768B, IAB 5/20/09, effective 7/1/09]

**441—25.18(331) Strategic plan.** The strategic plan shall describe the county's vision for its mental health, mental retardation, and developmental disabilities system for the ensuing three fiscal years. The

strategic plan development shall follow the process outlined in the policies and procedures manual. The strategic plan shall be submitted, for informational purposes, to the department by April 1, 2000, and by April 1 of every third year thereafter. The strategic plan shall include, but not be limited to:

**25.18(1) Needs assessment.** The strategic plan shall include an assessment of current needs. This plan shall describe how information from the annual reports from the previous years was incorporated into the current strategic plan and how the information will be used to develop future plans for the funding and provision of services to eligible groups.

**25.18(2) Goals and objectives.** The strategic plan shall list goals and objectives that are guided by the system principles of choice, empowerment, and community. The goals and objectives shall reflect the system which the county plans to have in place in three years, the action steps which will be taken to develop the future system, and how progress toward implementation will be measured. Projected costs for future projects should be included.

**25.18(3) Services and supports.** The strategic plan shall list services and supports that the county will fund, when requested, by eligibility group.

**25.18(4) Provider network.** The strategic plan shall include a list of providers used to provide the scope of services and supports described in the plan.

**25.18(5) Access points.** The strategic plan shall list designated access points and their function in the enrollment process.

**441—25.19(331) Technical assistance.** The department shall provide technical assistance and other necessary support to counties to assist in the development and implementation of the county management plans and completion of reports.

**441—25.20(331) Consumer financial eligibility and payment responsibility.** The county management plan shall identify basic financial eligibility standards for disability services consistent with this rule. The county may choose to assign responsibility for copayment to the consumer consistent with this rule. Nothing in this rule shall preclude a consumer from voluntarily paying a greater copayment than is provided in the county management plan.

**25.20(1) General requirements.** The basic financial eligibility standards identified in this rule are the minimum standards allowable. A county management plan may establish less restrictive financial standards, but shall not establish standards that are more restrictive.

*a.* The county management plan shall provide that a consumer who is eligible under all other eligibility standards of the county management plan shall be eligible for county disability services paid with public funding if the consumer meets the basic financial eligibility standards set forth in this rule.

*b.* The county management plan shall require no copayments by consumers, whether collected by the county or a provider, except as defined in this rule.

*c.* The county management plan may establish a policy to allow exceptions to the basic or extended financial eligibility standards on a case-by-case basis to benefit an individual consumer.

*d.* The income and resource standards in this rule shall not supersede the eligibility guidelines of any other federal, state, county, or municipal program, including general assistance guidelines adopted by the county board of supervisors.

*e.* Nothing in this rule shall be construed as relieving any consumer of financial obligations incurred pursuant to a Social Security Administration interim assistance agreement.

**25.20(2) Basic eligibility standards.** Except as otherwise provided in these rules, an applicant shall be financially eligible for county funding when the applicant meets the following standards:

*a.* If the applicant is eligible for federally funded or state-funded services or supports, the applicant has applied for and accepted those services and supports.

*b.* The applicant's household has:

(1) Income that is equal to or less than 150 percent of the federal poverty level, as defined by the most recently revised poverty income guidelines published by the United States Department of Health and Human Services; and

(2) Resources that are equal to or less than \$2,000 in countable value for a single-person household or \$3,000 in countable value for a multiperson household.

**25.20(3) Resource standards.** Basic financial eligibility standards shall include the following provisions for determining financial eligibility:

*a.* The countable value of all countable resources, both liquid and nonliquid, shall be included in the eligibility determination except as exempted in this subrule.

*b.* A transfer of property or other assets within five years of the time of application with the result of, or intent to, qualify for assistance may result in denial or discontinuation of funding.

*c.* The following resources shall be exempt:

(1) The homestead, including equity in a family home or farm that is used as the consumer household's principal place of residence. The homestead shall include all land that is contiguous to the home and the buildings located on the land.

(2) One automobile used for transportation.

(3) Tools of an actively pursued trade.

(4) General household furnishings and personal items.

(5) Burial spaces.

(6) Cash surrender value of life insurance with a face value of less than \$1,500 on any one person.

(7) Any resource determined excludable by the Social Security Administration as a result of an approved Social Security Administration work incentive.

*d.* Additional exemptions. If a person does not qualify for federally funded or state-funded services or other support, but meets all income, resource, and functional eligibility requirements of this chapter, the following types of resources shall additionally be considered exempt from consideration in eligibility determination:

(1) A retirement account that is in the accumulation stage.

(2) A medical savings account.

(3) An assistive technology account.

**25.20(4) Basic copayment standards.** Any copayments or other client participation required by any federal, state, county, or municipal program in which the consumer participates shall be required. Such copayments include, but are not limited to:

*a.* Client participation for maintenance in a residential care facility through the state supplementary assistance program.

*b.* Client participation for an intermediate care facility or an intermediate care facility for persons with mental retardation.

*c.* A portion of rent in conjunction with a rental assistance program consistent with guidelines of the United States Department of Housing and Urban Development.

*d.* A copayment, deductible, or spenddown required by the Medicare or Medicaid programs or any other third-party insurance coverage.

*e.* The financial liability for institutional services paid by counties as provided in Iowa Code sections 222.31 and 230.15.

*f.* The financial liability for attorney fees related to commitment as provided by Iowa Code section 229.19.

**25.20(5) Copayment for services provided by a facility participating in the state supplementary assistance program.** A county may require a copayment for a disability service provided to a consumer by a licensed residential care facility that participates in the state supplementary assistance program as follows:

*a.* A consumer who is approved for state supplementary assistance and pays client participation as determined through the state supplementary assistance program shall be considered eligible for disability services with no additional copayment.

*b.* A consumer who is ineligible for state supplementary assistance due to income or resources may be eligible for financial assistance under the county management plan through determination and payment of client participation as follows.

(1) Client participation in the service payment shall be determined by allowing the following deductions from available income and resources:

1. Any income earned by the consumer in a supported employment, sheltered workshop, day habilitation, or adult day care program.
2. A personal allowance equivalent to the personal allowance provided under the state supplementary assistance program.
3. Room and board payment made by the consumer to the facility at the state supplementary assistance rate.
4. Payment for any medical expenses for which the consumer is financially responsible.

(2) Any income remaining after deduction of the expenses allowed in subparagraph (1) and any resources in excess of \$2,000 shall be considered the required client participation toward the service in the facility. For any consumer whose client participation does not equal 100 percent of the service cost, the county shall participate in payment to the facility up to that level.

**25.20(6) *Extended eligibility and copayment standards.*** Each county management plan shall indicate if additional, less restrictive financial eligibility standards will be applied. The county management plan may permit a person with an income above 150 percent of the federal poverty level or resources above the basic resource limits to be eligible for public funding provided that the plan meets the requirements in this subrule. To apply less restrictive financial eligibility standards, the county management plan shall include:

- a. Policies relating to any income or resource limits that are different from the basic income and resource standards.
- b. Policies relating to any resource exemptions that are different from the basic financial eligibility standards.
- c. Policies relating to any other factors included in determination of financial eligibility and calculation of client participation.
- d. Policies defining procedures for calculation and collection of client participation.
- e. Policies providing for a copayment or other cost-sharing arrangement determined on a sliding fee scale based on household income and resources. Any sliding fee scale used for copayments shall be graduated and shall be based on the federal poverty guidelines. Policies shall address updates to the sliding fee scale.
- f. Policies regarding any county payment of third-party insurance copayment.
- g. Policies relating to exception provisions for financial eligibility determination and client participation calculation.
- h. Policies relating to informing consumers of the client participation required.

These rules are intended to implement Iowa Code sections 331.424A, 331.439, and 331.440.

**441—25.21 to 25.40** Reserved.

DIVISION III  
MINIMUM DATA SET

**441—25.41(331) Minimum data set.** Each county shall maintain data on all clients served through the MH/DD services fund.

**25.41(1) *Submission of data.*** Each county shall submit to DHS a copy of the data regarding each individual that the county serves through the central point of coordination process.

- a. DHS state payment program, state supplementary assistance program, mental health institutes, state resource centers, Medicaid program, and Medicaid managed care contractors shall provide the equivalent data in a compatible format on the same schedule as the required submission from the counties.
- b. DHS shall maintain the data in the data analysis unit for research and analysis purposes only. Only summary data shall be reported to policymakers or the public.

**25.41(2) *Data required.*** The data to be submitted are as follows:

a. Basic client information including a unique identifier, name, address, county of residence and county of legal settlement.

b. The state I.D. number for state payment cases.

c. Demographic information including date of birth, sex, ethnicity, marital status, education, residential living arrangement, current employment status, monthly income, income sources, type of insurance, insurance carrier, veterans' status, guardianship status, legal status in the system, source of referral, DSM IV diagnosis, ICD-9 diagnosis, disability group (i.e., mental retardation, developmental disability, chronic mental illness, mental illness), central point of coordination (county number preceded by A 1), and central point of coordination (CPC) name.

d. Service information including the decision on services, date of decision, date client terminated from CPC services and reason for termination, residence, approved service, service beginning dates, service ending dates, reason for terminating each service, approved units of services, unit rate for service, expenditure data, and provider data.

e. Counties shall not be penalized in any fashion for failing to collect data elements in situations of crisis or in outreach efforts to identify or engage people in needed mental health services. For the purposes of this rule:

(1) Situations of crisis include but are not limited to voluntary and involuntary hospitalizations, legal and transportation services associated with involuntary hospitalizations, emergency outpatient services, mobile crisis team services, jail diversion services, mental health services provided in a county jail, and other services for which the county is required to pay but does not have access to the client to collect the required information.

(2) Outreach efforts to identify or engage people in needed mental health services include but are not limited to mental health advocate services; services for homeless persons, refugees, or other legal immigrants; services for state cases who do not have documentation with them and are unable to help the county locate appropriate records; consultation; education to raise public awareness; 12-step or other support groups for persons with dual disorders; and drop-in centers.

f. Although all of the data in the minimum data set are important to provide support for program analysis, a county shall be penalized for noncompliance with this rule if the county does not provide 100 percent reporting of the data elements listed in this paragraph. Beginning with the data reported for state fiscal year 2008, less than 100 percent reporting for the following items shall be viewed as noncompliance unless the data are exempted by paragraph "e":

(1) Client identifiers:

1. Lname3 (the first three letters of the client's last name).
  2. Last4SSN (the last four digits of the client's social security number).
  3. SEX (the client's sex).
  4. BDATE (the client's birth date).
- (2) CPC (central point of coordination).

(3) Payment information:

1. PYMTDATE (CoMIS payment date).
2. FUND CODE (CoMIS fund code).
3. DG (CoMIS diagnosis).
4. COACODE (CoMIS chart of accounts code).
5. BEGDATE (CoMIS service beginning date).
6. ENDDATE (CoMIS service ending date).
7. UNITS (CoMIS units of service).
8. COPD (CoMIS county paid).

(4) ValidSSN (valid social security number indicator).

(5) IsPerson (IsPerson indicator).

g. Although all of the data in the minimum data set are important to provide support for program analysis, a county shall be penalized for noncompliance with this rule if the county does not provide 90 percent reporting of the data elements listed in this paragraph beginning with the data reported for fiscal

year 2008. Less than 90 percent reporting for the following items shall be viewed as noncompliance unless the data are exempted by paragraph “e”:

- (1) Application Date (application date).
- (2) RESCO (residence county).
- (3) LEGCO (legal county).
- (4) Provider ID (vendor number).

*h.* The department shall analyze the data received on or before December 1 each year by December 15 or by the next business day if December 15 falls on a weekend or holiday.

(1) When a county’s data submission does not meet the specifications in paragraph “f” or “g,” the department will notify the county by E-mail.

(2) The county shall have 30 days from the date of the E-mail notice to submit the missing data or to provide an explanation of why the data cannot be reported.

(3) If the county does not report the data or provide an adequate explanation within 30 days, the department shall find the county in noncompliance.

*i.* The department shall post the aggregate reports received by December 1 on the department’s Web site within 90 days.

**25.41(3) Method of data collection.** A county may choose to collect this information using the county management information system (CoMIS) that was designed by the department or may collect the information through some other means. If a county chooses to use another system, the county must be capable of supplying the information in the same format as CoMIS.

*a.* Except as provided in subparagraph (3), each county shall submit the following files in Microsoft Excel format (version 97 to 2000) or comma-delimited text file (CSV) format using data from the associated CoMIS table or from the county’s chosen management information system:

<u>Files to submit</u>	<u>Associated CoMIS Table</u>
WarehouseClient.xls or WarehouseClient.csv	Client Data
WarehouseIncome.xls or WarehouseIncome.csv	Income Review
WarehousePayment.xls or WarehousePayment.csv	Payment
WarehouseProvider.xls or WarehouseProvider.csv	Provider
WarehouseProviderServices.xls or WarehouseProviderServices.csv	tblProviderServices
WarehouseService.xls or WarehouseService.csv	Service Authorizations

(1) Paragraphs “b” through “g” list the data required in each file and specify the structure or description for each data item to be reported.

(2) The field names used in the report files must be exactly the same as indicated in the corresponding paragraph, including spaces, and must be entered in the first row for each sheet.

(3) The file labeled WarehouseService.xls or WarehouseService.csv or service authorization (described in paragraph “g” of this subrule) shall be removed from this requirement on June 30, 2011, if data from this file have not been used by that date.

*b.* File name: WarehouseClient.xls or WarehouseClient.csv.

Sheet name: Warehouse\_Client\_Transfer\_Query.

Field Name	Data Type	Field Size	Format	Description
CPC	Number	3	0 decimal places	Central point of coordination number: county number preceded by a 1
RESCO	Number	3	0 decimal places	Residence county of client: 1-99 = County number 100 = State of Iowa 900 = Undetermined or in dispute
LEGCO	Number	3	0 decimal places	Legal county of client: 1-99 = County number 100 = State of Iowa 900 = Undetermined or in dispute

Field Name	Data Type	Field Size	Format	Description
Lname3	Text	3		The first 3 characters of the last name
Last4SSN	Text	4		The last 4 digits of the client's social security number. If that number is unknown, then use the last 4 digits of the CLIENT ID# field and mark column "ValidSSN" with the value "No."
BDATE	Date	10	mm/dd/yyyy	Date of client's birth
SEX	Text	1		Sex of client: M = Male F = Female
Last Update	Date	10	mm/dd/yyyy	Date of last update to client record
SID	Text	8	9999999a	State identification number of client, if applicable (format of a valid number is 7 digits plus 1 alphabetical character).
ADD1	Text	50		First address line
ADD2	Text	50		Second address line (if applicable)
CITY	Text	50		City address line
STATE	Text	2		State code
ZIP	Number	5	0 decimal places	5-digit ZIP code
ETHN	Number	1	0 decimal places	Ethnicity of client: 0 = Unknown 1 = White, not Hispanic 2 = African-American, not Hispanic 3 = American Indian or Alaskan native 4 = Asian or Pacific Islander 5 = Hispanic 6 = Other (biracial; Sudanese; etc.)
MARITAL	Number	1	0 decimal places	Marital status of client: 1 = Single, never married 2 = Married (includes common-law marriage) 3 = Divorced 4 = Separated 5 = Widowed
EDUC	Number	2	0 decimal places	Education level of the client
RARG	Number	2	0 decimal places	Residential arrangement of client: 1 = Private residence/household 2 = State MHI 3 = State resource center 4 = Community supervised living 5 = Foster care or family life home 6 = Residential care facility 7 = RCF/MR 8 = RCF/PMI 9 = Intermediate care facility 10 = ICF/MR 11 = ICF/PMI 12 = Correctional facility 13 = Homeless shelter or street 14 = Other
LARG	Number	1	0 decimal places	Living arrangement of client: 1 = Lives alone 2 = Lives with relatives 3 = Lives with persons unrelated to client
INS	Number	1	0 decimal places	Health insurance owned by client: 1 = Client pays 3 = Medicaid 4 = Medicare 5 = Private third party 6 = Not insured 7 = Medically Needy

Field Name	Data Type	Field Size	Format	Description
INSCAR	Text	50		First insurance company name, if applicable
INSCAR1	Text	50		Second insurance company name, if applicable
INSCAR2	Text	50		Third insurance company name, if applicable
VET	Text	1		Veteran status of client: Y = Yes N = No
CONSERVATOR	Number	1	0 decimal places	Conservator status of client: 1 = Self 2 = Other
GUARDIAN	Number	1	0 decimal places	Guardian status of client: 1 = Self 2 = Other
LEGSTAT	Number	1	0 decimal places	Legal status of client: 1 = Voluntary 2 = Involuntary, civil commitment 3 = Involuntary, criminal commitment
REFSO	Number	1	0 decimal places	Referral source of client: 1 = Self 2 = Family or friend 3 = Targeted case management 4 = Other case management 5 = Community corrections 6 = Social service agency other than case management 7 = Other
DSMIV	Text	50		DSM IV diagnosis code of client
ICD9	Text	50		ICD-9 diagnosis code (optional for county use; not tied to CoMIS entry)
DG	Number	2	0 decimal places	Disability group of client: 40 = Mental illness 41 = Chronic mental illness 42 = Mental retardation 43 = Other developmental disability 44 = Other categories
Application Date	Date	10	mm/dd/yyyy	Date of client's initial application
Outcome decision	Number	1	0 decimal places	Decision on client's application: 1 = Application accepted 2 = Application denied 3 = Decision pending
Decision date	Date	10	mm/dd/yyyy	Date decision was made on client's application
Denial reason	Text	2		Denial reason code: 00 = Not applicable 01 = Over income guidelines 1A = Over resource guidelines 02 = Does not meet county plan criteria 2A = Legal settlement in another county 2B = State case 3A = Brain injury 3B = Alzheimer's 3C = Substance abuse 3D = Other 04 = Does not meet service plan criteria 05 = Client desires to discontinue process 5A = Client fails to return requested information

Field Name	Data Type	Field Size	Format	Description
Client exit date from CPC	Date	10	mm/dd/yyyy	Date client was terminated from CPC services
Exit reason	Number	1	0 decimal places	Reason client left the CPC system: 0 = Unknown 1 = Client voluntarily withdrew 2 = Client deceased 3 = Unable to locate consumer 4 = Ineligible due to reasons other than income 5 = Ineligible, over income guidelines 6 = Client moved out of state 7 = Client no longer needs service 8 = Client has legal settlement in another county
Review Date	Date	10	mm/dd/yyyy	Date of last application review
PhoneNumber	Text	50		Phone number of client
ValidSSN	Text	3	Generated for CoMIS users in the data extract only	Populate this field with YES if the client has a valid social security number. If the client does not have a valid social security number, populate this field with NO.
IsPerson	Text	3	Generated for CoMIS users in the data extract only	Populate this field with YES if the client is a person. If the client entry represents a nonperson such as administrative costs, populate this field with NO.

c. File name: WarehouseIncome.xls or WarehouseIncome.csv.

Sheet name: Warehouse\_Income\_Transfer\_Query.

Field Name	Data Type	Field Size	Format	Description
CPC	Number	3	0 decimal places	Central point of coordination number: county number preceded by a 1
RESCO	Number	3	0 decimal places	Residence county of client: 1-99 = County number 100 = State of Iowa 900 = Undetermined or in dispute
LEGCO	Number	3	0 decimal places	Legal county of client: 1-99 = County number 100 = State of Iowa 900 = Undetermined or in dispute
Lname3	Text	3		The first 3 characters of the last name
Last4SSN	Text	4		The last 4 digits of the client's social security number. If that number is unknown, then use the last 4 digits of the CLIENT ID# field and mark column "ValidSSN" with the value "No."
BDATE	Date	10	mm/dd/yyyy	Date of client's birth
SEX	Text	1		Sex of client: M = Male F = Female

Field Name	Data Type	Field Size	Format	Description
EMPL	Number	2	0 decimal places	Employment situation of client: 1 = Unemployed, available for work 2 = Unemployed, unavailable for work 3 = Employed full-time 4 = Employed part-time 5 = Retired 6 = Student 7 = Work activity employment 8 = Sheltered work employment 9 = Supported employment 10 = Vocational rehabilitation 11 = Seasonally employed 12 = In the armed forces 13 = Homemaker 14 = Other or not applicable 15 = Volunteer
House Hold Size	Number	2	0 decimal places	Number of people in client's household
INCSOUR	Number	2	0 decimal places	Primary income source of client: 1 = Family and friends 2 = Private relief agency 3 = Social security disability benefits 4 = Supplemental Security Income 5 = Social security benefits 6 = Pension 7 = Food assistance 8 = Veterans benefits 9 = Workers compensation 10 = General assistance 11 = Family investment program (FIP) 12 = Wages
Public Assistance Payments	Currency	14	2 decimal places	Monthly dollar amount for this income source (where applicable)
Social Security	Currency	14	2 decimal places	Monthly dollar amount for this income source (where applicable)
Social Security Disability	Currency	14	2 decimal places	Monthly dollar amount for this income source (where applicable)
SSI	Currency	14	2 decimal places	Monthly dollar amount for this income source (where applicable)
VA Benefits	Currency	14	2 decimal places	Monthly dollar amount for this income source (where applicable)
R/R Pension	Currency	14	2 decimal places	Monthly dollar amount for this income source (where applicable)
Child Support	Currency	14	2 decimal places	Monthly dollar amount for this income source (where applicable)
Employment Wages	Currency	14	2 decimal places	Monthly dollar amount for this income source (where applicable)
Dividend Interest	Currency	14	2 decimal places	Monthly dollar amount for this income source (where applicable)
Other Income	Currency	14	2 decimal places	Monthly dollar amount for this income source (where applicable)
Description 1	Text	50		Description of "Other Income"
Cash on hand	Currency	14	2 decimal places	Dollar amount for this resource type (where applicable)
Checking	Currency	14	2 decimal places	Dollar amount for this resource type (where applicable)
Savings	Currency	14	2 decimal places	Dollar amount for this resource type (where applicable)
Stocks/Bonds	Currency	14	2 decimal places	Dollar amount for this resource type (where applicable)
Time Certificates	Currency	14	2 decimal places	Dollar amount for this resource type (where applicable)

Field Name	Data Type	Field Size	Format	Description
Trust Funds	Currency	14	2 decimal places	Dollar amount for this resource type (where applicable)
Other Resources	Currency	14	2 decimal places	Dollar amount for this resource type (where applicable)
Description 2	Text	50		Description of "Other Resources" (where applicable)
Other Resources 2	Currency	14	2 decimal places	Dollar amount for this resource type (where applicable)
Description 3	Text	50		Description of "Other Resources 2"
Date reviewed	Date	10	mm/dd/yyyy	Date income was last reviewed (where applicable)

d. File name: WarehousePayment.xls or WarehousePayment.csv. Sheet name: Warehouse\_Payment\_Transfer\_Quer.

Field Name	Data Type	Field Size	Format	Description
CPC	Number	3	0 decimal places	Central point of coordination number: county number preceded by a 1
RESCO	Number	3	0 decimal places	Residence county of client: 1-99 = County number 100 = State of Iowa 900 = Undetermined or in dispute
LEGCO	Number	3	0 decimal places	Legal county of client: 1-99 = County number 100 = State of Iowa 900 = Undetermined or in dispute
Lname3	Text	3		The first 3 characters of the last name
Last4SSN	Text	4		The last 4 digits of the client's social security number. If that number is unknown, use the last 4 digits of the CLIENT ID# field and mark column "ValidSSN" with the value "No."
BDATE	Date	10	mm/dd/yyyy	Date of client's birth
SEX	Text	1		Sex of client: M = Male F = Female
PYMTDATE	Date	10	mm/dd/yyyy	Date county approves or makes payment
VENNAME	Text	50		Vendor or provider paid
COCODE	Number	3	0 decimal places	County where service was provided
FUND CODE	Text	10		Fund code for payment
DG	Number	2	0 decimal places	Disability group code for payment: 40 = Mental illness 41 = Chronic mental illness 42 = Mental retardation 43 = Other developmental disability 44 = Other categories
COACODE	Number	5	0 decimal places	Chart of accounts code for payment
BEGDATE	Date	10	mm/dd/yyyy	Beginning date of payment period
ENDDATE	Date	10	mm/dd/yyyy	Ending date of payment period
UNITS	Number	4	0 decimal places	Number of service units for payment
COPD	Currency	14	2 decimal places	Amount paid by the county
RECEIVED	Currency	14	2 decimal places	Amount received for reimbursement (if applicable)

e. File name: WarehouseProvider.xls or WarehouseProvider.csv. Sheet name: Warehouse\_Provider\_Transfer\_Que. (If the provider has more than one office location, enter information for the headquarters office.)

Field Name	Data Type	Field Size	Format	Description
Provider ID	Text	50		Provider identifier (tax ID code)
Provider Name	Text	50		Provider name
Provider Address1	Text	50		Provider address line 1
Provider Address2	Text	50		Provider address line 2 (if applicable)
City	Text	50		Provider city
State	Text	2		Provider state code
Zip	Text	10		Provider ZIP code
COCODE	Number	3	0 decimal places	Provider county code
PhoneNumber	Text	50		Provider phone number
Date of Last Update	Date	10	mm/dd/yyyy	Provider last updated date

f. File name: WarehouseProviderServices.xls or WarehouseProviderServices.csv. Sheet name: Warehouse\_Provider\_Services\_Tra.

Field Name	Data Type	Field Size	Format	Description
Provider ID	Text	50		Provider identifier (tax ID code)
Provider Name	Text	50		Provider name
FUND CODE	Text	10		Fund code for payment
DG	Number	2	0 decimal places	Disability group code for payment: 40 = Mental illness 41 = Chronic mental illness 42 = Mental retardation 43 = Other developmental disability 44 = Other categories
COACODE	Number	5	0 decimal places	Chart of accounts code for service
RATE	Currency	14	2 decimal places	Payment rate

g. File name: WarehouseService.xls or WarehouseService.csv. Sheet name: Warehouse\_Service\_Transfer\_Quer.

Field Name	Data Type	Field Size	Format	Description
CPC	Number	3	0 decimal places	Central point of coordination number: county number preceded by a 1
RESCO	Number	3	0 decimal places	Residence county of client: 1-99 = County number 100 = State of Iowa 900 = Undetermined or in dispute
LEGCO	Number	3	0 decimal places	Legal county of client: 1-99 = County number 100 = State of Iowa 200 = Iowa nonresident 900 = Undetermined or in dispute
Lname3	Text	3		The first 3 characters of the last name
Last4SSN	Text	4		The last 4 digits of the client's social security number. If that number is unknown, then use the last 4 digits of the CLIENT ID# field and mark column "ValidSSN" with the value "No."
BDATE	Date	10	mm/dd/yyyy	Date of client's birth
SEX	Text	1		Sex of client: M = Male F = Female

Field Name	Data Type	Field Size	Format	Description
FUND CODE	Text	10		Fund code for service
DG	Number	2	0 decimal places	Disability group code for payment: 40 = Mental illness 41 = Chronic mental illness 42 = Mental retardation 43 = Other developmental disability 44 = Other category
COACODE	Number	5	0 decimal places	Chart of accounts code for service
Begin Date	Date	10	mm/dd/yyyy	Beginning date of service period
End Date	Date	10	mm/dd/yyyy	Ending date of service period
Ending Reason	Number	1	0 decimal places	Reason for terminating approval of service: 0 = NA 1 = Voluntary withdrawal 2 = Client no longer needs service 3 = Ineligible, over income guidelines 4 = Ineligible due to other than income 5 = Client moved out of state 6 = Client deceased 7 = Reauthorization
Units	Number	4	0 decimal places	Average number of service units approved monthly
Rate	Currency	14	2 decimal places	Dollar amount per service unit
Review Date	Date	10	mm/dd/yyyy	Date for next service review

This rule is intended to implement Iowa Code sections 331.438 and 331.439.

**441—25.42 to 25.50** Reserved.

DIVISION IV  
INCENTIVE AND EFFICIENCY POOL FUNDING

PREAMBLE

These rules establish requirements for counties to receive funding from the incentive and efficiency pool. To be eligible for these funds, a county must select five performance indicators, submit a proposal, collect data, report data, and show improvement over time on the selected performance indicators.

**441—25.51(77GA, HF2545) Desired results areas.** In order to receive funds from the incentive and efficiency pool established in 1998 Iowa Acts, House File 2545, section 8, subsection 2, each county shall collect and report performance measure data in the following areas:

**25.51(1) Equity of access.** Each county shall measure the extent to which services are available and used. Each county shall:

*a.* Report annually the total number of consumers served, as well as an unduplicated total of the number of consumers served by disability category.

*b.* Calculate and report annually the percentage of service provision by dividing the number of consumers served in a year by the county's population as defined in 1998 Iowa Acts, House File 2545, section 7.

*c.* Calculate and report annually the percentage of denial of access by dividing the number of new, completed applications denied by the total number of new applications for service that year. A new, completed application shall be defined as an initial application of a consumer or any former consumer who is reapplying for service eligibility after more than 30 days of not being enrolled in the system, for which the consumer has supplied the information required on the application form.

*d.* Report annually the county's eligibility guidelines, which may include, but are not limited to, the income level below which an individual or family must be in order to be eligible for county-funded services, the maximum amount of resources which an individual or family may have in order to be eligible for county-funded services, covered populations, and service access criteria.

**25.51(2) Community-based supports.** Each county shall measure the extent to which community-based supports are available and used. Each county shall calculate and report annually:

*a.* The service setting percentage by dividing the unduplicated number of persons served in each of the following service settings in a fiscal year by the total unduplicated number of consumers served, both in total and by population group: mental health institutes, state hospital schools, intermediate care facilities for the mentally retarded, other living arrangements over five beds as captured by the county chart of accounts, and employment settings which include sheltered workshops, enclaves and supported employment.

*b.* The home-based percentage by subtracting the number of consumers currently being served in residential placements from the total unduplicated number of consumers served, and dividing the difference by the total number of consumers served. The calculation shall be made both in total and by population group.

*c.* The inpatient spending percentage by dividing the amount the county spent for inpatient services by the amount the county spent for outpatient services. Each county shall also divide the unduplicated number of consumers who received inpatient services during the fiscal year by the total unduplicated number of consumers who received services during that same fiscal year. Inpatient services shall be defined as any acute care for which the county is wholly or partially financially responsible.

**25.51(3) Consumer participation.** Each county shall measure the extent to which consumers participate in all aspects of the service system.

*a.* Each county shall report annually on the number of opportunities during the year for consumers to participate in planning activities, which may include, but are not limited to, open forums, focus groups, consumer advisory committee meetings, and planning council meetings by calculating the total number of consumers participating in these activities and dividing by the unduplicated number of consumers served and also by the total population of the county. In addition, the county shall report duplicated and unduplicated total attendance at all of these meetings. These calculations shall be made for consumers and family members separately.

*b.* Each county which has a planning group shall calculate and report annually the planning group percentage by dividing the number of consumers who actively serve on the planning group by the total number of people on the planning group. This calculation shall be made for consumers and family members separately. For the purposes of this subrule, a planning group is any group of individuals designated by the board of supervisors, or if no designation has been made, any group acknowledged by the central point of coordination administrator as assisting in the development of the county management plan.

*c.* Each county shall conduct a consumer satisfaction survey following adoption of more detailed rules for the survey.

**25.51(4) Administration.** Each county shall measure the extent to which the county services system is administered efficiently and effectively. Each county shall:

*a.* Calculate and report annually the administrative cost percentage by dividing the amount spent administering the county services system by the total amount spent from the services fund for the fiscal year.

*b.* Calculate and report annually the service responsiveness average by measuring the number of days between the date a new, completed application was submitted and the date a notice of decision of eligibility was sent to the consumer, adding all of these numbers of days, and dividing by the total number of new, completed applications for the fiscal year. A new, completed application shall be defined as an initial application of a consumer or an application of any former consumer who is reapplying for service eligibility after more than 30 days of not being enrolled in the system, for which the consumer has supplied the information required on the application form.

*c.* Report annually the number of appeals filed as a percent of the unduplicated total number of consumers served per year.

**441—25.52(77GA, HF2545) Methodology for applying for incentive funding.** Beginning with the county management plan for the fiscal year which begins July 1, 1999, each county applying for funding under 1998 Iowa Acts, House File 2545, section 8, subsection 2, shall include with its county management plan a performance improvement proposal for improving the county's performance on at least five performance measures. Three of the measures must be selected from at least two of the desired results areas stated in rule 441—25.51(77GA, HF2545). For the remaining two measures, the county either may propose measures not identified in these rules or may use measures described in these rules. A performance improvement proposal is not a mandatory element of a county management plan.

**25.52(1) *Performance improvement proposal.*** Each county shall identify the performance measures which the county has targeted for improvement and shall propose a percentage change for each indicator. The proposal shall include the county's rationale for selecting the indicators and may include any supporting information the county deems necessary. The proposal shall describe the process the county will use to involve consumers in the evaluation.

**25.52(2) *Committee responsibility.*** The state county management committee shall review all county proposals, and may either accept the proposal, request modifications, or reject the proposal. In order to interpret and provide context for each county's performance improvement proposal, the state county management committee shall, by January 1, 1999, establish the background data to be collected and aggregated for all counties.

**25.52(3) *County ineligibility.*** A county which does not have an accepted proposal prior to July 1 will be ineligible to receive incentive funds for that fiscal year. A county may apply for an extension by petitioning the state county management committee prior to July 1. The petition shall describe the circumstances which will cause the proposal to be delayed and identify the date by which the proposal will be submitted. In addition, the state county management committee may grant an extension for the purposes of negotiation.

**441—25.53(77GA, HF2545) Methodology for awarding incentive funding.** Each county shall report on all performance measures listed in this division, plus any additional performance measures the county has selected, by December 1 of each year.

**25.53(1) *Reporting.*** Each county shall report performance measure information on forms, or by electronic means, developed for the purpose by the department in consultation with the state county management committee.

**25.53(2) *Scoring.*** The department shall analyze each county's report to determine the extent to which the county achieved the levels contained in the proposal accepted by the state county management committee. Prior to distribution of incentive funding to counties, results of the analysis shall be shared with the state county management committee.

**25.53(3) *County ineligibility.*** A county which does not report performance measure data by December 1 will be ineligible to receive incentive funds for that fiscal year. A county may apply for an extension by petitioning the state county management committee prior to December 1. The petition shall describe the circumstances which will cause the report to be delayed and identify the date by which the report will be submitted.

**441—25.54(77GA, HF2545) Subsequent year performance factors.** For any fiscal year which begins after July 1, 1999, the state county management committee shall not apply any additional performance measures until the county management information system (CoMIS) developed and maintained by the division of mental health and developmental disabilities has been modified, if necessary, to collect and calculate required data elements and performance measures and each county has been given the opportunity to establish baseline measures for those measures.

**441—25.55(77GA, HF2545) Phase-in provisions.**

**25.55(1) *State fiscal year 1999.*** For the fiscal year which begins July 1, 1998, each county shall collect data as required above in order to establish a baseline level on all performance measures. A county

which collects and reports all required data by December 1, 1999, shall be deemed to have received a 100 percent score on the county's performance indicators.

**25.55(2) State fiscal year 2000.** A county which submits a proposal with its management plan for the fiscal year which begins July 1, 1999, and reports the levels achieved on the selected performance measures by December 1, 2000, shall be deemed to have received a 100 percent score on the county's performance indicators, regardless of the actual levels achieved.

These rules are intended to implement 1998 Iowa Acts, House File 2545, section 8, subsection 2.

**441—25.56 to 25.60** Reserved.

DIVISION V  
RISK POOL FUNDING

PREAMBLE

These rules establish a risk pool board to administer the risk pool fund established by the legislature and set forth the requirements for counties for receiving and repaying funding from the fund.

**441—25.61(426B) Definitions.**

*"Available pool"* means those funds remaining in the risk pool less any actuarial and other direct administrative costs.

*"Central point of coordination (CPC)"* means the administrative entity designated by a county board of supervisors, or the boards of a consortium of counties, to act as the single entry point to the service system as required in Iowa Code section 331.440.

*"Commission"* means the mental health, mental retardation, developmental disabilities, and brain injury commission.

*"Division"* means the mental health and disability services division of the department of human services.

*"Mandated services"* means those services for which a county is required to pay. Mandated services include, but may not be limited to, the following:

1. The costs for commitments for persons with mental illness, chronic mental illness, mental retardation, or developmental disabilities.
2. Inpatient services at the state mental health institutes for persons with mental illness or chronic mental illness.
3. Inpatient services at the state resource centers for persons with mental retardation or developmental disabilities.
4. Medicaid-funded care in an intermediate care facility for persons with mental retardation.
5. Medicaid-funded partial hospitalization and day treatment services for persons with chronic mental illness.
6. Medicaid-funded case management services for persons with mental retardation or developmental disabilities and for anyone not covered under the Iowa Plan.
7. Services provided under the Medicaid home- and community-based services mental retardation waiver.
8. Services provided under the Medicaid home- and community-based services brain injury waiver for which the county is responsible according to rule 441—83.90(249A).
9. Medicaid habilitation services for persons with chronic mental illness.

*"Services fund"* means a county's mental health, mental retardation, and developmental disabilities services fund created in Iowa Code section 331.424A.

**441—25.62(426B) Risk pool board.** This ten-member board consists of two county supervisors, two county auditors, a member of the commission who is not a member of a county board of supervisors, a member of the county finance committee created in Iowa Code chapter 333A who is not an elected official, a representative of a provider of mental health or developmental disabilities services selected

from nominees submitted by the Iowa Association of Community Providers, and two central point of coordination administrators, all appointed by the governor, subject to confirmation by two-thirds of the members of the senate, and one member appointed by the director of the department of human services.

**25.62(1) Organization.**

a. The members of the board shall annually elect from the board's voting membership a chairperson and vice-chairperson of the board.

b. Members appointed by the governor shall serve three-year terms.

**25.62(2) Duties and powers of the board.** The board's powers and duties are to make policy and to provide direction for the administration of the risk pool established by Iowa Code section 426B.5, subsection 2. In carrying out these duties, the board shall do all of the following:

a. Recommend to the commission for adoption rules governing the risk pool fund.

b. Determine application requirements to ensure prudent use of risk pool assistance.

c. Accept or reject applications for assistance in whole or in part.

d. Review the fiscal year-end financial records for all counties that are granted risk pool assistance and determine if repayment is required.

e. Approve actuarial and other direct administrative costs to be paid from the pool.

f. Compile a list of requests for risk pool assistance that are beyond the amount available in the risk pool fund for a fiscal year and the supporting information for those requests and submit the list and supporting information to the commission, the department of human services, and the general assembly.

g. Perform any other duties as mandated by law.

**25.62(3) Board action.**

a. A quorum shall consist of two-thirds of the membership appointed and qualified to vote.

b. When a quorum is present, an action is carried by a majority of the qualified members of the board.

**25.62(4) Board minutes.**

a. Copies of administrative rules and other materials considered are made part of the minutes by reference.

b. Copies of the minutes are kept on file in the office of the administrator of the division.

**25.62(5) Board meetings.**

a. The board shall meet in August of each year and may hold special meetings at the call of the chairperson or at the request of a majority of the voting members.

b. Any county making application for risk pool funds must be represented at the board meeting for awarding funds when that request is considered.

(1) The division shall notify the county of the date, time and location of the meeting.

(2) Any other persons with questions about the date, time or location of the meeting may contact the Administrator, Division of Mental Health and Disability Services, Department of Human Services, Hoover State Office Building, Fifth Floor, 1305 East Walnut Street, Des Moines, Iowa 50319-0114, telephone (515)281-7277.

c. The board shall comply with applicable provisions of Iowa's open meetings law, Iowa Code chapter 21.

**25.62(6) Records.** Any records maintained by the board or on behalf of the board shall be made available to the public for examination in compliance with Iowa's open records law, Iowa Code chapter 22. To the extent possible, before submitting applications, records and documents, applicants shall delete any confidential information. These records shall be maintained in the office of the division.

**25.62(7) Conflict of interest.** A board member cannot be a part of any presentation to the board of that board member's county's application for risk pool funds nor can the board member be a part of any action pertaining to that application.

**25.62(8) Robert's Rules of Order.** In cases not covered by these rules, Robert's Rules of Order shall govern.

**25.62(9) Report.** On or before March 1 and September 1 of each fiscal year, the department of human services shall provide the risk pool board with a report of the financial condition of each funding source administered by the board. The report shall include, but is not limited to, an itemization of the

funding source's balances, types and amount of revenues credited and payees and payment amounts for the expenditures made from the funding source during the reporting period.

[ARC 7879B, IAB 6/17/09, effective 6/1/09]

**441—25.63(426B) Application process.**

**25.63(1) Applicants.** A county may be eligible for risk pool assistance when the county demonstrates that it meets the conditions in this subrule.

*a. Basic eligibility.*

- (1) The county complies with the requirements of Iowa Code section 331.439.
- (2) The county levied the maximum amount allowed for the county's services fund under Iowa Code section 331.424A for the fiscal year of application.

(3) In the fiscal year that commenced two years before the fiscal year of distribution, the county's services fund ending balance under generally accepted accounting principles was equal to or less than 20 percent of the county's actual gross expenditures for that fiscal year.

*b. Circumstances indicating need for assistance.* Risk pool assistance is needed for one or more of the following purposes:

- (1) To continue support for mandated services.
- (2) To avoid the need for reduction or elimination of:
  1. Critical services, creating risk to a consumer's health or safety;
  2. Critical emergency or mobile crisis services, creating risk to the public's health or safety;
  3. Services or other support provided to an entire disability category; or
  4. Services or other support provided to maintain consumers in a community setting, creating risk of placement in a more restrictive, higher-cost setting.

**25.63(2) Application procedures.**

*a. Format for submission.* The county shall submit the application package electronically or send an original plus 15 copies to the division. Facsimiles are not acceptable.

*b. Deadline.* The division must receive the application no later than 4:30 p.m. on July 1 of each year; or, if July 1 is a holiday, Saturday or Sunday, the division must receive the application no later than 4:30 p.m. on the first working day thereafter.

*c. Signature.* The application shall be signed and dated by both the chairperson of the county board of supervisors and the central point of coordination administrator.

*d. Notice of receipt.* Staff of the division shall notify each county of receipt of the county's application.

*e. Content.* In addition to Form 470-3723, Risk Pool Application, the application package shall include the following forms for the fiscal year that commenced two years before the fiscal year of distribution:

- (1) Form 634C, Service Area 4 Supporting Detail (pages 1 to 8).
- (2) Form 638R, Statement of Revenues, Expenditures, and Changes in Fund Balance—Actual and Budget (pages 1 and 2).
- (3) If the budget has been amended, Form 653A-R, Record of Hearing and Determination on the Amendment to County Budget (sheet 2), as last amended.

**25.63(3) Request for additional information.** Staff shall review all applications for completeness. If an application is not complete, staff of the division shall contact the county within four working days after July 1 to request the information needed to complete the application. If July 1 is a holiday, Saturday or Sunday, the division shall make this contact within five working days after July 1. The county shall submit the required information within five working days from the date of the division's request for the additional information.

[ARC 7879B, IAB 6/17/09, effective 6/1/09]

**441—25.64(426B) Methodology for awarding risk pool funding.** The risk pool board shall make an eligibility decision on each application within 45 days after receiving the application and shall make a funding decision no later than August 15.

**25.64(1) Notice of decision.** The risk pool board shall send a notice of decision of the board's action to the chairperson of the applying county's board of supervisors. Copies of the notice of decision shall be sent to the county auditor and the central point of coordination administrator.

**25.64(2) Distribution of funds.** The total amount of the risk pool shall be limited to the available pool for a fiscal year.

*a.* If the total dollar amount of the approved applications exceeds the available pool, the board shall prorate the amount paid for an approved application. The funds will be prorated to each county based upon the proportion of each approved county's request to the total amount of all approved requests.

*b.* The division shall authorize the issuance of warrants payable to the county treasurers for the amounts due. The warrants shall be issued on or before September 15.

[ARC 7879B, IAB 6/17/09, effective 6/1/09]

**441—25.65(426B) Repayment provisions.**

**25.65(1) Required repayment.** Counties shall be required to repay risk pool funds if the county's actual need for risk pool assistance was less than the amount of risk pool assistance granted to the county. The county shall refund the lesser of:

*a.* The amount of assistance awarded; or

*b.* An amount such that the fund balance after refund will not exceed 5 percent of the expenditures for the year as determined on a modified accrual basis.

**25.65(2) Year-end report.** Each county granted risk pool funds shall complete a year-end financial report as required by Iowa Code section 225C.6A(2)(c)(3). The division shall review the accrual information and notify the mental health risk pool board if any county that was granted assistance in the prior year received more than the county's actual need based on the submitted financial report.

**25.65(3) Notification to county.** The chairperson of the mental health risk pool board shall notify each county by January 1 of each fiscal year of the amount to be reimbursed. The county shall reimburse the risk pool within 30 days of receipt of notification by the chairperson of the mental health risk pool board. If a county fails to reimburse the mental health risk pool, the board may request a revenue offset through the department of revenue. Copies of the overpayment and request for reimbursement shall be sent to the county auditor and the central point of coordination administrator of the county.

[ARC 7879B, IAB 6/17/09, effective 6/1/09]

**441—25.66(426B) Appeals.** The risk pool board may accept or reject an application for assistance from the risk pool fund in whole or in part. The decision of the board is final and is not appealable.

These rules are intended to implement Iowa Code section 426B.5, subsection 2.

**441—25.67 to 25.70** Reserved.

DIVISION VI  
TOBACCO SETTLEMENT FUND RISK POOL FUNDING

PREAMBLE

These rules provide for use of an appropriation from the tobacco settlement fund to establish a risk pool fund which may be used by counties with limited county mental health, mental retardation and developmental disabilities services funds to pay for increased compensation of the service staff of eligible purchase of service (POS) providers and establish the requirements for counties for receiving and repaying the funding. Implementation of the rate increases contemplated by the tobacco settlement fund in a timely manner will require cooperation among all eligible counties and providers.

**441—25.71(78GA,ch1221) Definitions.**

"Adjusted actual cost" means a POS provider's cost as computed using the financial and statistical report for the provider's fiscal year which ended during the state fiscal year beginning July 1, 1998 (state fiscal year 1999), as adjusted by multiplying those actual costs by 103.4 percent or the percentage

adopted by the risk pool board in accordance with 2000 Iowa Acts, chapter 1221, section 3, subsection 3, paragraph “c.”

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

“*Division*” means the mental health and developmental disabilities division of the department of human services.

“*Financial and statistical report*” means a report prepared by a provider and submitted to host counties that is prepared in accordance with department rules for cost determination set forth in 441—Chapter 150.

“*Host county*” means the county in which the primary offices of a POS provider are located. However, if a POS provider operates separate programs in more than one county, “host county” means each county in which a separate program is operated.

“*Purchase of service provider*” or “*POS provider*” means a provider of sheltered work, work activity, supported employment, job placement, enclave services, adult day care, transportation, supported community living services, or adult residential services paid by a county from the county’s services fund created in Iowa Code section 331.424A under a state purchase of service or county contract.

“*Risk pool board*” means that board established by Iowa Code section 426B.5, subsection 3.

“*Separate program*” means a POS service operated in a county other than the county in which the provider’s home office is located and for which the provider allocates costs separately from similar programs located in the county where the provider’s home office is located.

“*Services fund*” means the fund defined in Iowa Code section 331.424A.

“*Tobacco settlement fund loan*” or “*TSF loan*” means the tobacco settlement fund risk pool funds a county received in a fiscal year in which the county did not levy the maximum amount allowed for the county’s mental health, mental retardation, and developmental disabilities services fund under Iowa Code section 331.424A. The repayment amount shall be limited to the amount by which the actual amount levied was less than the maximum amount allowed.

**441—25.72(78GA,ch1221) Risk pool board.** The risk pool board is organized and shall take action and keep minutes and records as set out in rule 441—25.62(426B).

A risk pool board member cannot be a part of any presentation to the board of that board member’s county’s application for tobacco settlement fund risk pool funds nor can the board member be a part of any action pertaining to that application. If a risk pool board member is employed by or is a board member of a POS provider whose increases in compensation caused the host county to apply to the fund, the board member cannot be a part of any presentation to the board nor can the board member be a part of any action pertaining to that application.

**441—25.73(78GA,ch1221) Rate-setting process.** For services provided on or after July 1, 2000, each county shall increase its reimbursement rates for each program to the lesser of the adjusted actual cost or 105 percent of the rate paid for services provided on June 30, 2000.

**25.73(1) Financial and statistical report.** Each provider of POS services shall submit a financial and statistical report to each host county for each program that the provider operates within that county. These reports shall include actual costs for each separate program for the provider’s fiscal year that ended during state fiscal year 1999 and state fiscal year 2000. These reports shall be submitted to the central point of coordination (CPC) administrator of the host county or counties no later than August 15, 2000.

**25.73(2) Rate determination.** The CPC administrator in each host county shall receive and review provider financial and statistical reports for each separate program for which that county is the host county. If the host county determines that all or part of the provider’s increase in costs is attributable to increases in service staff compensation and that the adjusted actual cost is more than the rate paid by the county on June 30, 2000, the CPC administrator shall notify the provider in writing of the new rate for each program no later than September 1, 2000.

If a rate paid for services provided on June 30, 2000, exceeds the adjusted actual cost, the county shall not be required to adjust the rate for services provided on or after July 1, 2000.

The provider shall, no later than September 11, 2000, send to the CPC administrator of any other counties with consumers in those programs a copy of the rate determination signed by the CPC administrator of the host county. A county may delay payment of the reimbursement rate established pursuant to this subrule until the risk pool board has completed action as to adopting or not adopting a different percentage for the definition of adjusted actual cost, provided however that any increased rates required by 2000 Iowa Acts, chapter 1221, section 3, subsection 2, paragraph "c," shall be paid retroactively for all services provided on or after July 1, 2000.

**25.73(3) Exemptions.**

*a.* A POS provider that has negotiated a reimbursement rate increase with a host county as of July 1, 2000, has the option of exemption from the provisions of these rules. However, a county shall not be eligible to receive tobacco settlement funds for any rates established outside of the process established in these rules.

*b.* Nothing in these rules precludes a county from increasing reimbursement rates of POS providers by an amount that is greater than that specified in these rules. However, a county shall not be eligible for tobacco settlement funds for the amount of any rate increase in excess of the amount established pursuant to these rules.

**441—25.74(78GA,ch1221) Application process.**

**25.74(1) Who may apply.** If a county determines that payment of POS provider rates in accordance with these rules will cause the county to expend more funds in FY2001 than budgeted for POS services, the county may apply for assistance from the tobacco settlement fund. However, any fiscal year 2000 projected accrual basis fund balances in excess of 25 percent of fiscal year 2000 services fund gross expenditures will reduce the amount for which a county is eligible. In considering the cost of implementing these provisions, a county shall not include the cost of rate increases granted to any providers who fail to complete financial and statistical reports as provided in these rules.

**25.74(2) How to apply.** The county shall send the original and 15 copies of Form 470-3768, Tobacco Settlement Fund Risk Pool Application, to the division. The division must receive the application no later than 4:30 p.m. on September 25, 2000. Facsimiles and electronic mail are not acceptable. The application shall be signed and dated by the chairperson of the county board of supervisors, the county auditor, and the CPC administrator. Staff of the division shall notify each county of receipt of the county's application.

**25.74(3) Request for additional information.** Staff shall review all applications for completeness. If an application is not complete, staff of the division shall contact the county by October 5, 2000, and request the information needed to complete the application. The county shall submit the required information by October 16, 2000.

**441—25.75(78GA,ch1221) Methodology for awarding tobacco settlement fund risk pool funding.**

**25.75(1) Review of applications.** The risk pool board shall review all of the applications from counties for assistance from the tobacco settlement fund. If the total amount requested from the tobacco settlement fund does not exceed \$2 million, eligible counties shall be awarded funding pursuant to this division. The risk pool board shall determine for each county whether any or all of the assistance granted to that county is a TSF loan.

**25.75(2) Notice of decision.** The risk pool board shall notify the chair of the applying county's board of supervisors of the board's action no later than November 3, 2000. Copies shall be sent to the county auditor and the CPC administrator.

**25.75(3) Distribution of funds.** The total amount of the risk pool shall be limited to \$2 million. If the total dollar amount of the eligible applications exceeds the available pool, the risk pool board shall revise the percentage adjustment to actual cost to arrive at adjusted actual cost as defined in this division and prorate funding to the eligible counties. If it becomes necessary to revise the percentage adjustment used to determine adjusted actual cost, the risk pool board shall determine if applicant counties remain eligible under this program.

**25.75(4) Notification of adjustment.** If the risk pool board rolls back the percentage adjustment used to determine adjusted actual cost, the risk pool board shall notify the chair of the board of supervisors of all counties, and copies shall be sent to the county auditor and the CPC administrator of each county. Each host county shall recalculate the reimbursement rate under this division using the revised adjusted actual cost percentage and notify each provider in writing of the revised rate within 30 days of receiving notice of the percentage adjustment. The provider shall, within 30 days of receipt of notice, send to the CPC administrator of any other counties with consumers in those programs a copy of the revised rate determination signed by the CPC administrator of the host county.

**441—25.76(78GA,ch1221) Repayment provisions.**

**25.76(1) Required repayment.** Counties shall be required to repay TSF loans by January 1, 2002. Repayments shall be credited to the tobacco settlement fund.

**25.76(2) Notification to county.** In the notice of decision provided pursuant to these rules, the chairperson of the risk pool board shall notify each county of the portion, if any, of the assistance that is considered a TSF loan. If a county fails to reimburse the tobacco settlement fund by January 1, 2002, the board may request a revenue offset through the department of revenue. Copies of the overpayment and request for reimbursement shall be sent to the county auditor and the CPC administrator of the county.

**441—25.77(78GA,ch1221) Appeals.** The risk pool board may accept or reject an application for assistance from the tobacco settlement fund risk pool fund in whole or in part. The decision of the board is final and is not appealable.

These rules are intended to implement 2000 Iowa Acts, chapter 1221, section 3, as amended by chapter 1232, section 4.

**441—25.78 to 25.80** Reserved.

DIVISION VII  
COMMUNITY MENTAL HEALTH CENTER WAIVER REQUEST

PREAMBLE

This division establishes a process for the mental health and developmental disabilities commission to grant a waiver to any county not affiliated with a community mental health center.

**441—25.81(225C) Waiver request.** Counties that have not established or that are not affiliated with a community mental health center under Iowa Code chapter 230A are required to expend a portion of the money received from the MI/MR/DD/BI community services fund to contract with a community mental health center for services. When a county determines that a contractual arrangement is undesirable or unworkable, it may request a waiver from this requirement for a fiscal year. The waiver request and justification may be submitted to the mental health and developmental disabilities commission with the application for MI/MR/DD/BI community services funds on Form 470-0887, Waiver Request, or it may be submitted separately. The commission may grant a waiver if the request successfully demonstrates that all of the following conditions are met:

**25.81(1) Accreditation of provider.** The provider or network of providers that the county has contracted with to deliver the identified mental health services is accredited as another mental health provider pursuant to 441—Chapter 24.

**25.81(2) Contracted services.** The county has contracted to provide services that are equal to or greater than the smallest set of services provided by an accredited community mental health center in the department's service area for that county.

**25.81(3) Eligible populations.** The county contract includes the following eligible populations:

- a. Children.
- b. Adults.
- c. Elderly.
- d. Chronically mentally ill.

e. Mentally ill.

This rule is intended to implement Iowa Code section 225C.7.

**441—25.82 to 25.90** Reserved

DIVISION VIII  
CRITERIA FOR EXEMPTING COUNTIES FROM JOINING INTO REGIONS TO ADMINISTER  
MENTAL HEALTH AND DISABILITY SERVICES

**441—25.91(331) Exemption from joining into mental health and disability services region.**

**25.91(1) Definitions.**

“*Applicant*” means a single county or two counties that submit an application for an exemption from the requirement to join a region of three or more contiguous counties.

“*Clear lines of accountability*” means the governing board’s organizational structure makes it evident that the ultimate responsibility for the administration of non-Medicaid-funded mental health and disability services lies with the governing board and that the governing board directly and solely supervises the organization’s chief executive officer.

“*Coordinator of disability services*” means a person who meets the qualifications of a coordinator of disability services as defined in Iowa Code section 331.390(3) “b” and is responsible for ensuring that individuals receive effective service coordination consistent with the county’s or counties’ management plan.

“*Core services*” means core services mandated to be provided by the regional service system as defined in Iowa Code section 331.397.

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

“*Director*” means the director of the department.

“*Evidence-based practice*” means interventions that have been rigorously tested, have yielded consistent, replicable results, and have proven safe, beneficial, and effective.

“*Penetration rate,*” for the purposes of this rule, means the per capita number of adults in the adult population of a county who are receiving mental health and disability services.

“*Reasonably close proximity*” means a distance of 100 miles or less or a driving distance of two hours or less from the county seat or county seats of the applicant.

“*Trauma-informed care*” means services that are based on an understanding of the vulnerabilities or triggers of individuals who have experienced trauma, recognize the role trauma has played in the lives of those individuals, are supportive of trauma recovery, and avoid retraumatization.

**25.91(2) Application for exemption from the requirement to form a region of three or more contiguous counties.** The following requirements apply to an application for exemption from the requirement to form a region of three or more contiguous counties:

a. The applicant shall submit a written statement that the applicant intends to apply for an exemption from the requirement to form a region of three or more contiguous counties. The statement must be signed by the chairperson of the county board of supervisors of the applicant’s county. The signed written statement of intent must be received by the department on or before May 1, 2013, at 4:30 p.m.

b. The applicant shall submit a written application on forms specified by the department with required supporting documentation. The department shall only accept applications that are complete, signed by the applicant’s chairperson of the county board of supervisors, dated, and received by the department on or before June 30, 2013, at 4:30 p.m.

c. The director of the department shall issue a decision on the application within 45 days of receiving the application. The director shall deny an application if the application does not meet the criteria described in Iowa Code or rule.

**25.91(3) Applicant criteria.** The application shall include written documentation and evidence that the applicant has:

a. The capacity to provide required core services and perform required functions described in Iowa Code section 331.397.

*b.* A contract with a community mental health center or a federally qualified health center that provides psychiatric and outpatient mental health services in the applicant's county or counties or written intent from the community mental health center or federally qualified health center to enter into such a contract.

*c.* A contract with a hospital with an inpatient psychiatric unit or a state mental health institute located in or within reasonably close proximity that has the capacity to provide inpatient services to the applicant or written intent from the state mental health institute or inpatient psychiatric unit to enter into such a contract.

*d.* An administrative structure with clear lines of accountability. A description of the applicant's administrative functions shall be included with the application.

*e.* Taken steps to determine and demonstrate that forming a region of three or more contiguous counties is not workable.

**25.91(4)** *Core services and required functions standards.* The department shall review the application to determine if the applicant has provided written documentation and evidence for the availability of:

*a.* A 24-hour, 7-day-a-week, 365-days-per-year telephone response system for mental health and disability-related emergencies in the applicant's county or counties.

*b.* Service providers in the applicant's county or counties that demonstrate the capability of providing evidence-based practices that the applicant has independently verified meet established fidelity to evidence-based service models including, but not limited to:

- (1) Assertive community treatment or strengths-based case management.
- (2) Integrated treatment of co-occurring substance abuse and mental health disorders.
- (3) Supported employment.
- (4) Family psychoeducation.
- (5) Illness management and recovery.
- (6) Permanent supportive housing.

*c.* Service providers in the applicant's county or counties that are trained to provide effective services to persons with two or more of the following co-occurring conditions: mental illness, intellectual disability, developmental disability, brain injury, or substance use disorder. Training for serving persons with co-occurring conditions shall be training identified by the Substance Abuse and Mental Health Services Administration, the Dartmouth Psychiatric Research Center or other generally recognized professional organization specified in the application.

*d.* Service providers in the applicant's county or counties that are trained to provide effective trauma-informed care. Trauma-informed care training shall be training identified by the National Center for Trauma-Informed Care or other generally recognized professional organization specified in the application.

**25.91(5)** *Service capacity.* The department shall review the material provided in the application and by the applicant and other counties in their required county reports to determine if the applicant demonstrates that it has:

*a.* Sufficient financial resources to fund required core services.

*b.* A penetration rate that is at least equal to or exceeds the statewide per capita average for individuals with a mental illness or individuals with an intellectual disability.

*c.* A per capita use of inpatient psychiatric hospital services that is less than or equal to the statewide per capita average.

*d.* A per capita use of intermediate care facilities for individuals with intellectual disabilities that is less than or equal to the statewide per capita average.

*e.* A per capita use of outpatient mental health services that is greater than or equal to the statewide per capita average.

*f.* A per capita use of supported community living services that is greater than or equal to the statewide per capita average.

*g.* An average cost of service per individual served that is equal to or less than the statewide average.

*h.* Administrative costs, as a percentage of non-Medicaid service expenditures, that are less than or equal to the statewide average.

**25.91(6) Provider network sufficiency.** The department shall review the application to determine if the applicant provided written documentation and evidence of:

*a.* A contract with a community mental health center that provides services in the applicant's county or counties or a federally qualified health center that provides psychiatric and outpatient mental health services in the applicant's county or counties or written intent by a community mental health center or federally qualified health center to enter into such a contract.

*b.* Contracts with licensed and accredited providers to provide each service in the required core service domains or written intent by providers to enter into such contracts.

*c.* Adequate numbers of licensed and accredited providers to ensure availability of core services so that there is no waiting list for services due to lack of available providers.

*d.* A contract with an inpatient psychiatric hospital unit or state mental health institute within reasonably close proximity or written intent by an inpatient psychiatric hospital unit or state mental health institute to enter into such a contract.

**25.91(7) to 25.91(9) Reserved.**

**25.91(10) Staffing.** The department shall review the application to determine if the applicant provided written documentation and evidence of:

*a.* Clear lines of accountability.

*b.* The inclusion of one or more coordinators of disability services on the county administrator staff.

**25.91(11) Reserved.**

**25.91(12) Determination that formation of a region is unworkable.** The department shall review the application to determine if the applicant has provided documentation and convincing evidence that the applicant has evaluated the feasibility of forming into a region of three or more contiguous counties and that forming into such a region is unworkable.

**25.91(13) Compliance with requirements of a mental health and disability services region.** The applicant shall continuously fulfill all of the requirements of a region under Iowa Code chapters 331 and 225C for a regional service system, regional service system management plan, regional governing board, and regional administrator and any other requirements applicable to a region of counties providing local mental health and disability services. If the applicant does not fulfill these requirements, the department may address the deficiencies in the following order:

*a.* Require compliance with a corrective action plan that may include, but is not limited to, participation in technical assistance provided or arranged by the department, revision of the regional management plan, or other corrective actions required by the department.

*b.* Reduce the amount of the annual state funding provided through the mental health and disabilities regional services fund for the regional service system, not to exceed 15 percent of the amount of the annual state funding.

*c.* Withdraw approval for the county exemption.

This rule is intended to implement Iowa Code section 331.389.

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[Filed ARC 0735C (Notice ARC 0575C, IAB 2/6/13), IAB 5/15/13, effective 8/1/13]

<sup>◇</sup> Two or more ARCs

## **RACING AND GAMING COMMISSION[491]**

[Prior to 11/19/86, Chs 1 to 10, see Racing Commission[693]; Renamed Racing and Gaming

Division [195] under the “umbrella” of Commerce, Department of [181], 11/19/86]

[Prior to 12/17/86, Chs 20 to 25, see Revenue Department[730] Chs 91 to 96]

[Transferred from Commerce Department[181] to the Department of Inspections and Appeals “umbrella”[481]  
pursuant to 1987 Iowa Acts, chapter 234, section 421]

[Renamed Racing and Gaming Commission[491], 8/23/89; See 1989 Iowa Acts, ch 67 §1(2), and ch 231 §30(1), 31]

### CHAPTER 1

#### ORGANIZATION AND OPERATION

- 1.1(99D,99F) Function
- 1.2(99D,99F) Organization, meetings, and procedure
- 1.3(99D,99F) Administration of the commission
- 1.4(17A,22,99D,99F) Open records
- 1.5(17A,99D,99F) Forms
- 1.6 Reserved
- 1.7(99D,99F) Criteria for granting licenses, renewing licenses, and determining race dates
- 1.8(17A,99D,99F) Granting of a waiver

### CHAPTER 2

#### RULE MAKING AND DECLARATORY ORDERS

- 2.1(17A) Applicability
- 2.2(17A) Advice on possible rules before notice of proposed rule adoption
- 2.3(17A) Public rule-making docket
- 2.4(17A) Notice of proposed rule making
- 2.5(17A) Public participation
- 2.6(17A) Regulatory analysis
- 2.7(17A,25B) Fiscal impact statement
- 2.8(17A) Time and manner of rule adoption
- 2.9(17A) Variance between adopted rule and published notice of proposed rule adoption
- 2.10(17A) Exemption from public rule-making procedures
- 2.11(17A) Concise statement of reasons
- 2.12(17A) Contents, style, and form of rule
- 2.13(17A) Agency rule-making record
- 2.14(17A) Filing of rules
- 2.15(17A) Effectiveness of rules prior to publication
- 2.16(17A) General statements of policy
- 2.17(17A) Review by commission of rules
- 2.18(17A) Petition for rule making
- 2.19(17A) General
- 2.20(17A) Petition for declaratory order
- 2.21(17A) Notice of petition
- 2.22(17A,99D,99F) Intervention
- 2.23(17A) Briefs
- 2.24(17A) Inquiries
- 2.25(17A) Service and filing of petitions and other papers
- 2.26(17A) Consideration
- 2.27(17A) Action on petition
- 2.28(17A) Refusal to issue order
- 2.29(17A) Contents of declaratory order—effective date
- 2.30(17A) Copies of orders
- 2.31(17A) Effect of a declaratory order

CHAPTER 3  
FAIR INFORMATION PRACTICES  
(Uniform Rules)

3.1(17A,22)	Definitions
3.3(17A,22)	Requests for access to records
3.6(17A,22)	Procedure by which additions, dissents, or objections may be entered into certain records
3.9(17A,22)	Disclosures without the consent of the subject
3.10(17A,22)	Routine use
3.11(17A,22)	Consensual disclosure of confidential records
3.12(17A,22)	Release to subject
3.13(17A,22)	Availability of records
3.14(17A,22)	Personally identifiable information

CHAPTER 4  
CONTESTED CASES AND OTHER PROCEEDINGS

4.1(17A)	Scope and applicability
4.2(17A)	Definitions
4.3(17A)	Time requirements

DIVISION I  
GAMING REPRESENTATIVE, GAMING BOARD,  
AND BOARD OF STEWARDS

4.4(99D,99F)	Gaming representatives—licensing and regulatory duties
4.5(99D,99F)	Gaming board—duties
4.6(99D,99F)	Stewards—licensing and regulatory duties
4.7(99D,99F)	Penalties (gaming board and board of stewards)
4.8(99D,99F)	Effect of another jurisdiction's order
4.9(99D,99F)	Service of administrative actions
4.10(99D,99F)	Appeals of administrative actions
4.11 to 4.19	Reserved

DIVISION II  
CONTESTED CASES

4.20(17A)	Requests for contested case proceedings not covered in Division I
4.21(17A)	Notice of hearing
4.22(17A)	Presiding officer
4.23(17A)	Waiver of procedures
4.24(17A)	Telephone proceedings
4.25(17A)	Disqualification
4.26(17A)	Consolidation—severance
4.27(17A)	Pleadings
4.28(17A)	Service and filing of pleadings and other papers
4.29(17A)	Discovery
4.30(17A)	Subpoenas
4.31(17A)	Motions
4.32(17A)	Prehearing conference
4.33(17A)	Continuances
4.34(17A)	Withdrawals
4.35(17A)	Intervention
4.36(17A)	Hearing procedures
4.37(17A)	Evidence
4.38(17A)	Default
4.39(17A)	Ex parte communication
4.40(17A)	Recording costs

4.41(17A)	Interlocutory appeals
4.42(17A)	Final decision
4.43(17A)	Appeals and review
4.44(17A)	Applications for rehearing
4.45(17A)	Stays of commission actions
4.46(17A)	No factual dispute contested cases
4.47(17A)	Emergency adjudicative proceedings
4.48(17A)	Contested case hearings before the commission

## CHAPTER 5

TRACK, GAMBLING STRUCTURE, AND EXCURSION GAMBLING BOAT  
LICENSEES' RESPONSIBILITIES

5.1(99D,99F)	In general
5.2(99D,99F)	Annual reports
5.3(99D,99F)	Information
5.4(99D,99F)	Uniform requirements
5.5(99D)	Pari-mutuel uniform requirements
5.6(99F)	Excursion gambling boat uniform requirements

## CHAPTER 6

## OCCUPATIONAL AND VENDOR LICENSING

6.1(99D,99F)	Definitions
6.2(99D,99F,252J)	Occupational licensing
6.3(99D,99F)	Waiver of privilege
6.4(99D,99F)	License acceptance
6.5(99D,99F)	Grounds for denial, suspension, or revocation of a license or issuance of a fine
6.6(99D,99F)	Applications for license after denial, revocation, or suspension
6.7(99D,99F)	Probationary period placed on a license
6.8(99D,99F)	Duration of license
6.9(99D,99F)	Licensed employees moving from one location to another
6.10(99D,99F)	Required report of discharge of licensed employee
6.11(99D,99F,252J)	Receipt of certificate of noncompliance from the child support recovery unit
6.12(99D,99F,261)	Receipt of a certificate of noncompliance from the college student aid commission
6.13(99D,99F,272D)	Receipt of certificate of noncompliance from the centralized collection unit of the department of revenue
6.14(99D,99F)	Vendor's license
6.15(99D,99F)	Applicability of rules—exceptions
6.16(99D)	Disclosure of ownership of racing animals
6.17(99D)	Owners of racing animals
6.18(99D)	Kennel/stable name
6.19(99D)	Leases (horse racing only)
6.20(99D)	Partnerships owning racing animals
6.21(99D)	Corporations owning racing animals
6.22(99D)	Authorized agents for owner entities of racing animals
6.23(99D)	Trainers and assistant trainers of racing animals
6.24(99D)	Jockeys and apprentice jockeys
6.25(99D)	Jockey agent
6.26(99D)	Driver
6.27(99D)	Practicing veterinarians
6.28(99D,99F)	Alcohol and drug testing
6.29(99D)	Time by which owner and trainer must be licensed

CHAPTER 7  
GREYHOUND RACING

7.1(99D)	Terms defined
7.2(99D)	Facility's responsibilities
7.3(99D)	Racing officials—duties
7.4(99D)	Lead-outs
7.5(99D)	Trainers and assistant trainers
7.6(99D)	Registration
7.7(99D)	Entries
7.8(99D)	Withdrawals and scratches
7.9(99D)	Weights and weighing
7.10(99D)	Qualifying time
7.11(99D)	Schooling
7.12(99D)	Running of the race
7.13(99D)	Race reckless/interfered/ruled off
7.14(99D)	Medication and administration, sample collection, chemists, and practicing veterinarians

CHAPTER 8  
WAGERING, SIMULCASTING AND ADVANCE DEPOSIT WAGERING

8.1(99D)	Definitions
8.2(99D)	General
8.3(99D)	Approval of pari-mutuel wagers
8.4(99D)	Simulcast wagering
8.5(99D)	Interstate common-pool wagering
8.6(99D)	Advance deposit wagering

CHAPTER 9  
Reserved

CHAPTER 10  
THOROUGHBRED AND QUARTER HORSE RACING

10.1(99D)	Terms defined
10.2(99D)	Facilities' responsibilities
10.3(99D)	Facility policies
10.4(99D)	Racing officials
10.5(99D)	Trainer, jockey, and jockey agent responsibilities
10.6(99D)	Conduct of races
10.7(99D)	Medication and administration, sample collection, chemists, and practicing veterinarian

CHAPTER 11  
GAMBLING GAMES

11.1(99F)	Definitions
11.2(99F)	Conduct of all gambling games
11.3(99F)	Gambling games approved by the commission
11.4(99F)	Approval for distribution, operation, or movement of gambling games and implements of gambling
11.5(99F)	Gambling games authorized
11.6(99F)	Gambling game-based tournaments
11.7(99F)	Table game requirements
11.8(99F)	Keno
11.9(99F)	Slot machine requirements

- 11.10(99F) Slot machine hardware and software specifications
- 11.11 Reserved
- 11.12(99F) Progressive slot machines
- 11.13(99F) Licensing of manufacturers and distributors of gambling games or implements of gambling

## CHAPTER 12

### ACCOUNTING AND CASH CONTROL

- 12.1(99F) Definitions
- 12.2(99F) Accounting records
- 12.3(99F) Facility internal controls
- 12.4(99F) Accounting controls within the cashier's cage
- 12.5(99F) Gaming table container
- 12.6(99F) Accepting currency at gaming tables
- 12.7(99F) Procedures for the movement of gaming chips to and from gaming tables
- 12.8(99F) Dropping or opening a gaming table
- 12.9(99F) Slot machine container and key
- 12.10(99F) Procedures for hopper fills and attendant payouts
- 12.11(99F) Attendant and ticket payout accounting
- 12.12(99F) Computer recording requirements and monitoring of slot machines
- 12.13(99F) Transportation of containers
- 12.14(99F) Count room—characteristics
- 12.15(99F) Opening, counting, and recording contents of containers in the count room



CHAPTER 1  
ORGANIZATION AND OPERATION

[Prior to 11/19/86, Racing Commission[693]]

[Prior to 11/18/87, Racing and Gaming Division[195]]

[Prior to 8/9/00, see also 491—Chs 6, 20 and 21]

**491—1.1(99D,99F) Function.** The racing and gaming commission was created by Iowa Code chapter 99D and is charged with the administration of the Iowa pari-mutuel wagering Act and excursion boat gambling Act. Iowa Code chapters 99D and 99F mandate that the commission shall have full jurisdiction over and shall supervise all race meetings and gambling operations governed by Iowa Code chapters 99D and 99F.

**491—1.2(99D,99F) Organization, meetings, and procedure.**

**1.2(1) Organization.**

*a.* The racing and gaming commission is located at 1300 Des Moines Street, Suite 100, Des Moines, Iowa 50309; telephone (515)281-7352. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday.

*b.* The racing and gaming commission consists of five members. The membership shall elect a chairperson and vice-chairperson in July of each year. No chairperson shall serve more than two consecutive one-year full terms.

**1.2(2) Meetings.**

*a.* The commission meets periodically throughout the year and shall meet in July of each year. Notice of a meeting is published on the commission's Web site at [www.iowa.gov/irgc/](http://www.iowa.gov/irgc/) at least five days in advance of the meeting or will be mailed to interested persons upon request. The notice shall contain the specific date, time, and place of the meeting. Agendas are available to any interested persons not less than five days in advance of the meeting.

*b.* Persons wishing to appear before the commission should submit a written request to the commission office not less than ten working days prior to the meeting. The administrator or commission may place a time limit on presentations after taking into consideration the number of presentations requested.

*c.* Special or electronic meetings may be called by the chairperson only upon a finding of good cause and shall be held in strict accordance with Iowa Code section 21.4 or 21.8.

**1.2(3) Procedure.** All meetings shall be open to the public unless a closed session is voted by four members or all members present for the reasons specified in Iowa Code section 21.5. The operation of commission meetings shall be governed by the following rules of procedure:

*a.* A quorum shall consist of three members.

*b.* When a quorum is present, a position is carried by an affirmative vote of the majority of the entire membership of the commission.

*c.* A commissioner, who is present at a meeting of the commission when action is taken, shall be presumed to have assented to the action unless the commissioner's dissent was requested to be entered in the minutes. A roll-call vote on any motion may be recorded in the minutes. Reconsideration of any action may only be initiated by a commissioner who voted with the prevailing side. The motion to reconsider any action may be made and seconded before the conclusion of the meeting when the action was approved, or it may be made in writing and submitted to the commission office within two business days following the meeting. Only the mover has the option to request that the motion be held in abeyance, when the motion to reconsider is offered during the same meeting. Any commissioner is eligible to call up the motion to reconsider at the next meeting of the commission. The official minutes shall record the offering of any motion to reconsider, whether placed during the meeting or by timely written submission.

*d.* The presiding officer may exclude any person from the meeting for behavior that disrupts or obstructs the meeting.

*e.* Cases not covered by this rule shall be governed by the 2000 edition of Robert's Rules of Order Newly Revised.

[ARC 0734C, IAB 5/15/13, effective 6/19/13]

**491—1.3(99D,99F) Administration of the commission.** The commission shall appoint an administrator for the racing and gaming commission who is responsible for the day-to-day administration of the commission's activities.

**491—1.4(17A,22,99D,99F) Open records.** Except as provided in Iowa Code sections 17A.2(11) "f," 22.7, 99D.7(8), and 99F.4(6), all public records of the commission shall be available for public inspection during business hours. Requests to obtain records may be made by mail, telephone, or fax or in person. Minutes of commission meetings, forms, and other records routinely requested by the public may be obtained without charge or viewed on the commission's Web site. Other records requiring more than ten copies may be obtained upon payment of the actual cost for copying. This charge may be waived by the administrator.

**491—1.5(17A,99D,99F) Forms.** All forms utilized in the conduct of business with the racing and gaming commission shall be available from the commission upon request. These forms include but are not limited to:

**1.5(1) *Racing, gambling structure, or excursion gambling boat license application.*** This form shall contain at a minimum the full name of the applicant, all ownership interests, balance sheets and profit-and-loss statements for three fiscal years immediately preceding the application, pending legal action, location and physical plant of the facility, and description of proposed operation. The form may include other information the commission deems necessary to make a decision on the license application. The qualified nonprofit corporation and the boat operator, if different than the qualified nonprofit corporation, shall pay a nonrefundable application fee to offset the commission's cost for processing the application in the amount of \$25,000. The fee shall be \$5,000 for each subsequent application involving the same operator and the same qualified sponsoring organization. Additionally, the applicant shall remit an investigative fee of \$30,000 to the department of public safety to do background investigations as required by the commission. The department of public safety shall bill the applicant/licensee for additional fees as appropriate and refund any unused portion of the investigative fee within 90 days after the denial or operation begins.

**1.5(2) *Renewal application for racing license.*** This form shall contain, at a minimum, the full name of the applicant, racing dates, simulcast proposal, feasibility of racing facility, distribution to qualified sponsoring organizations, table of organization, management agreement, articles of incorporation and bylaws, lease agreements, financial statements, information on the gambling treatment program, and description of racetrack operations. The form may include other information the commission deems necessary to make a decision on the license application.

**1.5(3) *Renewal application for excursion gambling boat or gambling structure license.*** This form shall contain, at a minimum, the full name of the applicant, annual fee, distribution to qualified sponsoring organizations, table of organization, internal controls, operating agreement, hours of operation, casino operations, Iowa resources, contracts, guarantee bond, notarized certification of truthfulness, and gambling treatment program. The form may include other information the commission deems necessary to make a decision on the license application. An annual fee to operate an excursion gambling boat shall be based on the passenger-carrying capacity including crew. For a gambling structure, the annual license fee shall be based on the capacity of the gambling structure. The fee shall be \$5 per person capacity and accompany this application.

**1.5(4) *Renewal application for racetrack enclosure license.*** This form shall contain, at a minimum, the full name of the applicant, annual fee, casino operations, internal controls, Iowa resources, guarantee bond, and notarized certification of truthfulness. The form may include other information the commission deems necessary to make a decision on the license application. A \$1,000 application fee must accompany this license application.

**1.5(5) *Occupational license application.*** This form shall contain, at a minimum, the applicant's full name, social security number, residence, date of birth, and other personal identifying information that the commission deems necessary. A fee set by the commission shall apply to this application. (Refer to 491—Chapter 6 for additional information.)

**1.5(6) *Application for season approvals.*** This form shall contain, at a minimum, a listing of the department heads and racing officials, minimum purse, purse supplements for Iowa-breds, grading system (greyhound racing only), schedule and wagering format, equipment, security plan, certification, and any other information the commission deems necessary for approval. This request must be submitted 45 days prior to the meet. Any changes to the items approved by the commission shall be requested in writing by the licensee and subject to the written approval of the administrator or commission representative before the change occurs.

**1.5(7) *Manufacturers and distributors license application.*** This form shall contain at a minimum the full name of the applicant, all ownership interests, balance sheets and profit-and-loss statements for three fiscal years immediately preceding the application, pending legal action, location and physical plant of the applicant, and description of proposed operation. The form may include other information the administrator deems necessary to make a decision on the license application. (Refer to 491—Chapter 11 for additional information.)

**491—1.6(99D,99F) Limitation on location and number of racetracks and excursion gambling boats.** Rescinded IAB 9/29/04, effective 11/3/04.

**491—1.7(99D,99F) Criteria for granting licenses, renewing licenses, and determining race dates.** The commission sets forth the following criteria which the commission will consider when deciding whether to issue a license to conduct racing or gaming in Iowa. The various criteria may not have the same importance in each instance, and other factors may present themselves in the consideration of an application for a license. The criteria are not listed in order of priority. After the initial consideration for issuing a license, applicable criteria need only be considered when an applicant has demonstrated a deficiency.

**1.7(1) *Compliance.*** The commission will consider whether or not the applicant is and has been in compliance with the terms and conditions specified in Iowa Code section 99D.9 or 99F.4. The commission will also consider whether the proposed facility is in compliance with applicable state and local laws regarding fire, health, construction, zoning, and other similar matters.

**1.7(2) *Gaming integrity.*** The commission will consider whether the proposed operation would ensure that gaming is conducted with a high degree of integrity in Iowa and that the officers, directors, partners, or shareholders of the operation are of good repute and moral character. The commission shall decide what weight and effect evidence about an officer, director, partner, or shareholder should have in the determination of whether there is substantial evidence that the individual is not of good reputation and character.

**1.7(3) *Economic impact and development.*** The commission will consider:

*a.* The amount of revenue to be provided by the proposed facility to the state and local communities through direct taxation on the facility's operation and indirect revenues from tourism, ancillary businesses, creation of new industry, and taxes on employees and patrons. The commission may engage an independent firm proficient in market feasibility studies in the industry for specific analysis of any application to determine the potential market of any proposed facility as well as the impact on existing licensees.

*b.* The level of financial and other support the proposed operation will provide to the community in order to improve the quality of life of the residents of the community.

*c.* The viability and overall net benefit of the proposed operation to the state gaming industry, taking into consideration:

- (1) Investment versus projected adjusted gross revenue.
- (2) Impact on existing operators' adjusted gross revenue versus existing operators' ratio of adjusted gross revenue to investment.
- (3) Ratio of equity to total investment and whether the proposed project is adequately and properly financed.
- (4) Percent of projected adjusted gross revenue from underserved markets.
- (5) Percent of projected adjusted gross revenue from existing Iowa operators.

- (6) Stability and reliability of out-of-state market(s).
- d. The benefits to Iowa tourism.
- e. The number and quality of employment opportunities for Iowans.
- f. The development and sale of Iowa products.
- g. The number and types of developments and amenities associated with the proposed operation in addition to the gaming floor.

**1.7(4) *Efficient and safe operation.*** The commission will consider whether the proposed facility is planned in a manner that promotes efficient and safe operation of all aspects of the facility including providing adequate security for employees and patrons. Adequate employment to serve patrons' needs, facility scope and design, parking facilities, access to cashier windows, concessions, and restrooms will be considered.

**1.7(5) *Community support.*** The commission will consider support for the proposed project within the community in which a proposed facility is to be located.

**1.7(6) *Nurture of the racing industry.*** The commission will consider whether the proposed racetrack operation would serve to nurture, promote, develop, and improve the racing industry in Iowa and provide high-quality racing in Iowa. The commission will also consider if the proposed racetrack operation will maximize purses and is beneficial to Iowa breeders.

**1.7(7) *Other factors.*** The commission will consider such other factors as may arise in the circumstances presented by a particular application.

[ARC 8029B, IAB 8/12/09, effective 9/16/09]

**491—1.8(17A,99D,99F) Granting of a waiver.** For purposes of this rule, a waiver or variance means action by the commission that suspends in whole or in part the requirements or provisions of a rule as applied to an identified entity on the basis of the particular circumstances of that entity. For simplicity, the term “waiver” shall include both a waiver and a variance.

**1.8(1) *Scope of rule.*** This rule outlines generally applicable standards and a uniform process for the granting of a waiver from rules adopted by the commission 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 rule with respect to any waiver from that rule.

**1.8(2) *Applicability of rule.*** The commission may grant a waiver from a rule only if the commission has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The commission may not waive requirements created or duties imposed by statute.

**1.8(3) *Criteria for waiver.*** In response to a petition completed pursuant to subrule 1.8(5), the commission may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the commission finds, based on clear and convincing evidence, all of the following:

- a. The application of the rule would impose an undue hardship on the entity for whom the waiver is requested;
- b. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any entity;
- c. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and
- d. 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.

**1.8(4) *Filing of petition.*** A petition for a waiver must be submitted in writing to the commission as follows:

- a. *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.
- b. *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.

*c. Other.* If the petition does not relate to a license application or a pending contested case, the petition may be submitted to the administrator.

**1.8(5) Content of petition.** A petition for waiver shall include the following information where applicable and known to the requester:

*a.* The name, address, and telephone number of the person or entity for whom a waiver is being requested, and the case number of any related contested case.

*b.* A description and citation of the specific rule from which a waiver is requested.

*c.* The specific waiver requested, including the precise scope and duration.

*d.* The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in subrule 1.8(3). 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.

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

*f.* Any information known to the requester regarding the commission's treatment of similar cases.

*g.* 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 grant of a waiver.

*h.* The name, address, and telephone number of any person or entity who would be adversely affected by the grant of a waiver.

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

*j.* Signed releases of information authorizing persons with knowledge regarding the request to furnish the commission with information relevant to the waiver.

**1.8(6) Additional information.** Prior to issuing an order granting or denying a waiver, the commission 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 commission may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the administrator, a committee of the commission, or a quorum of the commission.

**1.8(7) Notice.** The commission shall acknowledge a petition upon receipt. The commission shall ensure that 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, within 30 days of the receipt of the petition. In addition, the commission may give notice to other persons.

To accomplish this notice provision, the commission 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 commission attesting that notice has been provided.

**1.8(8) 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 agency proceedings for a waiver only when the commission so provides by rule or order or is required to do so by statute.

**1.8(9) 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, reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

**1.8(10) Board discretion.** The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the commission, upon consideration of all relevant factors. Each petition for a waiver shall be evaluated by the commission based on the unique, individual circumstances set out in the petition.

**1.8(11) Burden of persuasion.** The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the commission should exercise its discretion to grant a waiver from a commission rule.

**1.8(12) *Narrowly tailored exception.*** A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

**1.8(13) *Administrative deadlines.*** When the rule from which a waiver is sought establishes administrative deadlines, the commission shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

**1.8(14) *Conditions.*** The commission may place any condition on a waiver that the commission finds desirable to protect the public health, safety, and welfare.

**1.8(15) *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 commission, a waiver may be renewed if the commission finds that grounds for the waiver continue to exist.

**1.8(16) *Time for ruling.*** The commission 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 commission shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

**1.8(17) *When deemed denied.*** Failure of the commission to grant or deny a petition within the required time period shall be deemed a denial of that petition by the commission. However, the commission shall remain responsible for issuing an order denying a waiver.

**1.8(18) *Service of order.*** Within seven days of its issuance, any order issued under this rule 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.

**1.8(19) *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 commission is authorized or required to keep confidential. The commission may accordingly redact confidential information from petitions or orders prior to public inspection.

**1.8(20) *Summary reports.*** Semiannually, the commission shall prepare a summary report identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the commission's actions on waiver requests. If practicable, the report shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

**1.8(21) *Cancellation of a waiver.*** A waiver issued by the commission pursuant to this rule may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the commission issues an order finding any of the following:

- a.* 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;
- b.* 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
- c.* The subject of the waiver order has failed to comply with all conditions contained in the order.

**1.8(22) *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.

**1.8(23) *Defense.*** After the commission 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.

**1.8(24) *Judicial review.*** Judicial review of the commission'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 section 17A.9A and Iowa Code chapters 99D and 99F.

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<sup>◊</sup> Two or more ARCs

<sup>1</sup> Effective date of Item 1, subrule 1.6(4), delayed by the Administrative Rules Review Committee at its meeting held September 8, 1998, until the adjournment of the 1999 Session of the General Assembly.

<sup>2</sup> Effective date of 1.8 delayed 70 days by the Administrative Rules Review Committee at its meeting held March 10, 2000.



CHAPTER 2  
RULE MAKING AND DECLARATORY ORDERS

[Prior to 11/19/86, Racing Commission[693]]  
[Prior to 11/18/87, Racing and Gaming Division[195]]

**491—2.1(17A) Applicability.** Except to the extent otherwise expressly provided by statute, all rules adopted by the agency are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

**491—2.2(17A) Advice on possible rules before notice of proposed rule adoption.** In addition to seeking information by other methods, the racing and gaming commission (commission) may, before publication of a Notice of Intended Action under Iowa Code section 17A.4(1) “a,” solicit comments from the public on a subject matter of possible rule making by the commission by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

**491—2.3(17A) Public rule-making docket.**

**2.3(1) Docket maintained.** The commission shall maintain a current public rule-making docket.

**2.3(2) Anticipated rule making.** The rule-making docket shall list each anticipated rule-making proceeding. A rule-making proceeding is deemed “anticipated” from the time a draft of proposed rules is distributed for internal discussion within the commission. For each anticipated rule-making proceeding, the docket shall contain a listing of the precise subject matter which may be submitted for consideration by the commission for subsequent proposal under the provisions of Iowa Code section 17A.4(1) “a,” the name and address of commission personnel with whom persons may communicate with respect to the matter, and an indication of the present status within the commission of that possible rule. The commission may also include in the docket other subjects upon which public comment is desired.

**2.3(3) Pending rule-making proceedings.** The rule-making docket shall list each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced, by publication in the Iowa Administrative Bulletin of a Notice of Intended Action pursuant to Iowa Code section 17A.4(1) “a,” to the time it is terminated, by publication of a Notice of Termination in the Iowa Administrative Bulletin or the rule becoming effective. For each rule-making proceeding, the docket shall indicate:

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

**491—2.4(17A) Notice of proposed rule making.**

**2.4(1) Contents.** At least 35 days before the adoption of a rule the commission shall cause Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

- a. A brief explanation of the purpose of the proposed rule;
- b. The specific legal authority for the proposed rule;
- c. Except to the extent impracticable, the text of the proposed rule;
- d. Where, when, and how persons may present their views on the proposed rule; and
- e. Where, when, and how persons may demand an oral proceeding on the proposed rule if the notice does not already provide for one.

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

**2.4(2) *Incorporation by reference.*** A proposed rule may incorporate other materials by reference only if it complies with all of the requirements applicable to the incorporation by reference of other materials in an adopted rule that are contained in subrule 2.12(2) of this chapter.

**2.4(3) *Copies of notices.*** Persons desiring to receive copies of future Notices of Intended Action by subscription must file with the commission a written request indicating the name and address to which such notices should be sent. The commission will attach the proposed rules to the agenda for the commission meeting in which the rules will be addressed. If the individual desiring a copy of the rules did not receive the rules with the copy of the agenda either through the mail or on the commission Web page within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the commission shall mail or electronically transmit a copy of that notice to subscribers who have filed a written request for either mailing or electronic transmittal with the commission for Notices of Intended Action. The written request shall be accompanied by payment of the subscription price which may cover the full cost of the subscription service, including its administrative overhead and the cost of copying and mailing the Notices of Intended Action for a period of one year.

#### **491—2.5(17A) Public participation.**

**2.5(1) *Written comments.*** For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing, on the proposed rule. Such written submissions should identify the proposed rule to which they relate and should be submitted to the Racing and Gaming Commission, 1300 Des Moines Street, Suite 100, Des Moines, Iowa 50309.

**2.5(2) *Oral proceedings.*** The commission may, at any time, schedule an oral proceeding on a proposed rule. The commission shall schedule an oral proceeding on a proposed rule if, within 20 days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the commission by the administrative rules review committee, a governmental subdivision, an agency, an association having not less than 25 members, or at least 25 persons. That request must also contain the following additional information:

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

**2.5(3) *Conduct of oral proceedings.***

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

b. *Scheduling and notice.* An oral proceeding on a proposed rule may be held in one or more locations and shall not be held earlier than 20 days after notice of its location and time is published in

the Iowa Administrative Bulletin. That notice shall also identify the proposed rule by ARC number and citation to the Iowa Administrative Bulletin.

*c. Presiding officer.* The commission, a member of the commission, or another person designated by the commission who will be familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule. If the commission does not preside, the presiding officer shall prepare a memorandum for consideration by the commission summarizing the contents of the presentations made at the oral proceeding unless the commission determines that such a memorandum is unnecessary because the commission will personally listen to or read the entire transcript of the oral proceeding.

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

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

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

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

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

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

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

(7) Participants in an oral proceeding shall not be required to take an oath or to submit to cross-examination. However, the presiding officer in an oral proceeding may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any questions.

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

**2.5(4) Additional information.** In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the commission may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

**2.5(5) Accessibility.** The commission shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the commission at (515)281-7352 in advance to arrange access or other needed services.

[ARC 0734C, IAB 5/15/13, effective 6/19/13]

#### **491—2.6(17A) Regulatory analysis.**

**2.6(1) Qualified requesters for regulatory analysis—business impact.** The commission shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A(1) after a proper request from:

*a.* The administrative rules review committee,

b. The administrative rules coordinator.

**2.6(2) *Time period for analysis.*** Upon receipt of a timely request for a regulatory analysis, the commission shall adhere to the time lines described in Iowa Code section 17A.4A(4).

**2.6(3) *Contents of request.*** A request for a regulatory analysis is made when it is mailed or delivered to the commission. The request shall be in writing and satisfy the requirements of Iowa Code section 17A.4A(1).

**2.6(4) *Contents of concise summary.*** The contents of the concise summary shall conform to the requirements of Iowa Code sections 17A.4A(2), (3) and (5).

**2.6(5) *Publication of a concise summary.*** The commission shall make available, to the maximum extent feasible, copies of the published summary in conformance with Iowa Code section 17A.4A(5).

**2.6(6) *Regulatory analysis contents—rules review committee or rules coordinator.*** When a regulatory analysis is issued in response to a written request from the administrative rules review committee, or the administrative rules coordinator, the regulatory analysis shall conform to the requirements of Iowa Code sections 17A.4A(1), (2)“a” and “b,” and (3) unless a written request expressly waives one or more of the items listed in the section.

#### **491—2.7(17A,25B) Fiscal impact statement.**

**2.7(1)** A proposed rule that mandates additional combined expenditures exceeding \$100,000 by all affected political subdivisions or agencies and entities which contract with political subdivisions to provide services must be accompanied by a fiscal impact statement outlining the costs associated with the rule. A fiscal impact statement must satisfy the requirements of Iowa Code section 25B.6.

**2.7(2)** If the commission determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the commission shall, at the same time, issue a corrected fiscal impact statement and publish the correct fiscal impact statement in the Iowa Administrative Bulletin.

#### **491—2.8(17A) Time and manner of rule adoption.**

**2.8(1) *Time of adoption.*** The commission shall not adopt a rule until the period for making written submissions and oral presentations has expired. Within 180 days after the later of the publication of the Notice of Intended Action, or the end of oral proceedings thereon, the commission shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

**2.8(2) *Consideration of public comment.*** Before the adoption of a rule, the commission shall consider fully all of the written submissions and oral submissions received in that rule-making proceeding or any memorandum summarizing such oral submissions, and any regulatory analysis or fiscal impact statement issued in that rule-making proceeding.

**2.8(3) *Reliance on commission expertise.*** Except as otherwise provided by law, the commission may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

#### **491—2.9(17A) Variance between adopted rule and published notice of proposed rule adoption.**

**2.9(1)** The commission shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based unless:

a. The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that notice; and

b. The differences are a logical outgrowth of the contents of that Notice of Intended Action and the comments submitted in response thereto; and

c. The Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

**2.9(2)** In determining whether the Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question, the commission shall consider the following factors:

- a.* The extent to which the person who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests;
- b.* The extent to which the subject matter of the rule or the issues determined by the rule are different from the subject matter or issues contained in the Notice of Intended Action; and
- c.* The extent to which the effects of the rule differ from the effects of the proposed rule contained in the Notice of Intended Action.

**2.9(3)** The commission shall commence a rule-making proceeding within 60 days of its receipt of a petition for rule making seeking the amendment or repeal of a rule that differs from the proposed rule contained in the Notice of Intended Action upon which the rule is based, unless the commission finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to petitioner, the administrative rules coordinator, and the administrative rules review committee, within three days of its issuance.

**2.9(4)** Concurrent rule-making proceedings. Nothing in this rule disturbs the discretion of the commission to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

**491—2.10(17A) Exemption from public rule-making procedures.**

**2.10(1)** *Omission of notice and comment.* To the extent the commission for good cause finds that public notice and participation are unnecessary, impracticable, or contrary to the public interest in the process of adopting a particular rule, the commission may adopt that rule without publishing advance Notice of Intended Action in the Iowa Administrative Bulletin and without providing for written or oral public submissions prior to its adoption. The commission shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

**2.10(2)** *Public proceedings on rules adopted without them.* The commission may, at any time, commence a standard rule-making proceeding for the adoption of a rule that is identical or similar to a rule it adopts in reliance upon subrule 2.10(1). Upon written petition by a governmental subdivision, the administrative rules review committee, an agency, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the commission shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 2.10(1). Such a petition must be filed within one year of the publication of the specified rule in the Iowa Administrative Bulletin as an adopted rule. The rule-making proceeding on that rule must be commenced within 60 days of the receipt of such a petition. After a standard rule-making proceeding commenced pursuant to this subrule, the commission may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 2.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

**491—2.11(17A) Concise statement of reasons.**

**2.11(1)** *General.* When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the commission shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to the Racing and Gaming Commission, 1300 Des Moines Street, Suite 100, Des Moines, Iowa 50309. The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

**2.11(2)** *Contents.* The concise statement of reasons shall contain:

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

**2.11(3) *Time of issuance.*** After a proper request, the commission shall issue a concise statement of reasons by the later of the time the rule is adopted or 35 days after receipt of the request.  
[ARC 0734C, IAB 5/15/13, effective 6/19/13]

**491—2.12(17A) Contents, style, and form of rule.**

**2.12(1) *Contents.*** Each rule adopted by the commission shall contain the text of the rule and, in addition:

- a. The date the commission adopted the rule;
- b. A brief explanation of the principal reasons for the rule-making action if such reasons are required by Iowa Code section 17A.4(1) “b” or the commission in its discretion decides to include such reasons;
- c. A reference to all rules repealed, amended, or suspended by the rule;
- d. A reference to the specific statutory or other authority authorizing adoption of the rule;
- e. Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule;
- f. A brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waiver or special exceptions provided in the rule if such reasons are required by Iowa Code section 17A.4(1) “b” or the commission in its discretion decides to include such reasons; and
- g. The effective date of the rule.

**2.12(2) *Incorporation by reference.*** The commission may incorporate by reference in a proposed or adopted rule, and without causing publication of the incorporated matter in full, all or any part of a code, standard, rule, or other matter if the commission finds that the incorporation of its text in the commission proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the commission proposed or adopted rule shall fully indicate the precise subject and the general contents of the incorporated matter and shall state that the proposed or adopted rule does not include any later amendments or editions of the incorporated matter. The commission may incorporate such matter by reference in a proposed or adopted rule only if the commission makes copies of it readily available to the public. The rule shall state how and where copies of the incorporated matter may be obtained at cost from the commission, and how and where copies may be obtained from the agency of the United States, this state, another state, or the organization, association, or persons, originally issuing that matter. The commission shall retain permanently a copy of any materials incorporated by reference in a rule of the commission.

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

**2.12(3) *References to materials not published in full.*** When the administrative code editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the commission shall prepare and submit to the administrative code editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules, and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the commission. The commission will provide a copy of that full text at the actual cost upon request and shall make copies of the full text available for review at the state law library and may make the standards available electronically.

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

**2.12(4) *Style and form.*** In preparing its rules, the commission shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

**491—2.13(17A) Agency rule-making record.**

**2.13(1) *Requirement.*** The commission shall maintain an official rule-making record for each rule it proposes by publication in the Iowa Administrative Bulletin of a Notice of Intended Action, or adopts. The rule-making record and materials incorporated by reference must be available for public inspection.

**2.13(2) *Contents.*** The commission rule-making record shall contain:

*a.* Copies of all publications in the Iowa Administrative Bulletin with respect to the rule or the proceeding upon which the rule is based and any file-stamped copies of commission submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based;

*b.* Copies of any portions of the commission's public rule-making docket containing entries relating to the rule or the proceeding upon which the rule is based;

*c.* All written petitions, requests, and submissions received by the commission, and all other written materials of a factual nature as distinguished from opinion that are relevant to the merits of the rule and that were created or compiled by the commission and considered by the administrator, in connection with the formulation, proposal, or adoption of the rule or the proceeding upon which the rule is based, except to the extent that the commission is authorized by law to keep them confidential; provided, however, that when any such materials are deleted because they are authorized by law to be kept confidential, the commission shall identify in the record the particular materials deleted and state the reasons for that deletion;

*d.* Any official transcript of oral presentations made in the proceeding upon which the rule is based or, if not transcribed, the stenographic record or electronic recording of those presentations, and any memorandum prepared by a presiding officer summarizing the contents of those presentations;

*e.* A copy of any regulatory analysis or fiscal impact statement prepared for the proceeding upon which the rule is based;

*f.* A copy of the rule and any concise statement of reasons prepared for that rule;

*g.* All petitions for amendment or repeal or suspension of the rule;

*h.* A copy of any objection to the issuance of that rule without public notice and participation that was filed pursuant to Iowa Code section 17A.4(2) by the administrative rules review committee, the governor, or the attorney general;

*i.* A copy of any objection to the rule filed by the administrative rules review committee, the governor, or the attorney general pursuant to Iowa Code section 17A.4(4), and any commission response to that objection;

*j.* A copy of any significant written criticism of the rule, including a summary of any petitions for waiver of the rule; and

*k.* A copy of any executive order concerning the rule.

**2.13(3) *Effect of record.*** Except as otherwise required by a provision of law, the commission rule-making record required by this rule need not constitute the exclusive basis for commission action on that rule.

**2.13(4) *Maintenance of record.*** The commission shall maintain the rule-making record for a period of not less than five years from the later of the date the rule to which it pertains became effective, the date of the Notice of Intended Action, or the date of any written criticism as described in 2.13(2) "g," "h," "i," or "j."

**491—2.14(17A) Filing of rules.** The commission shall file each rule it adopts in the office of the administrative rules coordinator. The filing must be executed as soon after adoption of the rule as is practicable. At the time of filing, each rule must have attached to it any fiscal impact statement and any concise statement of reasons that was issued with respect to that rule, if applicable. If a fiscal impact statement or statement of reasons for that rule was not issued until a time subsequent to the filing of that rule, the note or statement must be attached to the filed rule within five working days after the note

or statement is issued. In filing a rule, the commission shall use the standard form prescribed by the administrative rules coordinator.

**491—2.15(17A) Effectiveness of rules prior to publication.**

**2.15(1) *Grounds.*** The commission may make a rule effective after its filing at any stated time prior to 35 days after its indexing and publication in the Iowa Administrative Bulletin if it finds that a statute so provides, the rule confers a benefit or removes a restriction on some segment of the public, or that the effective date of the rule is necessary to avoid imminent peril to the public health, safety, or welfare. The commission shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

**2.15(2) *Special notice.*** When the commission makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)“b”(3), the commission shall employ all reasonable efforts to make its contents known to the persons who may be affected by that rule prior to the rule’s indexing and publication. The term “all reasonable efforts” requires the commission to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the effectiveness of the rule that is justified and practical under the circumstances considering the various alternatives available for this purpose, the comparative costs to the commission of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, personal notice or electronic means.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)“b”(3) shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of subrule 2.15(2).

**491—2.16(17A) General statements of policy.**

**2.16(1) *Compilation, indexing, public inspection.*** The commission shall maintain an official, current, and dated compilation that is indexed by subject, containing all of its general statements of policy within the scope of Iowa Code section 17A.2(10)“a,” “c,” “f,” “g,” “h,” “k.” Each addition to, change in, or deletion from the official compilation must also be dated, indexed, and a record thereof kept. Except for those portions containing rules governed by Iowa Code section 17A.2(7)“f,” or otherwise authorized by law to be kept confidential, the compilation must be made available for public inspection and copying.

**2.16(2) *Enforcement of requirements.*** A general statement of policy subject to the requirements of this subsection shall not be relied on by the commission to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule 2.16(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

**491—2.17(17A) Review by commission of rules.**

**2.17(1)** Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator requesting the commission to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the commission shall conduct a formal review of a specified rule to determine whether a new rule should be adopted instead or the rule should be amended or repealed. The commission may refuse to conduct a review if it has conducted such a review of the specified rule within five years prior to the filing of the written request.

**2.17(2)** In conducting the formal review, the commission shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report must include a concise statement of the commission’s findings regarding the rule’s effectiveness in achieving its objectives, including a summary of any available supporting data. The report shall

also concisely describe significant written criticisms of the rule received during the previous five years, including a summary of any petitions for waiver of the rule received by the commission or granted by the commission. The report shall describe alternative solutions to resolve the criticisms of the rule, the reasons any were rejected, and any changes made in the rule in response to the criticisms as well as the reasons for the changes. A copy of the commission’s report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report must also be available for public inspection.

**491—2.18(17A) Petition for rule making.** Any interested person or agency may file a petition for rule making with the commission. The petition for rule making shall be filed in the Racing and Gaming Commission Office, 1300 Des Moines Street, Suite 100, Des Moines, Iowa 50309. The petition shall either be mailed certified, return receipt requested, or may be delivered in person. An additional copy may be provided if the petitioner wishes to retain a file-stamped copy of the petition. The petition may be either typewritten or legibly printed in ink and must substantially conform to the following form:

RACING AND GAMING COMMISSION  
1300 Des Moines Street, Suite 100  
Des Moines, Iowa 50309

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Petition by (Name of Petitioner)  
for the (adoption, amendment,  
or repeal) of rules relating to  
(state subject matter).



PETITION FOR  
RULE MAKING

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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 commission’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.

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Petitioner’s signature

**2.18(1) *Petition signed.*** The petition must be dated and signed by the petitioner or the petitioner’s representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner’s representative and a statement indicating the person to whom communications concerning the petition should be directed.

**2.18(2) *Deny petition.*** The commission may deny a petition because it does not substantially conform to the required form.

**2.18(3) *Procedure after petition is filed.*** Upon filing of the petition, the administrator shall inspect the petition to ensure substantial compliance with the recommended form. If the petition does not contain the text or substance of the proposed amendment or fails to include copies of any cited statute, rule, or evidence, the administrator may reject the petition and return it to the petitioner along with the reasons for the rejection. Petitioner may then correct the reasons for rejection and refile the petition. A petition in substantial compliance with the recommended form shall be filed and stamped, and copies promptly sent to the commission members for further study.

**2.18(4) *Commission action.*** Within 60 days of the filing of a petition, the commission shall meet to consider the petition and shall either grant the petition and commence rule making, or deny the petition and notify the petitioner in writing of the grounds for the denial.

[ARC 0734C, IAB 5/15/13, effective 6/19/13]

**491—2.19(17A) General.** Any interested person may solicit oral or written advice from the administrator concerning the application or interpretation of any statute or administrative rule dealing with the commission. However, unless the request is made pursuant to Iowa Code section 17A.9, petition for declaratory order, any such advice is not binding upon the commission. Petitioners for a declaratory order must have a real and direct interest in a specific fact situation that may affect their legal rights, duties or responsibilities under statutes or regulations administered by the commission.

**491—2.20(17A) Petition for declaratory order.** Any person may file a petition with the commission for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the commission, at 1300 Des Moines Street, Suite 100, Des Moines, Iowa 50309. A petition is deemed filed when it is received by that office. The commission shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the commission an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

RACING AND GAMING COMMISSION  
1300 Des Moines Street, Suite 100  
Des Moines, Iowa 50309

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



PETITION FOR  
DECLARATORY ORDER

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The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by petitioner for a meeting provided for by 491—2.26(17A).

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

[ARC 0734C, IAB 5/15/13, effective 6/19/13]

**491—2.21(17A) Notice of petition.** Within 15 days after receipt of a petition for a declaratory order, the commission shall give notice of the petition to all persons not served by the petitioner pursuant to rule 2.25(17A) to whom notice is required by any provision of law or who have requested notice of petitions for declaratory orders. The commission may also give notice to any other persons.

**491—2.22(17A,99D,99F) Intervention.**

**2.22(1)** Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 30 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

2.22(2) Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the commission.

2.22(3) A petition for intervention shall be filed at the Racing and Gaming Commission Office, 1300 Des Moines Street, Suite 100, Des Moines, Iowa 50309. Such a petition is deemed filed when it is received by that office. The commission will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

RACING AND GAMING COMMISSION  
1300 Des Moines Street, Suite 100  
Des Moines, Iowa 50309

Petition by (Name of Original Petitioner)  
for a Declaratory Order on (Cite  
provisions of law cited in original petition).



PETITION FOR  
INTERVENTION

The petition for intervention must provide the following information:

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

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

[ARC 0734C, IAB 5/15/13, effective 6/19/13]

**491—2.23(17A) Briefs.** The petitioner or any intervenor may file a brief in support of the position urged. The commission may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

**491—2.24(17A) Inquiries.** Inquiries concerning the status of a declaratory order proceeding may be made to the Administrator, Racing and Gaming Commission, 1300 Des Moines Street, Suite 100, Des Moines, Iowa 50309.

[ARC 0734C, IAB 5/15/13, effective 6/19/13]

**491—2.25(17A) Service and filing of petitions and other papers.**

2.25(1) *When service required.* Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

**2.25(2) Filing—when required.** All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Racing and Gaming Commission Office, 1300 Des Moines Street, Suite 100, Des Moines, Iowa 50309. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the commission.

[ARC 0734C, IAB 5/15/13, effective 6/19/13]

**491—2.26(17A) Consideration.** Upon request by petitioner, the commission must schedule a brief and informal meeting between the original petitioner, all intervenors, and the commission, a member of the commission, or a member of the staff of the commission, to discuss the questions raised. The commission may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the commission by any person.

**491—2.27(17A) Action on petition.**

**2.27(1)** Within the time allowed by Iowa Code section 17A.9(5), after receipt of a petition for a declaratory order, the administrator or designee shall take action on the petition as required by Iowa Code section 17A.9(5).

**2.27(2)** The date of issuance of an order or of a refusal to issue an order is defined as the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified in the order.

**491—2.28(17A) Refusal to issue order.**

**2.28(1)** The commission shall not issue a declaratory order where prohibited by Iowa Code section 17A.9(1) and may refuse to issue a declaratory order on some or all questions raised for the following reasons.

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

**2.28(2)** A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final commission action on the petition.

**2.28(3)** Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the refusal to issue an order.

**491—2.29(17A) Contents of declaratory order—effective date.** In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the

specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion. A declaratory order is effective on the date of issuance.

**491—2.30(17A) Copies of orders.** A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

**491—2.31(17A) Effect of a declaratory order.** A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the commission, the petitioner, and any intervenors (who consent to be bound) and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the commission. The issuance of a declaratory order constitutes final commission action on the petition.

These rules are intended to implement Iowa Code chapters 17A, 99D and 99F.

[Filed 5/18/84, Notice 4/11/84—published 6/6/84, effective 7/13/84]

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[Filed ARC 0734C (Notice ARC 0604C, IAB 2/20/13), IAB 5/15/13, effective 6/19/13]



CHAPTER 3  
FAIR INFORMATION PRACTICES

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

**491—3.1(17A,22) Definitions.** As used in this chapter:

"Agency." In lieu of the words "(official or body issuing these rules)", insert "racing and gaming commission".

**491—3.3(17A,22) Requests for access to records.**

**3.3(1) Location of record.** In lieu of the words "(insert agency head)", insert "Administrator". In lieu of the words "(insert agency name and address)", insert "Racing and Gaming Commission, 1300 Des Moines Street, Suite 100, Des Moines, Iowa 50309".

**3.3(2) Office hours.** In lieu of the words "(insert customary office hours, and if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)", insert "8 a.m. to 4:30 p.m. Monday through Friday except legal holidays".

**3.3(7) Fees.**

*c. Supervisory fee.* In lieu of the words "(specify time period)", insert "30 minutes".  
[ARC 0734C, IAB 5/15/13, effective 6/19/13]

**491—3.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records.** In lieu of the words "(designate office)", insert "racing and gaming commission".

**491—3.9(17A,22) Disclosures without the consent of the subject.**

**3.9(1)** Open records are routinely disclosed without the consent of the subject.

**3.9(2)** To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

*a.* For a routine use as defined in rule 491—3.10(17A, 22) or in the notice for a particular record system.

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

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

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

*e.* To the legislative services agency under Iowa Code section 2A.3.

*f.* Disclosures in the course of employee disciplinary proceedings.

*g.* In response to a court order or subpoena.

**491—3.10(17A,22) Routine use.** "Routine use" means the disclosure of a record without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

**3.10(1)** To the extent allowed by law, the following uses are considered routine uses of all agency records:

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

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

*c.* 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.

*d.* 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.

*e.* Any disclosure specifically authorized by the statute under which the record was collected or maintained.

*f.* Information transferred to any originating agency when racing and gaming commission has completed the authorized audit, investigation, or inspection.

**3.10(2)** Reserved.

#### **491—3.11(17A,22) Consensual disclosure of confidential records.**

**3.11(1)** *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 491—3.7(17A,22).

**3.11(2)** *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency may to the extent permitted by law be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

**3.11(3)** *Sharing information.* Notwithstanding any statutory confidentiality provision, the agency may share information with the child support recovery unit and the college student aid commission through manual or automated means for the sole purpose of identifying licensees or applicants subject to enforcement under Iowa Code chapter 252J, 261 or 598.

#### **491—3.12(17A,22) Release to subject.**

**3.12(1)** A written request to review confidential records may be filed by the subject of the record as provided in rule 491—3.6(17A,22). The commission 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 otherwise privileged.

*c.* Investigative reports may be withheld from the subject, except as required by the Iowa Code. (See Iowa Code section 22.7(5))

*d.* As otherwise authorized by law.

**3.12(2)** Where a record has multiple subjects with interest in the confidentiality of the record, the commission may take reasonable steps to protect confidential information relating to another subject.

#### **491—3.13(17A,22) Availability of records.**

**3.13(1)** Agency records are open for public inspection and copying unless otherwise provided by rule or law.

**3.13(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.* Sealed bids received prior to the time set for public opening of bids. (Iowa Code section 72.3)

*b.* Tax records made available to the agency. (Iowa Code sections 422.20 and 422.72)

*c.* Exempt records under Iowa Code section 22.7.

- d. Minutes of closed meetings of a government body. (Iowa Code section 21.5(4))
- e. Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1)“d.”
- f. Those portions of commission staff manuals, instructions or other statements issued which set forth criteria or guidelines to be used by commission staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would:
  - (1) Enable law violators to avoid detection;
  - (2) Facilitate disregard of requirements imposed by law; or
  - (3) Give a clearly improper advantage to persons who are in an adverse position to the agency. (See Iowa Code sections 17A.2 and 17A.3)
- g. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa R.C.P. 122.11, the rules of evidence, the Code of Professional Responsibility, and case law.
- h. Criminal investigative reports. (Iowa Code section 22.7(5))
- i. Information gathered during an investigation during pendency of the investigation. (Iowa Code sections 99D.7(8) and 99F.4(6))
- j. Personnel files. Information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship. Some of this information is confidential under Iowa Code section 22.7(11).
- k. Security plans, surveillance system plans, and internal controls of the licensees that are made available to the commission that would enable law violators to avoid detection and give a clearly improper advantage to persons who are in an adverse position to the agency. (See Iowa Code sections 17A.2, 17A.3 and 22.7(18).)

**491—3.14(17A,22) Personally identifiable information.** The commission maintains systems of records which contain personally identifiable information.

**3.14(1) Board of stewards or gaming board hearings and contested case records.** Records are maintained in paper and computer files and contain names and identifying numbers of people involved. Evidence and documents submitted as a result of a hearing are contained in the board of stewards or gaming board hearing or contested case records as well as summary lists of enforcement activities.

Records are collected by authority of Iowa Code chapters 99D and 99F. None of the information stored in a data processing system is compared with information in any other data processing system.

**3.14(2) Occupational licensing.** Records associated with occupational licensing conducted under Iowa Code chapters 99D and 99F are maintained by this commission. The licensing system of records includes numerous files and crossfiles which include but are not limited to: computer storage of licensing records and photos, fingerprint cards, and license applications. The records associated with occupational licenses, which contain personally identifiable information, are open for public inspection only upon the approval of the administrator or the administrator’s designee. The information stored in a data processing system is not compared with information in any other data processing system.

**3.14(3) List of contested cases and stewards’ hearings.** The commission may utilize a listing of contested case and stewards’ hearings furnished by a national organization and provide individually identifiable information to that organization. The list is used for purposes delineated in Iowa Code chapter 99D.

These rules are intended to implement Iowa Code section 22.11 and chapters 99D and 17A.

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CHAPTER 4  
CONTESTED CASES AND OTHER PROCEEDINGS

[Prior to 11/19/86, Racing Commission[693]]  
[Prior to 11/18/87, Racing and Gaming Division[195]]

**491—4.1(17A) Scope and applicability.** This chapter applies to contested case proceedings conducted by the racing and gaming commission. The chapter shall also apply to gaming boards' and board of stewards' proceedings and gaming representatives' actions.

**491—4.2(17A) Definitions.** Except where otherwise specifically defined by law:

*"Board of stewards"* means a board established by the administrator to review conduct by occupational and pari-mutuel licensees that may constitute violations of the rules and statutes relating to pari-mutuel racing. The administrator may serve as a board of one.

*"Commission"* means the racing and gaming commission.

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

*"Gaming board"* means a board established by the administrator to review conduct by occupational, excursion gambling boat, gambling structure, and gambling game licensees that may constitute violations of the rules and statutes relating to gaming. The administrator may serve as a board of one.

*"Gaming representative"* means an employee of the commission assigned by the administrator to a licensed pari-mutuel racetrack, excursion gambling boat, or gambling structure to perform the supervisory and regulatory duties of the commission.

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

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

*"Presiding officer"* means the administrative law judge presiding over a contested case hearing or the commission in cases heard by the commission.

*"Proposed decision"* means the administrative law judge's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the commission did not preside.

*"Steward"* means a racing official appointed or approved by the commission to perform the supervisory and regulatory duties relating to pari-mutuel racing.

**491—4.3(17A) Time requirements.**

**4.3(1)** In computing any period of time prescribed or allowed by these rules or by an applicable statute, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. Legal holidays are prescribed in Iowa Code section 4.1(34).

**4.3(2)** All documents or papers required to be filed with the commission shall be delivered to any commission office within such time limits as prescribed by law or by rules or orders of the commission. No papers shall be considered filed until actually received by the commission.

**4.3(3)** 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.

DIVISION I  
GAMING REPRESENTATIVE, GAMING BOARD,  
AND BOARD OF STEWARDS

**491—4.4(99D,99F) Gaming representatives—licensing and regulatory duties.**

**4.4(1)** The gaming representative shall make decisions whether to approve applications for occupational licenses, in accordance with the rules and statutes.

*a.* Each decision denying a license for an occupational license shall be in writing. The decision must contain a brief explanation of the reason for the decision, including a reference to the statute or rule serving as the basis for the decision.

*b.* Rescinded IAB 2/5/03, effective 3/12/03.

*c.* Rescinded IAB 9/29/04, effective 11/3/04.

*d.* Upon the filing of a timely and perfected appeal, the applicant has the right to a contested case proceeding, as set forth supra in these rules.

**4.4(2)** The gaming representative shall monitor, supervise, and regulate the activities of occupational, pari-mutuel racetrack, gambling game, excursion gambling boat, and gambling structure licensees. A gaming representative may investigate any questionable conduct by a licensee for any violation of the rules or statutes. A gaming representative may refer an investigation to the gaming board upon suspicion that a licensee or nonlicensee has committed a violation of the rules or statutes.

*a.* A gaming representative shall make a referral to the gaming board in writing. The referral shall make reference to rules or statutory provisions at issue and provide a factual basis supporting the violation.

*b.* The gaming representative making the referral to the gaming board, or a designee of the gaming board, shall appear before the gaming board at the hearing to provide any information requested by the board.

**4.4(3)** A gaming representative shall summarily suspend an occupational license when a licensee has been formally arrested or charged with a crime that would disqualify the licensee, if convicted, from holding a license and the gaming representative determines that the licensee poses an immediate danger to the public health, safety, or welfare of the patrons, participants, or animals associated with a facility licensed under Iowa Code chapter 99D or 99F. Upon proof of resolution of a disqualifying criminal charge or formal arrest, regardless of summary suspension of a license, the gaming representative shall take one of the following courses of action:

*a.* If the license was summarily suspended and the charges are dismissed or the licensee is acquitted of the charges, the gaming representative shall reinstate the license.

*b.* If the licensee is convicted of the charges, the gaming representative shall deny the license.

*c.* If the licensee is convicted of a lesser charge, it is at the discretion of the gaming representative whether to reinstate or deny the license pursuant to 491—Chapter 6.

**4.4(4)** The gaming representative shall revoke the license of a person reported to the commission as having refused drug testing or as having a confirmed positive drug test result for a controlled substance, for a drug test conducted pursuant to Iowa Code section 730.5 or 99F.4(20).

**4.4(5)** A gaming representative may eject and exclude any person from the premises of a pari-mutuel racetrack, excursion gambling boat, or gambling structure for any reason justified by the rules or statutes. The gaming representative may provide notice of ejection or exclusion orally or in writing. The gaming representative may define the scope of the exclusion to any degree necessary to protect the integrity of racing and gaming in Iowa. The gaming representative may exclude the person for a certain or an indefinite period of time.

**4.4(6)** The gaming representative may forbid any person from continuing to engage in an activity the representative feels is detrimental to racing or gaming until resolved.

**4.4(7)** The gaming representative shall have other powers and duties set forth in the statutes and rules, and as assigned by the administrator.

**4.4(8)** A gaming representative may summarily suspend an occupational licensee in accordance with rule 491—4.47(17A).

[ARC 8029B, IAB 8/12/09, effective 9/16/09]

**491—4.5(99D,99F) Gaming board—duties.** The gaming board conducts informal hearings whenever the board has reasonable cause to believe that a licensee, an occupational licensee, or other persons have committed an act or engaged in conduct which is in violation of statute or commission rules. The hearings precede a contested case hearing and are investigative in nature. The following procedures will apply:

**4.5(1)** The gaming board shall consist of three gaming representatives, as assigned by the administrator. The administrator has the discretion to create more than one gaming board, to set terms for gaming board members, to assign alternates, and to make any decisions necessary for the efficient and effective operation of the gaming board. A gaming representative who has made a referral to the gaming board shall not sit on the board that makes a decision on the referral.

**4.5(2)** The administrator may designate an employee to act as gaming board coordinator. The gaming board coordinator shall have the power to assist and advise the gaming board through all aspects of the gaming board hearing process. The gaming board coordinator may review any referral from gaming representatives prior to setting the matter for hearing before the gaming board. The gaming board coordinator, in consultation with the administrator or the administrator's designee, may return the referral to the initiating gaming representative if the information provided appears insufficient to establish a violation. The gaming board coordinator shall otherwise assist the gaming board in setting the matter for hearing.

**4.5(3)** The gaming board, upon receipt of a referral, may review the referral prior to the hearing. The gaming board may return a referral to the initiating gaming representative on its own motion prior to hearing if the information provided appears insufficient to establish a violation.

**4.5(4)** Upon finding of reasonable cause, the board shall schedule a hearing to which the license holder shall be summoned for the purpose of investigating suspected or alleged misconduct by the license holder, at which all board members or their appointed representatives shall be present in person or by teleconference. The license holder may request a continuance for good cause in writing not less than 24 hours prior to the hearing except in cases of unanticipated emergencies. The continuance need not necessarily stay any intermediate sanctions.

**4.5(5)** The notice of hearing given to the license holder shall give adequate notice of the time, place and purpose of the board's hearing and shall specify by number the statutes or rules allegedly violated. If a license holder, after receiving adequate notice of a board meeting, fails to appear as summoned, the license holder will be deemed to have waived any right to appear and present evidence to the board.

**4.5(6)** The gaming board has complete and total authority to decide all issues concerning the process of the hearing. The gaming board shall recognize witnesses and either question the witnesses or allow them to give a narrative account of the facts relevant to the case. The gaming board has the right to request witnesses or additional documents that have not been submitted by the initiating gaming representative. The licensee has no right to present testimony, cross-examine witnesses, make objections, or present argument, unless specifically authorized by the gaming board.

**4.5(7)** It is the duty and obligation of every licensee to make full disclosure at a hearing before the board of any knowledge possessed regarding the violation of any rule, regulation or law concerning racing and gaming in Iowa. No person may refuse to testify before the board at any hearing on any relevant matter within the authority of the board, except in the proper exercise of a legal privilege. No person shall falsely testify before the board.

**4.5(8)** Persons who are not holders of a license or occupational license and who have allegedly violated commission rules or statute, or whose presence at a track or on a riverboat is allegedly undesirable, are subject to the authority of the board and to any penalties, as set forth in rule 491—4.7(99D,99F).

**4.5(9)** The gaming board has the power to interpret the rules and to decide all questions not specifically covered by them. The board has the power to determine all questions arising with reference to the conduct of gaming, and the authority to decide any question or dispute relating to racing or gaming in compliance with rules promulgated by the commission or policies approved for licensees, and persons participating in licensed racing or gaming agree in so doing to recognize and accept that authority. The board may also suspend the license of any license holder when the board has reasonable cause to believe that a violation of law or rule has been committed and that the continued performance of that individual in a licensed capacity would be injurious to the best interests of racing or gaming.

**4.5(10)** The gaming board shall enter a written decision after each hearing. The decision shall find whether there is a violation of the rules or statutes and, if so, shall briefly set forth the legal and factual

basis for the finding. The decision shall also establish a penalty for any violation. The gaming board has the authority to impose any penalty as set forth in these rules.

**4.5(11)** Rescinded IAB 9/29/04, effective 11/3/04.

**4.5(12)** Upon the filing of a timely and perfected appeal, the licensee has the right to a contested case proceeding, as set forth supra in these rules.

**4.5(13)** Informal settlements. A licensee may enter into a written stipulation representing an informed mutual consent with a gaming representative. This stipulation must specifically outline the violation and the penalty imposed. Stipulations must be approved by the gaming board. Stipulations are considered final agency action and cannot be appealed.

**491—4.6(99D,99F) Stewards—licensing and regulatory duties.**

**4.6(1)** The stewards shall make decisions whether to approve applications for occupational licenses, in accordance with the rules and statutes.

*a.* Each decision denying an application for an occupational license shall be in writing. The decision must contain a brief explanation of the reason for the decision, including a reference to the statute or rule serving as the basis for the decision.

*b.* Rescinded IAB 2/5/03, effective 3/12/03.

*c.* An applicant for an occupational license may appeal a decision denying the application. An appeal must be made in writing to the office of the stewards or the commission's office in Des Moines. The appeal must be received within 72 hours of service of the decision. The appeal must contain numbered paragraphs and set forth the name of the person seeking review, the decision to be reviewed, separate assignments of error, clear and concise statement of relevant facts, reference to applicable statutes, rules or other authority, prayer setting forth relief sought and signature, name, address, and telephone number of the person seeking review or that person's representative, or shall be on a form prescribed by the commission.

*d.* Upon the filing of a timely and perfected appeal, the applicant has the right to a contested case proceeding, as set forth supra in these rules.

**4.6(2)** The stewards shall monitor, supervise, and regulate the activities of occupational and pari-mutuel racetrack licensees. A steward may investigate any questionable conduct by a licensee for any violation of the rules or statutes. Any steward may refer an investigation to the board of stewards upon suspicion that a licensee or nonlicensee has committed a violation of the rules or statutes.

**4.6(3)** A steward shall summarily suspend an occupational license when a licensee has been formally arrested or charged with a crime that would disqualify the licensee, if convicted, from holding a license and the steward determines that the licensee poses an immediate danger to the public health, safety, or welfare of the patrons, participants, or animals associated with a facility licensed under Iowa Code chapter 99D or 99F. Upon proof of resolution of a disqualifying criminal charge or formal arrest, regardless of summary suspension of a license, the stewards shall take one of the following courses of action:

*a.* If the license was summarily suspended and the charges are dismissed or the licensee is acquitted of the charges, the stewards shall reinstate the license.

*b.* If the licensee is convicted of the charges, the stewards shall deny the license.

*c.* If the licensee is convicted of a lesser charge, it is at the discretion of the stewards whether to reinstate or deny the license pursuant to 491—Chapter 6.

**4.6(4)** The stewards may summarily suspend an occupational license in accordance with rule 491—4.47(17A).

**4.6(5)** Hearings before the board of stewards intended to implement Iowa Code section 99D.7(13) shall be conducted under the following parameters:

*a.* Upon finding of reasonable cause, the board shall schedule a hearing to which the license holder shall be summoned for the purpose of investigating suspected or alleged misconduct by the license holder. The license holder may request a continuance in writing for good cause not less than 24 hours prior to the hearing except in cases of unanticipated emergencies. The continuance need not necessarily stay any intermediate sanctions.

*b.* The notice of hearing given to the license holder shall give adequate notice of the time, place and purpose of the board's hearing and shall specify by number the statutes or rules allegedly violated. If a license holder, after receiving adequate notice of a board meeting, fails to appear as summoned, the license holder will be deemed to have waived any right to appear and present evidence to the board.

*c.* The board has complete and total authority to decide the process of the hearing. The administrator may designate an employee to assist and advise the board of stewards through all aspects of the hearing process. The board shall recognize witnesses and either question the witnesses or allow them to give a narrative account of the facts relevant to the case. The board may request additional documents or witnesses before making a decision. The licensee has no right to present testimony, cross-examine witnesses, make objections, or present argument, unless specifically authorized by the board.

*d.* It is the duty and obligation of every licensee to make full disclosure at a hearing before the board of any knowledge possessed regarding the violation of any rule, regulation or law concerning racing and gaming in Iowa. No person may refuse to testify before the board at any hearing on any relevant matter within the authority of the board, except in the proper exercise of a legal privilege. No person shall falsely testify before the board.

*e.* Persons who are not holders of a license or occupational license and who have allegedly violated commission rules or statute, or whose presence at a track is allegedly undesirable, are subject to the authority of the board and to any penalties, as set forth in rule 491—4.7(99D,99F).

*f.* The board of stewards has the power to interpret the rules and to decide all questions not specifically covered by them. The board of stewards has the power to determine all questions arising with reference to the conduct of racing, and the authority to decide any question or dispute relating to racing in compliance with rules promulgated by the commission or policies approved for licensees, and persons participating in licensed racing or gaming agree in so doing to recognize and accept that authority. The board may also suspend the license of any license holder when the board has reasonable cause to believe that a violation of law or rule has been committed and that the continued performance of that individual in a licensed capacity would be injurious to the best interests of racing or gaming.

*g.* The board of stewards shall enter a written decision after each hearing. The decision shall state whether there is a violation of the rules or statutes and, if so, shall briefly set forth the legal and factual basis for the finding. The decision shall also establish a penalty for any violation. The board of stewards has the authority to impose any penalty, as set forth in these rules.

*h.* Rescinded IAB 9/29/04, effective 11/3/04.

*i.* Upon the filing of a timely and perfected appeal, the licensee has the right to a contested case proceeding, as set forth supra in these rules.

**4.6(6)** A steward may eject and exclude any person from the premises of a pari-mutuel racetrack, excursion gambling boat, or gambling structure for any reason justified by the rules or statutes. The steward may provide notice of ejection or exclusion orally or in writing. The steward may define the scope of the exclusion to any degree necessary to protect the integrity of racing and gaming in Iowa. The steward may exclude the person for a certain or indefinite period of time.

**4.6(7)** The stewards shall have other powers and duties set forth in the statutes and rules, and as assigned by the administrator.

**4.6(8)** Informal settlements. A licensee may enter into a written stipulation representing an informed mutual consent with the stewards. This stipulation must specifically outline the violation and the penalty imposed. Stipulations must be approved by the board of stewards. Stipulations are considered final agency action and cannot be appealed.

[ARC 8029B, IAB 8/12/09, effective 9/16/09]

**491—4.7(99D,99F) Penalties (gaming board and board of stewards).** All penalties imposed will be promptly reported to the commission and facility in writing. The board may impose one or more of the following penalties: eject and exclude an individual from a facility; revoke a license; suspend a license for up to 365 days from the date of the original suspension; place a license on probation; deny a license; impose a fine of up to \$1000; or order a redistribution of a racing purse or the payment of or the

withholding of a gaming payout. The board may set the dates for which the suspension must be served. The board may also suspend the license of any person currently under suspension or in bad standing in any other state or jurisdiction by a state racing or gaming commission. If the punishment so imposed is not sufficient, in the opinion of the board, the board shall so report to the commission.

**4.7(1)** Fines shall be paid within ten calendar days of receipt of the ruling, by the end of business hours, at any commission office. Nonpayment or late payment of a fine may result in an immediate license suspension. All fines are to be paid by the individual assessed the fine.

**4.7(2)** If the fine is appealed to the board, the appeals process will not stay the fine. The fine will be due as defined in subrule 4.7(1).

**4.7(3)** If the party is successful in the appeal, the amount of the fine will be refunded to the party as soon as possible after the date the decision is rendered.

**4.7(4)** Refunds due under subrule 4.7(3) will be mailed to the party's current address on record.

**4.7(5)** When a racing animal or the holder of an occupational license is suspended by the board at one location, the suspension shall immediately become effective at all other facilities under the jurisdiction of the commission.

[ARC 9987B, IAB 2/8/12, effective 3/14/12]

**491—4.8(99D,99F) Effect of another jurisdiction's order.** The commission or board may take appropriate action against a license holder or other person who has been excluded from a track or gaming establishment in another jurisdiction to exclude that person from any track or gaming establishment under the commission's jurisdiction. Proceedings shall be conducted in the same manner as prescribed by these rules for determining misconduct on Iowa tracks or in gaming establishments and shall be subject to the same appeal procedures.

The commission and stewards shall have discretion to honor rulings from other jurisdictions regarding license suspension or revocation or the eligibility of contestants. Whenever the commission decides to honor an order from another jurisdiction, the commission representatives shall schedule a hearing at which the licensee shall be required to show cause as to why the license should not be suspended or revoked.

**491—4.9(99D,99F) Service of administrative actions.** Any administrative action taken against an applicant or occupational licensee shall be served on the applicant or occupational licensee by personal service or by certified mail with return receipt requested to the last-known address on the application.

**4.9(1)** If the applicant or licensee is represented by legal counsel, a copy of the written decision shall also be provided to legal counsel by regular mail. However, the applicant or licensee must still be served in accordance with this rule.

**4.9(2)** If the administrative action involves an alleged medication violation that could result in disqualification of a contestant, the stewards shall provide by regular mail notice of the hearing and all subsequent rulings to the owner of the contestant.

**491—4.10(99D,99F) Appeals of administrative actions.** A license applicant or an occupational licensee may appeal a denial, suspension or ruling. An appeal must be made in writing to the office of the gaming representative or the commission office in Des Moines. An appeal may also be filed by facsimile, electronic mail, or any other method as determined by the administrator. The appeal must be received within 72 hours of service of the decision and is not considered filed until received by the commission. For any appeal of a decision rendered pursuant to 491—paragraph 10.4(4) "d"(3)"1," the appeal must be received within 72 hours of any such decision and the standard of review will be abuse of discretion. The appeal must contain numbered paragraphs and set forth the name of the person seeking review; the decision to be reviewed; separate assignments of error; clear and concise statement of relevant facts; reference to applicable statutes, rules or other authority; prayer setting forth relief sought; and signature, name, address, and telephone number of the person seeking review or that person's representative; or shall be on a form prescribed by the commission. If a licensee is granted a stay of a suspension pursuant to 491—4.45(17A) and the ruling is upheld in a contested case

proceeding, the board of stewards may reassign the dates of suspension so that the suspension dates are served in the state of Iowa.

[ARC 0734C, IAB 5/15/13, effective 6/19/13]

**491—4.11 to 4.19** Reserved.

DIVISION II  
CONTESTED CASES

**491—4.20(17A) Requests for contested case proceedings not covered in Division I.** Any person or entity claiming an entitlement to a contested case proceeding, which is not otherwise covered by the procedures set forth in Division I, shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the commission action in question.

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

**491—4.21(17A) Notice of hearing.**

**4.21(1) Delivery.** Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

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

**4.21(2) Contents.** The notice of hearing shall contain the following information:

- a. A statement of the time, place, and nature of the hearing;
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- c. A reference to the particular sections of the statutes and rules involved;
- d. A short and plain statement of the matters asserted. If the commission or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;
- e. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the commission or the state and of parties' counsel where known;
- f. Reference to the procedural rules governing conduct of the contested case proceeding;
- g. Reference to the procedural rules governing informal settlement;
- h. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer (e.g., agency head, members of multimembered agency head, administrative law judge from the department of inspections and appeals); and
- i. Notification of the time period in which a party may request, pursuant to Iowa Code section 17A.11(1) "a" and rule 491—4.22(17A), that the presiding officer be an administrative law judge.

**491—4.22(17A) Presiding officer.** Contested case hearings may be heard directly by the commission. The commission, or the administrator, shall decide whether it will hear the appeal or whether the appeal will be heard by an administrative law judge who shall serve as the presiding officer. When the appeal is heard by an administrative law judge, the administrative law judge is authorized to issue a proposed decision.

**4.22(1)** Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must

file a written request within 20 days after service of a notice of hearing which identifies or describes the presiding officer as the commission chair, members of the commission or commission employees.

**4.22(2)** The administrator may deny the request only upon a finding that one or more of the following apply:

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

**4.22(3)** The administrator shall issue a written ruling specifying the grounds for the decision within 20 days after a request for an administrative law judge is filed.

**4.22(4)** An administrative law judge assigned to act as presiding officer in a contested case shall have a Juris Doctorate degree unless waived by the agency.

**4.22(5)** Except as provided otherwise by rules 491—4.41(17A) and 491—4.42(17A), all rulings by an administrative law judge acting as presiding officer are subject to appeal to the commission. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

**4.22(6)** Unless otherwise provided by law, the commission, 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.

**491—4.23(17A) Waiver of procedures.** Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the commission in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

**491—4.24(17A) Telephone proceedings.** The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

**491—4.25(17A) Disqualification.**

**4.25(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.

**4.25(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 commission 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 4.25(3) and 4.39(9).

**4.25(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.

**4.25(4)** If a party asserts disqualification on any appropriate ground, including those listed in subrule 4.25(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 491—4.41(17A) and seek a stay under rule 491—4.45(17A).

#### **491—4.26(17A) Consolidation—severance.**

**4.26(1) Consolidation.** The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

**4.26(2) Severance.** The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

#### **491—4.27(17A) Pleadings.**

**4.27(1) Pleadings,** other than the notice of appeal, will not be required in appeals from a licensing decision by a gaming representative, gaming board, or board of stewards. However, pleadings may be required in other contested cases or as ordered by the presiding officer.

##### **4.27(2) Petition.**

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

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

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

**4.27(3)** Answer. An answer shall be filed within 20 days of service of the petition unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

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

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

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

**4.27(4)** Amendment. Any notice of appeal, notice of hearing, petition, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

#### **491—4.28(17A) Service and filing of pleadings and other papers.**

**4.28(1)** *When service required.* Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the commission, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

**4.28(2)** *Service—how made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

**4.28(3)** *Filing—when required.* After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the commission at 1300 Des Moines Street, Suite 100, Des Moines, Iowa 50309. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the commission.

**4.28(4)** *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the commission office at 1300 Des Moines Street, Suite 100, Des Moines, Iowa 50309, 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.

**4.28(5)** *Proof of mailing.* Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (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 0734C, IAB 5/15/13, effective 6/19/13]

#### **491—4.29(17A) Discovery.**

**4.29(1)** Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

**4.29(2)** Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity

to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 4.29(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

**4.29(3)** Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

#### **491—4.30(17A) Subpoenas.**

##### **4.30(1) Issuance.**

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

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

**4.30(2) Motion to quash or modify.** The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

#### **491—4.31(17A) Motions.**

**4.31(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.

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

**4.31(3)** The presiding officer may schedule oral argument on any motion.

**4.31(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 commission or an order of the presiding officer.

**4.31(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 491—4.44(17A) and appeal pursuant to rule 491—4.43(17A).

#### **491—4.32(17A) Prehearing conference.**

**4.32(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 commission to all parties. For good cause the presiding officer may permit variances from this rule.

**4.32(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.

**4.32(3)** In addition to the requirements of subrule 4.32(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.

**4.32(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.

**491—4.33(17A) Continuances.** Unless otherwise provided, applications for continuances shall be made to the presiding officer.

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

**4.33(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.

**491—4.34(17A) Withdrawals.** A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with commission rules. Unless otherwise provided, a withdrawal shall be with prejudice.

**491—4.35(17A) Intervention.**

**4.35(1) Motion.** A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

**4.35(2) *When filed.*** Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

**4.35(3) *Grounds for intervention.*** The movant shall demonstrate that (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

**4.35(4) *Effect of intervention.*** If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

#### **491—4.36(17A) Hearing procedures.**

**4.36(1)** The presiding officer presides at the hearing, and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

**4.36(2)** All objections shall be timely made and stated on the record.

**4.36(3)** Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

**4.36(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.

**4.36(5)** The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

**4.36(6)** Witnesses may be sequestered during the hearing.

**4.36(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.

#### **491—4.37(17A) Evidence.**

**4.37(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.

**4.37(2)** Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

**4.37(3)** Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit

evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

**4.37(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.

**4.37(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.

**4.37(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.

#### **491—4.38(17A) Default.**

**4.38(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.

**4.38(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.

**4.38(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 commission 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 491—4.43(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.

**4.38(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.

**4.38(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.

**4.38(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.

**4.38(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 491—4.41(17A).

**4.38(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.

**4.38(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).

**4.38(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 491—4.45(17A).

**491—4.39(17A) Ex parte communication.**

**4.39(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 commission or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 4.25(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

**4.39(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.

**4.39(3)** Written, oral or other forms of communication are “ex parte” if made without notice and opportunity for all parties to participate.

**4.39(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 communication shall be provided in compliance with rule 491—4.28(17A) and may be supplemented by telephone, facsimile, E-mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

**4.39(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.

**4.39(6)** The administrator 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 subrule 4.25(1) or other law and they comply with subrule 4.39(1).

**4.39(7)** Communications with the presiding officer involving scheduling or procedural matters uncontested 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 491—4.33(17A).

**4.39(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.

**4.39(9)** Promptly after being assigned to serve as presiding officer on a hearing panel, as a member of a full board hearing, on an intra-agency appeal, or other basis, 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.

**4.39(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 commission. Violation of ex parte communication prohibitions by commission personnel shall be reported to the administrator for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

**491—4.40(17A) Recording costs.** Upon request, the commission shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

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

**491—4.41(17A) Interlocutory appeals.** Upon written request of a party or on its own motion, the commission may review an interlocutory order of the presiding officer. In determining whether to do so, the commission 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 commission 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.

**491—4.42(17A) Final decision.**

**4.42(1)** When the commission presides over the reception of evidence at the hearing, its decision is a final decision.

**4.42(2)** When the commission does not preside at the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of the commission without further proceedings unless there is an appeal to, or review on motion of, the commission within the time provided in rule 491—4.43(17A).

**4.42(3)** The commission has the authority to deny, suspend, or revoke any license applied for or issued by the commission or to fine a licensee or a holder of an occupational license.

**491—4.43(17A) Appeals and review.**

**4.43(1)** *Appeal by party.* Any adversely affected party may appeal a proposed decision to the commission within 10 days after issuance of the proposed decision.

**4.43(2)** *Review.* The commission may initiate review of a proposed decision on its own motion at any time within 30 days following the issuance of such a decision.

**4.43(3)** *Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with the commission. 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;
- e. The grounds for relief.

**4.43(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 commission may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

**4.43(5) Scheduling.** The commission shall issue a schedule for consideration of the appeal.

**4.43(6) Briefs and arguments.** Unless otherwise ordered, briefs, if any, must be filed within five days of meeting.

**491—4.44(17A) Applications for rehearing.**

**4.44(1) By whom filed.** Any party to a contested case proceeding may file an application for rehearing from a final order.

**4.44(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 agency decision on the existing record and whether, on the basis of the grounds enumerated in subrule 4.43(4), the applicant requests an opportunity to submit additional evidence.

**4.44(3) Time of filing.** The application shall be filed with the commission within 20 days after issuance of the final decision.

**4.44(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 commission shall serve copies on all parties.

**4.44(5) Disposition.** Any application for a rehearing shall be deemed denied unless the commission grants the application within 20 days after its filing.

**491—4.45(17A) Stays of commission actions.**

**4.45(1) When available.**

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

*b.* Any party to a contested case proceeding may petition the commission for a stay or other temporary remedies pending judicial review, of all or part of that proceeding. The petition for a stay shall state the reasons justifying a stay or other temporary remedy.

**4.45(2) When granted.** In determining whether to grant a stay, the presiding officer or administrator shall consider the factors listed in Iowa Code section 17A.19(5).

**4.45(3) Vacation.** A stay may be vacated by the issuing authority upon application by the commission or any other party. When a stay has been vacated, the commission or the commission's designee shall implement the original order or sanction which had been stayed. The commission or the commission's designee shall have full authority to determine how the original order or sanction is to be implemented.

**491—4.46(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.

**491—4.47(17A) Emergency adjudicative proceedings.**

**4.47(1) Necessary emergency action.** To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, the commission, gaming representatives, or stewards may issue

a written order in compliance with Iowa Code section 17A.18 to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the commission by emergency adjudicative order. Before the issuing of an emergency adjudicative order the commission shall consider factors including, but not limited to, the following:

- a. Whether there has been a sufficient factual investigation to ensure that the commission is proceeding on the basis of reliable information;
- b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;
- c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;
- d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and
- e. Whether the specific action contemplated by the commission is necessary to avoid the immediate danger.

**4.47(2) Issuance.**

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

- (1) Personal delivery;
- (2) Certified mail, return receipt requested, to the last address on file with the commission;
- (3) Certified mail to the last address on file with the commission;
- (4) First-class mail to the last address on file with the commission; or
- (5) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that commission orders be sent by fax and has provided a fax number for that purpose.

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

**4.47(3) Oral notice.** Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the commission shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

**4.47(4) Completion of proceedings.** Issuance of a written emergency adjudicative order shall include notification of the date on which commission proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further commission proceedings to a later date will be granted only in compelling circumstances upon application in writing.

**491—4.48(17A) Contested case hearings before the commission.** The commission may initiate a hearing upon its own motion, pursuant to any matter within its jurisdiction.

These rules are intended to implement Iowa Code chapters 17A, 99D and 99F.

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◊ Two or more ARCs



CHAPTER 5  
TRACK, GAMBLING STRUCTURE, AND EXCURSION GAMBLING BOAT  
LICENSEES' RESPONSIBILITIES

[Prior to 11/19/86, Racing Commission[693]]  
[Prior to 11/18/87, Racing and Gaming Division[195]]  
[Prior to 8/9/00, see also 491—Chs 20 and 25]

**491—5.1(99D,99F) In general.** For purposes of this chapter, the requirements placed upon an applicant shall become a requirement to the licensee once a license to race or operate a gaming facility has been granted. Every license is granted upon the condition that the license holder shall accept, observe, and enforce the rules and regulations of the commission. It is the affirmative responsibility and continuing duty of each officer, director, and employee of said license holder to comply with the requirements of the application and conditions of the license and to observe and enforce the rules. The holding of a license is a privilege. The burden of proving qualifications for the privilege to receive any license is on the licensee at all times. A licensee must accept all risks of adverse public notice or public opinion, embarrassment, criticism, or financial loss that may result from action with respect to a license. Licensees further covenant and agree to hold harmless and indemnify the Iowa racing and gaming commission from any claim arising from any action of the commission in connection with that license.

**491—5.2(99D,99F) Annual reports.** Licensees shall submit audits to the commission as required by Iowa Code sections 99D.20 and 99F.13. The audit of financial transactions and condition of licensee's operation shall include an internal control letter, documentation that the county board of supervisors selected the auditing firm, a balance sheet, and a profit-and-loss statement pertaining to the licensee's activities in the state, including a breakdown of expenditures and subsidies. If the licensee's fiscal year does not correspond to the calendar year, a supplemental schedule indicating financial activities on a calendar-year basis shall be included in the report. In the event of a license termination, change in business entity, or material change in ownership, the administrator may require the filing of an interim report, as of the date of occurrence of the event. The filing due date shall be the later of 30 calendar days after notification to the licensee or 30 calendar days after the date of the occurrence of the event, unless an extension is granted.

**5.2(1)** The annual audit report required by Iowa Code section 99D.20 shall include a schedule detailing the following information: number of performances; attendance; regulatory fee; total mutuel handle and taxes paid to state, city, county and gambler's treatment fund; unclaimed winnings; purses paid indicating sources; total breakage and disbursements; and the disbursements of 1 percent of exotic wagers on three or more racing animals.

**5.2(2)** The annual audit report required by Iowa Code section 99F.13 shall include:

- a. A schedule detailing a weekly breakdown of adjusted gross revenue; taxes paid to the state, city, county, county endowment fund, and gambler's treatment fund; and regulatory fees.
- b. A report on whether material weaknesses in internal accounting control exist.
- c. A report on whether the licensee has followed the system of internal accounting control approved by the administrator.

**491—5.3(99D,99F) Information.** The licensee shall submit all information specifically requested by the commission or commission representative.

**491—5.4(99D,99F) Uniform requirements.**

**5.4(1) Maintenance of premises and facilities.** Each licensee shall at all times maintain its premises and facilities so as to be neat and clean, well landscaped, painted and in good repair, handicapped accessible, with special consideration for the comfort and safety of patrons, employees, and other persons whose business requires their attendance.

**5.4(2) Facilities for commission.** Each licensee shall provide reasonable, adequately furnished office space, including utilities, direct long-distance access for voice and data lines, custodial services, and necessary office equipment, and, if applicable, work space on the boat for the exclusive use of the

commission employees and officials. The licensee shall also make available appropriate parking places for commission staff.

**5.4(3) Sanitary facilities for patrons.** Each licensee shall, on every day of operation, provide adequate and sanitary toilets and washrooms and furnish free drinking water for patrons and persons having business on the licensee's premises.

**5.4(4) First-aid room.** Each licensee shall equip and maintain adequate first-aid facilities and have in attendance, during live racing at racetracks and while excursion gaming boats are cruising, either a physician, a physician assistant, a registered nurse, a licensed practical nurse, a paramedic, or an emergency medical technician, all properly licensed according to requirements of the Iowa department of public health. During all other hours of operation, the licensee shall have, at a minimum, one employee trained in CPR, in first aid, and in the use of the automated external defibrillator (AED). Each licensee is required to have an AED at the licensee's facility.

**5.4(5) Security force.**

*a. Peace officer.* Each licensee shall ensure that a person who is a certified peace officer is present during all gaming hours, unless permission is otherwise granted by the administrator. A certified peace officer pursuant to this rule must be employed by a law enforcement agency and have police powers.

*b. Employ adequate security.* Each licensee shall employ sufficient security to remove from the licensed premises a person violating a provision of Iowa Code chapter 99D or 99F, commission rules, or orders; any person deemed to be undesirable by racing and gaming commission officials; or any person engaging in a fraudulent practice. Security shall also be provided in and about the premises to secure restricted areas including, but not limited to, the barn area, kennel area, paddock, and racing animal drug testing area.

*c. Incident reports.* The licensee shall be required to file a written report, within 72 hours, detailing any incident in which an employee or patron is detected violating a provision of Iowa Code chapter 99D or 99F, a commission rule or order, or internal controls; or is removed for reasons specified under paragraph 5.4(5) "b." In addition to the written report, the licensee shall provide immediate notification to the commission and DCI representatives on duty or, if representatives are not on duty, provide notification on each office's messaging system if the incident involved employee theft, criminal activity, Iowa Code chapter 99D or 99F violations, or gaming receipts.

*d. Ejection or exclusion.* A licensee may eject or exclude any person, licensed or unlicensed, from the premises or a part thereof of the licensee's facility, solely of the licensee's own volition and without any reason or excuse given, provided ejection or exclusion is not founded on constitutionally protected grounds such as race, creed, color, disability, or national origin.

Reports of all ejections or exclusions for any reason, other than voluntary exclusions, shall be made promptly to the commission representative and DCI and shall state the circumstances. The name of the person must be reported when the person is ejected or excluded for more than one gaming day.

The commission may exclude any person ejected by a licensee from any or all pari-mutuel facilities, gambling structures, or excursion gambling boats controlled by any licensee upon a finding that attendance of the person would be adverse to the public interest.

**5.4(6) Firearms possession within licensed facility.**

*a.* No patron or employee of the licensee, including the security department members, shall possess or be permitted to possess any pistol or firearm within a licensed facility without the express written approval of the administrator unless:

- (1) The person is a peace officer, on duty, acting in the peace officer's official capacity; or
- (2) The person is a peace officer possessing a valid peace officer permit to carry weapons who is employed by the licensee and who is authorized by the administrator to possess such pistol or firearm while acting on behalf of the licensee within that licensed facility.

*b.* Each licensee shall post in a conspicuous location at each entrance a sign that may be easily read stating, "Possession of any firearm within the licensed facility without the express written permission of the Iowa racing and gaming commission is prohibited".

**5.4(7) Video recording.** Licensees shall conduct continuous surveillance with the capability of video recording all gambling activities under Iowa administrative rules 661—Chapter 141, promulgated by the department of public safety.

*a.* “Gambling activities” means participating in or wagering on gambling games on the gaming floor; the movement, storage, and handling of uncounted gambling revenues; manual exchange of moneys for forms of wagering credit on the gaming floor; entrance of the public onto the gaming floor; and any other activity as determined by the commission administrator or administrator’s designee.

*b.* Commission and DCI representatives shall have unrestricted access to and use of, including independent access capabilities, both live and recorded views and images of the surveillance system.

*c.* A commission representative may allow a gambling game to be placed in operation pending approval under 661—Chapter 141.

*d.* A surveillance department shall develop a standard operating procedure manual, which shall include surveillance system maintenance and emergency plans. This manual shall be made available for inspection by the commission and DCI.

*e.* A facility may include capabilities within the surveillance system for video recording of other areas of a facility and grounds, provided that commission and DCI access is unrestricted.

**5.4(8) Commission approval of contracts and business arrangements.**

*a. Qualifying agreements.*

(1) All contracts and business arrangements entered into by a facility are subject to commission jurisdiction. Written and verbal contracts and business arrangements involving a related party or in which the term exceeds three years or the total value in a calendar year exceeds \$100,000 are agreements that qualify for submission to and approval by the commission. For the purpose of this subrule, a qualifying agreement shall be limited to:

1. Any obligation that expends, encumbers, or loans facility assets to anyone other than a not-for-profit entity or a unit of government for the payment of taxes or utilities.

2. Any disposal of facility assets or provision of goods and services at less than market value to anyone other than a not-for-profit entity or a unit of government.

3. A previously approved qualifying agreement, if consideration exceeds the approved amount in a calendar year by the greater of \$100,000 or 25 percent.

4. Any type of contract, regardless of value or term, where a third party provides electronic or mechanical access to cash or credit for a patron of the facility. The contract must contain a clause that provides for immediate notification and implementation when technology becomes available to allow a person to voluntarily bar the person’s access to receive cash or credit from such devices located on the licensed premises.

(2) A qualifying agreement must be submitted within 30 days of execution. Commission approval must be obtained prior to implementation, unless the qualifying agreement contains a written clause stating that the agreement is subject to commission approval. Qualifying agreements that are ongoing or open-ended need only be submitted on initiation, unless there is a material change in terms or noncompliance with 5.4(8)“b”(4).

*b. Purpose of review.* The commission conducts reviews to serve the public interest to ensure that:

(1) Gaming is free from criminal and corruptive elements.

(2) Gaming-related funds are directed to the lawful recipient.

(3) Gaming profits are not improperly distributed.

(4) Iowa resources, goods and services are utilized. Resources, goods, and services shall be considered to be made in Iowa, be provided by Iowans, or emanate from Iowa if one or more of the following apply:

1. Goods are manufactured in Iowa.

2. Goods are distributed through a distributor located in Iowa.

3. Goods are sold by a retailer/wholesaler located in Iowa.

4. Resources are produced or processed in Iowa.

5. Services are provided by a vendor whose headquarters/home office is in Iowa.

6. Goods, resources or services are provided by a vendor whose headquarters/home office is located outside Iowa, but which has a tangible business location (not simply a post office box) and does business in Iowa.

7. Services beyond selling are provided by employees who are based in Iowa.

A facility shall be considered to have utilized a substantial amount of Iowa resources, goods, services and entertainment in compliance with Iowa Code sections 99D.9 and 99F.7(4) as amended by 2004 Iowa Acts, House File 2302, section 11 and section 43, respectively, if the facility demonstrates to the satisfaction of the commission that preference was given to the extent allowed by law and other competitive factors.

*c. Related parties.* Other submittal requirements notwithstanding, agreements negotiated between the facility and a related party must be accompanied by an economic and qualitative justification. For the purpose of this subrule, related party shall mean any one of the following having any beneficial interest in any other party with whom the facility is seeking to negotiate an agreement:

(1) Any corporate officer or member of a facility's board of directors.

(2) Any owner with more than a 5 percent interest in a facility.

(3) A member of either the qualified sponsoring organization or the qualifying organization under Iowa Code section 99D.8 associated with a facility.

*d. Review criteria.* The commission shall approve all qualifying agreements that, in the commission's sole opinion, represent a normal business transaction and may impose conditions on an approval. The commission may deny approval of any agreement that, in the commission's sole opinion, represents a distribution of profits that differs from commission-approved ownership and beneficial interest. This subrule does not prohibit the commission from changing the approved ownership or beneficial interest.

**5.4(9) Checks.** The acceptance of personal checks shall be allowed; however, "counter" checks shall not be allowed. All checks accepted must be deposited in a bank by the close of the banking day following acceptance.

**5.4(10) Taxes and fees.**

*a. Annual taxes and fees.* All taxes and fees, whose collection by the state is authorized under Iowa Code chapters 99D and 99F, shall be accounted for on a fiscal-year basis, each fiscal year beginning on July 1 and ending on June 30.

*b. Submission of taxes and fees.* All moneys collected for and owed to the commission or state of Iowa under Iowa Code chapter 99F shall be accounted for and itemized on a weekly basis in a format approved by the commission. A week shall begin on Monday and end on Sunday. The reporting form must be received in the commission office by noon on Wednesday following the week's end. The moneys owed, according to the reporting form, must be received in the treasurer's office by 11 a.m. on the Thursday following the week's end. Additionally, each licensee shall file a monthly report indicating adjusted gross receipts received from gambling games, total number of admissions, and amount of regulatory fees paid. These reports shall be by calendar month and filed by noon on the first Wednesday following the end of the month unless the end of the month is a Monday or Tuesday, in which case the reports shall be filed by noon on the second Wednesday following the end of the month.

**5.4(11) Rate of tax revenue.** Each licensee shall prominently display at the licensee's gambling facility the annual percentage rate of state and local tax revenue collected by state and local government from the gambling facility annually.

**5.4(12) Problem gambling.**

*a.* The holder of a license to operate gambling games shall adopt and implement policies and procedures designed to:

(1) Identify problem gamblers; and

(2) Allow persons to be voluntarily excluded for life from all facilities. Each facility will disseminate information regarding the exclusion to all other facilities.

*b.* The policies and procedures shall be developed in cooperation with the gambling treatment program and shall include without limitation the following:

(1) Training of key employees to identify and report suspected problem gamblers;

- (2) Procedures for recording and tracking identified problem gamblers;
- (3) Policies designed to prevent serving alcohol to intoxicated casino patrons;
- (4) Steps for removing problem gamblers from the casino; and
- (5) Procedures for preventing reentry of problem gamblers.

c. A licensee shall include information on the availability of the gambling treatment program in a substantial number of its advertisements and printed materials.

**5.4(13) Records regarding ownership.**

a. In addition to other records and information required by these rules, each licensee shall maintain the following records regarding the equity structure and owners:

(1) If a corporation:

1. A certified copy of articles of incorporation and any amendments thereto.
2. A copy of bylaws and amendments thereto.
3. A current list of officers and directors.
4. Minutes of all meetings of stockholders and directors.
5. A current list of all stockholders and stockholders of affiliates, including their names and the names of beneficial shareholders.
6. A complete record of all transfers of stock.
7. A record of amounts paid to the corporation for issuance of stock and other capital contributions and dates thereof.
8. A record, by stockholder, of all dividends distributed by the corporation.
9. A record of all salaries, wages, and other remuneration (including perquisites), direct and indirect, paid by the corporation during the calendar or fiscal year to all officers, directors, and stockholders with an ownership interest at any time during the calendar or fiscal year, equal to or greater than 5 percent of the outstanding stock of any class of stock.

(2) If a partnership:

1. A schedule showing the amounts and dates of capital contributions, the names and addresses of the contributors, and percentage of interest in net assets, profits, and losses held by each.
2. A record of the withdrawals of partnership funds or assets.
3. A record of salaries, wages, and other remuneration (including perquisites), direct and indirect, paid to each partner during the calendar or fiscal year.
4. A copy of the partnership agreement and certificate of limited partnership, if applicable.

(3) If a sole proprietorship:

1. A schedule showing the name and address of the proprietor and the amount and date of the original investment.
2. A record of dates and amounts of subsequent additions to the original investment and withdrawals therefrom.
3. A record of salaries, wages, and other remuneration (including perquisites), direct or indirect, paid to the proprietor during the calendar or fiscal year.

b. All records regarding ownership shall be located in a place approved by the commission.

c. If the licensee is publicly held, upon the request of the administrator, the licensee shall submit to the commission one copy of any report required to be filed by such licensee or affiliates with the Securities and Exchange Commission or other domestic or foreign securities regulatory agency. If the licensee is privately held, upon the request of the administrator, the licensee shall submit financial, ownership, or other entity records for an affiliate.

**5.4(14) Retention, storage, and destruction of books, records, and documents.**

a. Except as otherwise provided, all original books, records, and documents pertaining to the licensee's operations shall be:

- (1) Prepared and maintained in a complete and accurate form.
- (2) Retained at a site approved by the administrator until audited.
- (3) Held immediately available for inspection by the commission during business hours of operations.

(4) Organized and indexed in such a manner as to provide immediate accessibility to the commission.

*b.* For the purpose of this subrule, “books, records, and documents” shall be defined as any book, record, or document pertaining to or prepared or generated by the licensee including, but not limited to, all forms, reports, accounting records, ledgers, subsidiary records, computer-generated data, internal audit records, correspondence, contracts, and personnel records, including information concerning a refusal to submit to drug testing and test results conducted pursuant to Iowa Code section 730.5.

*c.* All original books, records, and documents may be copied and stored on microfilm, microfiche, or other suitable media system approved by the administrator.

*d.* No original book, record, document, or suitable media copy may be destroyed by a licensee, for three years, without the prior approval of the administrator.

**5.4(15) *Remodeling.*** For any change to be made to the facility itself directly associated with racing or gaming or in the structure of the boat itself, the licensee must first submit plans to and receive the approval of the administrator.

**5.4(16) *Officers, agents, and employees.*** Licensees are accountable for the conduct of their officers, agents, and employees. The commission or commission representative reserves the right to impose penalties against the license holder or its officer, agent, employee, or both as the commission or commission representative determines appropriate. In addition, the licensee shall be responsible for the conduct of nonlicensed persons in nonpublic areas of the excursion gambling boat, gambling structure, or racetrack enclosure.

**5.4(17) *Designated gaming floor.*** The designated gaming floor is all areas occupied by or accessible from a gambling game, not otherwise obstructed by a wall, door, partition, barrier, or patron entrance. A patron entrance shall be identified by a sign visible to patrons approaching the gaming floor. The sign shall denote entrance to the gaming floor and specify that the gaming floor is not accessible to persons under the age of 21. A floor plan identifying the area shall be filed with the administrator for review and approval. Modification to a previously approved plan must be submitted for approval at least ten days prior to implementation.

**5.4(18) *State fire and building codes.***

*a.* Barges, as defined in 5.6(1) “c,” and other land-based gaming facilities and such facilities that undergo major renovation shall comply with the state building code created by Iowa Code chapter 103A, if there is no local building code in force in the local jurisdiction in which the facility is located. A licensee shall submit construction documents and plans to the state building code commissioner and receive approval prior to construction, if a facility is subject to the state building code.

*b.* If there is no enforcement of fire safety requirements by a local fire department, a licensee shall also submit construction plans and documents to the state fire marshal and receive approval prior to construction. The fire marshal may cause a facility subject to this paragraph to be inspected for compliance with fire marshal rules prior to operation of the facility and shall notify the commission and the licensee of the results of any such inspection.

*c.* If a proposed new or renovated facility is subject to both paragraphs “a” and “b,” a single submission of construction plans and documents to the building code commissioner, with a cover letter stating that review and approval are required with respect to both the state building code and rules of the fire marshal, is sufficient to meet both requirements. Facilities subject to both paragraphs “a” and “b” shall have received approval from both the fire marshal and the building code commissioner prior to construction.

**5.4(19) *Gambling setoff.*** Each licensee shall adopt and implement policies and procedures designed to set off winnings of patrons who have a valid lien established under Iowa Code chapters 99D and 99F.

**5.4(20) *Shelf application for debt.***

*a.* The commission may grant approval of a shelf application for a period not to exceed three years.

*b.* Licensees whose parent company has issued publicly traded debt or publicly traded securities may apply to the commission for a shelf approval of debt transactions if the parent company has:

(1) A class of securities listed on the New York Stock Exchange, the American Stock Exchange or the National Association of Securities Dealers Automatic Quotation System (NASDAQ) or has

stockholders' equity in the amount of \$15 million or more as reported in the parent company's most recent report on Form 10-K or Form 10-Q filed with the Securities and Exchange Commission (SEC) immediately preceding application; and

(2) Filed all reports required by the SEC.

c. The application shall be in writing and shall contain:

(1) Proof of qualification to make the application in accordance with the criteria of this subrule.

(2) A statement of the amount of debt sought to be approved and the intended use of potential proceeds.

(3) Duration sought for the shelf approval.

(4) Financing rate sought during shelf approval.

(5) Evidence of signature by authorized representative of the licensee under oath.

(6) Other supplemental documentation requested by the commission or commission representative following the initial submission.

d. Once an application is approved by the commission:

(1) The licensee shall notify the commission representative of all debt transactions within ten days of consummation, including subsequent amendments and modifications of debt transactions, and provide executed copies of the documents evidencing the transactions as may be required.

(2) The commission representative may rescind a shelf approval without prior written notice. The rescission shall be in writing and set forth the reasons for the rescission and shall remain in effect until lifted by the commission upon the satisfaction of any such terms and conditions as required by the commission.

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#### **491—5.5(99D) Pari-mutuel uniform requirements.**

**5.5(1) *Insect and rodent control.*** The licensee shall provide systematic and effective insect and rodent control, including control of flies, mosquitoes, fleas, and mice, to all areas of licensee's premises at all times during a race meeting.

**5.5(2) *Results boards, totalizators required.*** Each licensee shall provide and maintain computerized totalizators and electronic boards showing odds, results, and other racing information located in plain view of patrons.

**5.5(3) *Photo finish camera.*** A licensee shall provide two electronic photo finish devices with mirror image to photograph the finish of each race and record the time of each racing animal in at least hundredths of a second. The location and operation of the photo finish device must be approved by the commission before its first use in a race. The licensee shall promptly post a photograph, on a monitor, of each photo finish for win, place or show, or for fourth place in superfecta races, in an area accessible to the public. The licensee shall ensure that the photo finish devices are calibrated before the first day of each race meeting and at other times as required by the commission. On request by the commission, the licensee shall provide, without cost, a print of a photo finish to the commission. A photo finish of each race shall be maintained by the licensee for not less than six months after the end of the race meeting, or such other period as may be requested by the commission.

**5.5(4) *Electric timing device.*** Any electric timing device used by the licensee shall be approved by the commission.

**5.5(5) *Official scale.*** The licensee shall provide and maintain in good working order official scales or other approved weighing devices. The licensee shall provide to the stewards certification of the accuracy of the scales at the beginning of each race meeting or more frequently if requested by the stewards.

**5.5(6) *Lighting.*** Each licensee shall provide and maintain adequate illumination in the barn/kennel area, parking area, and racetrack area.

**5.5(7) *Fencing.*** The stable and kennel areas should be properly fenced as defined by the commission and admission permitted only in accord with rules of the commission.

**5.5(8) *Guest passes.*** The licensee shall develop a policy to be approved by the stewards for the issuance of guest passes for entrance to the kennel or stable area. The guest pass is not an occupational

license and does not permit the holder to work in any capacity or in any way confer the benefits of an occupational license to participate in racing. The license holder sponsoring or escorting the guest shall be responsible for the conduct of the guest pass holder.

**5.5(9) Stewards.** There shall be three stewards for each racing meet, two appointed by the commission and one nominated by the licensee for approval by the commission. The names of licensees' nominees for steward and biographical information describing the experience and qualifications of the nominees shall be submitted no later than 45 days before commencement of a race meeting. The commission may consider for appointment or approval a person who meets all of the following requirements. The person shall have:

- a. Engaged in pari-mutuel racing in a capacity and for a period satisfactory to the commission.
- b. Satisfactorily passed an optical examination within one year prior to approval as a steward evidencing corrected 20/20 vision and the ability to distinguish colors correctly.
- c. Satisfied the commission that income, other than salary as a steward, is independent of and unrelated to patronage of or employment by any occupational licensee under the supervision of the steward, so as to avoid the appearance of any conflict of interest or suggestion of preferential treatment of an occupational licensee.

**5.5(10) Purse information.** Each licensee shall provide to the commission at the close of each racing meet the following purse information:

- a. The identity of each person or entity to which purse money is paid by the licensee for purses won by racing animals at the facility. This report shall include the name, residential or business address and amount paid to that person or entity. The data should be assembled separately for Iowa and non-Iowa addressees, and aggregates should be presented in descending order of magnitude.
- b. The identity of each person or entity to which purse money is paid by the licensee for purses won by Iowa-bred animals at the facility. This report shall include the name, residential or business address and amount paid to that person or entity in supplemental funds for ownership of Iowa-bred animals. The data should be assembled separately for Iowa and non-Iowa addressees, and aggregates should be presented in descending order of magnitude.

**5.5(11) Designated wagering area.** The designated wagering area is a rectangular area within a minimum of five feet from the front and from either side of a stationary wagering window or self-service wagering device, not otherwise obstructed by a wall or other barrier. The facility shall either section off or clearly delineate the floor of the area and post a sign near the area, which is visible to patrons approaching the area, denotes the wagering area and specifies that the wagering area is not accessible to persons under the age of 21. The designation applies only when the wagering window or device is open to transact wagering. A floor plan identifying the area shall be filed with the administrator for review and approval. Modification to a previously approved plan must be submitted for approval at least ten days prior to implementation.

#### **491—5.6(99F) Excursion gambling boat uniform requirements.**

##### **5.6(1) Excursion gambling boat.**

- a. *Capacity.* The minimum passenger capacity necessary for an excursion gambling boat is 250.
- b. *Excursion boat.* A self-propelled, floating "vessel" as defined by the U.S. Coast Guard may contain more than one vessel. In order to be utilized for gaming purposes, the vessel containing the casino must either contain a permanent means of propulsion or have its means of propulsion contained in an attached vessel. In the event that the vessel containing the casino is propelled by a second vessel, the boat will be considered self-propelled only when the vessels are designed, constructed, and operated as a single unit.
- c. *Moored barge.* "Barge" means any stationary structure approved by the commission, where the entire gaming floor is located on or near a body of water as defined under Iowa Code section 99F.7, subsection 1, and which facility is subject to land-based building codes rather than maritime or Iowa department of natural resources inspection laws and regulations.

**5.6(2) Excursions.**

*a. Length.* The excursion season shall be from April 1 through October 31 of each calendar year. An excursion boat must operate at least one excursion during the excursion season to operate during the off-season, although a waiver may be granted by the commission in the first year of a boat's operation if construction of the boat was not completed in time for the boat to qualify. Excursions shall consist of a minimum of one hour in transit during the excursion season. The number of excursions per day is not limited. During the excursion season and the off-season, while the excursion gambling boat is docked, passengers may embark or disembark at any time during business hours pursuant to Iowa Code section 99F.4(17).

*b. Dockside completion of excursions.* If, during the excursion season, the captain determines that it would be unsafe to complete any portion of an excursion, or if mechanical problems prevent the completion of any portion of an excursion, the boat may be allowed to remain at the dock or, if the excursion is underway, return to the dock and conduct the gaming portion of the excursion while dockside, unless the captain determines that passenger safety is threatened.

*c. Notification.* If an excursion is not completed due to reasons specified in paragraph 5.6(2) "b," a commission representative shall be notified as soon as is practical.

**5.6(3) Drug testing of boat operators.** Captains, pilots, and physical operators of excursion gambling boats shall be drug tested, as permitted by Iowa Code section 730.5, on a continuous basis with no more than 60 days between tests. The testing shall be conducted by a laboratory certified by the United States Department of Health and Human Services or approved under the rules adopted by the Iowa department of public health. The facility shall report positive test results to a commission representative.

These rules are intended to implement Iowa Code chapters 99D and 99F.

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◇ Two or more ARCs

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CHAPTER 8  
WAGERING, SIMULCASTING AND ADVANCE DEPOSIT WAGERING

[Prior to 11/19/86, Racing Commission[693]]  
[Prior to 11/18/87, Racing and Gaming Division[195]]

**491—8.1(99D) Definitions.**

*“Account”* means an account approved by the commission for advance deposit wagering with a complete record of credits, wagers and debits established by a licensee account holder and managed by a licensee or ADWO.

*“Administrator”* means the administrator of the Iowa racing and gaming commission or the administrator’s designee.

*“Advance deposit wagering”* means a method of pari-mutuel wagering in which an individual may establish an account, deposit money into the account, and use the account balance to pay for pari-mutuel wagering.

*“Advance deposit wagering center”* means an actual location, the equipment, and the staff of a licensee, ADWO, or both involved in the management, servicing and operation of advance deposit wagering for the licensee.

*“Advance deposit wagering operator”* or *“ADWO”* means an advance deposit wagering operator licensed by the commission who has entered into an agreement with the licensee of the horse racetrack in Polk County and the Iowa Horsemen’s Benevolent and Protective Association to provide advance deposit wagering.

*“Authorized receiver”* means a receiver that conducts and operates a pari-mutuel wagering system on the results of contests being held or conducted and simulcast from the enclosures of one or more host facilities.

*“Betting interest”* means a number assigned to a single runner, an entry or a field for wagering purposes.

*“Board of stewards”* means a board established by the administrator to review conduct by pari-mutuel facilities and their employees that may constitute violations of the rules and statutes relating to pari-mutuel racing. The administrator may serve as a board of one.

*“Breakage”* means the odd cents by which the amount payable on each dollar wagered in a pari-mutuel pool exceeds a multiple of ten cents. “Breakage” is the net pool minus payoff.

*“Commission”* means the Iowa racing and gaming commission.

*“Commission representative”* means an employee of the commission designated to represent the commission in matters pertaining to the operation of the mutuel department. In the absence of a specifically appointed representative, a commission steward will perform the functions and duties of the commission representative.

*“Contest”* means a race on which wagers are placed.

*“Credits”* means all positive inflows of money to an account.

*“Dead heat”* means that two or more runners have tied at the finish line for the same position in the order of finish.

*“Debits”* means all negative outflow of money from an account.

*“Deposit”* means a payment of money into an account.

*“Double”* means a wager to select the winners of two consecutive races and is not a parlay and has no connection with or relation to any other pool conducted by the facility and shall not be construed as a “quinella double.”

*“Entry”* means two or more runners are coupled in a contest because of common ties and a wager on one of them shall be a wager on all of them.

*“Exacta”* (may also be known as “perfecta” or “correcta”) means a wager selecting the exact order of finish for first and second in that contest and is not a parlay and has no connection with or relation to any other pool conducted by the facility.

*“Facility”* means an entity licensed by the commission to conduct pari-mutuel wagering in Iowa.

“*Field*” means when the individual runners competing in a contest exceed the numbering capacity of the totalizator and all runners of the higher number shall be grouped together. A wager on one in the field shall be a wager on all. (No “fields” shall be allowed in greyhound racing.)

“*Guest facility*” means a facility which offers licensed pari-mutuel wagering on contests conducted by another facility (the host) in either the same state or another jurisdiction.

“*Host facility*” means the facility conducting a licensed pari-mutuel meeting from which authorized contests or entire performances are simulcast.

“*Interstate simulcasting*” means the telecast of live audio and visual signals of pari-mutuel racing sent to or received from a state outside the state of Iowa to an authorized racing or gaming facility for the purpose of wagering.

“*Intrastate simulcasting*” means the telecast of live audio and visual signals of pari-mutuel racing conducted on a licensed pari-mutuel track within Iowa sent to or received from an authorized pari-mutuel facility within Iowa for the purpose of pari-mutuel wagering.

“*Licensee*” means a horse racetrack located in Polk County operating under a license issued by the commission.

“*Licensee account holder*” means any individual at least 21 years of age who successfully completed an application and for whom the licensee or ADWO has opened an account. “Licensee account holder” does not include any corporation, partnership, limited liability company, trust, estate or other formal or nonformal entity.

“*Minus pool*” means when the total amount of money to be returned to the public exceeds what is in the pool because of the deduction of a commission and because of the rule stipulation that no mutuel tickets shall be paid at less than \$1.10 for each \$1.00 wagered.

“*Mutuel department*” means that area of a racetrack where wagers are made and winning tickets are cashed and where the totalizator is installed and any area used directly in the operation of pari-mutuel wagering.

“*Mutuel manager*” means an employee of the facility who manages the mutuel department.

“*Net pool*” means the amount remaining in each separate pari-mutuel pool after the takeout percentage, as provided for by Iowa Code section 99D.11, has been deducted.

“*Odds*” means the approximate payoffs per dollar based on win pool wagering only on each betting interest for finishing first without a dead heat with another betting interest.

“*Official*” means that the order of finish for the race is “official” and that payoff prices based upon the “official” order of finish shall be posted.

“*Order of finish*” means the finishing order of each runner from first place to last place in each race. For horse racing only, the order of finish may be changed by the stewards for a rule infraction prior to posting of the official order of finish.

“*Pari-mutuel pool*” means the total amount of money wagered on each separate pari-mutuel pool for payoff purposes.

“*Payoff*” means the amount distributed to holders of valid winning pari-mutuel tickets in each pool as determined by the official order of finish and includes the amount wagered and profit.

“*Pick (n)*” means a betting transaction in which a purchaser selects winner(s) of (x) number of contests designated by the facility during one racing card.

“*Pick three*” means a wager to select the winners of three consecutive races and is not a parlay and has no connection with or relation to any other pool conducted by the facility.

“*Place*” means a runner finishing second.

“*Place pick (n) pools*” means a wager to select the first- or second-place finisher in each of a designated number of contests.

“*Place pool*” means the total amount of money wagered on all betting interests in each race to finish first or second.

“*Post time*” means the scheduled starting time for a contest.

“*Proper identification*” means a form of identification accepted in the normal course of business to establish that the person making a transaction is a licensee account holder.

“*Quinella*” means a wager selecting two runners to finish first and second, regardless of the order of finish, and is not a parlay and has no connection with or relation to any other pool conducted by the facility.

“*Quinella double*” means a wager which consists of selecting the quinella in each of two designated contests and is an entirely separate pool from all other pools and has no connection with or relation to any other pool conducted by the facility.

“*Runner*” means each entrant in a contest, designated by a number as a betting interest.

“*Sales transaction data*” means the data between totalizator ticket-issuing machines and the totalizator central processing unit for the purpose of accepting wagers and generating, canceling and cashing pari-mutuel tickets and the financial information resulting from the processing of sales transaction data, such as handle.

“*Secure personal identification code*” means an alpha-numeric character code provided by a licensee account holder as a means by which the licensee or ADWO may verify a wager or account transaction as authorized by the licensee account holder.

“*Show*” means a runner finishing third.

“*Show pool*” means the total amount of money wagered on all betting interests in each contest to finish either first, second or third.

“*Source market fee*” or “*host fee*” means the part of a wager that is made on any race by a person who is a licensee account holder and that is returned to the licensee and the Iowa Horsemen’s Benevolent and Protective Association pursuant to the terms of a negotiated agreement as required by 491—8.6(99D).

“*Steward*” means a racing official appointed or approved by the commission to perform the supervisory and regulatory duties relating to pari-mutuel racing.

“*Superfecta*” means a wager selecting the exact order of finish for first, second, third, and fourth in that contest and is not a parlay and has no connection with or relation to any other pool conducted by the facility.

“*Totalizator*” means a machine for registering wagers and computing odds and payoffs based upon data supplied by each pari-mutuel ticket-issuing machine.

“*Trifecta*” means a wager selecting the exact order of finish for first, second, and third in that race and is not a parlay and has no connection with or relation to any other pool conducted by the facility.

“*Tri-superfecta*” means a wager selecting the exact order of finish for first, second and third in the first designated tri-super contest combined with selecting the exact order of finish for first, second, third and fourth in the second designated tri-super contest.

“*Twin quinella*” means a wager in which the bettor selects the first two finishers, regardless of order, in each of two designated contests. Each winning ticket for the twin quinella must be exchanged for a free ticket on the second twin quinella contest in order to remain eligible for the second-half twin quinella pool.

“*Twin superfecta*” means a wager in which the bettor selects the first four finishers, in their exact order, in each of two designated contests. Each winning ticket for the first twin superfecta contest must be exchanged for a free ticket on the second twin superfecta contest in order to remain eligible for the second-half twin superfecta pool.

“*Twin trifecta*” means a wager in which the bettor selects the three runners that will finish first, second, and third in the exact order as officially posted in each of the two designated twin trifecta races.

“*Underpayment*” means when the payoff to the public resulting from errors in calculating pools and errors occurring in the communication in payoffs results in less money returned to the public than is actually due.

“*Win*” means a runner finishing first.

“*Win pool*” means the total amount wagered on all betting interests in each contest to finish first.

“*Withdrawal*” means a payment of money from an account by the licensee or ADWO to the licensee account holder when properly requested by the licensee account holder.

**491—8.2(99D) General.**

**8.2(1) Wagering.** Each facility shall conduct wagering in accordance with applicable laws and these rules. Such wagering shall employ a pari-mutuel system approved by the commission. The totalizator shall be tested prior to and during the meeting as required by the commission. Annually, the facility shall have an external audit, approved by the administrator, of the totalizator system. All systems of wagering other than pari-mutuel, such as bookmaking and auction-pool selling, are prohibited, and any person attempting to participate in prohibited wagering shall be ejected or excluded from facility grounds.

**8.2(2) Records.** The facility shall maintain records of all wagering so the commission may review such records for any contest including the opening line, subsequent odds fluctuation, the amount and at which window wagers were placed on any betting interest and such other information as may be required. Such wagering records shall be retained by each facility and safeguarded for a period of time specified by the commission. The commission may require that certain of these records be made available to the wagering public at the completion of each contest.

The facility shall provide the commission with a list of the licensed individuals afforded access to pari-mutuel records and equipment at the wagering facility.

**8.2(3) Pari-mutuel tickets.** A pari-mutuel ticket is evidence of a contribution to the pari-mutuel pool operated by the facility and is evidence of the obligation of the facility to pay to the holder thereof such portion of the distributable amount of the pari-mutuel pool as is represented by such valid pari-mutuel ticket. The facility shall cash all valid winning tickets when such are presented for payment during the course of the meeting where sold and for a specified period after the last day of the meeting as provided in paragraph 8.2(4)“g.”

*a.* To be deemed a valid pari-mutuel ticket, such ticket shall have been issued by a pari-mutuel ticket machine operated by the facility and recorded as a ticket entitled to a share of the pari-mutuel pool and contain imprinted information as to:

- (1) The name of the facility operating the meeting.
- (2) A unique identifying number or code.
- (3) Identification of the terminal at which the ticket was issued.
- (4) A designation of the performance for which the wagering transaction was issued.
- (5) The contest number for which the pool is conducted.
- (6) The type(s) of wagers represented.
- (7) The number(s) representing the betting interests for which the wager is recorded.
- (8) The amount(s) of the contributions to the pari-mutuel pool or pools for which the ticket is evidence.

*b.* No pari-mutuel ticket recorded or reported as previously paid, canceled, or nonexistent shall be deemed a valid pari-mutuel ticket by the facility. The facility may withhold payment and refuse to cash any pari-mutuel ticket deemed not valid, except as provided in paragraph 8.2(4)“e.”

**8.2(4) Pari-mutuel ticket sales.**

*a.* Pari-mutuel tickets shall not be sold by anyone other than a facility licensed to conduct pari-mutuel wagering.

*b.* No pari-mutuel ticket may be sold on a contest for which wagering has already been closed, and no facility shall be responsible for ticket sales entered into but not completed by issuance of a ticket before the totalizator is closed for wagering on such contest.

*c.* Claims pertaining to a mistake on an issued or unissued ticket must be made by the bettor prior to leaving the seller’s window.

*d.* Payment on winning pari-mutuel wagers shall be made on the basis of the order of finish as purposely posted and declared “official.” Any subsequent change in the order of finish or award of purse money(s) as may result from a subsequent ruling by the stewards or administrator shall in no way affect the pari-mutuel payoff. If an error in the posted order of finish or payoff figures is discovered, the official order of finish or payoff prices may be corrected and an announcement concerning the change shall be made to the public.

*e.* The facility shall not satisfy claims on lost, mutilated, or altered pari-mutuel tickets without authorization from the administrator.

*f.* The facility shall have no obligation to enter a wager into a betting pool if unable to do so due to equipment failure.

*g.* Payment on valid pari-mutuel tickets shall be made only upon presentation and surrender to the facility where the wager was made within 60 days following the close of the meeting during which the wager was made. Failure to present any such ticket within 60 days shall constitute a waiver of the right to receive payment.

**8.2(5) *Advance performance wagering.*** No facility shall permit wagering to begin more than one hour before scheduled post time of the first contest of a performance unless it has first obtained the authorization of the administrator.

**8.2(6) *Claims for payment from pari-mutuel pool.*** At a designated location, a written, verified claim for payment from a pari-mutuel pool shall be accepted by the facility in any case where the facility has withheld payment or has refused to cash a pari-mutuel wager. The claim shall be made on such form as approved by the administrator, and the claimant shall make such claim under penalty of perjury. The original of such claim shall be forwarded to the administrator within 48 hours.

*a.* In the case of a claim made for payment of a mutilated pari-mutuel ticket which does not contain the total imprinted elements required in paragraph 8.2(3) “*a*” of these general provisions, the facility shall make a recommendation to accompany the claim forwarded to the administrator as to whether or not the mutilated ticket has sufficient elements to be positively identified as a winning ticket.

*b.* In the case of a claim made for payment on a pari-mutuel wager, the administrator shall adjudicate the claim and may order payment thereon from the pari-mutuel pool or by the facility, may deny the claim, or may make such other order as the administrator may deem proper.

**8.2(7) *Payment for errors.*** If an error occurs in the payment amounts for pari-mutuel wagers which are cashed or entitled to be cashed, and as a result of such error the pari-mutuel pool involved in the error is not correctly distributed among winning ticket holders, the following shall apply:

*a.* Verification is required to show that the amount of the commission, the amount in breakage, and the amount in payoffs are equal to the total gross pool. If the amount of the pool is more than the amount used to calculate the payoff, the underpayment shall be added to the corresponding pool of the next contest. If an underpayment is discovered after the close of the meeting, the underpayment shall be held in an interest-bearing account approved by the administrator until being added, together with accrued interest, to the corresponding pool of the next meet.

*b.* Any claim not filed with the facility within 30 days, inclusive of the date on which the underpayment was publicly announced, shall be deemed waived, and the facility shall have no further liability therefor.

*c.* In the event the error results in an overpayment to winning wagers, the facility shall be responsible for such payment.

**8.2(8) *Betting explanation.*** A summary explanation of pari-mutuel wagering and each type of betting pool offered shall be published in the program for every wagering performance. The rules of racing relative to each type of pari-mutuel pool offered must be prominently displayed on facility grounds and available upon request through facility representatives.

**8.2(9) *Display of betting information.***

*a.* Approximate odds for win pool betting shall be posted on display devices within view of the wagering public and updated at intervals of not more than 90 seconds.

*b.* The probable payoff or amounts wagered, in total and on each betting interest, for other pools may be displayed to the wagering public at intervals and in a manner approved by the administrator.

*c.* Official results and payoffs must be displayed upon each contest being declared official.

**8.2(10) *Canceled contests.*** If a contest is canceled or declared “no contest,” refunds shall be granted on valid wagers in accordance with these rules.

**8.2(11) *Refunds.***

*a.* Notwithstanding other provisions of these rules, refunds of the entire pool shall be made on:

(1) Win pools, exacta pools, and first-half double pools offered in contests in which the number of betting interests has been reduced to fewer than two.

(2) Place pools, quinella pools, trifecta pools, first-half quinella double pools, first-half twin quinella pools, first-half twin trifecta pools, and first-half tri-superfecta pools offered in contests in which the number of betting interests has been reduced to fewer than three.

(3) Show pools, superfecta pools, and first-half twin superfecta pools offered in contests in which the number of betting interests has been reduced to fewer than four.

b. Authorized refunds shall be paid upon presentation and surrender of the affected pari-mutuel ticket.

**8.2(12)** *Coupled entries and mutuel fields.*

a. Contestants coupled in wagering as a coupled entry or mutuel field shall be considered part of a single betting interest for the purpose of price calculations and distribution of pools. Should any contestant in a coupled entry or mutuel field be officially withdrawn or scratched, the remaining contestants in that coupled entry or mutuel field shall remain valid betting interests and no refunds will be granted. If all contestants within a coupled entry or mutuel field are scratched, then tickets on such betting interests shall be refunded, notwithstanding other provisions of these rules.

b. For the purpose of price calculations only, coupled entries and mutuel fields shall be calculated as a single finisher, using the finishing position of the leading contestant in that coupled entry or mutuel field to determine order of placing. This rule shall apply to all circumstances, including situations involving a dead heat, except as otherwise provided by these rules.

**8.2(13)** *Pools dependent upon betting interests.* Unless the administrator otherwise provides, at the time the pools are opened for wagering, the facility:

a. May offer win, place, and show wagering on all contests with six or more betting interests.

b. May prohibit show wagering on any contest with five or fewer betting interests scheduled to start.

c. May prohibit place wagering on any contest with four or fewer betting interests scheduled to start.

d. May prohibit quinella wagering on any contest with three or fewer betting interests scheduled to start.

e. May prohibit quinella double wagering on any contests with three or fewer betting interests scheduled to start.

f. May prohibit exacta wagering on any contest with three or fewer betting interests scheduled to start.

g. Shall prohibit trifecta wagering on any contest with five or fewer betting interests scheduled to start, or as provided in (1) below:

(1) Cancel trifecta. The stewards have the authority to cancel trifecta wagering at any time they determine an irregular pattern of wagering or determine that the conduct of the race would not be in the interest of the regulation of the pari-mutuel wagering industry or in the public confidence in racing. The stewards may approve smaller fields for trifecta wagering if extraneous circumstances are shown by the facility.

(2) Reserved.

h. May prohibit superfecta wagering on any contest with seven or fewer betting interests scheduled to start.

i. May prohibit twin quinella wagering on any contests with three or fewer betting interests scheduled to start.

j. May prohibit twin trifecta wagering on any contests with seven or fewer betting interests scheduled to start, except as provided in subparagraph 8.2(13)“g”(1).

k. May prohibit tri-superfecta wagering on any contests with seven or fewer betting interests scheduled to start.

l. May prohibit twin superfecta wagering on any contests with seven or fewer betting interests scheduled to start.

**8.2(14)** *Prior approval required for betting pools.*

a. A facility that desires to offer new forms of wagering must apply in writing to the administrator and receive written approval prior to implementing the new betting pool.

*b.* The facility may suspend previously approved forms of wagering with the prior approval of the administrator. Any carryover shall be held until the suspended form of wagering is reinstated. A facility may request approval of a form of wagering or separate wagering pool for specific requirements.

**8.2(15)** *Closing of wagering in a contest.*

*a.* All wagering shall stop and all pari-mutuel machines shall be locked at post time or at the actual start of the races. Machines shall be automatically locked, unless unusual circumstances dictate that the stewards act differently.

*b.* The facility shall maintain, in good order, a system approved by the administrator for closing wagering.

**8.2(16)** *Complaints pertaining to pari-mutuel operations.*

*a.* When a patron makes a complaint to a facility regarding the mutuel department, the facility shall immediately issue a complaint report, setting out:

- (1) The name of the complainant;
- (2) The nature of the complaint;
- (3) The name of the persons, if any, against whom the complaint was made;
- (4) The date of the complaint;
- (5) The action taken or proposed to be taken, if any, by the facility.

*b.* The facility shall submit every complaint report to the commission within five days after the complaint was made.

**8.2(17)** *Facility/vendor employees.* All facility/vendor employees shall report immediately to the administrator any known irregularities or wrongdoings by any person involving pari-mutuel wagering and shall cooperate in subsequent investigations.

**8.2(18)** *Unrestricted access.* The facility shall permit the commission unrestricted access at all times to its facilities and equipment and to all books, ledgers, accounts, documents and records of the facility that relate to pari-mutuel wagering.

**8.2(19)** *Totalizator breakdown.* In the event of irreparable breakdown of the totalizator during the wagering on a race, the wagering on that race shall be declared closed and the payoff shall be computed on the sums wagered in each pool up to the time of the breakdown.

**8.2(20)** *Minimum wager and payoff.* The minimum wager to be accepted by any licensed facility for win, place and show wagering shall be \$2. The minimum payoff on a \$2 wager shall be \$2.20. For all other wagers, the minimum wager to be accepted by any licensed facility shall be \$1. The minimum payoff for a \$1 wager shall be \$1.10. Any deviation from these minimums must be approved by the administrator. In cases where a minus pool occurs, the facility is responsible for the payment of the minimum payoff and no breakage shall be incurred from that pari-mutuel pool.

**8.2(21)** *Minors prohibited from wagering.* No minor shall be permitted by any licensed facility to purchase or cash a pari-mutuel ticket.

**8.2(22)** *Emergency situations.* In the event of an emergency in connection with the mutuel department not covered in these rules, the pari-mutuel manager representing the facility shall report the problem to the stewards, and the stewards shall render a full report to the administrator or administrator's designee within 48 hours.

**8.2(23)** *Commission mutuel supervisor.* The commission may employ a mutuel supervisor with accounting experience to serve as the commission's designated representative at each race meeting as provided in Iowa Code section 99D.19. In the absence of a specifically appointed commission mutuel supervisor, the board of stewards or simulcast steward will perform the functions and duties of the commission.

[ARC 0734C, IAB 5/15/13, effective 6/19/13]

**491—8.3(99D) Approval of pari-mutuel wagers.**

**8.3(1)** *Pools permitted.* All pari-mutuel wagering pools approved by the commission shall be separately and independently calculated and distributed. Takeout shall be deducted from each gross pool as stipulated by Iowa Code section 99D.11. The remainder of the moneys in the pool shall constitute the net pool for distribution as payoff on winning wagers.

**8.3(2) *Pari-mutuel wagering submissions.*** Prior to conducting a new pari-mutuel wager, a facility shall submit proposals for the wager including, but not limited to, the wager type, calculation of payoff, refunds and distribution of pools. The wager submission, or requests for modification to an approved wager, shall be in writing and approved by the administrator or an administrator's designee prior to implementation.

**8.3(3) *Public notice.*** The public shall have access to the wagering rules and the calculation of payoffs and distribution of pools which are approved by the commission. Signage shall be conspicuously posted in the wagering area to direct patrons to the wagering area where this information can be viewed.

[ARC 0734C, IAB 5/15/13, effective 6/19/13]

#### **491—8.4(99D) Simulcast wagering.**

##### **8.4(1) *General.***

*a. Rules.* All simulcasting must be transmitted live, and all wagering on simulcasting shall be made in accordance with the commission rules on pari-mutuel wagering. Commission rules in effect during live racing shall remain in effect during simulcasting where applicable.

*b. Transmission.* The method used to transmit sales transaction and data including, but not limited to, the odds, will pay, race results, and payoff prices must be approved by the commission, based upon the determination that provisions to secure the system and transmission are satisfactory.

*c. Communication.* A communication system between the host track and the receiving facility must be provided which will allow the totalizator operator and the commission representatives at the host track to communicate with the facility receiving the signal. The facility is responsible during the racing program's operating hours for reporting any problems or delays to the public.

##### *d. Approval.*

(1) All simulcasting, both interstate and intrastate, must be preapproved by the commission or commission representative. Each facility conducting simulcasting shall submit an annual written simulcast proposal to the commission with the application for license renewal required by 491—Chapter 1.

(2) The commission representative, upon written request, may grant modifications to the annual simulcast proposal. The commission representative may approve or disapprove simulcast requests at the representative's discretion. Factors that may be considered include, but are not limited to, economic conditions of a facility, impact on other facilities, impact on the Iowa breeding industry, other gambling in the state, and any other considerations the commission representative deems appropriate.

(3) Once simulcast authority has been granted by the commission or commission representative, it shall be the affirmative responsibility of the facility granted simulcast authority to obtain all necessary permission from other states and tracks to simulcast the pari-mutuel races. In addition, the burden of adhering to state and federal laws concerning simulcasting rests on the facility at all times.

##### **8.4(2) *Simulcast host.***

*a.* Every host facility, if requested, may contract with an authorized receiver for the purpose of providing authorized users its simulcast. All contracts governing participation in interstate or intrastate pools shall be submitted to the commission representative for prior approval. Contracts shall be of such content and in such format as required by the commission representative.

*b.* A host facility is responsible for the content of the simulcast and shall use all reasonable effort to present a simulcast which offers the viewers an exemplary depiction of each performance.

*c.* Unless otherwise permitted by the commission representative, every simulcast will contain in its video content a digital display of actual time of day, the name of the host facility from which the simulcast originates, the number of the contest being displayed, and any other relevant information available to patrons at the host facility.

*d.* The host facility shall maintain such security controls, including encryption over its uplink and communications systems, as directed or approved by the commission or commission representative.

*e.* Financial reports shall be submitted daily or as otherwise directed by the commission representative. Reports shall be of such content and in such format as required by the commission representative.

**8.4(3) Authorized receiver.**

a. An authorized receiver shall provide:

(1) Adequate transmitting and receiving equipment of acceptable broadcast quality which shall not interfere with the closed circuit TV system of the host facility for providing any host facility patron information.

(2) Pari-mutuel terminals, pari-mutuel odds displays, modems and switching units enabling pari-mutuel data transmissions, and data communications between the host and guest facilities.

(3) A voice communication system between each guest facility and the host facility providing timely voice contact among the commission representative, placing judges, and mutuel departments.

b. The guest facility and all authorized receivers shall conduct pari-mutuel wagering pursuant to the applicable commission rules.

c. Not less than 30 minutes prior to the commencement of transmission of the performance of pari-mutuel contests, the guest facility shall initiate a test program of its transmitter, encryption and decoding, and data communication to ensure proper operation of the system.

d. The guest facility shall, in conjunction with the host facility(ies) for which it operates pari-mutuel wagering, provide the commission representative with a certified report of its pari-mutuel operations as directed by the commission representative.

e. Every authorized receiver shall file with the commission an annual report of its simulcast operations and an audited financial statement.

f. The mutuel manager shall notify the commission representative when the transfer of pools, pool totals, or calculations are in question, or if partial or total cancellations occur, and shall suggest alternatives for continued operation. Should loss of video signal occur, wagering may continue with approval from the commission representative.

[ARC 0734C, IAB 5/15/13, effective 6/19/13]

**491—8.5(99D) Interstate common-pool wagering.****8.5(1) General.**

a. All contracts governing participation in interstate common pools shall be submitted to the commission representative for prior approval. Financial reports shall be submitted daily or as otherwise directed by the commission representative. Contracts and reports shall be of such content and in such format as required by the commission representative.

b. Individual wagering transactions are made at the point of sale in the state where placed. Pari-mutuel pools are combined for computing odds and calculating payoffs but will be held separate for auditing and all other purposes.

c. Any surcharges or withholdings in addition to the takeout shall be applied only in the jurisdiction otherwise imposing such surcharges or withholdings.

d. In determining whether to approve an interstate common pool which does not include the host facility or which includes contests from more than one facility, the commission representative shall consider and may approve use of a bet type which is not utilized at the host facility, application of a takeout rate not in effect at the host facility, or other factors which are presented to the commission representative.

e. The content and format of the visual display of racing and wagering information at facilities in other jurisdictions where wagering is permitted in the interstate common pool need not be identical to the similar information permitted or required to be displayed under these rules.

**8.5(2) Guest state participation in interstate common pools.**

a. With the prior approval of the commission representative, pari-mutuel wagering pools may be combined with corresponding wagering pools in the host state or with corresponding pools established by one or more other jurisdictions.

b. The commission representative may permit adjustment of the takeout from the pari-mutuel pool so that the takeout rate in this jurisdiction is identical to that of the host facility or identical to that of other jurisdictions participating in a merged pool.

c. When takeout rates in the merged pools are not identical, the net-price calculation shall be the method by which the differing takeout rates are applied.

d. Rules established in the state of the host facility designated for a pari-mutuel pool shall apply.

e. The commission representative shall approve agreements made between the facility and other participants in interstate common pools governing the distribution of breakage between the jurisdictions.

f. If, for any reason, it becomes impossible to successfully merge the bets placed into the interstate common pool, the facility shall make payoffs in accordance with payoff prices that would have been in effect if prices for the pool of bets were calculated without regard to wagers placed elsewhere, except that, with the permission of the commission representative, the facility may alternatively determine either to pay winning tickets at the payoff prices at the host facility or to declare such accepted bets void and make refunds in accordance with the applicable rules.

**8.5(3) *Host state participation in merged pools.***

a. With the prior approval of the commission representative, a facility licensed to conduct pari-mutuel wagering may determine that one or more of its contests be utilized for pari-mutuel wagering at guest facilities in other states and may also determine that pari-mutuel pools in guest states be combined with corresponding wagering pools established by it as the host facility or comparable wagering pools established by two or more states.

b. When takeout rates in the merged pool are identical, the net-price calculation shall be the method by which the differing takeout rates are applied.

c. Rules of racing established for races held in this state shall also apply to interstate common pools unless the commission representative specifically determines otherwise.

d. The commission representative shall approve agreements made between the facility and other participants in interstate common pools governing the distribution of breakage between the jurisdictions.

e. Any contract for interstate common pools entered into by the facility shall contain a provision to the effect that if, for any reason, it becomes impossible to successfully merge the bets placed in another state into the interstate common pool formed by the facility or if, for any reason, the commission representative or facility determines that attempting to effect transfer of pool data from the guest state may endanger the facility's wagering pool, the facility shall have no liability for any measure taken which may result in the guest's wagers not being accepted into the pool.

**8.5(4) *Takeout rates in interstate common pools.***

a. With the prior approval of the commission representative, a facility wishing to participate in an interstate common pool may change its takeout rate so as to achieve a common takeout rate with all other participants in the interstate common pool.

b. A facility wishing to participate in an interstate common pool may request that the commission representative approve a methodology whereby host facility and guest facility states with different takeout rates for corresponding pari-mutuel pools may effectively and equitably combine wagers from the different states into an interstate common pool.

[ARC 0734C, IAB 5/15/13, effective 6/19/13]

**491—8.6(99D) Advance deposit wagering.**

**8.6(1) *Authorization to conduct advance deposit wagering.***

a. A licensee may request authorization from the commission to conduct advance deposit wagering pursuant to Iowa Code section 99D.11(6) "c" and these rules. As part of the request, the licensee shall submit a detailed plan of how its advance deposit wagering system would operate. The commission may require changes in a proposed plan of operations as a condition of granting a request. No subsequent changes in the system's operation may occur unless ordered by the commission or until approval is obtained from the commission after it receives a written request.

b. The commission may conduct investigations or inspections or request additional information from the licensee as the commission deems appropriate in determining whether to allow the licensee to conduct advance deposit wagering.

c. The licensee shall establish and manage an advance deposit wagering center.

*d.* The commission may issue an ADWO license to an entity that enters into an agreement with the commission, the licensee, and the Iowa Horsemen's Benevolent and Protective Association. The terms of any ADWO's license shall include but not be limited to:

(1) Any source market fees and host fees to be paid on any races subject to advance deposit wagering.

(2) An annual ADWO license fee in an amount to be determined by the commission.

(3) Completion of all necessary background investigations.

(4) Acceptance of wagers on live races conducted at the horse racetrack in Polk County from all of its licensee account holders.

(5) A bond or irrevocable letter of credit on behalf of the ADWO to be determined by the commission.

(6) A detailed description and certification of systems and procedures used by the ADWO to validate the identity and age of licensee account holders and to validate the legality of wagers accepted.

(7) Certification of prompt commission access to all records relating to licensee account holder identity and age in hard-copy or standard electronic format acceptable to the commission.

(8) Certification of secure retention of all records related to advance deposit wagering and accounts for a period of not less than three years or such longer period as specified by the commission.

(9) Utilization and communication of pari-mutuel wagers to a pari-mutuel system meeting all requirements for pari-mutuel systems employed by licensed racing facilities in Iowa.

*e.* Commission access to and use of information concerning advance deposit wager transactions and licensee account holders shall be considered proprietary, and such information shall not be disclosed publicly except as may be required pursuant to statute or court order or except as part of the official record of any proceeding before the commission. This requirement shall not prevent the sharing of this information with other pari-mutuel regulatory authorities or law enforcement agencies for investigative purposes.

*f.* For each advance deposit wager made for an account by telephone, the licensee or ADWO shall make a voice recording of the entire transaction and shall not accept any such wager if the voice-recording system is inoperable. Voice recordings shall be retained for not less than six months and shall be made available to the commission for investigative purposes.

**8.6(2) *Establishing an account.***

*a.* A person must have an established account in order to place advance deposit wagers. An account may be established in person at the licensee's facility or with the ADWO by mail or electronic means. For establishing an account, the application must be signed or otherwise authorized in a manner acceptable to the commission and shall include the applicant's full legal name, principal residence address, telephone number, and date of birth and any other information required by the commission.

*b.* Each application submitted will be subject to electronic verification with respect to the applicant's name, principal residence address and date of birth by either a national, independent individual reference service company or by means of a technology which meets or exceeds the reliability, security, accuracy, privacy and timeliness provided by individual reference service companies. An applicant's social security number may be necessary for completion of the verification process and for tax-reporting purposes. If there is a discrepancy between the application submitted and the information provided by the electronic verification or if no information on the applicant is available from such electronic verification, another individual reference service may be accessed or another technology meeting the requirements described above may be used to verify the information provided. If these measures prove unsatisfactory, then the applicant will be contacted and given instructions as to how to resolve the matter.

*c.* The identity of a licensee account holder must be verified via electronic means or copies of other documents before the licensee account holder may place an advance deposit wager.

*d.* Each account shall have a unique identifying account number. The identifying account number may be changed at any time by the licensee or ADWO provided that the licensee or ADWO informs the licensee account holder in writing prior to the change.

*e.* The applicant shall provide the licensee or ADWO with an alpha-numeric code to be used as a secure personal identification code when the licensee account holder is placing an advance deposit wager. The licensee account holder has the right to change this code at any time.

*f.* The licensee account holder shall receive at the time the account is approved a unique account identification number; a copy of the advance deposit wagering rules and such other information and material pertinent to the operation of the account; and such other information as the licensee, ADWO or commission may deem appropriate.

*g.* The account is nontransferable.

*h.* The licensee or ADWO may close or refuse to open an account for what it deems good and sufficient reason and shall order an account closed if it is determined that information used to open an account was false or that the account has been used in violation of these rules or the licensee's or ADWO's terms and conditions.

**8.6(3) Operation of an account.** The ADWO shall submit operating procedures with respect to licensee account holder accounts for commission approval.

[ARC 9897B, IAB 12/14/11, effective 11/15/11; ARC 9987B, IAB 2/8/12, effective 3/14/12; ARC 0734C, IAB 5/15/13, effective 6/19/13]

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CHAPTER 9

HARNESS RACING

[Prior to 11/9/86, Racing Commission[693]]

[Prior to 11/18/87, Racing and Gaming Division[195]]

Rescinded **ARC 0734C**, IAB 5/15/13, effective 6/19/13



CHAPTER 10  
THOROUGHBRED AND QUARTER HORSE RACING

**491—10.1(99D) Terms defined.** As used in the rules, unless the context otherwise requires, the following definitions apply:

“*Age*” means the age of a horse reckoned from the first day of January of the year of foaling.

“*Allowance race*” means an overnight race for which eligibility and weight to be carried are determined according to specified conditions that include age, sex, earnings, and number of wins.

“*Also eligible*” means:

1. A number of eligible horses, properly entered, which were not drawn for inclusion in a race but which become eligible according to preference or lot when an entry is scratched prior to the scratch time deadline; or

2. The next preferred nonqualifier for the finals or consolation from a set of elimination trials that will become eligible in the event a finalist is scratched by the stewards for a rule violation or is otherwise eligible if written race conditions permit.

“*Appeal*” means a request for the commission or its designee to investigate, consider, and review any decisions or rulings of stewards.

“*Arrears*” means all moneys owed by a licensee, including subscriptions, jockey fees, forfeitures, and any default incident to these rules.

“*Authorized agent*” means a person licensed by the commission and appointed by a written instrument, signed and acknowledged before a notary public by the owner on whose behalf the agent will act.

“*Bleeder*” means a horse that hemorrhages from within the respiratory tract during a race, within one and one-half hours posttrace, during exercise or within one and one-half hours of exercise.

“*Bleeder list*” means a tabulation of all bleeders to be maintained by the commission.

“*Chemist*” means any official racing chemist designated by the commission.

“*Claiming race*” means a race in which any horse starting may be claimed (purchased for a designated amount) in conformance with the rules. (See also waived claiming rule in paragraph 10.6(18)“k.”)

“*Commission*” means the racing and gaming commission.

“*Conditions*” means qualifications that determine a horse’s eligibility to be entered in a race.

“*Contest*” means a competitive racing event on which pari-mutuel wagering is conducted.

“*Coupled entry*” means two or more contestants in a contest that are treated as a single betting interest for pari-mutuel wagering purposes. (See also “Entry.”)

“*Day*” means a 24-hour period ending at midnight.

“*Dead heat*” means when the noses of two or more horses reach the finish line of a race at the same time.

“*Declaration*” means the act of withdrawing an entered horse from a race prior to the closing of entries.

“*Detention barn*” means the barn designated for the collection from horses of test samples under the supervision of the commission veterinarian; also the barn assigned by the commission to a horse on the bleeder list, for occupancy as a prerequisite for receiving bleeder medication.

“*Entry*” means a horse made eligible to run in a race; or two or more horses, entered in the same race, which have common ties of ownership, lease, or training. (See also “Coupled entry.”)

“*Facility*” means an entity licensed by the commission to conduct pari-mutuel wagering or gaming operations in Iowa.

“*Facility premises*” means all real property utilized by the facility in the conduct of its race meeting, including the racetrack, grandstand, concession stands, offices, barns, stable area, employee housing facilities, parking lots, and any other areas under the jurisdiction of the commission.

“*Field or mutuel field*” means a group of two or more horses upon which a single bet may be placed. A mutuel field is required when the number of horses starting in a race exceeds the capacity of the track

totalizator. The highest numbered horse within the totalizator capacity and all the higher-numbered horses following are then grouped together in the mutuel field.

*"Foreign substances"* means all substances except those that exist naturally in the untreated horse at normal physiological concentration.

*"Forfeit"* means money due from a licensee because of an error, fault, neglect of duty, breach of contract, or penalty imposed by the stewards or the commission.

*"Handicap"* means a race in which the weights to be carried by the horses are assigned by the racing secretary or handicapper for the purpose of equalizing the chances of winning for all horses entered.

*"Horse"* means any equine (including equine designated as a mare, filly, stallion, colt, ridgeling, or gelding) registered for racing; specifically, an entire male 5 years of age and older.

*"Hypodermic injection"* means any injection into or under the skin or mucosa, including intradermal injection, subcutaneous injection, submucosal injection, intramuscular injection, intravenous injection, intra-arterial injection, intra-articular injection, intrabursal injection, and intraocular (intraconjunctival) injection.

*"Inquiry"* means an investigation by the stewards of potential interference in a contest prior to declaring the result of said contest official.

*"Jockey"* means a professional rider licensed to ride in races.

*"Licensee"* means any person or entity licensed by the commission to engage in racing or related regulated activity.

*"Maiden race"* means a contest restricted to nonwinners.

*"Meet/meeting"* means the specified period and dates each year during which a facility is authorized by the commission to conduct pari-mutuel wagering on horse racing.

*"Month"* means a calendar month.

*"Nomination"* means the naming of a horse to a certain race or series of races generally accompanied by payment of a prescribed fee.

*"Nominator"* means the person or entity in whose name a horse is nominated for a race or series of races.

*"Objection"* means:

1. A written complaint made to the stewards concerning a horse entered in a race and filed not later than one hour prior to the scheduled post time of the first race on the day in which the questioned horse is entered; or

2. A verbal claim of foul in a race lodged by the horse's jockey, trainer, owner, or the owner's authorized agent before the race is declared official.

*"Official starter"* means the official responsible for dispatching the horses for a race.

*"Official time"* means the elapsed time from the moment the first horse crosses the starting point until the first horse crosses the finish line.

*"Overnight race"* means a race for which entries close 96 hours, or less, before the time set for the first race of the day on which the race is to be run.

*"Owner"* means a person or entity that holds any title, right or interest, whole or partial, in a horse, including the lessee and lessor of a horse.

*"Paddock"* means an enclosure in which horses scheduled to compete in a contest are saddled prior to racing.

*"Performance"* means a schedule of 8 to 12 races per day unless otherwise authorized by the commission.

*"Post position"* means the preassigned position from which a horse will leave the starting gate.

*"Post time"* means the scheduled starting time for a contest.

*"Prize"* means the combined total of any cash, premium, trophy, and object of value awarded to the owners of horses according to order of finish in a race.

*"Purse"* means the total cash amount for which a race is contested.

*"Purse race"* means a race for money or other prize to which the owners of horses entered do not contribute money toward its purse and for which entries close less than 96 hours prior to its running.

“*Race*” means a running contest between horses ridden by jockeys for a purse, prize, or other reward run at a facility in the presence of the stewards of the meeting. This includes purse races, overnight races and stakes races.

“*Recognized meeting*” means any meeting with regularly scheduled races for horses on the flat in a jurisdiction having reciprocal relations with this state and the commission for the mutual enforcement of rulings relating to horse racing.

“*Rules*” means the rules promulgated by the commission to regulate the conduct of horse racing.

“*Scratch*” means the act of withdrawing an entered horse from a contest after the closing of entries.

“*Scratch time*” means the deadline set by the facility for withdrawal of entries from a scheduled performance.

“*Smoke*” means the procedure of reviewing entries for correctness, eligibility, weight allowances, and medications.

“*Stakes race*” means a contest in which nomination, entry, and starting fees contribute to the purse.

“*Starter*” means a horse that becomes an actual contestant in a race by virtue of the starting gate opening in front of it upon dispatch by the official starter.

“*Steward*” means a duly appointed racing official with powers and duties specified by rules.

“*Subscription*” means moneys paid for nomination, entry, eligibility, or starting of a horse in a stakes race.

“*Test level*” means the concentration of a foreign substance found in the test sample.

“*Test sample*” means any bodily substance including, but not limited to, blood or urine taken from a horse under the supervision of the commission veterinarian and as prescribed by the commission for the purpose of analysis.

“*Totalizator*” means the system used for recording, calculating, and disseminating information about ticket sales, wagers, odds, and payoff prices to patrons at a pari-mutuel wagering facility.

“*Veterinarian*” means a veterinarian holding a current unrestricted license issued by the state of Iowa veterinary regulatory authority and licensed by the commission.

“*Winner*” means the horse whose nose reaches the finish line first or is placed first through disqualification by the stewards.

“*Year*” means a calendar year.

[ARC 9987B, IAB 2/8/12, effective 3/14/12]

#### **491—10.2(99D) Facilities’ responsibilities.**

**10.2(1) *Stalls.*** The facility shall ensure that racing animals are stabled in individual box stalls; that the stables and immediate surrounding area are maintained in approved sanitary condition at all times; that satisfactory drainage is provided; and that manure and other refuse are kept in separate boxes or containers at locations distant from living quarters and promptly and properly removed.

**10.2(2) *Paddocks and equipment.*** The facility shall ensure that paddocks, starting gates, and other equipment subject to contact by different animals are kept in a clean condition and free of dangerous surfaces.

**10.2(3) *Receiving barn and stalls.*** Each facility shall provide a conveniently located receiving barn or stalls for the use of horses arriving during the meeting. The barn shall have adequate stable room and facilities, hot and cold water, and stall bedding. The facility shall employ attendants to operate and maintain the receiving barn or stalls in a clean and healthy condition.

**10.2(4) *Fire protection.*** The facility shall develop and implement a program for fire prevention on facility premises in accordance with applicable state fire codes. The facility shall instruct employees working on facility premises in procedures for fire prevention and evacuation. The facility shall, in accordance with state fire codes, prohibit the following:

- a. Smoking in horse stalls, feed and tack rooms, and in the alleyways.
- b. Sleeping in feed rooms or stalls.
- c. Open fires and oil- or gasoline-burning lanterns or lamps in the stable area.
- d. Leaving any electrical appliance unattended or in unsafe proximity to walls, beds, or furnishings.

- e. Keeping flammable materials, including cleaning fluids or solvents, in the stable area.
- f. Locking a stall which is occupied by a horse.

The facility shall post a notice in the stable area which lists the prohibitions outlined in 10.2(4) "a" to "f" above.

**10.2(5) Starting gate.**

- a. During racing hours a facility shall provide at least two operable padded starting gates that have been approved by the commission.
- b. During designated training hours a facility shall make at least one starting gate and qualified starting gate employee available for schooling.
- c. If a race is started at a place other than in a chute, the facility shall provide and maintain in good operating condition backup equipment for moving the starting gate. The backup equipment must be immediately available to replace the primary moving equipment in the event of failure.

**10.2(6) Distance markers.**

- a. A facility shall provide and maintain starting point markers and distance poles in a size and position that can be clearly seen from the steward's stand.
- b. The starting point markers and distance poles must be marked as follows:

1/4 poles	red and white horizontal stripes
1/8 poles	green and white horizontal stripes
1/16 poles	black and white horizontal stripes
220 yards	green and white
250 yards	blue
300 yards	yellow
330 yards	black and white
350 yards	red
400 yards	black
440 yards	red and white
550 yards	black and white horizontal stripes
660 yards	green and white horizontal stripes
770 yards	black and white horizontal stripes
870 yards	blue and white horizontal stripes

**10.2(7) Detention enclosure.** Each facility shall maintain a detention enclosure for use by the commission for securing samples of urine, saliva, blood, or other bodily substances or tissues for chemical analysis from horses who have run in a race. The enclosure shall include a wash rack, commission veterinarian office, a walking ring, at least four stalls, workroom for the sample collectors with hot and cold running water, and glass observation windows for viewing of the horses from the office and workroom. An owner, trainer, or designated representative licensed by the commission shall be with a horse in the detention barn at all times.

**10.2(8) Ambulance.** A facility shall maintain, on the premises during every day that its track is open for racing or exercising, an ambulance for humans and an ambulance for horses, equipped according to prevailing standards and staffed by medical doctors, paramedics, or other personnel trained to operate them. When an ambulance is used for transfer of a horse or patient to medical facilities, a replacement ambulance must be furnished by the facility to comply with this rule.

**10.2(9) Helmets and vests.** A facility shall not allow any person on horseback on facility grounds unless that person is wearing a protective helmet and safety vest of a type approved by the commission.

**10.2(10) Racetrack.**

- a. The surface of a racetrack, including cushion, subsurface, and base, must be designed, constructed, and maintained to provide for the safety of the jockeys and racing animals.

b. Distances to be run shall be measured from the starting line at a distance three feet out from the inside rail.

c. A facility shall provide an adequate drainage system for the racetrack.

d. A facility shall provide adequate equipment and personnel to maintain the track surface in a safe training and racing condition. The facility shall provide backup equipment for maintaining the track surface. A facility that conducts races on a turf track shall:

- (1) Maintain an adequate stockpile of growing medium; and
- (2) Provide a system capable of adequately watering the entire turf course evenly.

e. Rails.

(1) Racetracks, including turf tracks, shall have inside and outside rails, including gap rails, designed, constructed, and maintained to provide for the safety of jockeys and horses. The design and construction of rails must be approved by the commission prior to the first race meeting at the track.

(2) The top of the rail must be at least 38 inches but not more than 44 inches above the top of the cushion. The inside rail shall have no less than a 24-inch overhang with a continuous smooth cover.

(3) All rails must be constructed of materials designed to withstand the impact of a horse running at a gallop.

**10.2(11) *Patrol films or video recordings.*** Each facility shall provide:

a. A video recording system approved by the commission. Cameras must be located to provide clear panoramic and head-on views of each race. Separate monitors, which simultaneously display the images received from each camera and are capable of simultaneously displaying a synchronized view of the recordings of each race for review, shall be provided in the stewards' stand. The location and construction of video towers must be approved by the commission.

b. One camera, designated by the commission, to record the prerace loading of all horses into the starting gate and to continue to record until the field is dispatched by the starter.

c. One camera, designated by the commission, to record the apparent winner of each race from the finish line until the horse has returned, the jockey has dismounted, and the equipment has been removed from the horse.

d. At the discretion of the stewards, video camera operators to record the activities of any horses or persons handling horses prior to, during, or following a race.

e. That races run on an oval track be recorded by at least three video cameras. Races run on a straight course must be recorded by at least two video cameras.

f. Upon request of the commission, without cost, a copy of a video recording of a race.

g. That video recordings recorded prior to, during, and following each race be maintained by the facility for not less than six months after the end of the race meeting, or such other period as may be requested by the stewards or the commission.

h. A viewing room in which, on approval by the stewards, an owner, trainer, jockey, or other interested individual may view a video recording of a race.

i. Following any race in which there is an inquiry or objection, the video recorded replays of the incident in question which were utilized by the stewards in making their decision. The facility shall display to the public these video recorded replays on designated monitors.

**10.2(12) *Communications.***

a. Each facility shall provide and maintain in good working order a communication system between:

- (1) The stewards' stand;
- (2) The racing office;
- (3) The tote room;
- (4) The jockeys' room;
- (5) The paddock;
- (6) The test barn;
- (7) The starting gate;
- (8) The weigh-in scale;
- (9) The video camera locations;

- (10) The clocker's stand;
- (11) The racing veterinarian;
- (12) The track announcer;
- (13) The location of the ambulances (equine and human); and
- (14) Other locations and persons designated by the commission.

b. A facility shall provide and maintain a public address system capable of clearly transmitting announcements to the patrons and to the stable area.

**491—10.3(99D) Facility policies.** It shall be the affirmative responsibility and continuing duty of each occupational licensee to follow and comply with the facility policies as published in literature distributed by the facility or posted in a conspicuous location.

**491—10.4(99D) Racing officials.**

**10.4(1) General description.** Every facility conducting a race meeting shall appoint at least the following officials:

- a. One of the members of a three-member board of stewards;
- b. Racing secretary;
- c. Assistant racing secretary;
- d. Paddock judge;
- e. Horse identifier;
- f. Starter;
- g. Clocker/timer;
- h. Three placing judges;
- i. Jockey room custodian;
- j. Mutuel manager;
- k. Clerk of scales;
- l. Minimum of two outriders;
- m. Horsemen's bookkeeper;
- n. Any other person designated by the commission.

**10.4(2) Officials' prohibited activities.** No racing official or racing official's assistant(s) listed in 10.4(1) while serving in that capacity during any meeting may engage in any of the following:

- a. Enter into a business or employment that would be a conflict of interest, interfere with, or conflict with the proper discharge of duties including a business that does business with a facility or a business issued a concession operator's license;
- b. Participate in the sale, purchase, or ownership of any horse racing at the meeting;
- c. Be involved in any way in the purchase or sale of any contract on any jockey racing at the meeting;
- d. Sell or solicit horse insurance on any horse racing at the meeting, or any other business sales or solicitation not a part of the official's duties;
- e. Wager on the outcome of any race under the jurisdiction of the commission;
- f. Accept or receive money or anything of value for the official's assistance in connection with the official's duties;
- g. Consume or be under the influence of alcohol or any prohibited substance while performing official duties.

**10.4(3) Single official appointment.** No official appointed to any meeting, except placing judges, may hold more than one official position listed in 10.4(1) unless, in the determination of the stewards or commission, the holding of more than one appointment would not subject the official to a conflict of interest or duties in the two appointments.

**10.4(4) Stewards.** (For practice and procedure before the stewards and the commission, see 491—Chapter 4.)

- a. *General authority.*

(1) General. The board of stewards for each racing meet shall be responsible to the commission for the conduct of the racing meet in accordance with the laws of this state and the rules adopted by the commission. The stewards shall have authority to regulate and to resolve conflicts or disputes between all other racing officials, licensees, and those persons addressed by 491—paragraph 4.6(5)“e,” which are reasonably related to the conduct of a race or races and to discipline violators of these rules in accordance with the provisions of these rules.

(2) Period of authority. The stewards’ authority as set forth in this subrule shall commence 30 days prior to the beginning of each racing meet and shall terminate 30 days after the end of each racing meet or with the completion of their business pertaining to the meeting.

(3) Attendance. All three stewards shall be present in the stand during the running of each race.

(4) Appointment of substitute. Should any steward be absent at race time, the state steward(s) shall appoint a deputy for the absent steward. If any deputy steward is appointed, the commission shall be notified immediately by the stewards.

(5) Initiate action. The stewards shall take notice of questionable conduct or rule violations, with or without complaint, and shall initiate investigations promptly and render a decision on every objection and every complaint made to them.

(6) General enforcement provisions. Stewards shall enforce the laws of Iowa and the rules of the commission. The laws of Iowa and the rules of racing apply equally during periods of racing. They supersede the conditions of a race and the regulations of a racing meet and, in matters pertaining to racing, the orders of the stewards supersede the orders of the officers of the facility. The decision of the stewards as to the extent of a disqualification of any horse in any race shall be final for purposes of distribution of the pari-mutuel pool. The administrative standard of review for a disqualification decision is abuse of discretion.

*b. Other powers and authority.*

(1) The stewards shall have the power to interpret the rules and to decide all questions not specifically covered by them.

(2) All questions within their authority shall be determined by a majority of the stewards.

(3) The stewards shall have control over and access to all areas of the facility premises.

(4) The stewards shall have the authority to determine all questions arising with reference to entries and racing. Persons entering horses to run at licensed facilities agree in so doing to accept the decision of the stewards on any questions relating to a race or racing. The stewards, in their sole discretion, are authorized to determine whether two or more individuals or entities are operating as a single financial interest or as separate financial interests. In making this determination, the stewards shall consider all relevant information including, but not limited to, the following:

1. Whether the parties pay bills from and deposit receipts in the same accounts.

2. Whether the parties share resources such as employees, feed, supplies, veterinary and farrier services, exercise and pony riders, tack, and equipment.

3. Whether the parties switch horses or owner/trainer for no apparent reason, other than to avoid restrictions of being treated as a single interest.

4. Whether the parties engage in separate racing operations in other jurisdictions.

5. Whether the parties have claimed horses, or transferred claimed horses after the fact, for the other’s benefit.

6. If owners, whether one owner is paying the expenses for horses not in the owner’s name as owner.

7. If trainers, whether the relationship between the parties is more consistent with that of a trainer and assistant trainer.

(5) The stewards shall have the authority to discipline, for violation of the rules, any person subject to their control and, in their discretion, to impose fines or suspensions or both for infractions.

(6) The stewards shall have the authority to order the exclusion or ejection from all premises and enclosures of the facility any person who is disqualified for corrupt practices on any race course in any country.

(7) The stewards shall have the authority to call for proof that a horse is itself not disqualified in any respect, or nominated by, or, wholly or in part, the property of, a disqualified person. In default of proof being given to their satisfaction, the stewards may declare the horse disqualified.

(8) The stewards shall have the authority at any time to order an examination of any horse entered for a race or which has run in a race.

(9) In order to maintain necessary safety and health conditions and to protect the public confidence in horse racing as a sport, the stewards have the authority to authorize a person(s) on their behalf to enter into or upon the buildings, barns, motor vehicles, trailers, or other places within the premises of a facility, to examine same, and to inspect and examine the person, personal property, and effects of any person within such place, and to seize any illegal articles or any items as evidence found.

(10) The stewards shall maintain a log of all infractions of the rules and of all rulings of the stewards upon matters coming before them during the race meet.

(11) The state stewards must give prior approval for any person other than the commissioners or commission representative to be allowed in the stewards' stand.

*c. Emergency authority.*

(1) Substitute officials. When in an emergency, any official is unable to discharge the official's duties, the stewards may approve the appointment of a substitute and shall report it immediately to the commission.

(2) Substitute jockeys. The stewards have the authority, in an emergency, to place a substitute jockey on any horse in the event the trainer does not do so. Before using that authority, the stewards shall in good faith attempt to inform the trainer of the emergency and to afford the trainer the opportunity to appoint a substitute jockey. If the trainer cannot be contacted, or if the trainer is contacted but fails to appoint a substitute jockey and inform the stewards of the substitution by 30 minutes prior to post time, then the stewards may appoint under this rule.

(3) Substitute trainer. The stewards have the authority in an emergency to designate a substitute trainer for any horse.

(4) Excuse horse. In case of accident or injury to a horse or any other emergency deemed by the stewards before the start of any race, the stewards may excuse the horse from starting.

(5) Exercise authority. No licensee may exercise a horse on the track between races unless upon the approval of the stewards.

(6) Nonstarter. At the discretion of the stewards, any horse(s) precluded from having a fair start may be declared a nonstarter, and any wagers involving said horse(s) may be ordered refunded.

*d. Investigations and decisions.*

(1) Investigations. The stewards may, upon direction of the commission, conduct inquiries and shall recommend to the commission the issuance of subpoenas to compel the attendance of witnesses and the production of reports, books, papers, and documents for any inquiry. The commission stewards have the power to administer oaths and examine witnesses. The stewards shall submit a written report to the commission of every such inquiry made by them.

(2) Form reversal. The stewards shall take notice of any marked reversal of form by any horse and shall conduct an inquiry of the horse's owner, trainer, or other persons connected with the horse including any person found to have contributed to the deliberate restraint or impediment of a horse in order to cause it not to win or finish as near as possible to first.

(3) Fouls.

1. Extent of disqualification. Upon any claim of foul submitted to them, the stewards shall determine the extent of any disqualification and place any horse found to be disqualified behind others in the race with which it interfered or may place the offending horse last in the race. The stewards at their discretion may determine if there was sufficient interference or intimidation to affect the outcome of the race and take the appropriate actions thereafter. Abuse of discretion shall be the standard of review used in any appeal involving a steward's disqualification decision.

2. Coupled entry. When a horse is disqualified under 10.4(4) "d"(3)"1" and that horse was a part of a coupled entry and, in the opinion of the stewards, the act which led to the disqualification served to unduly benefit the other part of the coupled entry, the stewards may disqualify the other part of the entry.

3. Jockey guilty of foul. The stewards may discipline any jockey whose horse has been disqualified as a result of a foul committed during the running of a race.

(4) Protests and complaints. The stewards shall investigate promptly and render a decision in every protest and complaint made to them. They shall keep a record of all protests and complaints and any rulings made by the stewards and shall file reports daily with the commission.

1. Involving fraud. Protests involving fraud may be made by any person at any time. The protest must be made to the stewards.

2. Not involving fraud. Protests, except those involving fraud, may be filed only by the owner of a horse, authorized agent, trainer, or the jockey of the horse in the race over which the protest is made. The protest must be made to the clerk of scales, the stewards, or a person designated by the stewards before the race is declared official. If the placement of the starting gate is in error, no protest may be made, unless entered prior to the start of the race.

3. Protest to clerk of scales. A jockey who intends to enter a protest following the running of any race, and before the race is declared official, shall notify the clerk of scales, or a person designated by the stewards, of this intention immediately upon the arrival of the jockey at the scales.

4. Prize money of protested horse. During the time of determination of a protest, any money or prize won by a horse protested or otherwise affected by the outcome of the race shall be paid to and held by the horsemen's bookkeeper until the protest is decided.

5. Protest in writing. A protest, other than one arising out of the actual running of a race, must be in writing, signed by the complainant, and filed with the stewards not later than one hour before post time of the race out of which the protest arises.

6. Frivolous protests. No person shall make a frivolous protest nor may any person withdraw a protest without the permission of the stewards.

*e. Cancel wagering.* The stewards have the authority to cancel wagering on an individual betting interest or on an entire race and also have the authority to cancel a pari-mutuel pool for a race or races if such action is necessary to protect the integrity of pari-mutuel wagering.

**10.4(5) Racing secretary.**

*a. General authority.* The racing secretary is responsible for setting the conditions for each race of the meeting, regulating the nomination of entries, determining the amounts of purses and to whom they are due, and recording of race results. The racing secretary shall permit no person other than licensed racing officials to enter the racing secretary's office or work areas until such time as all entries are closed, drawn, and smoked. Exceptions to this rule must be approved by the stewards.

*b. Conditions.* The racing secretary shall establish the conditions and eligibility for entering the races of the meeting and cause them to be published to owners, trainers, and the commission. Corrections to the conditions must be made before entries are taken.

*c. Posting of entries.* Upon the closing of entries each day, the racing secretary shall post a list of entries in a conspicuous location in the office of the racing secretary and shall furnish that list to local newspaper, radio, and television stations.

*d. Stakes and entrance money records.* The racing secretary shall be caretaker of the permanent records of all stakes, entrance moneys, and arrears paid or due in a race meeting and shall keep permanent records of the results of each race of the meeting.

*e. Record of racing.* The racing secretary shall, no later than the day following each race, attach or endorse on the registration certificate of each horse winning in any race the fact of that winning performance and the distance, date of the race, and the type or conditions of the race.

*f. Daily program.* The racing secretary shall publish the official daily program, ensuring the accuracy therein of the following information:

- (1) The sequence of races to be run and post time for the first race;
- (2) The purse, conditions and distance for each race, and current track record for such distance;
- (3) The name of licensed owners of each horse, indicated as leased, if applicable, and description of racing colors to be carried;
- (4) The name of the trainer and the name of the jockey named for each horse together with the weight to be carried;

(5) The post position and saddle cloth number or designation for each horse if there is a variance with the saddle cloth designation;

(6) The identification of each horse by name, color, sex, age, sire and dam; and

(7) Such other information as may be requested by the association or the commission.

*g. Handicapping.* The racing secretary, or a handicapper assigned by the racing secretary, shall assign the weight to be carried by each horse in a handicap when weights are not stated in the condition of the race:

(1) Scale of weights for age. The scale of weights for age hereinafter listed shall be carried when conditions of races do not otherwise specify:

Distance	Age	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
HALF MILE	Two Years	X	X	X	X	X	X	X	105	108	111	114	114
	Three Years	117	117	119	119	121	123	125	126	127	128	129	129
MILE	Four Years	130	130	130	130	130	130	130	130	130	130	130	130
	Five Years and Up	130	130	130	130	130	130	130	130	130	130	130	130
SIX FURLONGS	Two Years	X	X	X	X	X	X	X	102	105	108	111	111
	Three Years	114	114	117	117	119	121	123	125	126	127	128	128
	Four Years	129	129	130	130	130	130	130	130	130	130	130	130
	Five Years and Up	130	130	130	130	130	130	130	130	130	130	130	130
ONE MILE	Two Years	X	X	X	X	X	X	X	X	96	99	102	102
	Three Years	107	107	111	111	113	115	117	119	121	122	123	123
	Four Years	127	127	128	128	127	126	126	126	126	126	126	126
	Five Years and Up	128	128	128	128	127	126	126	126	126	126	126	126
MILE AND A QUARTER	Two Years	X	X	X	X	X	X	X	X	X	X	X	X
	Three Years	101	101	107	107	111	113	116	118	120	121	122	122
	Four Years	125	125	127	127	127	126	126	126	126	126	126	126
	Five Years and Up	127	127	127	127	127	126	126	126	126	126	126	126
MILE AND A HALF	Two Years	X	X	X	X	X	X	X	X	X	X	X	X
	Three Years	98	98	104	104	108	111	114	117	119	121	122	122
	Four Years	124	124	126	126	126	126	126	126	126	126	126	126
	Five Years and Up	126	126	126	126	126	126	126	126	126	126	126	126
TWO MILES	Two Years	X	X	X	X	X	X	X	X	X	X	X	X
	Three Years	96	96	102	102	106	109	112	114	117	119	120	120
	Four Years	124	124	126	126	126	126	126	125	125	124	124	124
	Five Years and Up	126	126	126	126	126	126	126	125	125	124	124	124

(2) Weights listed.

1. In races of intermediate lengths, the weights for the shorter distance shall be carried.

2. In a race exclusively for two-year-olds, the weight shall be 122 pounds.

3. In a race exclusively for three-year-olds or four-year-olds, the weight shall be 126 pounds.

(3) Minimum weight.

1. Thoroughbreds. In all overnight races for two-year-olds, three-year-olds, or four-year-olds and older, the minimum weight shall be 112 pounds, subject to sex and apprentice allowance. This rule shall not apply to handicaps or to races written for three-year-olds and older.

2. Quarter horse and mixed races. In all overnight races for two-year-olds, the weight shall be 120 pounds; for three-year-olds, the weight shall be 122 pounds; and for four-year-olds and older, the weight shall be 124 pounds.

3. Quarter horse and mixed races. In qualifying for a speed index, standard weight shall be 120 pounds. Should any horse carry less than this amount in a race, one-tenth of a second will be added to the official time for each four pounds or fraction thereof less than 120 pounds.

(4) Sex allowances. In thoroughbred racing, sex allowances are obligatory. Sex allowances shall be applied in all thoroughbred races unless the conditions of the race expressly state to the contrary. If the conditions of the race are silent as to sex allowances, a sex allowance shall be applied. Sex allowances may not be declined. Two-year-old fillies shall be allowed three pounds; mares three years old and older are allowed five pounds before September 1 and three pounds thereafter. Sex allowances are not applicable for quarter horse or mixed races.

*h. Penalties not cumulative.* Penalties and weight allowances are not cumulative unless so declared in the conditions of a race by the racing secretary.

*i. Winnings.*

(1) All inclusive. For the purpose of the setting of conditions by the racing secretary, winnings shall be considered to include all moneys and prizes won up to the time of the start of a race, including those races outside the United States. Foreign winnings shall be determined on the basis of the normal rate of exchange prevailing on the day of the win. The amount of purse money earned is credited in United States currency, and there shall be no appeal for any loss on the exchange rate at the time of transfer from United States currency to that of another country.

(2) Winnings considered from January 1. Winnings during the year shall be reckoned by the racing secretary from the preceding January 1.

(3) Winner of a certain sum. "Winner of a certain sum" means the winner of a single race of that sum, unless otherwise expressed in the condition book by the racing secretary. In determining the net value to the winner of any race, the sums contributed by its owner or nominator shall be deducted from the amount won. In all stakes races, the winnings shall be computed on the value of the gross earnings.

(4) Winner's award. Rescinded IAB 5/16/01, effective 6/20/01.

*j. Cancellation of a race.* The racing secretary has the authority to withdraw, cancel, or change any race which has not been closed. In the event the race is canceled, any and all fees paid in connection with the race shall be refunded.

*k. Coggins test.* The racing secretary shall ensure that all horses have a current negative Coggins test. The racing secretary shall report all expired certificates to the stewards.

*l. Registrations and supporting documents.* The racing secretary shall be responsible for receiving, inspecting, and safeguarding all registrations and supporting documents submitted by the trainer while the horses are located on facility premises. Upon notification from a trainer of an alteration of the sex of a horse, the racing secretary shall note such alteration on the certificate of registration. Disclosure is made for the benefit of the public and all documents pertaining to the ownership or lease of a horse filed with the racing secretary shall be available for public inspection.

**10.4(6) Paddock judge.**

*a. General authority.* The paddock judge shall:

(1) Supervise the assembly of horses in the paddock no later than 15 minutes before the scheduled post time for each race;

(2) Maintain a written record of all equipment, inspect all equipment of each horse saddled, and report any change thereof to the stewards;

(3) Prohibit any change of equipment without the approval of the stewards;

(4) Ensure that the saddling of all horses is orderly, open to public view, free from public interference, and that horses are mounted at the same time and leave the paddock for the post in proper sequence;

(5) Supervise paddock schooling of all horses approved for such by the stewards;

(6) Report to the stewards any observed cruelty to a horse; and

(7) Ensure that only properly authorized persons are permitted in the paddock.

*b. Paddock judge's list.*

(1) The paddock judge shall maintain a list of horses which shall not be entered in a race because of poor or inconsistent behavior in the paddock that endangers the health or safety of other participants in racing.

(2) At the end of each day, the paddock judge shall provide a copy of the list to the stewards.

(3) To be removed from the paddock judge's list, a horse must be schooled in the paddock and demonstrate to the satisfaction of the paddock judge and the stewards that the horse is capable of performing safely in the paddock.

**10.4(7) Horse identifier.** The horse identifier shall:

a. When required, ensure the safekeeping of registration certificates and racing permits for horses stabled or racing on facility premises;

b. Inspect documents of ownership, eligibility, registration, or breeding necessary to ensure the proper identification of each horse scheduled to compete at a race meeting;

c. Examine every starter in the paddock for sex, color, markings, and lip tattoo for comparison with its registration certificate to verify the horse's identity;

d. Supervise the tattooing or branding for identification of any horse located on facility premises; and

e. Report to the stewards any horse not properly identified or whose registration certificate is not in conformity with these rules.

**10.4(8) Starter.**

a. *General authority.* The starter shall:

(1) Have complete jurisdiction over the starting gate, the starting of horses, and the authority to give orders not in conflict with the rules as may be required to ensure all participants an equal opportunity to a fair start;

(2) Appoint and supervise assistant starters who have demonstrated they are adequately trained to safely handle horses in the starting gate. In emergency situations, the starter may appoint qualified individuals to act as substitute assistant starters;

(3) Assign the starting gate stall positions to assistant starters and notify the assistant starters of their respective stall positions more than ten minutes before post time for the race;

(4) Assess the ability of each person applying for a jockey's license in breaking from the starting gate and working a horse in the company of other horses, and make said assessment known to the stewards; and

(5) Load horses into the gate in any order deemed necessary to ensure a safe and fair start.

b. *Assistant starters.* With respect to an official race, the assistant starters shall not:

(1) Handle or take charge of any horse in the starting gate without the expressed permission of the starter;

(2) Impede the start of a race;

(3) Use excessive force, a whip or other device, with the exception of steward-approved tongs, to assist in loading a horse into the starting gate;

(4) Slap, boot, or otherwise dispatch a horse from the starting gate;

(5) Strike or use abusive language to a jockey; or

(6) Accept or solicit any gratuity or payment other than their regular salary, directly or indirectly, for services in starting a race.

c. *Starter's list.* No horse shall be permitted to start in a race unless approval is given by the starter. The starter shall maintain a starter's list of all horses which are ineligible to be entered in any race because of poor or inconsistent behavior or performance in the starting gate. Any horse on the starter's list shall be refused entry until the horse has demonstrated to the starter that it has been satisfactorily schooled in the gate and can be removed from the starter's list. Schooling shall be under the direct supervision of the starter.

**10.4(9) Timer/clocker.**

a. *General authority—timer.*

(1) The timer shall accurately record the official time.

(2) At the end of a race, the timer shall post the official running time on the infield totalizator board on instruction by the stewards.

(3) At a facility equipped with an appropriate infield totalizator board, the timer shall post the quarter times (splits) for thoroughbred races in fractions as a race is being run. For quarter horse races, the timer shall post the official times in hundredths of a second.

(4) For backup purposes, the timer shall also use a stopwatch to time all races. In time trials, the timer shall ensure that at least two stopwatches are used by the stewards or their representatives.

(5) The timer shall maintain, and make available for inspection by the stewards or the commission on request, a written record of fractional and finish times of each race.

*b. General authority—clocker.*

(1) The clocker shall be present during training hours at each track on facility premises which is open for training to identify each horse working out and to accurately record the distances and times of each horse's workout.

(2) Each day, the clocker shall prepare a list of workouts that includes the name of each horse which worked along with the distance and time of each horse's workout.

(3) At the conclusion of training hours, the clocker shall deliver a copy of the list of workouts to the stewards and the racing secretary.

**10.4(10) Placing judges.**

*a. General authority.* The placing judges shall determine the order of finish in a race as the horses pass the finish line and, with the approval of the stewards, may display the results on the totalizator board.

*b. Photo finish.*

(1) In the event the placing judges or the stewards request a photo of the finish, the photo finish sign shall be posted on the totalizator board.

(2) Following their review of the photo finish film strip, the placing judges shall, with the approval of the stewards, determine the exact order of finish for all horses participating in the race, and shall immediately post the numbers of the first four finishers on the totalizator board.

(3) In the event a photo was requested, the placing judges shall cause a photographic print of said finish to be produced. The finish photograph shall, when needed, be used by the placing judges as an aid in determining the correct order of finish.

(4) Upon determination of the correct order of finish of a race in which the placing judges have utilized a photographic print to determine the first four finishers, the placing judges shall cause prints of said photograph to be displayed publicly in the grandstand and clubhouse areas of the facility.

*c. Dead heats.*

(1) In the event the placing judges determine that two or more horses finished the race simultaneously and cannot be separated as to their order of finish, a dead heat shall, with the approval of the stewards, be declared.

(2) In the event one or more of the first four finishers of a race are involved in a dead heat, the placing judges shall post the dead heat sign on the totalizator board and cause the numbers of the horse or horses involved to blink on the totalizator board.

**10.4(11) Jockey room custodian.** The jockey room custodian shall:

- a.* Supervise the conduct of the jockeys and their attendants while they are in the jockey room;
- b.* Keep the jockey room clean and safe for all jockeys;
- c.* Ensure all jockeys are in the correct colors and wearing the correct arm number before leaving the jockey room to prepare for mounting their horses;
- d.* Keep a daily film list as dictated by the stewards and have it displayed in plain view for all jockeys;
- e.* Keep a daily program displayed in plain view for the jockeys;
- f.* Keep unauthorized persons out of the jockey room;
- g.* Report to the stewards any unusual occurrences in the jockey room;
- h.* Assist the clerk of scales as required;
- i.* Supervise the care and storage of racing colors; and

*j.* Assign to each jockey a locker for the use of storing the jockey's clothing, equipment, and personal effects.

**10.4(12) *Mutuel manager.*** The mutuel manager is responsible for the operation of the mutuel department. The mutuel manager shall ensure that any delays in the running of official races caused by totalizator malfunctions are reported to the stewards. The mutuel manager shall submit a written report on any delay when requested by the state steward.

**10.4(13) *Clerk of scales.*** The clerk of scales shall:

- a.* Verify the presence of all jockeys in the jockey room at the appointed time;
- b.* Verify that each jockey has a current jockey's license issued by the commission;
- c.* Verify the correct weight of each jockey at the time of weighing out and weighing in and report any discrepancies to the stewards immediately;
- d.* Oversee the security of the jockey room including the conduct of the jockeys and their attendants;
- e.* Record all required data on the scale sheet and submit that data to the horsemen's bookkeeper at the end of each race day;
- f.* Maintain the record of applicable winning races on all apprentice certificates at the meeting;
- g.* Release apprentice jockey certificates, upon the jockey's departure or upon the conclusion of the race meet; and
- h.* Assume the duties of the jockey room custodian in the absence of such employee.

**10.4(14) *Outrider.***

- a.* The facility shall appoint a minimum of two outriders on the main track for each race of a performance and during workouts. The facility shall appoint one outrider on the training track during all workouts. The outriders must be neat in appearance, wear approved helmets with the chin straps securely fastened, and wear approved safety vests while on the main track or training track.
- b.* The outriders shall:
  - (1) Accompany the field of horses from the paddock to the post;
  - (2) Ensure the post parade is conducted in an orderly manner, with all jockeys and pony riders conducting themselves in a manner in conformity with the best interests of racing as determined by the board of stewards;
  - (3) Assist jockeys with unruly horses;
  - (4) Render assistance when requested by a jockey;
  - (5) Be present during morning workouts to assist exercise riders as required by regulations;
  - (6) Promptly report to the stewards any unusual conduct which occurs while performing the duties of an outrider;
  - (7) Ensure individuals using the track(s) are appropriately licensed; and
  - (8) Promptly report jockey objections to the stewards after the finish of each race.

**10.4(15) *Horsemen's bookkeeper.***

*a.* General authority. The horsemen's bookkeeper shall maintain the records and accounts and perform the duties described herein and maintain such other records and accounts and perform such other duties as the facility and commission may prescribe.

*b.* Records.

- (1) The records shall include the name, mailing address, social security number or federal tax identification number, and the state or country of residence of each horse owner, trainer, or jockey participating at the race meeting who has funds due or on deposit in the horsemen's account.
- (2) The records shall include a file of all required statements of partnerships, syndicates, corporations, assignments of interest, lease agreements, and registrations of authorized agents.
- (3) All records of the horsemen's bookkeeper shall be kept separate and apart from the records of the facility.
- (4) All records of the horsemen's bookkeeper including records of accounts and moneys and funds kept on deposit are subject to inspection by the commission at any time.

*c.* Moneys and funds on account.

- (1) All moneys and funds on account with the horsemen's bookkeeper shall be maintained:

1. Separate and apart from moneys and funds of the facility;
2. In a trust account designated as “horsemen’s trust account”; and
3. In an account insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(2) The horsemen’s bookkeeper shall be bonded.

*d.* Payment of purses.

(1) The horsemen’s bookkeeper shall receive, maintain, and disburse the purses of each race and all stakes, entrance money, jockey fees, purchase money in claiming races, all applicable taxes, and other moneys that properly come into the horsemen’s bookkeeper’s possession in accordance with the provisions of commission rules.

(2) The horsemen’s bookkeeper may accept moneys due, belonging to other organizations or recognized meetings, provided prompt return is made to the organization to which the money is due.

(3) The horsemen’s bookkeeper shall disburse the purse of each race and all stakes, entrance money, jockey fees, purchase money in claiming races, and all applicable taxes, upon request, within 48 hours of receipt of notification that all tests with respect to such races have cleared the drug testing laboratory (commission chemist) as reported by the stewards. Minimum jockey mount fees may be disbursed prior to notification that the tests have cleared the testing laboratory.

(4) Absent a prior request, the horsemen’s bookkeeper shall disburse moneys to the persons entitled to receive same within 15 days after the last race day of the race meeting, including purses for official races, provided that all tests with respect to such races have cleared the drug testing laboratory as reported by the stewards, and provided further that no protest or appeal has been filed with the stewards or the commission.

(5) In the event a protest or appeal has been filed with the stewards or the commission, the horsemen’s bookkeeper shall disburse the purse within 48 hours of receipt of dismissal or a final nonappealable order disposing of such protest or appeal.

*e.* No portion of purse money other than jockey fees shall be deducted by the facility for itself or for another, unless so requested in writing by the person to whom purse moneys are payable or the person’s duly authorized representative. The horsemen’s bookkeeper shall mail to each owner a duplicate of each record of all deposits, withdrawals, or transfers of funds affecting the owner’s racing account at the close of each race meeting.

**10.4(16) Patrol judges.**

*a.* *General authority.* A facility may employ patrol judges who shall observe the running of the race and report information concerning the running of the race to the stewards.

*b.* *Duty stations.* Each patrol judge shall have a duty station assigned by the stewards.

**10.4(17) Commission veterinarians.**

*a.* The veterinarians shall advise the commission and the stewards on all veterinary matters.

*b.* The commission veterinarians shall have supervision and control of the detention barn for the collection of test samples for the testing of horses for prohibited medication as provided in Iowa Code sections 99D.23(2) and 99D.25(9). The commission may employ persons to assist the commission veterinarians in maintaining the detention barn area and collecting test samples.

*c.* The commission veterinarians shall not buy or sell any horse under their supervision; wager on a race under their supervision; or be licensed to participate in racing in any other capacity.

*d.* The stewards or commission veterinarians may request any horse entered in a race to undergo an examination on the day of the race to determine the general fitness of the horse for racing. During the examination, all bandages shall be removed by the groom upon request and the horse may be exercised outside the stall to permit the examiner to determine the condition of the horse’s legs and feet. The examining veterinarian shall report any unsoundness in a horse to the stewards.

*e.* A commission veterinarian shall inspect all of the horses in a race at the starting gate and after the finish of a race shall observe the horses upon their leaving the track.

*f.* The commission veterinarian shall place any horse determined to be sick or too unsafe, unsound, or unfit to race on a veterinarian’s list that shall be posted in a conspicuous place available to all owners, trainers, and officials.

g. A horse placed on the veterinarian's list, bleeders exempt, may be allowed to enter only after it has been removed from the list by the commission veterinarian. Requests for the removal of any horse from the veterinarian's list will be accepted only after three calendar days from the placing of the horse on the veterinarian's list have elapsed. Removal from the list will be at the discretion of the commission veterinarian, who may require satisfactory workouts or examinations to adequately demonstrate that the problem that caused the horse to be placed on the list has been rectified. Horses that are entered to race and then placed on the veterinarian's list for any reason will not be allowed to enter a race for a minimum of three calendar days beginning the day after the horse was scheduled to race.

Every confirmed bleeder, regardless of age, shall be placed on the bleeder list and be ineligible to race for the following time periods:

- (1) First incident – 14 days.
- (2) Second incident within 365-day period – 30 days.
- (3) Third incident within 365-day period – 180 days.
- (4) Fourth incident within 365-day period – barred for racing lifetime.

For the purposes of counting the number of days a horse is ineligible to run, the day the horse bled externally is the first day of the recovery period. The voluntary administration of furosemide without an external bleeding incident shall not subject the horse to the initial period of ineligibility specified in subparagraph (1). A horse may be removed from the bleeder list only upon the direction of the official veterinarian, who shall certify in writing to the stewards the recommendation for removal. A horse which has been placed on a bleeder list in another jurisdiction pursuant to these rules shall be placed on a bleeder list in this jurisdiction.

h. The commission veterinarians shall supervise and ensure that the administration of furosemide and phenylbutazone is in compliance with Iowa Code section 99D.25A.

i. Rescinded IAB 9/29/04, effective 11/3/04.

j. The commission veterinarian or commission representative shall take receipt of veterinary reports as required by Iowa Code section 99D.25(10).

[ARC 0734C, IAB 5/15/13, effective 6/19/13]

#### **491—10.5(99D) Trainer, jockey, and jockey agent responsibilities.**

##### **10.5(1) Trainer.**

a. *Responsibility.* The trainer is responsible for:

(1) The condition of horses entered in an official workout or race and, in the absence of substantial evidence to the contrary, for the presence of any prohibited drug, medication or other substance, including permitted medication in excess of the maximum allowable level, in such horses, regardless of the acts of third parties. A positive test for a prohibited drug, medication, or substance, including permitted medication in excess of the maximum allowable level, as reported by a commission-approved laboratory, is prima facie evidence of a violation of this rule or Iowa Code chapter 99D.

(2) Preventing the administration of any drug, medication, or other prohibited substance that may cause a violation of these rules.

(3) Any violation of rules regarding a claimed horse's participation in the race in which the trainer's horse is claimed.

(4) The condition and contents of stalls, tack rooms, feed rooms, sleeping rooms, and other areas which have been assigned to the trainer by the facility and maintaining the assigned stable area in a clean, neat, and sanitary condition at all times.

(5) Ensuring that fire prevention rules are strictly observed in the assigned stable area.

(6) Being present to witness the administration of furosemide during the administration time and sign as the witness on the affidavit form. A licensed designee of the trainer may witness the administration of the furosemide and sign as the witness on the affidavit form; however, this designee may not be another practicing veterinarian or veterinary assistant.

(7) The proper identity, custody, care, health, condition, and safety of horses in the trainer's charge.

(8) Disclosure to the racing secretary of the true and entire ownership of each horse in the trainer's care, custody, or control. Any change in ownership shall be reported immediately to, and approved by,

the stewards and recorded by the racing secretary. The disclosure, together with all written agreements and affidavits setting out oral agreements pertaining to the ownership for or rights in and to a horse, shall be attached to the registration certificate for the horse and filed with the racing secretary.

(9) Training all horses owned wholly or in part by the trainer which are participating at the race meeting.

(10) Registering with the racing secretary each horse in the trainer's charge within 24 hours of the horse's arrival on facility premises.

(11) Ensuring that, at the time of arrival at the facility, each horse in the trainer's care is accompanied by a valid health certificate which shall be filed with the racing secretary.

(12) Having each horse in the trainer's care that is racing or stabled on facility premises tested for equine infectious anemia (EIA) in accordance with state law and for filing evidence of such negative test results with the racing secretary. The test must have been conducted within the previous 12 months and must be repeated upon expiration. The certificate must be attached to the foal certificate.

(13) Using the services of those veterinarians licensed by the commission to attend horses that are on facility premises.

(14) Immediately reporting the alteration of the sex of a horse in the trainer's care to the horse identifier and the racing secretary.

(15) Promptly reporting to the racing secretary and the commission veterinarian any horse on which a posterior digital neurectomy (heel nerving) has been performed and ensuring that such fact is designated on its certificate of registration. See Iowa Code subsections 99D.25(1) to 99D.25(3).

(16) Promptly reporting to the stewards and the commission veterinarian the serious illness of any horse in the trainer's charge.

(17) Promptly reporting the death of any horse in the trainer's care on facility premises to the stewards, owner, and the commission veterinarian and complying with Iowa Code subsection 99D.25(5) governing postmortem examination.

(18) Maintaining a knowledge of the medication record and status of all horses in the trainer's care.

(19) Immediately reporting to the stewards and the commission veterinarian if the trainer knows, or has cause to believe, that a horse in the trainer's custody, care, or control has received any prohibited drugs or medication.

(20) Representing an owner in making entries and scratches and in all other matters pertaining to racing.

(21) Eligibility of horses entered and weight or other allowance claimed.

(22) Ensuring the fitness of a horse to perform creditably at the distance entered.

(23) Ensuring that the trainer's horses are properly shod, bandaged, and equipped.

(24) Presenting the trainer's horse in the paddock at least 20 minutes before post time or at a time otherwise appointed before the race in which the horse is entered.

(25) Personally attending to the trainer's horses in the paddock and supervising the saddling thereof, unless excused by the stewards.

(26) Instructing the jockey to give the jockey's best effort during a race and instructing the jockey that each horse shall be ridden to win.

(27) Witnessing the collection of a urine or blood sample from the horse in the trainer's charge or delegating a licensed employee or the owner of the horse to do so.

(28) Notifying horse owners upon the revocation or suspension of the trainer's license. Upon application by the owner, the stewards may approve the transfer of such horses to the care of another licensed trainer and, upon such approved transfer, such horses may be entered to race.

(29) Ensuring that all individuals in their employ are properly licensed by the commission.

*b. Restrictions on wagering.* A trainer with a horse(s) entered in a race shall be allowed to wager only on that horse(s) or that horse(s) in combination with other horses.

*c. Assistant trainers.*

(1) Upon the demonstration of a valid need, a trainer may employ an assistant trainer as approved by the stewards. The assistant trainer shall be licensed prior to acting in such capacity on behalf of the trainer.

(2) Qualifications for obtaining an assistant trainer's license shall be prescribed by the stewards and the commission and may include requirements set forth in 491—Chapter 6.

(3) An assistant trainer may substitute for and shall assume the same duties, responsibilities and restrictions as are imposed on the licensed trainer, in which case the trainer shall be jointly responsible for the assistant trainer's compliance with the rules.

*d. Substitute trainers.*

(1) A trainer absent for more than five days from responsibility as a licensed trainer, or on a day in which the trainer has a horse in a race, shall obtain another licensed trainer to substitute.

(2) A substitute trainer shall accept responsibility for the horses in writing and shall be approved by the stewards.

(3) A substitute trainer and the absent trainer shall be jointly responsible as absolute insurers of the condition of their horses entered in an official workout or race.

**10.5(2) Jockey.**

*a. Responsibility.*

(1) A jockey shall give a best effort during a race, and each horse shall be ridden to win.

(2) A jockey shall not have a valet attendant except one provided and compensated by the facility.

(3) No person other than the licensed contract employer or a licensed jockey agent may make riding engagements for a rider, except that a jockey not represented by a jockey agent may make the jockey's own riding engagements.

(4) A jockey shall have no more than one jockey agent.

(5) No revocation of a jockey agent's authority is effective until the jockey notifies the stewards in writing of the revocation of the jockey agent's authority.

(6) A jockey shall promptly report objections to the outrider(s) following the finish of the race.

*b. Jockey betting.* A jockey shall be allowed to wager only on a race in which the jockey is riding. A jockey shall be allowed to wager only if:

(1) The owner or trainer of the horse that the jockey is riding makes the wager for the jockey;

(2) The jockey only wagers on the jockey's own mount to win or finish first in combination with other horses in multiple-type wagers; and

(3) Records of such wagers are kept and available for presentation upon request by the stewards.

*c. Jockey's spouse.* A jockey shall not compete in any race against a horse that is trained or owned by the jockey's spouse.

*d. Jockey mount fees.* Rescinded IAB 5/6/09, effective 6/10/09.

*e. Entitlement.* Any apprentice or contract rider shall be entitled to the regular jockey fees, except when riding a horse owned in part or solely by the contract holder. An interest in the winnings only (such as trainer's percent) shall not constitute ownership.

*f. Fee earned.* A jockey's fee shall be considered earned when the jockey is weighed out by the clerk of scales. The fee shall not be considered earned when injury to the horse or rider is not involved and jockeys, of their own free will, take themselves off their mounts. Any conditions or considerations not covered by the above shall be at the discretion of the stewards.

*g. Multiple engagements.* If any owner or trainer engages two or more jockeys for the same race, the owner or trainer shall be required to pay each of the jockeys the appropriate fee whether the jockeys ride in the race or not.

*h. Dead heats.* Jockeys finishing a race in a dead heat shall divide equally the totals they individually would have received had one jockey won the race alone. The owners of the horses finishing in the dead heat shall pay equal shares of the jockey fees.

*i. Apprentices subject to jockey rules.* Unless excepted under these rules, apprentices are subject to all rules governing jockeys and racing.

*j. Conduct.*

(1) *Clothing and appearance.* A jockey shall wear the colors furnished by the owner or facility with the number on the saddlecloth corresponding to the number given in the racing program. A jockey shall maintain a neat and clean appearance while engaged in duties on facility premises and shall wear a clean

jockey costume, cap, helmet (approved by commission), a jacket of silk or waterproof fabric, breeches, and top boots.

(2) Competing against contractor. No jockey may ride in any race against a starting horse belonging to the jockey's contract employer unless the jockey's mount and the contract employer's horse are both trained by the same trainer.

(3) Confined to jockey room. Jockeys engaged to ride a race shall report to the jockey room on the day of the race at the time designated by the facility officials. The jockeys shall then report their engagements and any overweight to the clerk of scales. Thereafter, they shall not leave the jockey room, except by permission of the stewards, until all of their riding engagements of the day have been fulfilled. Once jockeys have fulfilled their riding engagements for the day and have left the jockeys' quarters, they shall not be readmitted to the jockeys' quarters until after the entire racing program for that day has been completed, except upon permission of the stewards. Jockeys are not allowed to communicate with anyone but the trainer while in the room during the performance except with approval of the stewards. On these occasions, they shall be accompanied by a security guard.

(4) Whip prohibited. Jockeys may not use a whip on a two-year-old horse before April 1 of each year, nor shall a jockey or other person engage in excessive or indiscriminate whipping of any horse at any time.

(5) Spurs prohibited. Jockeys shall not use spurs.

(6) Possessing drugs or devices. Jockeys shall not have in their care, control, or custody any drugs, prohibited substances, or electrical or mechanical device that could affect a horse's racing performance.

*k. Jockey effort.* A jockey shall exert every effort to ride the horse to the finish in the best and fastest run of which the horse is capable. No jockey shall ease up or coast to a finish, without adequate cause, even if the horse has no apparent chance to win prize money.

*l. Duty to fulfill engagements.* Jockeys shall fulfill their duly scheduled riding engagements, unless excused by the stewards. Jockeys shall not be forced to ride a horse they believe to be unsound or over a racing strip they believe to be unsafe. If the stewards find a jockey's refusal to fulfill a riding engagement is based on personal belief unwarranted by the facts and circumstances, the jockey may be subject to disciplinary action. Jockeys shall be responsible to their agent for any engagements previously secured by the agent.

*m. Riding interference.*

(1) When the way is clear in a race, a horse may be ridden to any part of the course; but if any horse swerves, or is ridden to either side, so as to interfere with, impede, or intimidate any other horse, it is a foul.

(2) The offending horse may be disqualified if, in the opinion of the stewards, the foul altered the finish of the race, regardless of whether the foul was accidental, willful, or the result of careless riding.

(3) If the stewards determine the foul was intentional, or due to careless riding, the jockey shall be held responsible.

(4) In a straightaway race, every horse must maintain position as nearly as possible in the lane in which it started. If a horse is ridden, drifts, or swerves out of its lane in such a manner that it interferes with, impedes, or intimidates another horse, it is a foul and may result in the disqualification of the offending horse.

*n. Jostling.* Jockeys shall not jostle another horse or jockey. Jockeys shall not strike another horse or jockey or ride so carelessly as to cause injury or possible injury to another horse in the race.

*o. Partial fault/third-party interference.* If a horse or jockey interferes with or jostles another horse, the aggressor may be disqualified, unless the interfered or jostled horse or jockey was partly at fault or the infraction was wholly caused by the fault of some other horse or jockey.

*p. Careless riding.* A jockey shall not ride carelessly or willfully permit the mount to interfere with, intimidate, or impede any other horse in the race. A jockey shall not strike at another horse or jockey so as to impede, interfere with, or injure the other horse or jockey. If a jockey rides in a manner contrary to this rule, the horse may be disqualified; or the jockey may be fined, suspended, or otherwise disciplined; or other penalties may apply.

*q. Jockey weighed out.*

(1) Jockeys must be weighed for their assigned horse not more than 30 minutes before the time fixed for the race.

(2) A jockey's weight shall include the jockey's clothing, boots, saddle and its attachments. A safety vest shall be mandatory, shall weigh no more than two pounds, and shall be designed to provide shock-absorbing protection to the upper body of at least a rating of five as defined by the British Equestrian Trade Association.

(3) All other equipment shall be excluded from the weight.

*r. Overweight limited.* No jockey may weigh more than two pounds or, in the case of inclement weather, four pounds over the weight the horse is assigned to carry unless with consent of the owner or trainer and unless the jockey has declared the amount of overweight to the clerk of scales at least 45 minutes before the time of the race. However, a horse shall not carry more than seven pounds overweight, except in inclement weather when nine pounds shall be allowed. The overweight shall be publicly announced and posted in a conspicuous place both prior to the first race of the day and before the running of the race.

(1) Weigh in. Upon completion of a race, jockeys shall ride promptly to the winner's circle and dismount. Jockeys riding the first four finishers, or at the discretion of the stewards a greater number, shall present themselves to the clerk of scales to be weighed in. If a jockey is prevented from riding the mount to the winner's circle because of accident or illness either to the jockey or the horse, the jockey may walk or be carried to the scales unless excused by the stewards.

(2) Unsaddling. Jockeys, upon completion of a race, must return to the unsaddling area and unsaddle their own horse, unless excused by the stewards.

(3) Removing horse's equipment. No person except the valet attendant for each mount is permitted to assist the jockey in removing the horse's equipment that is included in the jockey's weight, unless the stewards permit otherwise. To weigh in, jockeys shall carry to the scales all pieces of equipment with which they weighed out. Thereafter they may hand the equipment to the valet attendant.

(4) Underweight. When any horse places first, second, or third in a race, or is coupled in any form of multiple exotic wagering, and thereafter the horse's jockey is weighed in short by more than two pounds of the weight of which the jockey was weighed out, the mount may be disqualified and all purse moneys forfeited.

(5) Overweight. If the jockey is overweight, the jockey is subject to fine, suspension, or both.

*s. Contracts.* Rescinded IAB 5/16/01, effective 6/20/01.

*t. Jockey fines and forfeitures.* Jockeys shall pay any fine or forfeiture from their own funds within 48 hours of the imposition of the fine or at a time deemed proper by the stewards. No other person shall pay jockey fines or forfeitures for the jockey.

*u. Competing claims.* Whenever two or more licensees claim the services of one jockey for a race, first call shall have priority and any dispute shall be resolved by the stewards.

*v. Jockey suspension.*

(1) Offenses involving fraud. Suspension of a licensee for an offense involving fraud or deception in racing shall begin immediately after the ruling unless otherwise ordered by the stewards or commission.

(2) Offenses not involving fraud. Suspension for an offense not involving fraud or deception in racing shall begin on the third day after the ruling or at the stewards' discretion.

(3) Withdrawal of appeal. Withdrawal by the appellant of a notice of appeal filed with the commission, whenever imposition of the disciplinary action has been stayed or enjoined pending a final decision by the commission, shall be deemed a frivolous appeal and referred to the commission for further disciplinary action in the event the appellant fails to show good cause to the stewards why the withdrawal should not be deemed frivolous.

(4) Riding suspensions of ten days or less and participating in designated races. The stewards appointed for a race meeting shall immediately, prior to the commencement of that meeting, designate the stakes, futurities, futurity trials, or other races in which a jockey will be permitted to compete, notwithstanding the fact that such jockey is technically under suspension for ten days or less for a riding infraction at the time the designated race is to be run.

1. Official rulings for riding suspensions of ten days or less shall state: “The term of this suspension shall not prohibit participation in designated races.”

2. A listing of the designated races shall be posted in the jockey room and any other such location deemed appropriate by the stewards.

3. A suspended jockey must be named at time of entry to participate in any designated race.

4. A day in which a jockey participated in one designated race while on suspension shall count as a suspension day. If a jockey rides in more than one designated race on a race card while on suspension, the day shall not count as a suspension day. Designated trials for a stake shall be considered one race.

**10.5(3) Apprentice jockey.** Upon completion of licensing requirements, the stewards may issue an apprentice jockey certificate allowing the holder to claim this allowance only in overnight races.

a. An apprentice jockey shall ride with a five-pound weight allowance beginning with the first mount and for one full year from the date of the jockey’s fifth winning mount.

b. If, after riding one full year from the date of the fifth winning mount, the apprentice jockey has not ridden 40 winners, the applicable weight allowance shall continue for one more year or until the fortieth winner, whichever comes first. In no event shall a weight allowance be claimed for more than two years from the date of the fifth winning mount, unless an extension has been granted.

c. The steward may extend the weight allowance of an apprentice jockey when, in the discretion of the steward, the apprentice provides proof of incapacitation for a period of seven or more consecutive days. The allowance may be claimed for a period not to exceed the period such apprentice was unable to ride.

d. The apprentice jockey must have the apprentice certificate with the jockey at all times and must keep an updated record of the first 40 winners. Prior to riding, the jockey must submit the certificate to the clerk of scales, who will record the apprentice’s winning mounts.

**10.5(4) Jockey agent.**

a. Responsibilities.

(1) A jockey agent shall not make or assist in making engagements for a jockey other than the jockeys the agent is licensed to represent.

(2) A jockey agent shall file written proof of all agencies and changes of agencies with the stewards.

(3) A jockey agent shall notify the stewards, in writing, prior to withdrawing from representation of a jockey and shall submit to the stewards a list of any unfulfilled engagements made for the jockey.

(4) All persons permitted to make riding engagements shall maintain current and accurate records of all engagements made. Such records shall be subject to examination by the stewards at any time.

(5) A jockey agent may represent an apprentice jockey and two journeymen jockeys or three journeymen jockeys at a “mixed” meet. However, at the “mixed” meeting two, at most, may ride the same breed.

(6) A jockey agent must honor a first call given to a trainer or the trainer’s assistant trainer.

b. Prohibited areas. A jockey agent is prohibited from entering the jockey room, winner’s circle, racing strip, paddock, or saddling enclosure during the hours of racing.

c. A jockey agent shall not be permitted to withdraw from the representation of any jockey unless written notice to the stewards has been provided.

[ARC 7757B, IAB 5/6/09, effective 6/10/09; ARC 0734C, IAB 5/15/13, effective 6/19/13]

#### **491—10.6(99D) Conduct of races.**

**10.6(1) Horses ineligible.** Any horse ineligible to be entered for a race, or ineligible to start in any race, which competes in that race may be disqualified and the stewards may discipline the persons responsible for the horse competing in that race.

a. A horse is ineligible to enter a race when:

(1) The nominator has failed to identify the horse which is being entered for the first time, by name, color, sex, age, and the names of sire and dam as registered.

(2) A horse has been knowingly entered or raced in any jurisdiction under a different name, with an altered registration certificate, or altered lip tattoo by a person having lawful custody or control of the horse for the purpose of deceiving any facility or regulatory agency.

(3) A horse has been allowed to enter or start by a person having lawful custody or control of the horse who participated in or assisted in the entry or racing of some other horse under the name of the horse in question.

(4) A horse is wholly or partially owned by a disqualified person or a horse is under the direct or indirect management of a disqualified person.

(5) A horse is wholly or partially owned by the spouse of a disqualified person or a horse is under the direct or indirect management of the spouse of a disqualified person. In such cases, a presumption which may be rebutted is that the disqualified person and spouse constitute a single financial entity with respect to the horse.

(6) A horse is owned in whole or in part by an undisclosed person or interest.

(7) A horse has been nerved by surgical neurectomy.

(8) A horse has been trachea-tubed to artificially assist breathing.

(9) A horse has impaired eyesight in both eyes.

(10) A horse appears on the starter's list, stewards' list, paddock list, or veterinarian's list, notwithstanding a horse appearing on the veterinarian's list as a "bleeder."

(11) A horse is barred from racing in any racing jurisdiction.

*b.* A horse is ineligible to start a race when:

(1) The horse is not stabled on the premises of the facility by the time designated by the stewards.

(2) The horse's breed registration certificate is not on file with the racing secretary, or horse identifier, except in the case of a quarter horse where the racing secretary has submitted the certificate to the breed registry for correction. The stewards may, in their discretion, waive the requirement in nonclaiming races provided the horse is otherwise properly identified.

(3) The horse is not fully identified by an official tattoo on the inside of the upper lip.

(4) A horse is brought to the paddock and is not in the care of and saddled by a currently licensed trainer or assistant trainer.

(5) No current negative Coggins test or current negative equine infectious anemia test certificate is attached to the horse's registration certificate.

(6) The stakes or entrance money for the horse has not been paid.

(7) The horse appears on the starter's list, stewards' list, paddock list, or veterinarian's list.

(8) The horse is a first-time starter not approved by the starter and does not have a minimum of two published workouts.

(9) Within the past calendar year, the horse has started in a race that has not been reported in a nationally published monthly chartbook, unless, at least 48 hours prior to entry, the owner of the horse provides to the racing secretary performance records which show the place and date of the race, distance, weight carried, amount carried, and the horse's finishing position and time.

(10) In a stakes race, a horse has been transferred with its engagements, unless prior to the start, the fact of transfer of the horse and its engagements has been filed with the racing secretary.

(11) A horse is subject to a lien which has not been approved by the stewards and filed with the horsemen's bookkeeper.

(12) A horse is subject to a lease not filed with the stewards.

(13) A horse is not in sound racing condition.

(14) A horse has been blocked with alcohol or injected with any other foreign substance or drug to desensitize the nerves of the leg.

(15) A horse appears on the veterinarian's list as a "bleeder."

#### **10.6(2) Entries.**

*a.* The facility shall provide forms for making entries and declarations with the racing secretary. Entries and declarations shall be in writing, or by telephone or fax subsequently confirmed in writing by the owner, trainer, or authorized agent. When any entrant or nominator claims failure or error in the receipt by a facility of any entry or declaration, the entrant or nominator may be required to submit evidence within a reasonable time of the filing of the entry or the declaration.

*b.* Upon the closing of entries the racing secretary shall promptly compile a list of entries and cause it to be conspicuously posted.

*c.* Coupling.

(1) Entry coupling. When one owner or lessee enters more than one horse in the same race or a horse trained by a trainer who owns or leases any interest in any of the other horses in the race, the horses shall be coupled as an entry, except that entries may be uncoupled in stakes races. Horses shall be regarded as having a common owner when an owner of one horse, either as an individual, a licensed member of a partnership, or a licensed shareholder of a corporation, has an aggregate commonality of ownership of 5 percent interest in another horse, either as an individual, a licensed member of a partnership, or a licensed shareholder of a corporation.

(2) Coupled entry limitations on owner. No more than two horses coupled by a common ownership or trainer shall be entered in an overnight race.

(3) Coupling of entries by stewards. The stewards may couple as a single entry any horses which, in the determination of the stewards, are connected by common ownership, common lessee, the same trainer, or when the stewards determine that coupling is necessary in the interest of the regulation of the pari-mutuel wagering industry or is necessary to ensure the public's confidence in racing.

(4) Exclusion of single interest. Horses having the same owner, lessee, or trainer shall not be permitted to enter or start if the effect would deprive a single interest from starting in overnight races.

*d.* Split or divided races.

(1) In the event a race is canceled or declared off, the facility may split any overnight race for which post positions have not been drawn.

(2) Where an overnight race is split, forming two or more separate races, the racing secretary shall give notice of not less than 15 minutes before such races are closed to grant time for making additional entries to such split race.

*e.* Entry weight. Owners, trainers, or any other duly authorized person who enters a horse for a race shall ensure that the entry is correct and accurate as to the weight allowances available and claimed for the horse under the conditions set for the race. After a horse is entered and has been assigned a weight to carry in the race, the assignment of weight shall not be changed except in the case of error and with the approval of the stewards. Weight allowances may be waived with the approval of the stewards.

*f.* Consecutive days. No horse shall be run on two consecutive calendar days.

*g.* Foreign entries. For the purposes of determining eligibility, weight assignments, or allowances for horses imported from a foreign nation, the racing secretary shall take into account the "Pattern Race Book" published jointly by the Irish Turf Club, The Jockey Club of Great Britain, and the Société d'Encouragement.

*h.* Weight conversions. For the purpose of determining eligibility, weight assignments, or allowances for horses imported from a foreign nation, the racing secretary shall convert metric distances to English measures by reference to the following scale:

1 sixteenth	= 100 meters
1 furlong	= 200 meters
1 mile	= 1600 meters

*i.* Name. The "name" of a horse means the name reflected on the certificate of registration, racing permit, or temporary racing permit issued by the breed registry. Imported horses shall have a suffix, enclosed by brackets, added to their registered names showing the country of foaling. This suffix is derived from the international code of suffixes and constitutes part of the horse's registered name. The registered names and suffixes, where applicable, shall be printed in the official program.

*j.* Bona fide entry. No person shall enter or attempt to enter a horse for a race unless that entry is a bona fide entry, made with the intention that the horse is to compete in the race for which the horse was entered.

*k.* Registration certificate to reflect correct ownership. Every breed registry foal certificate filed with the racing secretary to establish the eligibility of a horse to be entered for any race shall accurately reflect the correct and true ownership of the horse. The name of the owner that is printed on the official

program for the horse shall conform to the ownership as declared on the certificate of registration or eligibility certificate unless a stable name has been registered with the commission for the owner or ownership.

*l. Naming/engaging of riders.* Riders must be named at the time of entry. Before naming any rider, the trainer, owner, or other person authorized must first engage the services of the rider and state on the entry or to the person taking the entry whether it is a first or second call, excluding trial races. Riders properly engaged must fulfill their engagements as required in 10.5(2)“l.”

*m. More than one race.* No horse may be entered in more than one race, with the exception of stakes races, to be run on the same day on which pari-mutuel wagering is conducted.

**10.6(3) Sweepstakes entries.**

*a. Entry and withdrawal.* The entry of a horse in a sweepstakes is a subscription to the sweepstakes. Before the time of closing, any entry or subscription may be altered or withdrawn.

*b. Entrance money.* Entrance money shall be paid by the nominator to a race. In the event of the death of the horse or a mistake made in the entry of an otherwise eligible horse, the nominator subscriber shall continue to be obligated for any stakes, and the entrance money shall not be returned.

*c. Quarter horse scratches and qualifiers unable to participate in finals.* If a horse should be scratched from the time trial finals, the horse’s owner will not be eligible for a refund of the fees paid. If a horse that qualified for the final should be unable to enter due to racing soundness, or scratched for any reason other than a positive drug test report or a rule violation, the horse shall be deemed to have earned and the owner will receive last place money. If more than one horse should be unable to enter due to racing soundness, or scratched for any reason other than a positive drug test report or a rule violation, then those purse moneys shall be added together and divided equally among the horse owners.

**10.6(4) Closing of entries.**

*a. Overnight entries.* Entries for overnight racing shall be closed at 10 a.m. by the racing secretary, unless a later closing is established by the racing secretary or unless approved by the stewards.

*b. Sweepstakes entries.* If an hour for closing is designated, entries and declarations for sweepstakes cannot be received thereafter. However, if a time for closing is not designated, entries and declarations may be mailed or faxed until midnight of the day of closing, if they are received in time to comply with all other conditions of the race. In the absence of notice to the contrary, entries and declarations for sweepstakes that close during or on the day preceding a race meeting shall close at the office of the racing secretary in accordance with any requirements the secretary shall make. Closing for sweepstakes not during race meetings shall be at the office of the facility.

*c. Exception.* Nominations for stakes races shall not close nor shall any eligibility payment be due on a day in which the United States Postal Service is not operating.

**10.6(5) Prohibited entries.**

*a. Entry by disqualified person.* An entry made by a disqualified person or the entry of a disqualified horse shall be void. Any money paid for the entry shall be returned, if the disqualification is disclosed at least 45 minutes before post time for the race. Otherwise, the entry money shall be paid to the winner.

*b. Limited partner entry prohibited.* No person other than a managing partner of a limited partnership or a person authorized by the managing partner may enter a horse owned by that partnership.

*c. Altering entries prohibited.* No alteration shall be made in any entry after the closing of entries, but the stewards may permit the correction of an error in an entry.

*d. Limitation on overnight entries.* If the number of entries to any purse or overnight race is in excess of the number of horses that may be accommodated due to the size of the track, the starters for the race and their post positions shall be determined by lot conducted in public by the racing secretary.

*e. Stake race entry limit.* In a stake race, the number of horses which may compete shall be limited only by the number of horses nominated and entered. In any case, the facility’s lawful race conditions shall govern.

*f. Stewards’ denial of entry.* The stewards may, after notice to the entrant, subscriber, or nominator, deny entry of any horse to a race if the stewards determine the entry to be in violation of

these rules or the laws of this state or to be contrary to the interests of the commission in the regulation of pari-mutuel wagering or to public confidence in racing.

**10.6(6) Preferences and eligibles.**

*a. Also eligible.* A list of not more than eight names may be drawn from entries filed in excess of positions available in the race. These names shall be listed as “also eligible” to be used as entries if originally entered horses are withdrawn. Any owner, trainer, or authorized agent who has entered a horse listed as an “also eligible” and who does not wish to start shall file a scratch card with the secretary not later than the scratch time designated for that race. “Also eligibles” shall have preference to scratch.

*b. Preference system.* A system using dates or stars shall be used to determine preference for horses being entered in races. The system being used will be at the option of the racing secretary and approved by the stewards. A preference list will be kept current by the racing secretary and made available to horsemen upon request.

*c. Disputed decision.* When the decision of a race is in dispute, all horses involved in the dispute, with respect to the winner’s credit or earnings, shall be liable to all weights or conditions attached to the winning of that race until a winner has been finally adjudged.

**10.6(7) Post positions.** Post positions shall be determined by the racing secretary publicly and by lot. Post positions shall be drawn from “also eligible” entries at scratch time. In all races, horses drawn into the race from the “also eligible” list shall take the outside post positions, except in straightaway quarter horse racing. In straightaway quarter horse racing, the post position of the scratched horse shall be assigned to the horse “drawing in.” In the event there is more than one scratch, the post positions shall be assigned by lot.

**10.6(8) Scratch; declaring out.**

*a. Notification to the secretary.* No horse shall be considered scratched, declared out, or withdrawn from a race until the owner, agent, or other authorized person has given notice in writing to the racing secretary before the time set by the facility as scratch time. All scratches must be approved by the stewards.

*b. Declaration irrevocable.* Scratching or the declaration of a horse out of an engagement for a race is irrevocable.

*c. Limitation on scratches.* No horse shall be permitted to be scratched from a race if the horses remaining in the race number fewer than eight, unless the stewards permit a lesser number. When the number of requests to scratch would, if granted, leave a field of fewer than eight, the stewards shall determine by lot which entrants may be scratched and permitted to withdraw from the race.

*d. Scratch time.* Unless otherwise set by the stewards, scratch time shall be:

- (1) Stakes races. Scratch time shall be at least 45 minutes before post time.
- (2) Other races. Scratch time shall be no later than 10 a.m. of the day of the race.

**10.6(9) Workouts.**

*a. When required.* No horse shall be allowed to start unless the horse has raced in an official race or has an approved official timed workout satisfactory to the stewards. A horse that has not started for a period of 60 days or more shall be ineligible to race until it has completed a published workout satisfactory to the stewards prior to the day of the race in which the horse is entered. The workout must have occurred within the previous 30 days for a thoroughbred or within the previous 60 days for a quarter horse. First-time starters must have at least two published workouts and be approved from the gate by the starter.

*b. Identification.* The timer or the stewards may require licensees to identify a horse in their care being worked. The owner, trainer, or jockey may be required to identify the distance the horse is to be worked and the point on the track where the workout will start.

*c. Information dissemination.* If the stewards approve the timed workout so as to permit the horse to run in a race, they shall make it mandatory that this information be furnished to the public in advance of the race including, but not limited to, the following means:

- (1) Announcement over the facility’s public address system;
- (2) Transmission on the facility’s message board;
- (3) Posting in designated conspicuous places in the racing enclosure; and

(4) Exhibit on track TV monitors at certain intervals if the track has closed circuit TV. If the workout is published prior to the race in either the Daily Racing Form or the track program, then it shall not be necessary to make the announcements set forth above.

*d. Restrictions.* No horse shall be taken onto the track for training or a workout except during hours designated by the facility.

**10.6(10) Equipment.**

*a. Whip and bridle limitations.* Unless permitted by the stewards, no whip or substitute for a whip shall exceed one pound or 30 inches and no bridle shall exceed two pounds.

*b. Equipment change.* No licensee may change the equipment used on a horse from that used in the horse's last race, unless with permission of the stewards. No licensee may add blinkers to a horse's equipment or discontinue their use without the prior approval of the starter and the stewards. In the paddock prior to a race, a horse's tongue may be tied down with clean bandages, clean gauze, or with a tongue strap.

**10.6(11) Racing numbers.**

*a. Number display.* Each horse in a race shall carry a conspicuous saddle cloth number corresponding to the official number given that horse on the official program.

*b. Coupled entries.* In the case of a coupled or other entry that includes more than one horse, each horse in the entry shall carry the same number, with a different distinguishing letter following the number. As an example, two horses in the same entry shall be entered as 1 and 1-A.

*c. Field horses.* In a combined field of horses, each horse in the field shall carry a separate number.

**10.6(12) Valuation of purse money.** Rescinded IAB 5/16/01, effective 6/20/01.

**10.6(13) Dead heats.**

*a.* When two horses run a dead heat for first place, all purses or prizes to which first and second horses would have been entitled shall be divided equally between them; and this applies in dividing all purses or prizes whatever the number of horses running a dead heat and whatever places for which the dead heat is run.

*b.* In the event of a dead-heat finish for second place and thereafter, when an objection to the winner of the race is sustained, the horses in the dead heat shall be considered to have run a dead heat for first place.

*c.* If a prize includes a cup, plate, or other indivisible prize, owners shall draw lots for the prize in the presence of at least two stewards.

**10.6(14)** The facility shall not make distribution of any purses until given clearance of chemical tests by the state steward.

**10.6(15)** Purse money presumption. The fact that purse money has been distributed prior to the issuance of a laboratory report shall not be deemed a finding that no chemical substance has been administered, in violation of these rules, to the horse earning the purse money.

**10.6(16) Equine infectious anemia (EIA) test.**

*a. Certificate required.* No horse shall be allowed to start or be stabled on the premises of the facility unless a valid negative Coggins test or other laboratory-approved negative EIA test certificate is on file with the racing secretary.

*b. Trainer responsibility.* In the event of claims, sales, or transfers, it shall be the responsibility of the new trainer to ascertain the validity of the certificate for the horse within 24 hours. If the certificate is either unavailable or invalid, the previous trainer shall be responsible for any reasonable cost associated with obtaining a negative EIA laboratory certificate.

*c. Positive test reports.* Whenever any owner or trainer is furnished a positive Coggins test or positive EIA test result, the horse shall be removed by the owner or trainer from facility premises or approved farms within 24 hours of actual notice to the owner or trainer of the infection.

**10.6(17) Race procedures.**

*a. Full weight.* Each horse shall carry the full weight assigned for that race from the paddock to the starting point, and shall parade past the stewards' stand, unless excused by the stewards.

*b. Touching and dismounting prohibited.* After the horses enter the track, jockeys may not dismount or entrust their horse to the care of an attendant unless due to an accident occurring to the

jockey, the horse, or the equipment, and then only with the prior consent of the starter. During any delay during which a jockey is permitted to dismount, all other jockeys may dismount and their horses may be attended by others. After the horses enter the track, only the hands of the jockey, the starter, the assistant starter, the commission veterinarian, an outrider on a lead pony, or persons approved by the stewards may touch the horse before the start of the race. If a horse throws its jockey on the way from the paddock to the post, the horse must be returned to the point where the jockey was thrown, where the horse shall be remounted and then proceed over the route of the parade to the post. The horse must carry its assigned weight from paddock to post and from post to finish.

*c. Jockey injury.* If a jockey is seriously injured on the way to the post, the horse shall be returned to the paddock, a replacement jockey obtained, and both the injured jockey and the replacement jockey will be paid by the owner.

*d. Twelve-minute parade limit.* After entering the track, all horses shall proceed to the starting post in not more than 12 minutes unless approved by the stewards. After passing the stewards' stand in parade, the horses may break formation and proceed to the post in any manner. Once at the post, the horses shall be started without unnecessary delay. All horses must participate in the parade carrying their weight and equipment from the paddock to the starting post, and any horse failing to do so may be disqualified by the stewards. No lead pony leading a horse in the parade shall obstruct the public's view of the horse being led except with permission of the stewards.

*e. Striking a horse prohibited.* In assisting the start of a race, no person other than the jockey, starter, assistant starter, or veterinarian shall strike a horse or use any other means to assist the start.

*f. Loading of horses.* Horses will be loaded into the starting gate in numerical order or in any other fair and consistent manner determined by the starter and approved by the stewards.

*g. Delays prohibited.* No person shall obstruct or delay the movement of a horse to the starting post.

#### **10.6(18) Claiming races.**

##### *a. Eligibility.*

(1) Registered to race or open claim. No person may file a claim for any horse unless the person:

1. Is a licensed owner at the meeting who either has foal paper(s) registered with the racing secretary's office or has started a horse at the meeting; or
2. Is a licensed authorized agent, authorized to claim for an owner eligible to claim; or
3. Has a valid open claim certificate. Any person not licensed as an owner, or a licensed authorized agent for the account of the same, or a licensed owner not having foal paper(s) registered with the racing secretary's office or who has not started a horse at the meeting may request an open claim certificate from the commission. The person must submit a completed application for a prospective owner's license to the commission. The applicant must have the name of the trainer licensed by the commission who will be responsible for the claimed horse. A nonrefundable fee must accompany the application along with any financial information requested by the commission. The names of the prospective owners shall be prominently displayed in the offices of the commission and the racing secretary. The application will be processed by the commission; and when the open claim certificate is exercised, an owner's license will be issued.

(2) One stable claim. No stable that consists of horses owned by more than one person and which has a single trainer may submit more than one claim in any race. An authorized agent may submit only one claim in any race regardless of the number of owners represented.

##### *b. Procedure for claiming.* To make a claim for a horse, an eligible person shall:

(1) Deposit to the person's account with the horsemen's bookkeeper the full claiming price and applicable taxes as established by the racing secretary's conditions.

(2) File in a locked claim box maintained for that purpose by the stewards the claim filled out completely in writing and with sufficient accuracy to identify the claim on forms provided by the facility at least ten minutes before the time of the race.

##### *c. Claim box.*

(1) The claim box shall be approved by the commission and kept locked until ten minutes prior to the start of the race, when it shall be presented to the stewards or their representatives for opening and publication of the claims.

(2) The claim box shall also include a time clock which automatically stamps the time on the claim envelope prior to its being dropped in the box.

(3) No official of a facility shall give any information as to the filing of claims therein until after the race has been run.

*d. Claim irrevocable.* After a claim has been filed in the claim box, it shall not be withdrawn.

*e. Multiple claims on single horses.* If more than one claim is filed on a horse, the successful claim shall be determined by lot conducted by the stewards or their representatives.

*f. Successful claims; later races.*

(1) Sale or transfer. No successful claimant may sell or transfer a horse, except in a claiming race, for a period of 30 days from the date of claim.

(2) Eligibility price. A horse that is declared the official winner in the race in which it is claimed may not start in a race in which the claiming price is less than the amount for which it was claimed. After the first start back or 30 days, whichever occurs first, a horse may start for any claiming price. A horse which is not the official winner in the race in which it is claimed may start for any claiming price. This provision shall not apply to starter handicaps in which the weight to be carried is assigned by the handicapper. No right, title, or interest for any claimed horse shall be sold or transferred except in a claiming race for a period of 30 days following the date of claiming. The day claimed shall not count, but the following calendar day shall be the first day.

(3) Racing elsewhere. A horse that was claimed under these rules may not participate at a race meeting other than that at which it was claimed until the end of the meeting, except with written permission of the stewards. This limitation shall not apply to stakes races.

(4) Same management. A claimed horse shall not remain in the same stable or under the control or management of its former owner.

(5) When a horse is claimed out of a claiming race, the horse's engagements are included.

*g. Transfer after claim.*

(1) Forms. Upon a successful claim, the stewards shall issue in triplicate, upon forms approved by the commission, an authorization of transfer of the horse from the original owner to the claimant. Copies of the transfer authorization shall be forwarded to and maintained by the commission, the stewards, and the racing secretary. No claimed horse shall be delivered by the original owner to the successful claimant until authorized by the stewards. Every horse claimed shall race for the account of the original owner, but title to the horse shall be transferred to the claimant from the time the horse becomes a starter. The successful claimant shall become the owner of the horse at the time of starting, regardless of whether it is alive or dead, sound or unsound, or injured during the race or after it. The original trainer of the claimed horse shall be responsible for the postrace test results.

(2) Other jurisdiction rules. The commission will recognize and be governed by the rules of any other jurisdiction regulating title and claiming races when ownership of a horse is transferred or affected by a claiming race conducted in that other jurisdiction.

(3) Determination of sex and age. The claimant shall be responsible for determining the age and sex of the horse claimed notwithstanding any designation of sex and age appearing in the program or in any racing publication. In the event of a spayed mare, the (s) for spayed should appear next to the mare's name on the program. If it does not and the claimant finds that the mare is in fact spayed, claimant may then return the mare for full refund of the claiming price.

(4) Affidavit by claimant. The stewards may, if they determine it necessary, require any claimant to execute a sworn statement that the claimant is claiming the horse for the claimant's own account or as an authorized agent for a principal and not for any other person.

(5) Delivery required. No person shall refuse to deliver a properly claimed horse to the successful claimant. The claimed horse shall be disqualified from entering any race until delivery is made to the claimant.

(6) Obstructing rules of claiming. No person or licensee shall obstruct or interfere with another person or licensee in claiming any horse or enter into any agreement with another to subvert or defeat the object and procedures of a claiming race, or attempt to prevent any horse entered from being claimed.

*h. Elimination of stable.* An owner whose stable has been eliminated by claiming may claim for the remainder of the meeting at which eliminated or for 30 racing days, whichever is longer. With the permission of the stewards, stables eliminated by fire or other casualty may claim under this rule.

*i. Deceptive claim.* The stewards may cancel and disallow any claim within 24 hours after a race if they determine that a claim was made upon the basis of a lease, sale, or entry of a horse made for the purpose of fraudulently obtaining the privilege of making a claim. In the event of a disallowance, the stewards may further order the return of a horse to its original owner and the return of all claim moneys.

*j. Protest of claim.* A protest to any claim must be filed with the stewards before noon of the day following the date of the race in which the horse was claimed. Nonracing days are excluded from this rule.

*k. Waived claiming rule.*

(1) At the time of entry into claiming races, the owner, trainer, or any authorized agent may opt to declare a horse ineligible to be claimed provided:

1. The horse has not been an official starter at any racetrack for a minimum of 120 days since the horse's last race as an official starter (at time of race);

2. The horse's last race as an official starter was a claiming race in which the horse was eligible to be claimed;

3. The horse is entered for a claiming price equal to or greater than the claiming price at which the horse last started as an official starter;

4. Failure of declaration of ineligibility at time of entry may not be remedied; and

5. Ineligibility to be claimed shall apply only to the horse's first start as an official starter following each such 120-day or longer layoff.

(2) Any win which occurs in a claiming race by a horse ineligible to be claimed under waived claiming rules of this, or any other, jurisdiction will be treated as an allowance win for the determination of the horse's eligibility and allowances for every race at the meet, unless the conditions of the race specify otherwise.

**10.6(19) Quarter horse time trial races.**

*a.* Except in cases where the starting gate physically restricts the number of horses starting, each time trial shall consist of no more than ten horses.

*b.* The time trials shall be raced under the same conditions as the finals. If the time trials are conducted on the same day, the horses with the ten fastest times shall qualify to participate in the finals. If the time trials are conducted on two days, the horses with the five fastest times on the first day and the horses with the five fastest times on the second day shall qualify to participate in the finals. When time trials are conducted on two days, the racing office should make every attempt to split owners with more than one entry into separate days so that the owner's horses have a chance at all ten qualifying positions.

*c.* If the facility's starting gate has fewer than ten stalls, then the maximum number of qualifiers will correspond to the maximum number of starting gate post positions.

*d.* If only 11 or 12 horses are entered to run in time trials from a gate with 12 or more stalls, the facility may choose to run finals only. If 11 or 12 horses participate in the finals, only the first 10 finishers will receive purse money.

*e.* In the time trials, horses shall qualify on the basis of time and order of finish. The times of the horses in the time trial will be determined to the limit of the timer. The only exception is when two or more horses have the same time in the same trial heat. Then the order of finish shall also determine the preference in the horses' qualifying for the finals. Should two or more horses in different time trials have the same qualifying time to the limit of the timer for the final qualifying position(s), then a draw by public lot shall be conducted as directed by the stewards. Under no circumstances should stewards or placing judges attempt to determine horses' qualifying times in separate trials beyond the limit of the timer by comparing or enlarging a photo finish picture.

*f.* Except in the case of disqualification, under no circumstances shall a horse qualify ahead of a horse that finished ahead of that horse in the official order of finish in a time trial.

*g.* Should a horse be disqualified for interference during the running of a time trial, it shall receive the time of the horse it is immediately placed behind plus one hundredth of a second, or the maximum accuracy of the electronic timing device. No adjustments will be made in the times recorded in the time trials to account for headwind, tailwind, and off track. In the case where a horse is disqualified for interference with another horse causing loss of rider or the horse not to finish the race, the disqualified horse may be given no time plus one hundredth of a second, or the maximum accuracy of the electronic timing device.

*h.* Should a malfunction occur with an electronic timer on any time trial, finalists from that time trial will then be determined by official hand times operated by three official and disinterested persons. The average of the three hand times will be utilized for the winning time, unless one of the hand times is clearly incorrect. In such cases, the average of the two accurate hand times will be utilized for the winning time. The other horses in that race will be given times according to the order and margins of finish with the aid of the photo finish strip, if available.

*i.* When there is a malfunction of the timer during the time trials, but the timer operates correctly in other time trials, under no circumstances should the accurate electronic times be discarded and the average of the hand times used for all time trials. (The only exemption may be if the conditions of the stakes race so state, or state that, in the case of a malfunction of the timer in trials, finalists will be selected by order of finish in the trials.)

*j.* In the case where the accuracy of the electronic timer or the average of the hand times is questioned, the video of a time trial may be used to estimate the winning time by counting the number of video frames in the race from the moment the starting gate stall doors are fully open parallel to the racing track. This method is accurate to approximately .03 seconds. Should the case arise where the timer malfunctions and there are no hand times, the stewards have the option to select qualifiers based on the video time.

*k.* Should there be a malfunction of the starting gate and one or more stall doors not open or open after the exact moment when the starter dispatches the field, the stewards may declare the horses in stalls with malfunctioning doors to be nonstarters. The stewards should have the option, however, to allow any horse whose stall door opened late but still ran a time fast enough to qualify to be declared a starter for qualifying purposes. In the case where a horse breaks through the stall door or the stall door opens prior to the exact moment the starter dispatches the field, the horse must be declared a nonstarter and all entry fees refunded. In the case where one or more, but not all, stall doors open at the exact moment the starter dispatches the field, these horses should be considered starters for qualifying purposes, and placed according to their electronic times. If the electronic timer malfunctions in this instance, the average of the hand times, or, if not available, the video time, should be utilized for the horses that were declared starters.

*l.* There will be an also eligible list only in the case of a disqualification for a positive drug test report, ineligibility of the horse according to the conditions of the race, or a disqualification by the stewards for a rule violation. Should a horse be disqualified for a positive drug test report, ineligibility of the horse according to the conditions of the race, or a disqualification by the stewards for a rule violation, the next fastest qualifier shall assume the disqualified horse's position in the finals.

*m.* If a horse should be scratched from the time trials, the horse's owner will not be eligible for a refund of the fees paid, and that horse will not be allowed to enter the finals under any circumstances. If a horse that qualified for the finals is unable to enter due to racing soundness or is scratched for any reason other than a positive drug test report or a rule violation, the horse shall be deemed to have earned, and the owner will receive, last place purse money. If more than one horse is scratched from the finals for any reason other than a positive drug test report or a rule violation, then the purse moneys shall be added together and divided equally among the owners.

[ARC 7757B, IAB 5/6/09, effective 6/10/09; ARC 9987B, IAB 2/8/12, effective 3/14/12]

**491—10.7(99D) Medication and administration, sample collection, chemists, and practicing veterinarian.****10.7(1) Medication and administration.**

*a.* No horse, while participating in a race, shall carry in its body any medication, drug, foreign substance, or metabolic derivative thereof, which is a narcotic or which could serve as a local anesthetic or tranquilizer or which could stimulate or depress the circulatory, respiratory, or central nervous system of a horse, thereby affecting its speed.

*b.* Also prohibited are any drugs or foreign substances that might mask or screen the presence of the prohibited drugs, or prevent or delay testing procedures.

*c.* Proof of detection by the commission chemist of the presence of a medication, drug, foreign substance, or metabolic derivative thereof, prohibited by paragraph “*a*” or “*b*,” in a saliva, urine, or blood sample duly taken under the supervision of the commission veterinarian from a horse immediately prior to or promptly after running in a race shall be prima facie evidence that the horse was administered, with the intent that it would carry or that it did carry in its body while running in a race, prohibited medication, drug, or foreign substance in violation of this rule.

*d.* Administration or possession of drugs.

(1) No person shall administer, cause to be administered, or participate or attempt to participate in any way in the administration of any medication, drug, foreign substance, or treatment by any route to a horse registered for racing on the day of the race prior to the race in which the horse is entered.

(2) No person except a veterinarian shall have in the person’s possession any prescription drug. However, a person may possess a noninjectable prescription drug for animal use if:

1. The person actually possesses, within the racetrack enclosure, documentary evidence that a prescription has been issued to said person for such a prescription drug.

2. The prescription contains a specific dosage for the particular horse or horses to be treated by the prescription drug.

3. The horse or horses named in the prescription are then in said person’s care within the racetrack enclosure.

(3) No veterinarian or any other person shall have in their possession or administer to any horse within any racetrack enclosure any chemical or biological substance which:

1. Has not been approved for use on equines by the Food and Drug Administration pursuant to the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Section 301 et seq., and implementing regulations, without the prior written approval from a commission veterinarian, after consulting with the board of stewards.

2. Is on any of the schedules of controlled substances as prepared by the Attorney General of the United States pursuant to 21 U.S.C. Sections 811 and 812, without the prior written approval from a commission veterinarian after consultation with the board of stewards. The commission veterinarian shall not give such approval unless the person seeking the approval can produce evidence in recognized veterinary journals or by recognized equine experts that such chemical substance has a beneficial therapeutic use in horses.

(4) No veterinarian or any other person shall dispense, sell, or furnish any feed supplement, tonic, veterinary preparation, medication, or any substance that can be administered or applied to a horse by any route, to any person within the premises of the facility unless there is a label specifying the name of the substance dispensed, the name of the dispensing person, the name of the horse or horses for which the substance is dispensed, the purpose for which said substance is dispensed, the dispensing veterinarian’s recommendations for withdrawal before racing (if applicable), and the name of the person to whom dispensed, or is otherwise labeled as required by law.

(5) No person shall have in the person’s possession or in areas under said person’s responsibility on facility premises any feed supplement, tonic, veterinary preparation, medication, or any substance that can be administered or applied to a horse by any route unless it complies with the labeling requirements in 10.7(1) “*d*”(4).

*e.* Any person found to have administered, or caused, participated in, or attempted to participate in any way in the administration of a medication, drug, or foreign substance that caused or could have caused a violation of this rule shall be subject to disciplinary action.

*f.* The owner, trainer, groom, or any other person having charge, custody, or care of the horse is obligated to protect the horse properly and guard it against the administration or attempted administration of a substance in violation of this rule. If the stewards find that any person has failed to show proper protection and guarding of the horse, or if the stewards find that any owner, lessee, or trainer is guilty of negligence, they shall impose discipline and take other action they deem proper under any of the rules including referral to the commission.

*g.* In order for a horse to be placed on the bleeder list in Iowa through reciprocity, that horse must be certified as a bleeder in another state or jurisdiction. A certified bleeder is a horse that has raced with furosemide in another state or jurisdiction in compliance with the laws governing furosemide in that state or jurisdiction.

*h.* The possession or use of blood doping agents, including but not limited to those listed below, on the premises of a facility under the jurisdiction of the commission is forbidden:

- (1) Erythropoietin;
- (2) Darbepoetin;
- (3) Oxyglobin®; and
- (4) Hemopure®.

*i.* The use of extracorporeal shock wave therapy or radial pulse wave therapy shall not be permitted unless the following conditions are met:

- (1) Any treated horse shall not be permitted to race for a minimum of ten days following treatment;
- (2) The use of extracorporeal shock wave therapy or radial pulse wave therapy machines shall be limited to veterinarians licensed to practice by the commission;
- (3) Any extracorporeal shock wave therapy or radial pulse wave therapy machines on the association grounds must be registered with and approved by the commission or its designee before use;
- (4) All extracorporeal shock wave therapy or radial pulse wave therapy treatments must be reported to the official veterinarian on the prescribed form not later than the time prescribed by the official veterinarian.

*j.* The use of a nasogastric tube (a tube longer than six inches) for the administration of any substance within 24 hours prior to the post time of the race in which the horse is entered is prohibited without the prior permission of the official veterinarian or designee.

*k.* Non-steroidal anti-inflammatory drugs (NSAIDs).

(1) The use of one of three approved NSAIDs shall be permitted under the following conditions:  
1. The level does not exceed the following permitted serum or plasma threshold concentrations which are consistent with administration by a single intravenous injection at least 24 hours before the post time for the race in which the horse is entered:

- Phenylbutazone (or its metabolite oxyphenylbutazone) – 5 micrograms per milliliter;
- Flunixin – 20 nanograms per milliliter;
- Ketoprofen – 10 nanograms per milliliter.

2. The NSAIDs listed in numbered paragraph “1” or any other NSAIDs are prohibited from being administered within the 24 hours before post time for the race in which the horse is entered.

3. The presence of more than one of the three approved NSAIDs, with the exception of phenylbutazone in a concentration below 1 microgram per milliliter of serum or plasma, or the presence of any unapproved NSAID in the post-race serum or plasma sample is not permitted. The use of all but one of the approved NSAIDs shall be discontinued at least 48 hours before the post time for the race in which the horse is entered.

(2) Any horse to which an NSAID has been administered shall be subject to having a blood sample(s), urine sample(s) or both taken at the direction of the official veterinarian to determine the quantitative NSAID level(s) or the presence of other drugs which may be present in the blood or urine sample(s).

**10.7(2) Sample collection.**

*a.* Under the supervision of the commission veterinarian, urine, blood, and other specimens shall be taken and tested from any horse that the stewards, commission veterinarian, or the commission's representatives may designate. The samples shall be collected by the commission veterinarian or other person or persons the commission may designate. Each sample shall be marked or numbered and bear information essential to its proper analysis; but the identity of the horse from which the sample was taken or the identity of its owners or trainer shall not be revealed to the official chemist or the staff of the chemist. The container of each sample shall be sealed as soon as the sample is placed therein.

*b.* A facility shall have a detention barn under the supervision of the commission veterinarian for the purpose of collecting body fluid samples for any tests required by the commission. The building, location, arrangement, furnishings, and facilities including refrigeration and hot and cold running water must be approved by the commission. A security guard, approved by the commission, must be in attendance at each access to the detention barn during the hours designated by the commission.

*c.* No unauthorized person shall be admitted at any time to the building or the area utilized for the purpose of collecting the required body fluid samples or the area designated for the retention of horses pending the obtaining of body fluid samples.

*d.* During the taking of samples from a horse, the owner, responsible trainer, or a representative designated by the owner or trainer may be present and witness the taking of the sample and so signify in writing. Failure to be present and witness the collection of the samples constitutes a waiver by the owner, trainer, or representative of any objections to the source and documentation of the sample.

*e.* The commission veterinarian, the board of stewards, agents of the division of criminal investigation, or commission representative may take samples of any medicine or other materials suspected of containing improper medication, drugs, or other substance which could affect the racing condition of a horse in a race, which may be found in barns or elsewhere on facility premises or in the possession of any person connected with racing, and the same shall be delivered to the official chemist for analysis.

*f.* Nothing in these rules shall be construed to prevent:

(1) Any horse in any race from being subjected by the order of a steward or the commission veterinarian to tests of body fluid samples for the purpose of determining the presence of any foreign substance.

(2) The state steward or the commission veterinarian from authorizing the splitting of any sample.

(3) The commission or commission veterinarian from requiring body fluid samples to be stored in a frozen state for future analysis.

*g.* Before leaving the racing surface, the trainer shall ascertain the testing status of the horse under the trainer's care from the commission veterinarian or designated detention barn representative.

**10.7(3) Chemists.**

*a.* Tests are to be under the supervision of the commission, which shall employ one or more chemists or contract with one or more qualified chemical laboratories to determine by chemical testing and analysis of body fluid samples whether a foreign substance, medication, drug or metabolic derivative thereof is present.

*b.* All body fluid samples taken by or under direction of the commission veterinarian or commission representative shall be delivered to the laboratory of the official chemist for analysis.

*c.* The commission chemist shall be responsible for safeguarding and testing each sample delivered to the laboratory by the commission veterinarian.

*d.* The commission chemist shall conduct individual tests on each sample, screening them for prohibited substances, and conducting other tests to detect and identify any suspected prohibited substance or metabolic derivative thereof with specificity. Pooling of samples shall be permitted only with the knowledge and approval of the commission.

*e.* Upon the finding of a test negative for prohibited substances, the remaining portions of the sample may be discarded. Upon the finding of tests suspicious or positive for prohibited substances, the tests shall be reconfirmed, and the remaining portion, if available, of the sample shall be preserved and protected for two years following close of meet.

*f.* The commission chemist shall submit to the commission a written report as to each sample tested, indicating by sample tag identification number, whether the sample was tested negative or positive for prohibited substances. The commission chemist shall report test findings to no person other than the administrator or commission representative, with the exception of notifying the state stewards of all positive tests.

*g.* In the event the commission chemist should find a sample suspicious for a prohibited medication, additional time for test analysis and confirmation may be requested.

*h.* In reporting to the state steward a finding of a test positive for a prohibited substance, the commission chemist shall present documentary or demonstrative evidence acceptable in the scientific community and admissible in court in support of the professional opinion as to the positive finding.

*i.* No action shall be taken by the state steward until an official report signed by the chemist properly identifying the medication, drug, or other substance as well as the horse from which the sample was taken has been received.

*j.* The cost of the testing and analysis shall be paid by the commission to the official chemist. The commission shall then be reimbursed by each facility on a per-sample basis so that each facility shall bear only its proportion of the total cost of testing and analysis. The commission may first receive payment from funds provided in Iowa Code chapter 99D, if available.

**10.7(4) Practicing veterinarian.**

*a.* Prohibited acts.

(1) Ownership. A licensed veterinarian practicing at any meeting is prohibited from possessing any ownership, directly or indirectly, in any racing animal racing during the meeting.

(2) Wagering. Veterinarians licensed by the commission as veterinarians are prohibited from placing any wager of money or other thing of value directly or indirectly on the outcome of any race conducted at the meeting at which the veterinarian is furnishing professional service.

(3) Prohibition of furnishing injectable materials. No veterinarian shall within the facility premises furnish, sell, or loan any hypodermic syringe, needle, or other injection device, or any drug, narcotic, or prohibited substance to any other person unless with written permission of the stewards.

*b.* The use of other than single-use disposable syringes and infusion tubes on facility premises is prohibited. Whenever a veterinarian has used a hypodermic needle or syringe, the veterinarian shall destroy the needle and syringe and remove the needle and syringe from the facility premises.

*c.* Veterinarians must submit daily to the commission veterinarian on a prescribed form a report of all procedures, medications and other substances which the veterinarian prescribed, administered, or dispensed for racing animals registered at the current race meeting as provided in Iowa Code section 99D.25(10). Reports shall be submitted not later than noon the day following the treatments' being reported. Reports shall include the racing animal, trainer, procedure, medication or other substance, dosage or quantity, route of administration, date and time administered, dispensed, or prescribed. Reports shall be signed by the practicing veterinarian.

*d.* Within 20 minutes following the administration of furosemide, the veterinarian must deliver to the commission veterinarian or commission representative a signed affidavit certifying information regarding the treatment of the horse. The statement must include, at a minimum, the name of the practicing veterinarian, the tattoo number of the horse, the location of the barn and stall where the treatment occurred, the race number of the horse, the name of the trainer, and the time that the furosemide was administered. This affidavit must be signed by the trainer or trainer's designee who witnessed the administration of furosemide. The veterinarian shall not administer the furosemide if a witness is not present. Furosemide shall only be administered (by a single intravenous injection) in a dose level allowed by Iowa Code section 99D.25A, subsection 7.

*e.* Each veterinarian shall report immediately to the commission veterinarian any illness presenting unusual or unknown symptoms in a racing animal entrusted into the veterinarian's care.

*f.* Practicing veterinarians may have employees licensed as veterinary assistants working under their direct supervision. Activities of these employees shall not include direct treatment or diagnosis of any animal. The practicing veterinarian must be present if a veterinary assistant is to have access

to injection devices or injectables. The practicing veterinarian shall assume all responsibility for a veterinary assistant.

g. Equine dentistry is considered a function of veterinary practice by the Iowa veterinary practice Act. Any dental procedures performed at the facility must be performed by a licensed veterinarian or a licensed veterinary assistant.

h. Unless approved by the commission veterinarian, veterinarians shall not have contact with an entered horse on race day except for the administration of furosemide.

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These rules are intended to implement Iowa Code chapter 99D.

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◊ Two or more ARCs

<sup>1</sup> Effective date (1/4/89) of 10.4(14), 10.4(19)“b” and 10.6 delayed by the Administrative Rules Review Committee until January 9, 1989, at its December 13, 1988, meeting; effective date of January 4, 1989, delayed seventy days by this Committee at its January 5, 1989, meeting. Effective date delay lifted by the Committee at its February 13, 1989, meeting.

<sup>2</sup> Effective date of 10.6(2)“g”(3) second paragraph delayed until adjournment of the 1997 Session of the General Assembly by the Administrative Rules Review Committee at its meeting held October 8, 1996.

CHAPTER 11  
GAMBLING GAMES

**491—11.1(99F) Definitions.**

“*Administrator*” means the administrator of the commission.

“*Coin*” means tokens, nickels, and quarters of legal tender.

“*Commission*” means the racing and gaming commission.

“*Currency*” means any coin or paper money of legal tender and paper forms of cashless wagering.

“*Discount rate*” means either the current prime rate as published in the Wall Street Journal or a blended rate computed by obtaining quotes for the purchase of qualified investments at least three times per month.

“*Distributor’s license*” means a license issued by the administrator to any entity that sells, leases, or otherwise distributes gambling games or implements of gambling to any entity licensed to conduct gambling games pursuant to Iowa Code chapter 99F.

“*Facility*” means an entity licensed by the commission to conduct gaming operations in Iowa.

“*Facility grounds*” means all real property utilized by the facility in the conduct of its gaming activity, including the grandstand, concession stands, offices, parking lots, and any other areas under the jurisdiction of the commission.

“*Gambling game*” means any game of chance approved by the commission for wagering, including, but not limited to, gambling games authorized by this chapter.

“*Government sponsored enterprise debt instrument*” means a negotiable, senior, noncallable debt obligation issued by an agency of the United States or an entity sponsored by an agency of the United States that on the date of funding possesses an issuer credit rating equivalent to the highest investment grade rating given by Standard & Poor’s or Moody’s Investment Services.

“*Implement of gambling*” means any device or object determined by the administrator to directly or indirectly influence the outcome of a gambling game; collect wagering information while directly connected to a slot machine; or be integral to the conduct of a commission-authorized gambling game.

“*Manufacturer’s license*” means a license issued by the administrator to any entity that assembles, fabricates, produces, or otherwise constructs a gambling game or implement of gambling used in the conduct of gambling games pursuant to Iowa Code chapter 99F.

“*Present value*” means the current value of a future payment or series of payments, discounted using the discount rate.

“*Qualified investment*” means an Iowa state issued debt instrument, a United States Treasury debt instrument or a government sponsored enterprise debt obligation.

“*Reserve*” means an account with an independent financial institution or brokerage firm consisting of cash and qualified investments used to satisfy periodic payments of prizes.

“*Slot machine*” means a mechanical or electronic gambling game device into which a player may deposit currency or forms of cashless wagering and from which certain numbers of credits are awarded when a particular configuration of symbols or events is displayed on the machine.

“*Storage media*” means EPROMs, ROMs, flash-ROMs, DVDs, CD-ROMs, compact flashes, hard drives and any other types of program storage device.

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**491—11.2(99F) Conduct of all gambling games.**

**11.2(1) *Commission policy.*** It is the policy of the commission to require that all facilities conduct gambling games in a manner suitable to protect the public health, safety, morals, good order, and general welfare of the state. Responsibility for the employment and maintenance of suitable methods of operation rests with the facility. Willful or persistent use or toleration of methods of operation deemed unsuitable in the sole discretion of the commission will constitute grounds for disciplinary action, up to and including license revocation.

**11.2(2) *Activities prohibited.*** A facility is expressly prohibited from the following activities:

- a. Failing to conduct advertising and public relations activities in accordance with decency, dignity, good taste, and honesty.
- b. Permitting persons who are visibly intoxicated to participate in gaming activity.
- c. Failing to comply with or make provision for compliance with all federal, state, and local laws and rules pertaining to the operation of a facility including payment of license fees, withholding payroll taxes, and violations of alcoholic beverage laws or regulations.
- d. Possessing, or permitting to remain in or upon any facility grounds, any associated gambling equipment which may have in any manner been marked, tampered with, or otherwise placed in a condition or operated in a manner which might affect the game and its payouts.
- e. Permitting, if the facility was aware of, or should have been aware of, any cheating.
- f. Possessing or permitting to remain in or upon any facility grounds, if the facility was aware of, or should have been aware of, any cheating device whatsoever; or conducting, carrying on, operating, or dealing any cheating or thieving game or device on the grounds.
- g. Possessing or permitting to remain in or upon any facility grounds, if the facility was aware of, or should have been aware of, any gambling device which tends to alter the normal random selection of criteria which determines the results of the game or deceives the public in any way.
- h. Failing to conduct gaming operations in accordance with proper standards of custom, decorum, and decency; or permitting any type of conduct that reflects negatively on the state or acts as a detriment to the gaming industry.
- i. Denying a commissioner or commission representative, upon proper and lawful demand, information or access to inspect any portion of the gaming operation.

**11.2(3) *Gambling aids.*** No person shall use, or possess with the intent to use, any calculator, computer, or other electronic, electrical, or mechanical device that:

- a. Assists in projecting the outcome of a game.
- b. Keeps track of cards that have been dealt.
- c. Keeps track of changing probabilities.

**11.2(4) *Wagers.*** Wagers may only be made:

- a. By a person present at a facility.
- b. In the form of chips, coins, or other cashless wagering.
- c. By persons 21 years of age or older.

[ARC 8029B, IAB 8/12/09, effective 9/16/09]

**491—11.3(99F) *Gambling games approved by the commission.*** The commission may approve a gambling game by administrative rule, resolution, or motion.

**491—11.4(99F) *Approval for distribution, operation, or movement of gambling games and implements of gambling.***

**11.4(1) *Approval.*** Prior to distribution, a distributor shall request that the administrator inspect, investigate, and approve a gambling game or implement of gambling for compliance with commission rules and the standards required by a commission-designated independent testing facility. The distributor, at its own expense, must provide the administrator and independent testing facility with information and product sufficient to determine the integrity and security of the product, including independent testing conducted by a designated testing facility. The commission shall designate up to two independent testing facilities for the purpose of certifying electronic gambling games or implements of gambling.

**11.4(2) *Trial period.*** Prior to or after commission approval and after completing a review of a proposed gambling game, the administrator may require a trial period of up to 180 days to test the gambling game in a facility. During the trial period, minor changes in the operation or design of the gambling game may be made with prior approval of the administrator. During the trial period, a gambling game distributor shall not be entitled to receive revenue of any kind from the operation of that gambling game.

**11.4(3) *Gambling game submissions.*** Prior to conducting a commission-authorized gambling game or for a trial period, a facility shall submit proposals for game rules, procedures, wagers, shuffling procedures, dealing procedures, cutting procedures, and payout odds. The gambling game submission, or requests for modification to an approved submission, shall be in writing and approved by the administrator or a commission representative prior to implementation.

**11.4(4) *Public notice.*** The public shall have access to the rules of play, payout schedules, and permitted wagering amounts. Signage shall be conspicuously posted on the gaming floor to direct patrons to the gaming floor area where this information can be viewed. All participants in all licensed gambling games are required to know and follow the rules of play. No forms of cheating shall be permitted.

**11.4(5) *Operation.*** Each gambling game shall operate and play in accordance with the representation made to the commission and the public at all times. The administrator or commission representative may order the withdrawal of any gambling game suspected of malfunction or misrepresentation, until all deficiencies are corrected. The administrator or commission representative may require additional testing by an independent testing facility at the expense of the licensee or distributor for the purpose of complying with this subrule.

**11.4(6) *Distribution, movement and disposal.***

*a.* Any entity providing slot machines, gambling games or implements of gambling to a licensed facility must file written notice with the commission at least five calendar days prior to receipt by the facility. A licensed facility selling or an owner removing slot machines or gambling games from the facility must file written notice with the commission at least one day prior to removal. All methods of disposal for slot machines, gambling games or implements of gambling are subject to administrator approval. Notification by facsimile or electronic mail shall be considered written notice.

*b.* The administrator may approve licensee transfers of slot machines, gambling games, or implements of gambling among subsidiaries of the licensee's parent company.

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#### **491—11.5(99F) Gambling games authorized.**

**11.5(1)** Craps, roulette, twenty-one (blackjack), baccarat, and poker are authorized as table games. The administrator is authorized to approve multiplayer electronic devices simulating these games, subject to the requirements of rule 491—11.4(99F) and subrule 11.5(3).

**11.5(2)** Slot machines, video poker, and other video games of chance, both progressive and nonprogressive, shall be allowed as slot machine games, subject to the administrator's approval of individual slot machine prototypes and game variations. For racetrack enclosures without a table games license, video machines which simulate table games of chance shall not be allowed.

**11.5(3)** The administrator is authorized to approve variations of approved gambling games and bonus features or progressive wagers associated with approved gambling games, subject to the requirements of rule 491—11.4(99F).

*a.* Features utilizing a controller or a system linked to gambling games that do not require direct monetary consideration and are not otherwise integrated within a slot machine game theme may be allowed as bonus features. Payouts from these bonus features may be included in winnings for the calculation of wagering tax adjusted gross receipts when the following conditions are met:

(1) The only allowable nonmonetary consideration to be expended by a participant shall be active participation in a gambling game with a bonus feature or use of a player's club card, or both.

(2) The actual bonus payout deductible in any month from all qualified system bonuses requiring no additional direct monetary consideration shall be:

1. No more than 2 percent of the coin-in for all slot machines linked to any system bonuses for that month, if slot machines linked to system bonuses exceed 20 percent of the total number of slot machines; or

2. No more than 3 percent of the coin-in for all slot machines linked to any system bonuses for that month, if slot machines linked to system bonuses are less than or equal to 20 percent of the total number of slot machines; or

3. No more than 3 percent of the amount wagered on the qualifying bets for all table games linked to any system bonus for that month.

(3) The probability of winning a system bonus award shall be the same for all persons participating in the bonus feature.

*b.* Noncashable credit payouts may be allowed as bonus feature payouts subject to the administrator's approval of individual accounting, expiration and redemption practices.

**11.5(4)** Gambling games of chance involving prizes awarded to participants through promotional activities at a facility.

*a. Proposals.* Gambling games of chance involving prizes awarded to participants through promotional activities shall be authorized and approved by the commission. Before a facility may conduct such gambling games, all proposals for terms, game rules, prizes, dates of operation and procedures for any gambling games of chance involving prizes awarded through promotional activities shall be submitted in writing to a commission representative for approval. The written submission shall be submitted to the commission representative at least 14 days in advance of the planned activity. Any changes to an approved gambling game of chance involving prizes awarded to participants through promotional activities shall also require the approval of the commission representative. Gambling games of chance involving prizes awarded to participants through promotional activities shall meet the following requirements:

- (1) All rules of play shall be in writing and posted for public inspection;
- (2) Such games shall be limited to participants 21 years of age or older;
- (3) All games shall be conducted in a fair and honest manner, and all prizes advertised shall be awarded in accordance with the posted rules of play;
- (4) All such games shall be conducted on the gaming floor and shall be conducted in accordance with the submission approved by the commission representative;
- (5) No entry fees shall be permitted; and
- (6) All employees of the facility shall be prohibited from participation.

*b. Limits.* Gambling games of chance involving prizes awarded to participants through promotional activities conducted at a facility shall be subject to the wagering tax pursuant to Iowa Code section 99F.11. However, in determining the adjusted gross receipts, the facility may consider all nonmonetary consideration expended by a participant and shall certify to the commission that the nonmonetary consideration is at least equal to the value of the prizes awarded.

[ARC 8029B, IAB 8/12/09, effective 9/16/09; ARC 9018B, IAB 8/25/10, effective 9/29/10; ARC 9987B, IAB 2/8/12, effective 3/14/12; ARC 0734C, IAB 5/15/13, effective 6/19/13]

#### **491—11.6(99F) Gambling game-based tournaments.**

**11.6(1) Proposals.** Proposals for terms, game rules, entry fees, prizes, dates, and procedures must be submitted in writing and approved by a commission representative before a facility conducts any tournament. Any changes to approved tournaments must be submitted to the commission representative for review and approval prior to being implemented. The written proposal or change shall be submitted to a commission representative at least 14 days in advance of the planned activity. Rules, fees, and a schedule of prizes must be made available to the player prior to entry.

**11.6(2) Limits.** Tournaments must be based on gambling games authorized by the commission. Entry fees, less prizes paid, are subject to the wagering tax pursuant to Iowa Code section 99F.11. In determining adjusted gross receipts, to the extent that prizes paid out exceed entry fees received, the facility shall be deemed to have paid the fees for the participants.

**11.6(3) Tournament chips.** Tournament chips used as wagers in table game tournament proposals approved pursuant to this rule shall be imprinted with a number representing the value of the chip or shall be assigned a value. The facility shall provide that:

- a.* The assigned value of tournament chips be conspicuously displayed in the tournament area.
- b.* Internal controls which account for all tournament chips and include reconciliation, handling and variance procedures are approved by a commission representative.

[ARC 8029B, IAB 8/12/09, effective 9/16/09; ARC 9987B, IAB 2/8/12, effective 3/14/12]

**491—11.7(99F) Table game requirements.**

**11.7(1)** Removable storage media in a table game device which controls the randomness of card shufflers or progressive table game meters shall be verified and sealed with evidence tape by a commission representative prior to implementation.

**11.7(2)** Wagers. All wagers at table games shall be made by placing gaming chips or coins on the appropriate areas of the layout. Information pertaining to the minimum and maximum allowed at the table shall be posted on the game. Any other fee collected to participate in a table game shall be subject to the wagering tax pursuant to Iowa Code section 99F.11.

**11.7(3)** Craps.

*a.* Wagers must be made before the dice are thrown. “Call bets,” or the calling out of bets between the time the dice leave the shooter’s hand and the time the dice come to rest, not accompanied by the placement of gaming chips, are not allowed. A wager made on any bet may be removed or reduced at any time prior to a roll that decides the outcome of such wager unless the wager is a “Pass” or “Come” bet and a point has been established with respect to such bet or the wager is a proposition bet contingent on multiple rolls.

*b.* The shooter shall make a “Pass” or “Don’t Pass” bet and shall handle the two selected dice with one hand before throwing the dice in a simultaneous manner.

*c.* Each die used shall be transparent.

**11.7(4)** Twenty-one.

*a.* Before the first card is dealt for each round of play, each player shall make a wager against the dealer. Once the first card of any hand has been dealt by the dealer, no player shall handle, remove, or alter any wagers that have been made until a decision has been rendered and implemented with respect to that wager. Once a wager on the insurance line, a wager to double down, or a wager to split pairs has been made and confirmed by the dealer, no player shall handle, remove, or alter the wagers until a decision has been rendered and implemented with respect to that wager, except as explicitly permitted. A facility or licensee shall not permit any player to engage in conduct that violates this paragraph.

*b.* At the conclusion of a round of play, all cards still remaining on the layout shall be picked up by the dealer in a prescribed order and in such a way that they can be readily arranged to indicate each player’s hand in case of question or dispute. The dealer shall pick up the cards beginning with those of the player to the far right and moving counterclockwise around the table. The dealer’s hand will be the last hand collected. The cards will then be placed on top of the discard pile. No player or spectator shall remove or alter any cards used to game at twenty-one or be permitted to do so by a casino employee.

*c.* Each player at the table shall be responsible for correctly computing the point count of the player’s hand. No player shall rely on the point counts announced by the dealer without checking the accuracy of such announcement.

**11.7(5)** Roulette.

*a.* No person at a roulette table shall be issued or permitted to game with nonvalue gaming chips that are identical in color and design to value gaming chips or to nonvalue gaming chips being used by another person at that same table.

*b.* Each player shall be responsible for the correct positioning of the player’s wager on the roulette layout, regardless of whether the player is assisted by the dealer. Each player must ensure that any instructions the player gives to the dealer regarding the placement of the player’s wager are correctly carried out.

*c.* Each wager shall be settled strictly in accordance with its position on the layout when the ball falls to rest in a compartment of the wheel.

**11.7(6)** Big six—roulette. Rescinded IAB 2/8/12, effective 3/14/12.**11.7(7)** Poker.

*a.* When a facility conducts poker with an imprest dealer gaming chip bank, the rules in 491—Chapter 12 for closing and distributing or removing gaming chips to or from gaming tables do not apply. The entire amount of the table rake is subject to the wagering tax pursuant to Iowa Code section 99F.11. Proposals for imprest dealer gaming chip banks must be submitted in writing and approved by

a commission representative prior to use and must include, but not be limited to, controls to regularly monitor, investigate, and report table bank variances.

*b.* All games shall be played according to table stakes game rules as follows:

(1) Only gaming chips or coins on the table at the start of a deal shall be in play for that pot.

(2) Concealed gaming chips or coins shall not play.

(3) A player with gaming chips may add additional gaming chips between deals, provided that the player complies with any minimum buy-in requirement.

(4) A player is never obliged to drop out of contention because of insufficient gaming chips to call the full amount of a bet, but may call for the amount of gaming chips the player has on the table. The excess part of the bet made by other players is either returned to the players or used to form a side pot.

*c.* Each player in a poker game is required to act only in the player's own best interest. The facility has the responsibility of ensuring that any behavior designed to assist one player over another is prohibited. The facility may prohibit any two players from playing in the same game.

*d.* Poker games where winning wagers are paid by the facility according to specific payout odds or pay tables are permitted.

*e.* The facility shall comply with and receive approval pursuant to subrule 11.4(3) for each type of poker game offered.

*f.* The facility may elect to offer a jackpot award generated from pot contributions at a table or group of tables for predesignated high-value poker hands, subject to the following requirements:

(1) Approval of the jackpot award rules must be obtained from a commission representative prior to play.

(2) Jackpot award rules and jackpot award amounts shall be posted in a conspicuous location within the poker room. Jackpot award amounts shall be updated no less than once per day.

(3) The facility shall divide pot contributions for any single qualifying award circumstance or event into no more than three jackpot award pools.

(4) The jackpot award pool containing the highest monetary value amount shall be the amount posted in the poker room and awarded to a qualifying player or players.

(5) If additional jackpot award pools are in use, the award pool containing the highest monetary value shall be used to seed the primary jackpot award pool.

(6) All moneys collected as pot contributions to a jackpot award payout shall be distributed in their entirety to the players; no facility shall charge an administration fee for distribution of a jackpot award.

**11.7(8) Baccarat.** Before the first card is dealt for each round of play, each player is permitted to make a wager on the Banker's Hand, Player's Hand, Tie Bet, and any proposition bet if offered. All wagers shall be made by placing gaming chips on the appropriate areas of the layout. Once the first card has been dealt by the dealer, no player shall handle, remove, or alter any wagers that have been made until a decision has been rendered and implemented with respect to that wager.

[ARC 9987B, IAB 2/8/12, effective 3/14/12]

#### **491—11.8(99F) Keno.**

**11.8(1)** Keno shall be conducted using an automated ticket writing and redemption system where a game's winning numbers are selected by a random number generator.

**11.8(2)** Each game shall consist of the selection of 20 numbers out of 80 possible numbers, 1 through 80.

**11.8(3)** For any type of wager offered, the payout must be at least 70 percent.

**11.8(4)** Multigame tickets shall be limited to 20 games.

**11.8(5)** Writing or voiding tickets for a game after that game has closed is prohibited.

**11.8(6)** All winning tickets shall be valid up to a maximum of one year from the date of purchase. All expired, unclaimed winning tickets shall be subject to the requirements in 491—paragraph 12.11(2) "b."

**11.8(7)** The administrator shall determine minimum hardware and software requirements to ensure the integrity of play. An automated keno system must be proven to accurately account for adjusted gross receipts to the satisfaction of the administrator.

**11.8(8)** Adjusted gross receipts from keno games shall be the difference between dollar value of tickets written and dollar value of winning tickets as determined from the automated keno system. The wagering tax pursuant to Iowa Code section 99F.11 shall apply to adjusted gross receipts of keno games.

**11.8(9)** An area of a facility shall not be designated as gaming floor for the sole purpose of keno runners, who accept patron wagering funds remotely from the keno game location.  
[ARC 9018B, IAB 8/25/10, effective 9/29/10]

**491—11.9(99F) Slot machine requirements.**

**11.9(1) Payout percentage.** A slot machine game must meet the following maximum and minimum theoretical percentage payouts during the expected lifetime of the game.

*a.* A slot machine game's theoretical payout must be at least 80 percent and no more than 100 percent of the amount wagered. The theoretical payout percentage is determined using standard methods of probability theory. Slot machine games with a bonus feature that is available with varying payouts based on the player's ability shall be allowed if the difference between the minimum and maximum payout for all ability-based outcomes does not exceed a 4 percent contribution to the overall theoretical payout of the slot machine game.

*b.* A slot machine game shall have a probability of obtaining the highest single advertised payout, which must statistically occur at least once in 50 million games.

**11.9(2) Features.** Unless otherwise authorized by the administrator, each slot machine in a casino shall have the following features:

*a.* A casino number at least two inches in height permanently imprinted, affixed, or impressed on the outside of the machine so that the number may be observed by the surveillance camera.

*b.* A clear description displayed on the slot machine of any merchandise or thing of value offered as a payout including the cash equivalent value of the merchandise or thing of value offered, the dates the merchandise or thing of value will be offered if the facility establishes a time limit upon initially offering the merchandise or thing of value, and the availability or unavailability to the patron of the optional cash equivalent value. A cash equivalent value shall be at least 75 percent of the fair market value of the merchandise or thing of value offered.

*c.* Devices, equipment, features, and capabilities, as may be required by the commission, that are specific to each slot machine after the prototype model is approved by the commission.

**11.9(3) Storage media.** Hardware media devices which contain game functions or characteristics, including but not limited to pay tables and random number generators, shall be verified and sealed with evidence tape by a commission representative prior to being placed in operation, as determined by the administrator.

**11.9(4) Posting of the actual aggregate payout percentage.** The actual aggregate payout percentage to the nearest one-tenth of 1 percent (0.1%) of all slot machine games in operation during the preceding three calendar months shall be posted at the main casino entrance, cashier cages, and slot booths by the fifteenth day of each calendar month. For the purpose of this calculation, the actual aggregate payout percentage shall be the slot revenue reported to the commission during the preceding three calendar months divided by the slot coin-in reported to the commission during the preceding three calendar months subtracted from 100 percent.

**11.9(5) Communication equipment.** Equipment must be installed in each slot machine that allows for communication to an online monitoring and control system accessible, with read-only access, to the commission representatives using a communications protocol provided to each licensed manufacturer by the commission for the information and control programs approved by the administrator.

**11.9(6) Meter clears.** Prior to the clearing of electronic accounting meters detailed in paragraph 11.10(2)“c,” a licensee must notify a commission representative. All meters recorded by the game must be retained according to the requirements in 491—subrule 5.4(14).

[ARC 8029B, IAB 8/12/09, effective 9/16/09; ARC 9018B, IAB 8/25/10, effective 9/29/10]

**491—11.10(99F) Slot machine hardware and software specifications.**

**11.10(1) Hardware specifications.**

a. Electrical and mechanical parts and design principles shall not subject players to physical hazards.

b. The battery backup, or an equivalent, for the electronic meters must be capable of maintaining accuracy of all required information for 30 days after power is discontinued from a slot machine. The backup shall be kept within the locked logic board compartment.

c. An identification badge permanently affixed by the manufacturer to the exterior of the cabinet shall include the following information:

- (1) The manufacturer;
- (2) A unique serial number;
- (3) The gaming device model number; and
- (4) The date of manufacture.

d. The operations and outcomes of each slot machine must not be adversely affected by influences from outside the device.

e. The internal space of a slot machine shall not be readily accessible when the front door is both closed and locked.

f. Logic boards and software storage media which significantly influence the operation of the game must be in a locked compartment within the slot machine.

g. The currency drop container must be in a locked compartment within or attached to the slot machine. Access to the currency storage areas shall be secured by separate locks which shall be fitted with sensors that indicate door open/closed or stacker removed.

h. No hardware switches may be installed that alter the pay tables or payout percentages in the operation of a slot machine. Hardware switches may be installed to control graphic routines, speed of play, and sound.

i. A display which automatically illuminates when a player has won a jackpot or other award not paid automatically and totally by the slot machine and which advises players that they will be paid by an attendant shall be located conspicuously on the slot machine.

j. A payglass/video display shall be clearly identified and shall accurately state the rules of the game and the award that will be paid to the player when the player obtains a specific combination of symbols or other criteria. All information required in this paragraph must be available and readable at all times the slot machine is in service.

k. A light that automatically illuminates when a player has won an amount or is redeeming credits that the machine cannot automatically pay, an error condition has occurred, or a "Call attendant" condition has been initiated by the player shall be located conspicuously on top of the gaming device. At the discretion of the administrator, tower lights may be shared among certain machines or substituted by an audible alarm.

l. If credits are collected and the total credit value is unable to be paid automatically by the gaming device, the device shall lock up until the credits have been paid and the amount collected has been cleared by an attendant handpay or normal operation has been restored.

**11.10(2) Software specifications.**

a. *Random number generator:* Each slot machine must have a random number generator to determine the results of the game symbol selections or production of game outcomes. The selection shall:

- (1) Be statistically independent.
- (2) Conform to the desired random distribution.
- (3) Pass various recognized statistical tests.
- (4) Be unpredictable.
- (5) Have a testing confidence level of 99 percent.

b. *Continuation of game after malfunction is cleared.* Each slot machine must be capable of continuing the current game with all current game features after a malfunction is cleared. This paragraph does not apply if a slot machine is rendered totally inoperable; however, the current wager and all credits appearing on the screen prior to the malfunction must be returned to the player.

*c. Electronic accounting meters.* Each slot machine must maintain electronic accounting meters at all times, regardless of whether the slot machine is being supplied with power. For each meter recording values, the slot machine must be capable of maintaining no fewer than ten digits. For each meter recording occurrences, the slot machine must be capable of maintaining no fewer than eight digits. No slot machine may have a mechanism that will cause the electronic accounting meters to automatically clear due to an error. The electronic meters must record, at a minimum, the following:

- (1) Coin-in.
- (2) Coin-out.
- (3) Drop.
- (4) Attendant-paid jackpots.
- (5) Currency in.
- (6) Currency out.
- (7) External door.
- (8) Bill validator door.
- (9) Machine-paid external bonus payout.
- (10) Attendant-paid external bonus payout.
- (11) Attendant-paid progressive payout.
- (12) Machine-paid progressive payout.

*d. Error conditions.* Each slot machine shall display and report error conditions to the online monitoring system. For machines that display only a code, definitions for all codes must be permanently affixed to the interior of the slot machine. Error conditions that must be displayed and reported include but are not limited to:

- (1) Currency in.
- (2) Currency out.
- (3) Door open.
- (4) RAM.
- (5) Low battery.
- (6) Program authentication.
- (7) Reel spin.
- (8) Power reset.

**11.10(3) Previous slot machine models.** Subject to administrator approval of specific gaming devices, slot machines may be used that do not meet the requirements of subrules 11.10(1) and 11.10(2) but have been certified under previously approved specifications by a commission-designated independent testing facility and maintain a current certification.

[ARC 8029B, IAB 8/12/09, effective 9/16/09]

**491—11.11(99F) Slot machine specifications.** Rescinded IAB 8/12/09, effective 9/16/09.

**491—11.12(99F) Progressive slot machines.**

**11.12(1) Meter required.** A progressive machine is a slot machine game with an award amount that increases based on a function of credits bet on the slot machine and that is awarded when a particular configuration of symbols or events is displayed on the slot machine. Random events generating awards independent of the base slot machine game and not dependent on any specific slot machine game shall be considered bonus features. A progressive slot machine or group of linked progressive slot machines must have a meter showing the progressive jackpot payout.

**11.12(2) Progressive controllers.** The reset or base value and the rate of increment of a progressive jackpot game must be filed with a commission representative prior to implementation. A reset or base value must equal or exceed the equivalent nonprogressive jackpot payout.

**11.12(3) Limits.** A facility may impose a limit on the progressive jackpot payout of a slot machine if the limit imposed is greater than the progressive jackpot payout at the time the limit is imposed. The facility must prominently display a notice informing the public of the limit. No progressive meter may be turned back to a lesser amount unless one of the following circumstances occurs:

- a. The amount shown on the progressive meter is paid to a player as a jackpot.
- b. It is necessary to adjust the progressive meter to prevent it from displaying an amount greater than the limit imposed by the facility.
- c. It is necessary to change the progressive indicator because of game malfunction.

**11.12(4) *Transfer of jackpots.*** In the event of malfunction, replacement, or other reason approved by the commission, a progressive jackpot that is removed shall be transferred, less the reset value, to other progressive slot machine jackpots of similar progressive wager and probability at the same facility within 30 days from the removal date. In the event a similar progressive jackpot at the same facility is unavailable, other transfers shall be allowed. A commission representative shall be notified in writing prior to a removal or transfer.

**11.12(5) *Records required.*** Records must be maintained that record the amount shown on a progressive jackpot meter. Supporting documents must be maintained to explain any reduction in the payoff amount from a previous entry. The records and documents must be retained for a period of three years unless permission to destroy them earlier is given in writing by the administrator.

**11.12(6) *Transfer of progressive slot machines.*** A progressive slot machine, upon permission of the administrator, may be moved to a different facility if a bankruptcy, loss of license, or other good cause warrants.

**11.12(7) *Linked machines.*** Each machine on the link shall have the same probability of winning the progressive jackpot, adjusted for the total amount wagered. The product of the odds of winning the progressive jackpot multiplied by the maximum amount wagered shall be equal for all games on the link.

**11.12(8) *Wide area progressive systems.*** A wide area progressive system is a method of linking progressive slot machines or electronic gaming machines across telecommunication lines as part of a network connecting participating facilities. The purpose of a wide area progressive system is to offer a common progressive jackpot (system jackpot) at all participating locations. The operation of a wide area progressive system (multilink) is permitted subject to the following conditions:

- a. The method of communication over the multilink must consist of dedicated on-line communication lines (direct connect) or equivalent as determined by the administrator, dial-tone lines, or wireless communication which may be subject to certain restrictions imposed by the administrator.
- b. All communication between each facility location and the central system site must be encrypted.
- c. All meter reading data must be obtained in real time in an on-line automated fashion. When requested to do so, the system must return meter readings on all slot machines or electronic gaming machines attached to the multilink within a reasonable time of the meter acquisition request. Manual reading of meter values may not be substituted for these requirements. There is no restriction as to the acceptable method of obtaining meter reading values, provided that the methods consist of either pulses from any machine computer board or associated wiring, or the use of serial interface to the machine's random access memory (RAM) or other nonvolatile memory.
- d. The multilink must have the ability to monitor entry into the front door of the machine as well as the logic area of the machine and report such data to a central system.
- e. The central system site must be located in the state of Iowa, be equipped with a noninterruptible power supply, and the central computer must be capable of on-line data redundancy should hard disk peripherals fail during operation. The office containing the central computer shall be equipped with a surveillance system that has been approved by the administrator. Any person authorized to provide a multilink shall be required to keep and maintain an entry and exit log for the office containing the central computer. Any person authorized to provide a multilink shall provide access to the office containing the central computer to the administrator and shall make available to the administrator all books, records, and information required by the administrator in fulfilling its regulatory purpose.
- f. Any person authorized to provide a multilink must suspend play on the multilink if a communication failure of the system cannot be corrected within 24 consecutive hours.
- g. Approval by a commission representative of any multilink shall occur only after the administrator has reviewed the multilink software and hardware and is satisfied that the operation of the system meets accepted industry standards for multilink products, as well as any other requirements that the administrator may impose to ensure the integrity, security, and legal operation of the multilink.

*h.* A meter that shows the amount of the system jackpot must be conspicuously displayed at or near the machines to which the jackpot applies. The system jackpot meter need not precisely show the actual moneys in the system jackpot award at each instant. Nothing shall prohibit the use of odometer or other paced updating progressive displays. In the case of the use of paced updating displays, the system jackpot meter must display the winning value after the jackpot broadcast is received from the central system, providing the remote site is communicating to the central computer. If a system jackpot is recognized in the middle of a systemwide poll cycle, the system jackpot display may contain a value less than the aggregated amount calculated by the central system. The coin values from the remaining portion of the poll cycle will be received by the central system but not the local site, in which case the system jackpot amount paid will always be the higher of the two reporting amounts.

*i.* When a system jackpot is won, a person authorized to provide the multilink shall have the opportunity to inspect the machine, storage media, the error events received by the central system, and any other data which could reasonably be used to ascertain the validity of the jackpot.

(1) The central system shall produce reports that will clearly demonstrate the method of arriving at the payoff amount. This shall include the coins contributed beginning with the polling cycle immediately following the previous jackpot and will include all coins contributed up to, and including, the polling cycle, which includes the jackpot signal. Coins contributed to and registered by the system before the jackpot message is received will be deemed to have been contributed to the progressive amount prior to the current jackpot. Coins contributed to the system subsequent to the jackpot message's being received as well as coins contributed to the system before the jackpot message is received by the system, but registered after the jackpot message is received at the system, will be deemed to have been contributed to the progressive amount of the next jackpot.

(2) The system jackpot may be disbursed in periodic payments as long as each machine clearly displays the fact that the jackpot will be paid in such periodic payments. In addition, the number of periodic payments and time between payments must be clearly displayed on the face of the slot machine in a nonmisleading manner.

(3) Two system jackpots which occur in the same polling cycle before the progressive amount can reset will be deemed to have occurred simultaneously; therefore, each winner shall receive the full amount shown on the system jackpot meter.

*j.* Any person authorized to provide a multilink must supply to the commission, as requested, reports which support and verify the economic activity of the system.

(1) Any person authorized to provide a multilink must supply to the commission, as requested, reports and information indicating the amount of, and basis for, the current system jackpot. Such reports may include an aggregate report and a detail report. The aggregate report may show only the balancing of the system with regard to systemwide totals. The detail report shall be in such form as to indicate for each machine, summarized by location, the coin-in totals as such terms are commonly understood in the industry.

(2) In addition, upon the invoicing of any facility participating in a multilink, each such facility must be given a printout of each machine operated by that facility, the coins contributed by each machine to the system jackpot for the period for which an invoice is remitted, and any other information required by the commission to confirm the validity of the facility's contributions to the system jackpot.

*k.* In calculating adjusted gross receipts, a facility may deduct its pro-rata share of the present value of any system jackpots awarded. Such deduction shall be listed on the detailed accounting records provided by the person authorized to provide the multilink. A facility's pro-rata share is based on the number of coins in from that facility's machines on the multilink, compared to the total amount of coins in on the whole system for the time period(s) between jackpot(s) awarded.

*l.* In the event a facility ceases operations and a progressive jackpot is awarded subsequent to the last day of the final month of operation, the facility may not file an amended wagering tax submission or make a claim for a wagering tax refund based on its contributions to that particular progressive prize pool.

*m.* A facility, or an entity that is licensed as a manufacturer or distributor, shall provide the multilink, in accordance with a written agreement which shall be reviewed and approved by the commission prior to offering the jackpots.

*n.* The payment of any system jackpot offered on a multilink shall be administered by the person authorized to provide the multilink, and such person shall have primary liability for payment of any system jackpot the person administers. In addition, any facility shall have secondary liability for the payment of system jackpots won on a multilink in which the licensee is or was a participant if and to the extent that the person authorized to provide the multilink fails to make payment when due.

*o.* A person who is authorized to provide the multilink shall comply with the following:

(1) A reserve shall be established and maintained by the provider of the multilink in an amount of not less than the sum of the following amounts:

1. The present value of the aggregate remaining balances owed on all jackpots previously won by patrons on the multilink.

2. The present value of the amount currently reflected on the jackpot meters of the multilink.

3. The present value of one additional reset (start amount) of the multilink.

(2) The reserve shall continue to be maintained until all payments owed to winners of the system jackpots have been made.

(3) For system jackpots disbursed in periodic payments, any qualified investment shall be purchased within 90 days following notice of the win of the system jackpot, and a copy of such qualified investment will be provided to the commission office within 30 days of purchase. Any qualified investment shall have a surrender value at maturity, excluding any interest paid before the maturity date, equal to or greater than the value of the corresponding periodic jackpot payment, and shall have a maturity date prior to the date the periodic jackpot payment is required to be made.

(4) The person authorized to provide the multilink shall not be permitted to sell, trade, or otherwise dispose of any qualified investments prior to their maturity unless approval to do so is first obtained from the commission.

(5) Upon becoming aware of an event of noncompliance with the terms of the reserve requirement mandated by subparagraph (1) above, the person authorized to provide the multilink must immediately notify the commission of such event. An event of noncompliance includes a nonpayment of a jackpot periodic payment or a circumstance which may cause the person authorized to provide the multilink to be unable to fulfill, or which may otherwise impair the person's ability to satisfy, the person's jackpot payment obligations.

(6) On a quarterly basis, the person authorized to provide the multilink must deliver to the commission office a calculation of system reserves required under subparagraph (1) above. The calculation shall come with a certification of financial compliance signed by a duly authorized financial officer of the person authorized to provide the multilink, on a form prescribed by the commission, validating the calculation.

(7) The reserve required under subparagraph (1) must be examined by an independent certified public accountant according to procedures approved by the commission. Two copies of the report must be submitted to the commission office within 90 days after the conclusion of the fiscal year of the person authorized to provide the multilink.

*p.* For system jackpots disbursed in periodic payments, subsequent to the date of the win, a winner may be offered the option to receive, in lieu of periodic payments, a discounted single cash payment in the form of a "qualified prize option," as that term is defined in Section 451(h) of the Internal Revenue Code. The person authorized to provide the multilink shall calculate the single cash payment based on the discount rate. Until the new discount rate becomes effective, the discount rate selected by the person authorized to provide the multilink shall be used to calculate the single cash payment for all qualified prizes that occur subsequent to the date of the selected discount rate.

[ARC 7757B, IAB 5/6/09, effective 6/10/09; ARC 8029B, IAB 8/12/09, effective 9/16/09; ARC 9018B, IAB 8/25/10, effective 9/29/10]

**491—11.13(99F) Licensing of manufacturers and distributors of gambling games or implements of gambling.**

**11.13(1) *Impact on gambling.*** In considering whether a manufacturer or distributor applicant will be licensed or a specific product will be distributed, the administrator shall give due consideration to the economic impact of the applicant's product, the willingness of a licensed facility to offer the product to the public, and whether its revenue potential warrants the investigative time and effort required to maintain effective control over the product.

**11.13(2) *Licensing standards.*** Standards which shall be considered when determining the qualifications of an applicant shall include, but are not limited to, financial stability; business ability and experience; good character and reputation of the applicant as well as all directors, officers, partners, and employees; integrity of financial backers; and any effect on the Iowa economy.

**11.13(3) *Application procedure.*** Application for a manufacturer's or a distributor's license shall be made to the commission for approval by the administrator. In addition to the application, the following must be completed and presented when the application is filed:

*a.* Disclosure of ownership interest, directors, or officers of licensees.

(1) An applicant or licensee shall notify the administrator of the identity of each director, corporate officer, owner, partner, joint venture participant, trustee, or any other person who has any beneficial interest of 5 percent or more, direct or indirect, in the business entity. For any of the above, as required by the administrator, the applicant or licensee shall submit background information on forms supplied by the division of criminal investigation and any other information the administrator may require.

For purposes of this rule, beneficial interest includes all direct and indirect forms of ownership or control, voting power, or investment power held through any contract, lien, lease, partnership, stockholding, syndication, joint venture, understanding, relationship (including family relationship), present or reversionary right, title or interest, or otherwise.

(2) For ownership interests of less than 5 percent, the administrator may request a list of these interests. The list shall include names, percentages owned, addresses, social security numbers, and dates of birth. The administrator may request the same information required of those individuals in subparagraph (1) above.

*b.* Investigative fees.

(1) Advance payment. The department of public safety may request payment of the investigative fee in advance as a condition to beginning investigation.

(2) Payment required. The administrator may withhold final action with respect to any application until all investigative fees have been paid in full.

*c.* A bank or cashier's check made payable to the Iowa Racing and Gaming Commission for the annual license fee as follows:

(1) A manufacturer's license shall be \$250.

(2) A distributor's license shall be \$1,000.

*d.* A copy of each of the following:

(1) Articles of incorporation and certificate of incorporation, if the business entity is a corporation.

(2) Partnership agreement, if the business entity is a partnership.

(3) Trust agreement, if the business entity is a trust.

(4) Joint venture agreement, if the business entity is a joint venture.

(5) List of employees of the aforementioned who may have contact with persons within the state of Iowa.

*e.* A copy of each of the following types of proposed distribution agreements, where applicable:

(1) Purchase agreement(s).

(2) Lease agreement(s).

(3) Bill(s) of sale.

(4) Participation agreement(s).

*f.* Supplementary information. Each applicant shall promptly furnish the administrator with all additional information pertaining to the application or the applicant which the administrator may require.

Failure to supply the information requested within five days after the request has been received by the applicant shall constitute grounds for delaying consideration of the application.

*g.* Any and all changes in the applicant's legal structure, directors, officers, or the respective ownership interests must be promptly filed with the administrator.

*h.* The administrator may deny, suspend, or revoke the license of an applicant or licensee in which a director, corporate officer, or holder of a beneficial interest includes or involves any person or entity which would be, or is, ineligible in any respect, such as through want of character, moral fitness, financial responsibility, professional qualifications, or due to failure to meet other criteria employed by the administrator, to participate in gaming regardless of the percentage of ownership interest involved. The administrator may order the ineligible person or entity to terminate all relationships with the licensee or applicant, including divestiture of any ownership interest or beneficial interest at acquisition cost.

*i.* Disclosure. Disclosure of the full nature and extent of all beneficial interests may be requested by the administrator and shall include the names of individuals and entities, the nature of their relationships, and the exact nature of their beneficial interest.

*j.* Public disclosure. Disclosure is made for the benefit of the public, and all documents pertaining to the ownership filed with the administrator shall be available for public inspection.

**11.13(4) Temporary license certificates.**

*a.* A temporary license certificate may be issued at the discretion of the administrator.

*b.* Temporary licenses—period valid. Any certificate issued at the discretion of the administrator shall be valid for a maximum of 120 calendar days from the date of issue.

Failure to obtain a permanent license within the designated time may result in revocation of the license eligibility, fine, or suspension.

**11.13(5) Withdrawal of application.** A written notice of withdrawal of application may be filed by an applicant at any time prior to final action. No application shall be permitted to be withdrawn unless the administrator determines the withdrawal to be in the public interest. No fee or other payment relating to any application shall become refundable by reason of withdrawal of the application.

**11.13(6) Record keeping.**

*a. Record storage required.* Distributors and manufacturers shall maintain adequate records of business operations, which shall be made available to the administrator upon request. These records shall include:

(1) All correspondence with the administrator and other governmental agencies on the local, state, and federal level.

(2) All correspondence between the licensee and any of its customers who are applicants or licensees under Iowa Code chapter 99F.

(3) A personnel file on each employee of the licensee, including sales representatives.

(4) Financial records of all transactions with facilities and all other licensees under these regulations.

*b. Record retention.* The records listed in 11.13(6)“a” shall be retained as required by 491—subrule 5.4(14).

**11.13(7) Violation of laws or regulations.** Violation of any provision of any laws of the state or of the United States of America or of any rules of the commission may constitute an unsuitable method of operation, subjecting the licensee to limiting, conditioning, restricting, revoking or suspending the license, or fining the licensee, or any combination of the above.

**11.13(8) Consent to inspections, searches, and seizures.** Each manufacturer or distributor licensed under this chapter shall consent to inspections, searches, and seizures deemed necessary by the administrator and authorized by law in order to enforce licensing requirements.

These rules are intended to implement Iowa Code chapter 99F.

[Filed 10/13/00, Notice 9/6/00—published 11/1/00, effective 12/6/00]

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## IOWA PUBLIC INFORMATION BOARD[497]

### CHAPTER 1

#### ORGANIZATION AND GENERAL ADMINISTRATION

- 1.1(84GA,ch1115) Board description
- 1.2(84GA,ch1115) Requirements for requesting board advisory opinions
- 1.3(84GA,ch1115) Processing of advisory opinion requests
- 1.4(84GA,ch1115) Conflict of interest

### CHAPTER 2

#### COMPLAINT INVESTIGATION AND RESOLUTION PROCEDURES

- 2.1(84GA,ch1115) Complaints
- 2.2(84GA,ch1115) Investigations—board action
- 2.3(84GA,ch1115) Civil penalties and other appropriate remedies
- 2.4(84GA,ch1115) Settlements

### CHAPTER 3

#### DECLARATORY ORDERS

- 3.1(17A) Petition for declaratory order
- 3.2(17A) Notice of petition
- 3.3(17A) Intervention
- 3.4(17A) Briefs
- 3.5(17A) Inquiries
- 3.6(17A) Service and filing of petitions and other papers
- 3.7(17A) Consideration
- 3.8(17A) Action on petition
- 3.9(17A) Refusal to issue order
- 3.10(17A) Contents of declaratory order—effective date
- 3.11(17A) Copies of orders
- 3.12(17A) Effect of a declaratory order

### CHAPTER 4

#### CONTESTED CASES

- 4.1(17A) Scope and applicability
- 4.2(17A) Definitions
- 4.3(17A) Time requirements
- 4.4(17A) Notice of hearing
- 4.5(17A) Presiding officer
- 4.6(17A) Waiver of procedures
- 4.7(17A) Telephone proceedings
- 4.8(17A) Disqualification
- 4.9(17A) Consolidation—severance
- 4.10(17A) Pleadings
- 4.11(17A) Service and filing of pleadings and other papers
- 4.12(17A) Discovery
- 4.13(17A) Subpoenas
- 4.14(17A) Motions
- 4.15(17A) Prehearing conference
- 4.16(17A) Continuances
- 4.17(17A) Withdrawals
- 4.18(17A) Intervention
- 4.19(17A) Hearing procedures
- 4.20(17A) Evidence

4.21(17A)	Default
4.22(17A)	Ex parte communication
4.23(17A)	Recording costs
4.24(17A)	Interlocutory appeals
4.25(17A)	Final decision
4.26(17A)	Appeals and review
4.27(17A)	Applications for rehearing
4.28(17A)	Stays of agency actions
4.29(17A)	No factual dispute contested cases

#### CHAPTER 5 PETITIONS FOR RULE MAKING

5.1(17A)	Petition for rule making
5.2(17A)	Briefs
5.3(17A)	Inquiries
5.4(17A)	Board consideration

#### CHAPTER 6 AGENCY PROCEDURE FOR RULE MAKING

6.1(17A)	Applicability
6.2(17A)	Advice on possible rules before notice of proposed rule adoption
6.3(17A)	Public rule-making docket
6.4(17A)	Notice of proposed rule making
6.5(17A)	Public participation
6.6(17A)	Regulatory analysis
6.7(17A)	Fiscal impact statement
6.8(17A)	Time and manner of rule adoption
6.9(17A)	Variance between adopted rule and published notice of proposed rule adoption
6.10(17A)	Exemptions from public rule-making procedures
6.11(17A)	Concise statement of reasons
6.12(17A)	Contents, style, and form of rule
6.13(17A)	Agency rule-making record
6.14(17A)	Filing of rules
6.15(17A)	Effectiveness of rules prior to publication
6.16(17A)	General statements of policy
6.17(17A)	Review by agency of rules

#### CHAPTER 7 FAIR INFORMATION PRACTICES

7.1(17A,22)	Definitions
7.2(17A,22)	Statement of policy
7.3(17A,22)	Requests for access to board records
7.4(17A,22)	Procedures for access to confidential records
7.5(17A,22)	Requests for treatment of a government record as a confidential record and its withholding from examination by the board
7.6(17A,22)	Procedure by which additions, dissents or objections may be entered into certain records
7.7(17A,22)	Consensual disclosure of confidential records
7.8(17A,22)	Routine use
7.9(17A,22)	Disclosures without the consent of the subject
7.10(17A,22)	Release to subject
7.11(17A,22)	Availability of records
7.12(17A,22)	Personally identifiable information

- 7.13(17A,22) Other groups of records available for public inspection—policies and procedures (excluding security), meeting minutes
- 7.14(17A,22) Applicability



CHAPTER 1  
ORGANIZATION AND GENERAL ADMINISTRATION

**497—1.1(84GA,ch1115) Board description.**

**1.1(1)** The Iowa public information board is established by 2012 Iowa Acts, chapter 1115, section 6, 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. 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.

**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 Web site at [Web address]. 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 [telephone number]. Written guidance about compliance with the open meetings and public records laws may be provided by advisory opinions (see rules 497—1.2(84GA,ch1115) and 497—1.3(84GA,ch1115)) or by declaratory orders (see rules 497—3.1(84GA,ch1115) to 497—3.8(84GA,ch1115)). In addition, complaints may be filed alleging violations of open meetings or public records laws under rule 497—2.1(84GA,ch1115).

This rule is intended to implement 2012 Iowa Acts, chapter 1115, section 6.  
[ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—1.2(84GA,ch1115) Requirements for requesting board advisory opinions.**

**1.2(1) *Jurisdiction.*** The board will only 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 and 22. 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 2012 Iowa Acts, chapter 1115, section 9(3).  
[ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—1.3(84GA,ch1115) Processing of advisory opinion requests.**

**1.3(1)** Requests for board advisory opinions may be mailed to the Iowa Public Information Board, [address]. Requests may also be submitted by fax to [fax number] or by e-mail to [e-mail address].

**1.3(2)** After receiving an opinion request, the board’s executive director shall prepare 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. The executive director may also cause an opinion to be issued on a routine matter on behalf of the board and shall provide notice to the board in writing of the opinion given. 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.

**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 Web site at [Web address].

**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.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

#### **497—1.4(84GA,ch1115) Conflict of interest.**

**1.4(1) Definition.** "Conflict of interest" means that a board member, the executive director, or a board member's immediate family 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, declaratory order, or a complaint. For purposes of this rule, "immediate family" means a member's spouse, child, grandchild, or parent.

**1.4(2) Procedures.** As soon as a member of the board or the executive director becomes aware of a conflict of interest, the member or executive director shall follow these procedures:

*a.* If the conflict is known before a meeting, the member or executive director shall fully disclose the interest to the chairperson of the board in writing at least 24 hours before the meeting.

*b.* If the conflict is discovered during a meeting, the member or executive director shall orally inform the board and the nature of the conflict shall be reported in writing to the chairperson of the board within 24 hours after the meeting.

*c.* The board member or executive director who has the conflict shall not participate in discussion or vote on any advisory opinion, declaratory order, or complaint.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

These rules are intended to implement 2012 Iowa Acts, chapter 1115, section 6.

[Filed ARC 0741C (Notice ARC 0644C, IAB 3/20/13), IAB 5/15/13, effective 7/1/13]

CHAPTER 2  
COMPLAINT INVESTIGATION AND RESOLUTION PROCEDURES

**497—2.1(84GA,ch1115) Complaints.**

**2.1(1) Form.** A complaint shall be written and signed by the person filing the complaint on forms provided by the board. The complaint shall allege a violation of Iowa Code chapter 21 or 22; provide specific facts in support of the allegation, including the identification of persons and government entity involved in the alleged violation; and provide the specific relief sought.

**2.1(2) Board acceptance or dismissal.** Upon receipt of a written complaint alleging a violation of Iowa Code chapter 21 or 22, the board shall either:

*a.* Accept the complaint, following a review of the allegations on their face, having determined that the complaint is within the board's jurisdiction, appears legally sufficient, and could have merit; or

*b.* Dismiss the complaint, following a review of the allegations on their face, having determined that the complaint is outside the board's jurisdiction, appears legally insufficient, is frivolous, is without merit, involves harmless error, or relates to a specific incident that has previously been disposed of on its merits by the board or a court.

**2.1(3) Delegation.** In order to expedite proceedings, the board may delegate acceptance or dismissal of a complaint to the executive director, subject to review by the board.

**2.1(4) Notice.** If the complaint is accepted, the board shall notify the parties in writing. If the complaint is dismissed, the board shall notify the complainant in writing and explain its reasons for dismissal.

**2.1(5) Board review.** The board's review of a formal complaint for legal sufficiency is not a contested case proceeding and shall be made solely on the facts alleged in the complaint.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—2.2(84GA,ch1115) Investigations—board action.**

**2.2(1) Referral to staff.** Upon acceptance of a complaint, the board shall work with the executive director toward an informal, expeditious resolution. If the complaint is not resolved, the staff shall initiate an investigation to determine whether there is probable cause to believe a violation of Iowa Code chapter 21 or 22 has occurred.

*a. Statements inadmissible and confidential.* Statements made in the course of discussions undertaken to attempt to reach an informal, expeditious resolution cannot be admitted in subsequent contested case proceedings and shall not be related by any participating board member or staff to nonparticipating board members who may later be assigned to hear and decide the contested case.

*b. Board member participation.* A board member who participates in discussions undertaken to attempt to reach an informal, expeditious resolution shall not participate in subsequent contested case proceedings or any appeal from a proposed decision to the full board.

**2.2(2) Subpoenas.** Investigations may include the issuance and enforcement of investigative subpoenas requiring the production of books, papers, records, electronic records and other real evidence, as well as requiring the attendance and testimony of witnesses.

**2.2(3) Completion.** Upon completion of an investigation, staff shall make a report to the board and may provide a recommendation for board action.

**2.2(4) Board action.** Upon receipt and review of the staff investigative report and any recommendations, the board may:

*a.* Redirect the matter for further investigation;

*b.* Dismiss the matter for lack of probable cause to believe a violation has occurred;

*c.* Make a determination that probable cause exists to believe a violation has occurred, but, as an exercise of administrative discretion, dismiss the matter; or

*d.* Make a determination that probable cause exists to believe a violation has occurred, designate a prosecutor and direct the issuance of a statement of charges to initiate a contested case proceeding.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—2.3(84GA,ch1115) Civil penalties and other appropriate remedies.** If it is determined after a contested case proceeding that a violation of statute or rule under the board's jurisdiction has occurred, the board may impose any of the remedies set out in 2012 Iowa Acts, chapter 1115, section 9(8) or section 13(3b).

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—2.4(84GA,ch1115) Settlements.** Settlements may be negotiated during an investigation or after the commencement of a contested case proceeding. Negotiations shall be conducted between the prosecutor and a governmental body or government official against whom a complaint has been filed.

**2.4(1) Board member participation.** The board may designate the chairperson or another board member to participate in settlement negotiations after initiation of a contested case.

**2.4(2) Ex parte communications.** If settlement negotiations are undertaken after a contested case has been initiated, the respondent may be required to waive any objections to ex parte communications concerning settlement discussions.

**2.4(3) Approval.** A settlement shall be in writing and is subject to approval of a majority of the board. If the board declines to approve a proposed settlement, the settlement shall be of no force or effect.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

These rules are intended to implement 2012 Iowa Acts, chapter 1115.

[Filed ARC 0741C (Notice ARC 0644C, IAB 3/20/13), IAB 5/15/13, effective 7/1/13]

CHAPTER 3  
DECLARATORY ORDERS

**497—3.1(17A) Petition for declaratory order.** Any person may file a petition with the board for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the board, at Iowa Public Information Board, [address]. A petition is deemed filed when it is received by that office. The board shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

IOWA PUBLIC INFORMATION BOARD

Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	PETITION FOR DECLARATORY ORDER
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The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by petitioner for a meeting provided for by rule 497—3.7(17A).

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

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—3.2(17A) Notice of petition.** Within 15 days after receipt of a petition for a declaratory order, the board shall give notice of the petition to all persons not served by the petitioner pursuant to rule 497—3.6(17A) to whom notice is required by any provision of law. The board may also give notice to any other persons.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—3.3(17A) Intervention.**

**3.3(1)** Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 15 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

**3.3(2)** Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the board.

**3.3(3)** A petition for intervention shall be filed at Iowa Public Information Board, [address]. Such a petition is deemed filed when it is received by that office. The board will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose.

A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

IOWA PUBLIC INFORMATION BOARD

Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	PETITION FOR INTERVENTION
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The petition for intervention must provide the following information:

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

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

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—3.4(17A) Briefs.** The petitioner or any intervenor may file a brief in support of the position urged. The board may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—3.5(17A) Inquiries.** Inquiries concerning the status of a declaratory order proceeding may be made to the board's executive director at Iowa Public Information Board, [address].

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—3.6(17A) Service and filing of petitions and other papers.**

**3.6(1) When service required.** Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

**3.6(2) Filing—when required.** All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Iowa Public Information Board, [address]. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the board.

**3.6(3) Method of service, time of filing, and proof of mailing.** Method of service, time of filing, and proof of mailing shall be as provided by rule 497—4.11(17A).

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—3.7(17A) Consideration.** Upon request by petitioner, the board must schedule a brief and informal meeting between the original petitioner, all intervenors, and the board, a member of the board, or a member of the staff of the board, to discuss the questions raised. The board may solicit comments from

any person on the questions raised. Also, comments on the questions raised may be submitted to the board by any person.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—3.8(17A) Action on petition.**

**3.8(1)** Within the time allowed by Iowa Code section 17A.9(5), after receipt of a petition for a declaratory order, the board's executive director or designee shall take action on the petition as required by Iowa Code section 17A.9(5).

**3.8(2)** The date of issuance of an order or of a refusal to issue an order means the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified in the order.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—3.9(17A) Refusal to issue order.**

**3.9(1)** The board shall not issue a declaratory order where prohibited by Iowa Code section 17A.9(1) and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

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

**3.9(2)** A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final agency action on the petition.

**3.9(3)** Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the refusal to issue an order.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—3.10(17A) Contents of declaratory order—effective date.** In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion. A declaratory order is effective on the date of issuance.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—3.11(17A) Copies of orders.** A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—3.12(17A) Effect of a declaratory order.** A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the board, the petitioner,

and any intervenors who consent to be bound and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the board. The issuance of a declaratory order constitutes final agency action on the petition.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

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

[Filed ARC 0741C (Notice ARC 0644C, IAB 3/20/13), IAB 5/15/13, effective 7/1/13]

CHAPTER 4  
CONTESTED CASES

**497—4.1(17A) Scope and applicability.** This chapter applies to contested case proceedings conducted by the board.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—4.2(17A) Definitions.** Except where otherwise specifically defined by law:

“*Contested case*” means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under Iowa Code section 17A.10A.

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

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

“*Presiding officer*” means the board, or one or more members of the board, or an administrative law judge assigned by the department of inspections and appeals.

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

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—4.3(17A) Time requirements.**

**4.3(1)** Time shall be computed as provided in Iowa Code subsection 4.1(34).

**4.3(2)** For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute or by rule. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—4.4(17A) Notice of hearing.**

**4.4(1) Delivery.** Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

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

**4.4(2) Contents.** The notice of hearing shall contain the following information:

- a. A statement of the time, place, and nature of the hearing;
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- c. A reference to the particular sections of the statutes and rules involved;
- d. A short and plain statement of the matters asserted. If the 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;
- e. Identification of all parties including the name, address and telephone number of the person who will act as prosecutor for the board and of the parties’ counsel where known;
- f. Reference to the procedural rules governing conduct of the contested case proceeding;
- g. Reference to the procedural rules governing informal settlement;
- h. Identification of the presiding officer, if known; and
- i. Notification of the time period in which a party may request, pursuant to Iowa Code section 17A.11(1) “a,” that the presiding officer be an administrative law judge.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—4.5(17A) Presiding officer.**

**4.5(1)** Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must

file a written request within ten days after service of a notice of hearing which identifies or describes the presiding officer as the board or one or more members of the board.

**4.5(2)** The board shall give preference to assigning an administrative law judge if requested by a party and may deny the request only upon a finding that two or more of the following apply:

*a.* Neither the board nor any member 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.* A qualified 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.

**4.5(3)** The board shall issue a written ruling specifying the grounds for its decision within ten days after a request for an administrative law judge is filed. If the ruling is contingent upon the availability of a qualified 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.

**4.5(4)** An administrative law judge assigned to act as presiding officer in contested cases involving open meetings or public records laws shall have knowledge of or experience with Iowa Code chapters 21 and 22 unless waived by the agency.

**4.5(5)** Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the board. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

**4.5(6)** Unless otherwise provided by law, the board, 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 0741C, IAB 5/15/13, effective 7/1/13]

**497—4.6(17A) Waiver of procedures.** Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the board in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—4.7(17A) Telephone proceedings.** The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—4.8(17A) Disqualification.**

**4.8(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.

**4.8(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(3).

**4.8(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.

**4.8(4)** If a party asserts disqualification on any appropriate ground, the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 497—4.24(17A) and seek a stay under rule 497—4.28(17A).

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

#### **497—4.9(17A) Consolidation—severance.**

**4.9(1) Consolidation.** The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where: (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

**4.9(2) Severance.** The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

#### **497—4.10(17A) Pleadings.**

**4.10(1)** Pleadings may be required by rule, by the notice of hearing, or by order of the presiding officer.

**4.10(2)** Petition.

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

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

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

**4.10(3) Answer.** An answer shall be filed within 20 days of service of the petition unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

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

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

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

**4.10(4) Amendment.** Any notice of hearing, petition, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—4.11(17A) Service and filing of pleadings and other papers.**

**4.11(1) *When service required.*** Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the agency, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

**4.11(2) *Service—how made.*** Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

**4.11(3) *Filing—when required.*** After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the board at [address]. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the Iowa public information board.

**4.11(4) *Filing—when made.*** Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the board office, 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.

**4.11(5) *Proof of mailing.*** Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (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 0741C, IAB 5/15/13, effective 7/1/13]

**497—4.12(17A) Discovery.**

**4.12(1)** Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

**4.12(2)** Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 4.12(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

**4.12(3)** Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.  
[ARC 0741C, IAB 5/15/13, effective 7/1/13]

#### **497—4.13(17A) Subpoenas.**

##### **4.13(1) Issuance.**

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

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

**4.13(2) Motion to quash or modify.** The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

#### **497—4.14(17A) Motions.**

**4.14(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.

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

**4.14(3)** The presiding officer may schedule oral argument on any motion.

**4.14(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 agency or an order of the presiding officer.

**4.14(5)** Motions for summary judgment. Motions for summary judgment shall comply with the requirements of the Iowa Rules of Civil Procedure 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 30 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 10 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 497—4.27(17A) and appeal pursuant to rule 497—4.26(17A).

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

#### **497—4.15(17A) Prehearing conference.**

**4.15(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 board to all parties. For good cause the presiding officer may permit variances from this rule.

**4.15(2)** Each party shall bring to the prehearing conference:

- a.* A final list of the witnesses who the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names; and
- b.* A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.
- c.* Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

**4.15(3)** In addition to the requirements of subrule 4.15(2), the parties at a prehearing conference may:

- a.* Enter into stipulations of law or fact;
- b.* Enter into stipulations on the admissibility of exhibits;
- c.* Identify matters which the parties intend to request be officially noticed;
- d.* Enter into stipulations for waiver of any provision of law; and
- e.* Consider any additional matters which will expedite the hearing.

**4.15(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.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—4.16(17A) Continuances.** Unless otherwise provided, applications for continuances shall be made to the presiding officer.

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

**4.16(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.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—4.17(17A) Withdrawals.** A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with agency rules. Unless otherwise provided, a withdrawal shall be with prejudice.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—4.18(17A) Intervention.**

**4.18(1) Motion.** A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within ten days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

**4.18(2) When filed.** Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

**4.18(3) Grounds for intervention.** The movant shall demonstrate that: (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

**4.18(4) Effect of intervention.** If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—4.19(17A) Hearing procedures.**

**4.19(1)** The presiding officer presides at the hearing, and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

**4.19(2)** All objections shall be timely made and stated on the record.

**4.19(3)** Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

**4.19(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.

**4.19(5)** The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

**4.19(6)** Witnesses may be sequestered during the hearing.

**4.19(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 0741C, IAB 5/15/13, effective 7/1/13]

**497—4.20(17A) Evidence.**

**4.20(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.

**4.20(2)** Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

**4.20(3)** Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

**4.20(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.

**4.20(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.

**4.20(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 0741C, IAB 5/15/13, effective 7/1/13]

**497—4.21(17A) Default.**

**4.21(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.

**4.21(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.

**4.21(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 497—4.26(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.

**4.21(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.

**4.21(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.

**4.21(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.

**4.21(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 497—4.24(17A).

**4.21(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.

**4.21(9)** A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues.

**4.21(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 497—4.28(17A).

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—4.22(17A) Ex parte communication.**

**4.22(1)** Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the agency or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 4.8(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

**4.22(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.

**4.22(3)** Written, oral or other forms of communication are “ex parte” if made without notice and opportunity for all parties to participate.

**4.22(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 497—4.11(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.

**4.22(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.

**4.22(6)** The executive director or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 4.22(1).

**4.22(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 497—4.16(17A).

**4.22(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.

**4.22(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.

**4.22(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 agency. Violation of ex parte communication prohibitions by agency personnel shall be reported to the executive director or the individual designated by the executive director for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—4.23(17A) Recording costs.** Upon request, the board shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

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

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—4.24(17A) Interlocutory appeals.** Upon written request of a party or on its own motion, the board may review an interlocutory order of the presiding officer. In determining whether to do so, the board shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the agency 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 0741C, IAB 5/15/13, effective 7/1/13]

**497—4.25(17A) Final decision.**

**4.25(1)** When the board, or a quorum of the board, presides over the reception of evidence at the hearing, its decision is a final decision.

**4.25(2)** When the board, or a quorum of the board, does not preside at the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the board within the time provided in rule 497—4.26(17A).

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—4.26(17A) Appeals and review.**

**4.26(1)** *Appeal by party.* Any adversely affected party may appeal a proposed decision to the board within 30 days after issuance of the proposed decision.

**4.26(2)** *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.

**4.26(3)** *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:

- 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.

**4.26(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 non-appealing 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.

**4.26(5) Scheduling.** The board shall issue a schedule for consideration of the appeal.

**4.26(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 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.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

#### **497—4.27(17A) Applications for rehearing.**

**4.27(1) By whom filed.** Any party to a contested case proceeding may file an application for rehearing from a final order.

**4.27(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 agency decision on the existing record and whether, on the basis of the grounds enumerated in subrule 4.26(4), the applicant requests an opportunity to submit additional evidence.

**4.27(3) Time of filing.** The application shall be filed with the board within 20 days after issuance of the final decision.

**4.27(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 board shall serve copies on all parties.

**4.27(5) Disposition.** Any application for a rehearing shall be deemed denied unless the agency grants the application within 20 days after its filing.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

#### **497—4.28(17A) Stays of agency actions.**

**4.28(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 presiding officer 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. A party must petition the board for a stay before seeking a stay in district court.

**4.28(2) When granted.** In determining whether to grant a stay, the presiding officer or the board shall consider the factors listed in Iowa Code section 17A.19(5) “c.”

**4.28(3) Vacation.** A stay may be vacated by the issuing authority upon application of any party.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—4.29(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 0741C, IAB 5/15/13, effective 7/1/13]

These rules are intended to implement Iowa Code section 17A.12 and 2012 Iowa Acts, chapter 1115, section 6.

[Filed ARC 0741C (Notice ARC 0644C, IAB 3/20/13), IAB 5/15/13, effective 7/1/13]

CHAPTER 5  
PETITIONS FOR RULE MAKING

**497—5.1(17A) Petition for rule making.** Any person or agency may file a petition for rule making with the board at Iowa Public Information Board, [address]. A petition is deemed filed when it is received by the board. The board must 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 typewritten or legibly handwritten in ink and must substantially conform to the following form:

IOWA PUBLIC INFORMATION BOARD

Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (state subject of matter).	PETITION FOR RULE MAKING
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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 amendments 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 board'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 the data supporting the action urged in the petition.
5. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by or interested in, the proposed action which is the subject of the petition.
6. Any request by petitioner for a meeting provided for by rule 497—5.4(17A).

**5.1(1)** The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

**5.1(2)** The board may deny a petition because it does not substantially conform to the required form. [ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—5.2(17A) 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.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—5.3(17A) Inquiries.** Inquiries concerning the status of a petition for rule making may be made to the board at Iowa Public Information Board, [address].

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—5.4(17A) Board consideration.**

**5.4(1)** Within 14 days after the filing of a petition, the board must submit a copy of the petition and any accompanying brief to the administrative rules coordinator and to the administrative rules review committee. Upon request by petitioner in the petition, the board must schedule a brief and informal meeting between the petitioner and the board, a member of the board, or a member of the staff of the board, to discuss the petition. 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.

**5.4(2)** Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the board must, in writing, deny the petition, and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that it has instituted rule-making proceedings on the subject of the petition. Petitioner shall be deemed notified of the denial or grant of the petition on the date when the board mails or delivers the required notification to petitioner.

**5.4(3)** Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the board's rejection of the petition.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

These rules are intended to implement Iowa Code section 17A.7 and 2012 Iowa Acts, chapter 1115, section 6.

[Filed ARC 0741C (Notice ARC 0644C, IAB 3/20/13), IAB 5/15/13, effective 7/1/13]

CHAPTER 6  
AGENCY PROCEDURE FOR RULE MAKING

**497—6.1(17A) Applicability.** Except to the extent otherwise expressly provided by statute, all rules adopted by the board are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—6.2(17A) Advice on possible rules before notice of proposed rule adoption.** In addition to seeking information by other methods, the board may, before publication of a Notice of Intended Action under Iowa Code section 17A.4(1) “a,” solicit comments from the public on a subject matter of possible rule making by the board by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—6.3(17A) Public rule-making docket.**

**6.3(1) Docket maintained.** The board shall maintain a current public rule-making docket.

**6.3(2) Anticipated rule making.** The rule-making docket shall list each anticipated rule-making proceeding. A rule-making proceeding is deemed “anticipated” from the time a draft of proposed rules is distributed for internal discussion within the board. For each anticipated rule-making proceeding the docket shall contain a listing of the precise subject matter which may be submitted for consideration by the board for subsequent proposal under the provisions of Iowa Code section 17A.4(1) “a,” the name and address of board personnel with whom persons may communicate with respect to the matter, and an indication of the present status within the board of that possible rule. The board may also include in the docket other subjects upon which public comment is desired.

**6.3(3) Pending rule-making proceedings.** The rule-making docket shall list each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced, by publication in the Iowa Administrative Bulletin of a Notice of Intended Action pursuant to Iowa Code section 17A.4(1) “a,” to the time it is terminated, by publication of a Notice of Termination in the Iowa Administrative Bulletin or the rule becoming effective. For each rule-making proceeding, the docket shall indicate:

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

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—6.4(17A) Notice of proposed rule making.**

**6.4(1) Contents.** At least 35 days before the adoption of a rule the board shall cause Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

- a. A brief explanation of the purpose of the proposed rule;
- b. The specific legal authority for the proposed rule;
- c. Except to the extent impracticable, the text of the proposed rule;
- d. Where, when, and how persons may present their views on the proposed rule; and
- e. Where, when, and how persons may demand an oral proceeding on the proposed rule if the notice does not already provide for one.

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

**6.4(2) *Incorporation by reference.*** A proposed rule may incorporate other materials by reference only if it complies with all of the requirements applicable to the incorporation by reference of other materials in an adopted rule that are contained in subrule 6.12(2) of this chapter.

**6.4(3) *Copies of notices.*** Persons desiring to receive copies of future Notices of Intended Action by subscription must file with the board a written request indicating the name and address to which such notices should be sent. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the board shall mail or electronically transmit a copy of that notice to subscribers who have filed a written request for either mailing or electronic transmittal with the board for Notices of Intended Action. The written request shall be accompanied by payment of the subscription price which may cover the full cost of the subscription service, including its administrative overhead and the cost of copying and mailing the Notices of Intended Action for a period of one calendar year.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

#### **497—6.5(17A) Public participation.**

**6.5(1) *Written comments.*** For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing, on the proposed rule. Such written submissions should identify the proposed rule to which they relate and should be submitted to Iowa Public Information Board, [address], or the person designated in the Notice of Intended Action.

**6.5(2) *Oral proceedings.*** The board may, at any time, schedule an oral proceeding on a proposed rule. The board shall schedule an oral proceeding on a proposed rule if, within 20 days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the board by the administrative rules review committee, a governmental subdivision, an agency, an association having not less than 25 members, or at least 25 persons. That request must also contain the following additional information:

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

**6.5(3) *Conduct of oral proceedings.***

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

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

*c. Presiding officer.* The board, a member of the board, or another person designated by the board who will be familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule. If the board does not preside, the presiding officer shall prepare a memorandum for consideration by the board summarizing the contents of the presentations made at the oral proceeding unless the board determines that such a memorandum is unnecessary because the board will personally listen to or read the entire transcript of the oral proceeding.

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

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

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

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

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

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

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

(7) Participants in an oral proceeding shall not be required to take an oath or to submit to cross-examination. However, the presiding officer in an oral proceeding may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.

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

**6.5(4) Additional information.** In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the board may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

**6.5(5) Accessibility.** The board shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the board's executive director at [telephone number] in advance to arrange access or other needed services.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

#### **497—6.6(17A) Regulatory analysis.**

**6.6(1) Definition of small business.** A "small business" is defined in Iowa Code section 17A.4A(8).

**6.6(2) Mailing list.** Small businesses or organizations of small businesses may be registered on the board's small business impact list by making a written application addressed to Iowa Public Information Board, [address]. The application for registration shall state:

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

*b.* Its address;

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

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

**6.6(3) *Time of mailing.*** Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the board shall mail to all registered small businesses or organizations of small businesses, in accordance with their request, either a copy of the Notice of Intended Action or notice of the subject of that proposed rule making. In the case of a rule that may have an impact on small business adopted in reliance upon Iowa Code section 17A.4(3), the board shall mail notice of the adopted rule to registered businesses or organizations prior to the time the adopted rule is published in the Iowa Administrative Bulletin.

**6.6(4) *Qualified requesters for regulatory analysis—economic impact.*** The board shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A(2)“a” after a proper request from:

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

**6.6(5) *Qualified requesters for regulatory analysis—business impact.*** The board shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A(2)“b” after a proper request from:

- a. The administrative rules review committee;
- b. The administrative rules coordinator;
- c. At least 25 or more persons who sign the request provided that each represents a different small business;
- d. An organization representing at least 25 small businesses. That organization shall list the name, address and telephone number of not less than 25 small businesses it represents.

**6.6(6) *Time period for analysis.*** Upon receipt of a timely request for a regulatory analysis the board shall adhere to the time lines described in Iowa Code section 17A.4A(4).

**6.6(7) *Contents of request.*** A request for a regulatory analysis is made when it is mailed or delivered to the board. The request shall be in writing and satisfy the requirements of Iowa Code section 17A.4A.

**6.6(8) *Contents of concise summary.*** The contents of the concise summary shall conform to the requirements of Iowa Code section 17A.4A.

**6.6(9) *Publication of a concise summary.*** The board shall make available, to the maximum extent feasible, copies of the published summary in conformance with Iowa Code section 17A.4A.

**6.6(10) *Regulatory analysis contents—rules review committee or rules coordinator.*** When a regulatory analysis is issued in response to a written request from the administrative rules review committee, or the administrative rules coordinator, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2)“a” unless a written request expressly waives one or more of the items listed in the section.

**6.6(11) *Regulatory analysis contents—substantial impact on small business.*** When a regulatory analysis is issued in response to a written request from the administrative rules review committee, the administrative rules coordinator, at least 25 persons signing that request who each qualify as a small business or by an organization representing at least 25 small businesses, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2)“b.”

**497—6.7(17A) Fiscal impact statement.**

**6.7(1)** A proposed rule that mandates additional combined expenditures exceeding \$100,000 by all affected political subdivisions or agencies and entities which contract with political subdivisions to provide services must be accompanied by a fiscal impact statement outlining the costs associated with the rule. A fiscal impact statement must satisfy the requirements of Iowa Code section 25B.6.

**6.7(2)** If the board determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the board shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—6.8(17A) Time and manner of rule adoption.**

**6.8(1)** *Time of adoption.* The board shall not adopt a rule until the period for making written submissions and oral presentations has expired. Within 180 days after the later of the publication of the Notice of Intended Action, or the end of oral proceedings thereon, the board shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

**6.8(2)** *Consideration of public comment.* Before the adoption of a rule, the board shall consider fully all of the written submissions and oral submissions received in that rule-making proceeding or any memorandum summarizing such oral submissions, and any regulatory analysis or fiscal impact statement issued in that rule-making proceeding.

**6.8(3)** *Reliance on board expertise.* Except as otherwise provided by law, the board may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—6.9(17A) Variance between adopted rule and published notice of proposed rule adoption.**

**6.9(1)** The board shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based unless:

- a. The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that notice; and
- b. The differences are a logical outgrowth of the contents of that Notice of Intended Action and the comments submitted in response thereto; and
- c. The Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

**6.9(2)** In determining whether the Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question, the board shall consider the following factors:

- a. The extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests;
- b. The extent to which the subject matter of the rule or the issues determined by the rule are different from the subject matter or issues contained in the Notice of Intended Action; and
- c. The extent to which the effects of the rule differ from the effects of the proposed rule contained in the Notice of Intended Action.

**6.9(3)** The board shall commence a rule-making proceeding within 60 days of its receipt of a petition for rule making seeking the amendment or repeal of a rule that differs from the proposed rule contained in the Notice of Intended Action upon which the rule is based, unless the board finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to petitioner, the administrative rules coordinator, and the administrative rules review committee, within three days of its issuance.

**6.9(4)** Concurrent rule-making proceedings. Nothing in this rule disturbs the discretion of the board to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—6.10(17A) Exemptions from public rule-making procedures.**

**6.10(1) *Omission of notice and comment.*** To the extent the board for good cause finds that public notice and participation are unnecessary, impracticable, or contrary to the public interest in the process of adopting a particular rule, the board may adopt that rule without publishing advance Notice of Intended Action in the Iowa Administrative Bulletin and without providing for written or oral public submissions prior to its adoption. The board shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

**6.10(2) *Categories exempt.*** The following narrowly tailored category of rules is exempted from the usual public notice and participation requirements because those requirements are unnecessary, impracticable, or contrary to the public interest with respect to each and every member of the defined class: rules whose precise content is mandated by either state or federal law.

**6.10(3) *Public proceedings on rules adopted without them.*** The board may, at any time, commence a standard rule-making proceeding for the adoption of a rule that is identical or similar to a rule it adopts in reliance upon subrule 6.10(1). Upon written petition by a governmental subdivision, the administrative rules review committee, an agency, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the board shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 6.10(1). Such a petition must be filed within one year of the publication of the specified rule in the Iowa Administrative Bulletin as an adopted rule. The rule-making proceeding on that rule must be commenced within 60 days of the receipt of such a petition. After a standard rule-making proceeding commenced pursuant to this subrule, the board may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 6.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—6.11(17A) Concise statement of reasons.**

**6.11(1) *General.*** When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the board shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to Iowa Public Information Board, [address]. The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

**6.11(2) *Contents.*** The concise statement of reasons shall contain:

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

**6.11(3) *Time of issuance.*** After a proper request, the board shall issue a concise statement of reasons by the later of the time the rule is adopted or 35 days after receipt of the request.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—6.12(17A) Contents, style, and form of rule.**

**6.12(1) *Contents.*** Each rule adopted by the board shall contain the text of the rule and, in addition:

- a. The date the board adopted the rule;
- b. A brief explanation of the principal reasons for the rule-making action if such reasons are required by Iowa Code section 17A.4(2) or the board in its discretion decides to include such reasons;
- c. A reference to all rules repealed, amended, or suspended by the rule;
- d. A reference to the specific statutory or other authority authorizing adoption of the rule;
- e. Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule;
- f. A brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waiver or special exceptions provided; and

g. The effective date of the rule.

**6.12(2) *Incorporation by reference.*** The board may incorporate by reference in a proposed or adopted rule, and without causing publication of the incorporated matter in full, all or any part of a code, standard, rule, or other matter if the board finds that the incorporation of its text in the board proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the board proposed or adopted rule shall fully and precisely identify the incorporated matter by location, title, citation, date, and edition, if any; shall briefly indicate the precise subject and the general contents of the incorporated matter; and shall state that the proposed or adopted rule does not include any later amendments or editions of the incorporated matter. The board may incorporate such matter by reference in a proposed or adopted rule only if the board makes copies of it readily available to the public. The rule shall state how and where copies of the incorporated matter may be obtained at cost from this board, and how and where copies may be obtained from the agency of the United States, this state, another state, or the organization, association, or persons originally issuing that matter. The board shall retain permanently a copy of any materials incorporated by reference in a rule of the board.

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

**6.12(3) *References to materials not published in full.*** When the administrative code editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the board shall prepare and submit to the administrative code editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules, and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the board. The board will provide a copy of that full text at actual cost upon request and shall make copies of the full text available for review at the state law library and may make the standards available electronically.

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

**6.12(4) *Style and form.*** In preparing its rules, the board shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.  
[ARC 0741C, IAB 5/15/13, effective 7/1/13]

#### **497—6.13(17A) Agency rule-making record.**

**6.13(1) *Requirement.*** The board shall maintain an official rule-making record for each rule it proposes by publication in the Iowa Administrative Bulletin of a Notice of Intended Action, or adopts. The rule-making record and materials incorporated by reference must be available for public inspection.

**6.13(2) *Contents.*** The board rule-making record shall contain:

a. Copies of all publications in the Iowa Administrative Bulletin with respect to the rule or the proceeding upon which the rule is based and any file-stamped copies of board submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based;

b. Copies of any portions of the board's public rule-making docket containing entries relating to the rule or the proceeding upon which the rule is based;

c. All written petitions, requests, and submissions received by the board, and all other written materials of a factual nature as distinguished from opinion that are relevant to the merits of the rule and that were created or compiled by the board and considered by the board, in connection with the formulation, proposal, or adoption of the rule or the proceeding upon which the rule is based, except to the extent the board is authorized by law to keep them confidential; provided, however, that when any

such materials are deleted because they are authorized by law to be kept confidential, the board shall identify in the record the particular materials deleted and state the reasons for that deletion;

*d.* Any official transcript of oral presentations made in the proceeding upon which the rule is based or, if not transcribed, the stenographic record or electronic recording of those presentations, and any memorandum prepared by a presiding officer summarizing the contents of those presentations;

*e.* A copy of any regulatory analysis or fiscal impact statement prepared for the proceeding upon which the rule is based;

*f.* A copy of the rule and any concise statement of reasons prepared for that rule;

*g.* All petitions for amendment or repeal or suspension of the rule;

*h.* A copy of any objection to the issuance of that rule without public notice and participation that was filed pursuant to Iowa Code section 17A.4(3) by the administrative rules review committee, the governor, or the attorney general;

*i.* A copy of any objection to the rule filed by the administrative rules review committee, the governor, or the attorney general pursuant to Iowa Code section 17A.4(4), and any board response to that objection;

*j.* A copy of any significant written criticism of the rule, including a summary of any petitions for waiver of the rule; and

*k.* A copy of any executive order concerning the rule.

**6.13(3) *Effect of record.*** Except as otherwise required by a provision of law, the board rule-making record required by this rule need not constitute the exclusive basis for board action on that rule.

**6.13(4) *Maintenance of record.*** The board shall maintain the rule-making record for a period of not less than five years from the later of the date the rule to which it pertains became effective, the date of the Notice of Intended Action, or the date of any written criticism as described in 6.13(2) “g,” “h,” “i,” or “j.”

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—6.14(17A) *Filing of rules.*** The board shall file each rule it adopts in the office of the administrative rules coordinator. The filing must be executed as soon after adoption of the rule as is practicable. At the time of filing, each rule must have attached to it any fiscal impact statement and any concise statement of reasons that was issued with respect to that rule. If a fiscal impact statement or statement of reasons for that rule was not issued until a time subsequent to the filing of that rule, the note or statement must be attached to the filed rule within five working days after the note or statement is issued. In filing a rule, the board shall use the standard form prescribed by the administrative rules coordinator.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—6.15(17A) *Effectiveness of rules prior to publication.***

**6.15(1) *Grounds.*** The board may make a rule effective after its filing at any stated time prior to 35 days after its indexing and publication in the Iowa Administrative Bulletin if it finds that a statute so provides, the rule confers a benefit or removes a restriction on some segment of the public, or that the effective date of the rule is necessary to avoid imminent peril to the public health, safety, or welfare. The board shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

**6.15(2) *Special notice.*** When the board makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2) “b”(3), the board shall employ all reasonable efforts to make its contents known to the persons who may be affected by that rule prior to the rule’s indexing and publication. The term “all reasonable efforts” requires the board to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the effectiveness of the rule that is justified and practical under the circumstances considering the various alternatives available for this purpose, the comparative costs to the board of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or more of

the following means: radio, newspaper, television, signs, mail, telephone, personal notice or electronic means.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)“b”(3) shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of subrule 6.15(2).

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—6.16(17A) General statements of policy.**

**6.16(1)** *Compilation, indexing, public inspection.* The board shall maintain an official, current, and dated compilation that is indexed by subject, containing all of its general statements of policy within the scope of Iowa Code section 17A.2(11)“a,” “c,” “f,” “g,” “h,” “k.” Each addition to, change in, or deletion from the official compilation must also be dated, indexed, and a record thereof kept. Except for those portions containing rules governed by Iowa Code section 17A.2(11)“f,” or otherwise authorized by law to be kept confidential, the compilation must be made available for public inspection and copying.

**6.16(2)** *Enforcement of requirements.* A general statement of policy subject to the requirements of this subsection shall not be relied on by the board to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule 6.16(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—6.17(17A) Review by agency of rules.**

**6.17(1)** Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator requesting the board to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the board shall conduct a formal review of a specified rule to determine whether a new rule should be adopted instead or the rule should be amended or repealed. The board may refuse to conduct a review if it has conducted such a review of the specified rule within five years prior to the filing of the written request.

**6.17(2)** In conducting the formal review, the board shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report must include a concise statement of the board’s findings regarding the rule’s effectiveness in achieving its objectives, including a summary of any available supporting data. The report shall also concisely describe significant written criticisms of the rule received during the previous five years, including a summary of any petitions for waiver of the rule received by the board or granted by the board. The report shall describe alternative solutions to resolve the criticisms of the rule, the reasons any were rejected, and any changes made in the rule in response to the criticisms as well as the reasons for the changes. A copy of the board’s report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report must also be available for public inspection.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

These rules are intended to implement Iowa Code section 17A.4.

[Filed ARC 0741C (Notice ARC 0644C, IAB 3/20/13), IAB 5/15/13, effective 7/1/13]



CHAPTER 7  
FAIR INFORMATION PRACTICES

The Iowa public information board hereby adopts, with the following exceptions and amendments, the Uniform Rules on Agency Procedure relating to fair information practices which are published on the Iowa general assembly's Web site at <https://www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf>.

**497—7.1(17A,22) Definitions.** As used in this chapter:

“Agency” means the Iowa public information board.

“Confidential records” means records, as defined under Iowa Code section 22.7 or any other provision of law, which are not disclosed to members of the public unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release the records. This includes records which the board is prohibited by law from making available for inspection by members of the public and those exempt records which the board has lawfully determined not to disclose to members of the public.

“Open records” means those records which are not authorized or required to be kept confidential under Iowa Code section 22.7 or any other provision of law.

“Record” means the whole or a part of a “public record” as defined in Iowa Code section 22.1 that is owned by or is in the physical possession of the board.

“Record system” 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 0741C, IAB 5/15/13, effective 7/1/13]

**497—7.2(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 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, and board staff shall cooperate with members of the public in implementing the provisions of that chapter.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—7.3(17A,22) Requests for access to board records.**

**7.3(1) Location of record.** A request for access to a board record shall be directed to the Iowa Public Information Board, [address]. If the requested record is not on file in the board office, the custodian will arrange for it to be retrieved from state archives and made available in the board office.

**7.3(2) Office hours.** Records of the board shall be made available during customary office hours of 8 a.m. to 4:30 p.m. on Monday through Friday, excluding Saturdays, Sundays, and legal holidays. Records made available via the board's Web site at [Web address] are available at all hours and on all days.

**7.3(3) Request for access.** Requests for access to board records may be made in writing, in person, or by telephone. Requests shall identify the particular records sought by name or description in order to facilitate the location of the record. Mail requests shall include the name, address, and telephone number of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

**7.3(4) Granting access to records.** The custodian is authorized to grant or deny access to the board's record according to the provisions of Iowa Code chapter 22, this chapter or any other provision of law. The decision to grant or deny access may be delegated to one or more designated employees. Access to an open record shall be granted immediately upon request. If the size or nature of the request requires time for compliance, the board shall comply with the request as soon as possible. However, access to such a record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4). The board shall promptly inform the requester of the reason for the delay.

**7.3(5) *Security of record.*** No person shall, without permission, search or remove any record from board files. Examination and copying of records shall be done under the supervision of board staff. Records shall be protected from damage and disorganization.

**7.3(6) *Copying.*** A reasonable number of copies may be made in the board office unless printed copies are available. If copying equipment is not available in the office where a record is kept, the board shall permit its examination in that office and shall arrange to have copies promptly made elsewhere. Records made available on the board's Web site may be copied without restriction.

**7.3(7) *Fees.***

*a. Copying costs.* Price schedules for regularly published records and for copies of records not regularly published shall be posted by the board. Copies may be made by or for members of the public at cost as determined and posted by the custodian of the record. The cost of postage and of other services provided in connection with the request may be charged as appropriate.

*b. Search and supervisory fee.* An hourly fee may be charged for actual board expenses in searching for, and supervising the examination and copying of, requested records. The fee shall be based upon the pay scale of the employee involved and other actual costs incurred. No fee shall be charged if the records are not made available for inspection, or if the time required does not exceed three hours in duration, or if the time required for the search was the result of a board error or a record-keeping problem. The board shall post the hourly fees to be charged in routine cases for search and supervision of records. The board shall give advance notice to the requester if it will be necessary to use an employee with a higher hourly wage in order to find or supervise the particular records in question, and shall indicate the amount of that higher hourly wage to the requester.

*c. Advance deposits.*

(1) The board may require a requester to make an advance deposit of the estimated fee.

(2) When a requester has previously failed to pay a fee charged under this subrule, the board may require advance payment of the full amount of any estimated fee before the board processes a new or pending request for access to records from that requester, as well as payment in full of the amount previously owed.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—7.4(17A,22) Procedures for access to confidential records.** The following procedures for access to confidential records are in addition to those specified for all board records in rule 497—7.3(17A,22).

**7.4(1) *Proof of identity.*** A person requesting access to a confidential record shall be required to provide proof of identity if access to the record is restricted to a particular person or class of persons.

**7.4(2) *Requests.*** A request to review a confidential board record shall be in writing. A person requesting access to a confidential board record may be required to sign a certified statement or affidavit enumerating the specific grounds justifying access to the confidential record and to provide any proof necessary to establish relevant facts. Such request may be referred to the full board for consideration.

**7.4(3) *Request denied.*** When the custodian of a confidential board record or the board denies a request for access to a confidential record, in whole or in part, the requester shall be notified in writing. The denial shall be signed by the custodian of the confidential record and shall include:

*a.* The name and title or position of the person or persons responsible for the denial and a brief citation to the statute or other provision of law that prohibits disclosure of the record;

*b.* A brief citation to the statute vesting discretion in the custodian to deny disclosure of the record; and

*c.* A brief statement of the grounds for the denial to this requester.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—7.5(17A,22) Requests for treatment of a government record as a confidential record and its withholding from examination by the board.**

**7.5(1) *Board to maintain confidential status of government records.*** If, pursuant to the board's investigation of a complaint, the record of a government body comes into the board's possession, either pursuant to the government body's voluntary response to the board's request or in response to a board subpoena, and if the government body makes a claim that all or part of the record constitutes a

confidential record under Iowa Code section 22.7 or other provision of law, the board shall maintain the confidential status of the record or part of the record until the claim is adjudicated as hereafter provided. If a person provides the board with a government record without the apparent authority of the lawful custodian, the board shall confirm the authenticity of the record with the government body and shall inquire of the government body if it makes claim that all or part of the record constitutes a confidential record under Iowa Code section 22.7 or other provision of law. If the government body makes claim that all or part of the record constitutes a confidential record, the board shall maintain the confidential status of the record or part of the record until the claim is adjudicated as hereafter provided.

**7.5(2) *Who may file request.*** Any person, including a government body, who would be aggrieved or adversely affected by disclosure of all or a part of a record to members of the public may file a request, as provided in this rule, for the record's treatment as a confidential record. Failure of a person to request confidential record treatment for all or part of a record, such as information obtained in the course of a board investigation or to achieve voluntary compliance with 2012 Iowa Acts, chapter 1115, does not preclude the board from treating the record as a confidential record. The information may become an open record once the matter is resolved or dismissed.

**7.5(3) *Form of request.*** A request for the treatment of a government record as a confidential record shall be in writing and shall be filed with the board custodian of the record. The request shall include the specific grounds justifying confidential record treatment for all or part of the record; the specific provision of law that authorizes such confidential record treatment; and the name, address, and telephone number of the person authorized to respond to any board action concerning the request. A person, including a government body, filing such a request shall attach a copy of the record in question. The material to which the request applies shall be physically separated from any materials to which the request does not apply. The request shall be attached to the materials to which it applies. Each page of the material to which the request applies shall be clearly marked confidential. If the original record is being submitted to the board by the person requesting confidentiality at the same time the request is filed, the person shall indicate conspicuously on the original record that all or portions of it are a confidential record. A request for treatment of all or portions of a record as a confidential record for a limited time period shall also specify the precise period of time for which such confidential record treatment is requested.

**7.5(4) *Failure to request confidentiality.*** If a person, including a government body, who has submitted business information to the board does not request confidential record treatment for all or part of that information, the board custodian of records containing that information may assume that the person who submitted the information has no objection to its disclosure.

**7.5(5) *Time.*** A board decision with respect to the confidentiality of all or parts of a record may be made when a request for the record's treatment as a confidential record is filed or when the board receives a request for access to the record, or when a complaint alleging a violation of Iowa Code chapter 22 is resolved by the board.

**7.5(6) *Effect of granted request.*** 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 board decision will be placed in the public file in lieu of the original record.

**7.5(7) *Board denial of request for confidential record treatment.*** If the board determines that the record of a government body which is claimed to be confidential in whole or in part is not entitled to confidential treatment under Iowa Code chapter 22 or under other applicable provisions of law or applicable precedent, the board may enter its decision denying the request for confidential record treatment. If the record is the subject of a pending complaint, the board may withhold an order addressing confidentiality until the complaint is resolved. Upon resolution of the complaint, the board may enter an order concluding the record is confidential, or directing the government body to release the record, or any part thereof which the board determines not to be entitled to confidential record treatment. [ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—7.6(17A,22) Procedure by which additions, dissents or objections may be entered into certain records.** Except as otherwise provided by law, the subject shall have the right to have a written statement of additions, dissents or objections entered into the record. The subject shall send the statement to the

Executive Director, Iowa Public Information Board, [address]. The statement shall be dated and signed by the subject and shall include the subject's current address and telephone number.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—7.7(17A,22) Consensual disclosure of confidential records.**

**7.7(1)** *Consent to disclose by a subject individual.* To the extent allowed by law, the subject may consent in writing to agency disclosure of confidential records.

**7.7(2)** *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency may, to the extent permitted by law, be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

**7.7(3)** *Obtaining information from a third party.* The board is required to obtain information to assist in making decisions regarding classification, programming, security and administrative management. Requests to third parties for this information may involve the release of confidential information about individuals. Except as provided by law, the board may make these requests only when the individual has authorized the release.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—7.8(17A,22) Routine use.** To the extent allowed by law, the following uses are considered routine uses of all agency records:

**7.8(1)** Disclosure to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer or employee, or on the custodian's own initiative, determine what constitutes legitimate need to use confidential records.

**7.8(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.

**7.8(3)** Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the agency.

**7.8(4)** Transfers of information within the agency, to other state agencies, or to units of local government as appropriate to administer the program for which the information is collected.

**7.8(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.

**7.8(6)** Any disclosure specifically authorized by the statute under which the record was collected or maintained.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—7.9(17A,22) Disclosures without the consent of the subject.**

**7.9(1)** Open records are routinely disclosed without the consent of the subject.

**7.9(2)** To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances when disclosure, if lawful, will generally occur without notice to the subject:

*a.* For a routine use as permitted by law and in the 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 the head of such government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

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

- e. To the legislative services agency under Iowa Code section 2A.3.
- f. Disclosures in the course of employee disciplinary proceedings.
- g. In response to a court order or subpoena.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

#### **497—7.10(17A,22) Release to subject.**

**7.10(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 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).
- 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.
- d. As otherwise authorized by law.

**7.10(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 0741C, IAB 5/15/13, effective 7/1/13]

#### **497—7.11(17A,22) Availability of records.**

**7.11(1)** *Open records.* Board records are open for public inspection and copying unless otherwise prohibited by current rule or law.

**7.11(2)** *Confidential records.* The following records may be kept confidential. Records are listed by category, according to the legal basis for withholding them from public inspection.

- a. Records obtained under subpoena or through a board investigation that are confidential under Iowa Code section 22.7 or any another provision of law;
- b. Minutes of closed meetings of a governmental body (Iowa Code section 21.5(4));
- c. 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”;
- d. Those portions of agency staff manuals, instructions, or other statements issued which set forth criteria or guidelines to be used by agency staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerance or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would:
  - (1) Enable law violators to avoid detection;
  - (2) Facilitate disregard of requirements imposed by law; or
  - (3) Give a clearly improper advantage to persons who are in an adverse position to the agency;
- e. Records which constitute attorney work product, or attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa Rule of Civil Procedure 1.503(3), Federal Rule of Civil Procedure 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility and case law; or
- f. Other records made confidential by law.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

#### **497—7.12(17A,22) Personally identifiable information.**

**7.12(1)** This rule describes the nature and extent of personally identifiable information which is collected, maintained and retrieved by the agency by personal identifier in record systems as defined in this rule. For each record system, this rule:

- a. Describes the legal authority for the collection of that information and the means of storage of that information; and

b. Indicates whether a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

**7.12(2)** Complaint files. These records are the complaints filed with the board alleging a violation of Iowa Code chapter 21 or 22. The complaint will include a description of the facts on which the complaint is based and the name of the person filing the complaint.

**7.12(3)** Records of telephone inquiries. Records of the telephone inquiries may be kept for statistical reasons or to inform the board of the nature and volume of informal, verbal advice.

**7.12(4)** Litigation files. These files or records contain information regarding litigation or anticipated litigation, which includes judicial and administrative proceedings. The records include briefs, depositions, docket sheets, documents, correspondence, attorney notes, memoranda, research materials, witness information, investigation materials, information compiled under the direction of the attorney and case management records. The files contain materials which are confidential as attorney work product and attorney-client communications. Some materials are confidential under other applicable provisions of law or because of a court order. Persons wishing copies of pleadings and other documents filed in litigation should obtain these from the clerk of the appropriate court which maintains the official copy.

**7.12(5)** Personnel files. The agency maintains files containing information about employees, families and dependents, and applicants for positions with the agency. The files include payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, and tax withholding information concerning the employer-employee relationship. Some of this information is confidential under Iowa Code section 22.7(11).

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—7.13(17A,22) Other groups of records available for public inspection—policies and procedures (excluding security), meeting minutes.** This rule describes groups of records maintained by the board other than record systems as previously defined. These records are routinely available to the public. However, the board's file of these records may contain confidential information, as discussed in rule 497—7.12(17A,22). The following records are stored both as hard copy and in automated data processing systems unless otherwise noted.

**7.13(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.

**7.13(2)** *Board meeting records.* Agendas, minutes and materials presented to the board are available from the office of the executive director, except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5(4) or which are otherwise confidential by law. Board meeting records contain information about people who participate in meetings. The information is collected pursuant to Iowa Code section 21.3. This information is not retrieved by individual identifier.

**7.13(3)** *Publications.* News releases, annual reports, project reports, board newsletters, and related documents are available from the board office. Board news releases, project reports, and newsletters may contain information about individuals, including board staff or members of the board. This information is not retrieved by individual identifier.

**7.13(4)** *Statistical reports.* Periodic reports of the board for various board programs are available from the board office. Statistical reports do not contain personally identifiable information.

**7.13(5)** *Published materials.* The board uses many legal and technical publications in its work. The public may inspect these publications upon request. Some of these materials may be protected by copyright law. These records are hard copy only.

**7.13(6)** *Policy manuals.* The board employees' manual, containing procedures describing the board's regulations and practices, is available. Subscriptions to all or part of the employees' manual are available at the cost of production and handling. Requests for subscription information should be addressed to the board office. Policy manuals do not contain information about individuals.

**7.13(7) *Other records.*** All other records that are not exempt from disclosure by law are available from the board office.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

**497—7.14(17A,22) Applicability.** This chapter does not:

**7.14(1)** Require the agency to index or retrieve records which contain information about an individual by that person's name or other personal identifier.

**7.14(2)** Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.

**7.14(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.

**7.14(4)** 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, rules of discovery, evidentiary privileges and applicable regulations of the agency.

[ARC 0741C, IAB 5/15/13, effective 7/1/13]

These rules are intended to implement Iowa Code chapters 17A and 22.

[Filed ARC 0741C (Notice ARC 0644C, IAB 3/20/13), IAB 5/15/13, effective 7/1/13]



CHAPTER 22  
VOTING SYSTEMS

[Prior to 7/13/88, see Secretary of State[750] Ch 10]

TESTING AND EXAMINATION OF VOTING EQUIPMENT

**721—22.1(52) Definitions for certification of voting equipment.**

*“Accredited independent test authority”* means a person or agency that was formally recognized by the National Association of State Election Directors as competent to design and perform qualification tests for voting system hardware and software. *“Accredited independent test authority”* also includes voting system test laboratories accredited by the Election Assistance Commission to test voting systems for compliance with federal voting system standards and guidelines, as required by the Help America Vote Act, Section 231.

*“Audio ballot”* means the presentation of the contents of a ballot on an electronic ballot marking device in a recorded format, played to the voter over headphones.

*“Automatic tabulating equipment”* means apparatus that are utilized to ascertain the manner in which optical scan ballots have been marked by voters or by electronic ballot marking devices and to count the votes marked on the ballots.

*“Ballot”* means the official document that includes all of the offices or public measures to be voted upon at a single election, whether they appear on one or more paper ballots. The term includes optical scan paper ballots designed to be read by automatic tabulating equipment. In appropriate contexts, *“ballot”* also includes conventional paper ballots.

*“Ballot marking device”* means a pen, pencil, or similar writing tool, or an electronic device, all designed for use in marking an optical scan ballot, and so designed or fabricated that the mark it leaves may be detected and the vote so cast counted by automatic tabulating equipment.

*“Certification”* means formal approval of an optical scan voting system for use in Iowa pursuant to Iowa Code sections 52.5 and 52.26.

*“De minimis change”* means a change to a certified voting system’s hardware, the nature of which will not materially alter the system’s reliability, functionality, capability, security and operation. In order for a change to qualify as a de minimis change, it must not alter the reliability, functionality, capability, security and operability of the system. A de minimis change shall also ensure that when the hardware is replaced, the original hardware and the replacement hardware are electronically and mechanically interchangeable and have identical functionality and tolerances. A change shall not be considered de minimis if it has reasonable and identifiable potential to affect the system’s operation and compliance with applicable voting system standards.

*“Early voting”* means the process of receiving ballots from voters before election day without using absentee voting procedures. Iowa law does not authorize this process.

*“Electronic ballot marking device”* means a component of an optical scan voting system designed to assist voters with disabilities by displaying audio and visual ballot information to the voter, providing accessible methods for the voter to make selections, and then printing the voter’s choices on an optical scan ballot.

*“Electronic transmission”* means using hardware and software components to send data over distances both within and external to the polling place and to receive an accurate copy of the transmission.

*“Examiners”* means the board of examiners for voting systems described in Iowa Code section 52.4.

*“Modification”* means a change to a certified voting system’s software or firmware. Modification also means a change to a certified voting system’s hardware that has the potential to affect the reliability, functionality, capability, security or operability of a system.

*“Optical scan ballot”* means a printed ballot designed to be marked by a voter with a ballot marking device and to be counted by use of automatic tabulating equipment.

“*Optical scan voting system*” means a system employing paper ballots under which votes are cast by voters by marking paper ballots with a ballot marking device and thereafter counted by use of automatic tabulating equipment.

“*Program*” means the written record of the set of instructions defining the operations to be performed by a computer in examining, counting, tabulating, and printing votes.

“*Qualification test*” means the examination and testing of a voting system by an independent test authority using the voting system standards required by Iowa Code section 52.5 and rule 721—22.2(52) to determine whether the system complies with those standards.

“*Vendor*” means a person or representative of a person owning or being interested in an optical scan voting system and seeking certification of the equipment for use in elections in Iowa.

“*Voting booth*” means an enclosure designed to be used by a voter while marking a conventional paper ballot, optical scan ballot or ballot card.

“*Voting equipment*” means an optical scan voting system which is required by Iowa Code sections 52.5 and 52.26 to be approved for use by the examiners.

“*Voting system*” means the total combination of mechanical, electromechanical or electronic equipment (including the software, firmware and documentation required to program, control and support the equipment that is used to define ballots, to cast and count votes, to report or display election results and to maintain and produce any audit trail information). “Voting system” also includes the practices and associated documentation used to identify system components and versions of such components, to test the system during its development and maintenance, to maintain records of system errors and defects, to determine specific system changes to be made to a system after the initial qualification of the system and to make available any materials to the voter such as notices, instructions, forms or paper ballots. (See Section 301(b) of HAVA.)

[ARC 8244B, IAB 10/21/09, effective 10/2/09; ARC 9468B, IAB 4/20/11, effective 5/25/11]

**721—22.2(52) Voting system standards.** All electronic voting systems approved for use by the board of examiners after April 9, 2003, shall meet Voting Systems Performance and Test Standards, as adopted by the Federal Election Commission April 30, 2002, or the 2005 Voluntary Voting Systems Guidelines, as adopted by the U.S. Election Assistance Commission in December 2005. The report of an accredited independent test authority certifying that the system is in compliance with these standards shall be submitted with the application for examination.

This rule is intended to implement Iowa Code section 52.5.

[ARC 9468B, IAB 4/20/11, effective 5/25/11; ARC 9762B, IAB 10/5/11, effective 9/8/11]

**721—22.3(52) Examiners.** The examiners annually shall elect a chairperson. All three examiners must be present for any formal action. Approval by two of the three examiners is required to approve any action to be taken by the examiners.

**22.3(1)** Notice of the time and place of any meeting by the board of examiners must be published pursuant to Iowa Code section 21.4.

**22.3(2)** Meetings of the examiners are open to the public, except that closed meetings may be held as permitted by Iowa Code section 21.5.

**22.3(3)** Correspondence and materials required to be filed with the board of examiners shall be addressed to the examiners in care of the Elections Division, Office of the Secretary of State, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319.

**721—22.4(52) Fees and expenses paid to the examiners.**

**22.4(1)** The examiners shall be reimbursed for travel to and from the meeting place at the rate specified in Iowa Code section 70A.9. The examiners shall also be reimbursed for actual expenses for meals and lodging, if necessary.

*a.* If the meeting was called for the purpose of examining, reexamining, testing, or discussing the certification of voting equipment offered by a vendor, the examiners’ expenses shall be paid by the vendor within seven days following the completion of the examination and testing of the voting equipment.

b. If the meeting was called for the purpose of advising the secretary of state regarding administrative rules for the examiners, or to hear complaints or requests for decertification of voting equipment, or any other business of interest to the examiners, the expenses shall be paid by the secretary of state.

**22.4(2)** The vendor shall pay the examiners the amount of compensation specified in Iowa Code section 52.6 at the beginning of each meeting for which compensation is required to be provided to the examiners. The fee shall be paid as follows:

a. For each meeting or series of meetings held for the purpose of certifying an optical scan voting system or component thereof.

b. For each meeting or series of meetings for reconsideration of an optical scan voting system or component thereof after denial of certification.

This rule is intended to implement Iowa Code sections 17A.19, 49.25(3), 52.5, 52.6, and 52.26.  
[ARC 8244B, IAB 10/21/09, effective 10/2/09]

**721—22.5(52) Examination of voting equipment—application.** Any vendor who wishes to apply for certification of voting equipment for use in the state of Iowa shall apply to the secretary of state for an appointment with the examiners. The application shall include five copies of each of the following:

**22.5(1)** History of the equipment to be examined. This history shall include a complete description of the equipment to be examined, descriptions of any previous models of the equipment, the date the system to be examined went into production, and a complete list of jurisdictions which have used the equipment. The user list shall include jurisdictions which used the equipment experimentally without purchasing it, jurisdictions which purchased earlier versions of the equipment to be examined, and jurisdictions which purchased the current version of the equipment to be examined.

**22.5(2)** Copies of all manuals developed for use with the system including, but not limited to, technical manuals for repair and maintenance of the equipment, operations manuals for election officials, printer's manuals for ballot production, and any other written documents prepared by the vendor that describe the operation, use, and maintenance of the machine.

**22.5(3)** Report of an accredited independent test authority certifying that the system is in compliance with the voting systems standards required by rule 721—22.2(52). Copies of these reports are confidential records as defined by Iowa Code section 22.7 and Iowa Code chapter 550. Independent test authority reports shall be available to the secretary of state, deputy secretary of state, director of elections, members of the board of examiners, and any other person designated by the secretary of state to have a bona fide need to review the report. No other person shall have access to the reports, and no copies shall be made. All independent test authority reports shall be marked "CONFIDENTIAL" and shall also be accompanied by a list of those persons who are authorized to examine the report. The reports shall be kept in a locked cabinet.

**22.5(4)** Copies of the reports of any test authority who has examined the equipment in conjunction with certification requirements of other states.

**22.5(5)** Reports of the certifying authorities of any other states that have examined the equipment, whether or not the equipment was approved for use.

**22.5(6)** Brochures, photographs and advertising material used to encourage sales of the equipment.

**22.5(7)** Manuals for the use and maintenance of any components of the equipment that are not manufactured by the vendor.

**22.5(8)** Rescinded IAB 4/20/11, effective 5/25/11.

**22.5(9)** Reserved.

**22.5(10)** The form prescribed by the state commissioner of elections to request examination and testing of voting systems.

[ARC 8244B, IAB 10/21/09, effective 10/2/09; ARC 9468B, IAB 4/20/11, effective 5/25/11]

**721—22.6(52) Review of application by examiners.** Upon receipt of the application, the secretary of state shall immediately forward copies of the application to each of the examiners. The examiners shall review the application and within seven days a date shall be set for the examiners to meet and examine

the equipment. If additional information is needed by the examiners, they may delay setting a date for the examination pending the submission of the requested materials.

**721—22.7(52) Consultant.** If the examiners determine that a consultant is necessary to determine whether a system meets the requirements of Iowa law or whether a change to a voting system is de minimis or a modification, the examiners shall notify the vendor of the decision. The vendor may suggest the names of reliable independent test authorities to the examiners and may decline to submit the equipment to the examination of an individual for good reason.

A consultant may be employed if no other state has certified the equipment for use. The examiners may require a consultant if the equipment has been modified following certification by other states, or if the examiners believe it to be necessary.

If a test authority has been determined to be necessary by the examiners and a suitable consultant cannot be agreed upon by the examiners and the vendor, the equipment shall not be approved for use.

[ARC 8244B, IAB 10/21/09, effective 10/2/09]

**721—22.8(52) Contact other users.** The examiners shall contact a representative sample of the users of the equipment to determine the nature of the experience of other users.

**721—22.9(52) Testing the equipment.** The vendor shall provide to the examiners one, or more, if deemed necessary by the examiners, production models of the equipment submitted for certification. The equipment shall be prepared by the examiners with the aid of the vendor to be tested at two sample elections: a sample partisan primary election, and a sample general election.

**22.9(1)** Test county for absentee voting. Voting equipment which is designed to be used for tabulation of absentee ballots shall be tested using a model county consisting of 155 precincts, with 180,000 registered voters. The county shall include one U.S. congressional district, five state senate districts, 11 state house of representatives districts, and 30 townships. Each township shall include both rural voters (who are eligible to vote for township officers) and city voters (who are not eligible to vote for township officers).

**22.9(2)** Test county for absentee systems. Voting equipment which is designed to be used for tabulation of absentee ballots only shall be tested using a model county consisting of 155 precincts, with 180,000 registered voters. The county shall include one U.S. Congressional District, five state senate districts, 11 state house of representatives districts, and 30 townships. Each township shall include both rural voters (who are eligible to vote for township officers) and city voters (who are not eligible to vote for township officers).

**22.9(3)** Test precinct for precinct count systems. The test precinct shall include both rural voters (who are eligible to vote for township officers) and city voters (who are not eligible to vote for township officers).

**22.9(4)** All requirements for preparation and printing of test ballots shall be met in the preparation of ballots for the test elections including, but not limited to, rotation of candidates' names and the provision of space for write-in votes.

**22.9(5)** Test ballots provided by vendor. The vendor shall provide the ballots to be used in the testing of the equipment. A total of at least 2000 ballots shall be printed for each of the two test elections. One thousand ballots for each test election shall be marked and manually tabulated by the vendor to use as a test of the ability to tabulate results accurately. The balance of the ballots shall be delivered to the examiners before the date set for the examination. The examiners shall mark and manually tabulate an additional set of at least 300 test ballots.

**22.9(6)** Accessibility testing by other interested parties. Any party interested in the accessibility of voting equipment that is being considered for state certification may request to be included on notices of meetings of the board of examiners. Requests shall be sent to the examiners, in care of the Elections Division, Office of the Secretary of State, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319. Any parties present at the meeting may complete accessibility testing on the equipment and submit a report on the accessibility of the voting system to the examiners within 30 days of the date of

the examination and test. The report may be made in written or oral form. If an interested party would like to make an oral report, the examiners may hear the report either in person or by conference call organized by the elections division, whichever the examiners prefer.  
[ARC 0736C, IAB 5/15/13, effective 6/19/13]

**721—22.10(52) Test primary election for three political parties.**

**22.10(1) Closed primary election.** Voters may only cast votes for the candidates of one of the parties.

**22.10(2) Offices.** The following offices shall each have two candidates for each party. Candidate names shall be rotated as required by Iowa Code section 43.28.

- a. U.S. Senator
- b. U.S. Representative
- c. Governor
- d. Secretary of State
- e. Auditor of State
- f. Treasurer of State
- g. Secretary of Agriculture
- h. Attorney General
- i. State Senator
- j. State Representative
- k. County Supervisor (vote for no more than three of six candidates)
- l. County Treasurer
- m. County Recorder
- n. County Attorney
- o. and p. Rescinded IAB 8/1/07, effective 7/13/07.

**22.10(3) Write-in votes.** Spaces for write-in votes shall be provided for each office on the ballot. The number of spaces shall equal the number of persons to be elected to the office.

**721—22.11(52) Test general election.** The ballots for the test general election shall include the following:

**22.11(1) Offices.** In the test general election all of the above offices shall be included with the addition of candidates for lieutenant governor to be voted for jointly with each candidate for governor. Each political party and nonparty political organization shall have one candidate for each office that appeared on the primary ballot, except county supervisor, which shall have three candidates for each party and nonparty political organization. Names of candidates for county supervisor shall be rotated as required by Iowa Code section 49.31, subsection 2.

The following nonpartisan offices shall also be included on the ballot with the heading “Nominated by Petition”:

- a. Township Trustee
- b. Township Clerk
- c. County Public Hospital Trustee
- d. Soil and Water Conservation District Commissioners
- e. Agricultural Extension Council

**22.11(2) Judicial ballot.** Portions of the judicial ballot may be printed separately if necessary.

- a. Supreme Court (five justices)
- b. Appeals (four judges)
- c. District Court (six judges)
- d. District Associate Judges (three judges)

**22.11(3) Public measures.**

- a. Constitutional Amendments (two)
- b. Local public measures (three)

**22.11(4) Straight party voting for three political parties and five nonparty political organizations.**

**22.11(5)** Write-in votes. Spaces for write-in votes shall be provided for each office on the ballot. The number of spaces shall equal the number of persons to be elected to the office. This does not include judges standing for retention.

**721—22.12(52) Report of findings.** Within 60 days of examining a voting system pursuant to this chapter, the examiners shall complete a report showing their findings. The report shall include a checklist containing all statutory requirements for voting systems and shall indicate whether each requirement applies to the voting system being examined and whether the voting system is compliant or not compliant. The checklist must indicate that all applicable items are compliant with statutory requirements in order for the examiners to find that the voting system may be approved for use.

**22.12(1) Accessibility reports.** If interested parties are present at the examination and test and participate in accessibility testing of the equipment, the examiners shall wait a minimum of 30 days from the date of the examination and test before completing the report required by this rule so that the examiners have sufficient time to receive and review any accessibility reports submitted by interested parties pursuant to subrule 22.9(6).

**22.12(2) Approval prior to use.** If the report states that the voting system has been approved for use, the voting system may be adopted for use at elections.

**22.12(3) Report filed with the secretary of state.** The report shall be filed with the secretary of state. The secretary of state shall retain the vendor's application and other documents submitted pertaining to the certification as long as the voting system remains certified.

[ARC 0736C, IAB 5/15/13, effective 6/19/13]

**721—22.13(52) Notification.** The examiners shall promptly notify the vendor of their decision and shall provide the vendor with a copy of their report.

**721—22.14(52) Denial of certification.** If the examiners find that the equipment does not meet the requirements prescribed by the Code of Iowa and the Iowa Administrative Code, the examiners shall deny certification to the equipment. The report of the board shall specify the reasons for the denial, as well as all areas in which the equipment complied with the requirements of the law. Certification may be denied for any of the following reasons:

**22.14(1)** The absence of any feature required by Iowa Code section 52.5 or 52.26.

**22.14(2)** Failure to pay the examiners' fees and expenses, or the fees of any consultant mutually agreed upon by the examiners and the vendor.

**22.14(3)** Failure to provide the examiners with a complete application as required by rule 721—22.5(52).

**22.14(4)** Failure of the equipment to produce accurate results in one or both of the test elections. The test groups of ballots shall be tabulated manually to determine the expected outcome of each test election. If the equipment fails to reproduce exactly the results of the manual tabulation, the system shall not be approved for use, unless it can be demonstrated that the manual tabulation was in error and the machine tabulation was accurate.

[ARC 9468B, IAB 4/20/11, effective 5/25/11]

**721—22.15(52) Application for reconsideration.** Following denial of certification a vendor may make the necessary modifications to the system and apply for reconsideration. Aspects of the equipment which were approved in the initial application do not need to be reexamined unless the examiners find that the modifications may have affected the ability of the equipment to comply in other areas. If certification was denied for the reasons cited in 22.14(1) or 22.14(4), both test elections must be completed satisfactorily, or approval shall not be granted.

**721—22.16(52) Appeal.** If the vendor believes the denial of certification is in error, the vendor must file written exceptions with the examiners within 30 days after issuance of the report. The examiners will issue a response to the exceptions within 30 days after filing of the exceptions. A vendor who is

aggrieved or adversely affected by a denial after a ruling on exceptions may seek judicial review pursuant to Iowa Code section 17A.19.

**721—22.17(52) Changes to certified voting systems.** The procedures in this rule shall be followed anytime a change is made to a certified voting system, including a change in tabulation software, firmware, or hardware.

**22.17(1) Notification of change.** The vendor shall notify the examiners of any changes in a certified voting system. The vendor shall provide the examiners with the following information at the time the vendor provides notice of the change(s):

- a. A description of the changes made.
- b. Reports of test results conducted by an accredited independent test authority, and any reports of test results conducted by or for other states following the changes to the voting system.
- c. Copies of manuals, instructions, advertisements and other documents submitted with the voting system's original application for certification that have been updated since the original application was submitted.
- d. An assessment from an accredited independent test authority of the change as either a de minimis change or a modification to the voting system.

**22.17(2) Commencing review proceedings.** Within seven days of receiving a voting system change notice from a vendor, the examiners shall commence review proceedings to independently determine whether the change submitted by the vendor is a de minimis change or a modification to the voting system. In making this independent determination, the examiners may use any means available, including hiring a consultant pursuant to rule 721—22.7(52).

**22.17(3) De minimis changes.** If the examiners determine a change to a voting system is de minimis, the examiners may approve the changes by motion and certify the changed voting system for use in the state.

**22.17(4) Modifications to voting systems.** If the examiners determine a change to a voting system is a modification to the voting system, the examiners shall require the vendor to submit a new application for certification and testing of the voting system pursuant to rules 721—22.5(52) to 721—22.11(52).  
[ARC 8244B, IAB 10/21/09, effective 10/2/09]

**721—22.18(52) Rescinding certification.**

**22.18(1) Grounds for rescinding certification.** Certification may be rescinded if it is found that:

- a. The equipment does not produce accurate results and reports as required for an election.
- b. Modifications have been made in a certified voting system that have not been approved by the examiners.
- c. Equipment which has been certified for use has not been adopted by any county in Iowa, or is no longer used by any county in Iowa, and is no longer available for purchase from the manufacturer. The examiners may rescind certification of such voting equipment without a complaint or contested case proceedings.
- d. Equipment that has been certified for use no longer complies with the requirements of Iowa law.
- e. Any other grounds that may materially affect delivery or performance of the equipment.

**22.18(2) Procedure for rescinding certification.** Complaints regarding voting equipment certified for use in Iowa shall be filed with the secretary of state. The examiners shall review all complaints and may initiate a contested case to rescind certification on any ground listed above. The contested case may be conducted before the examiners or before an administrative law judge. A contested case for rescinding certification shall be conducted, to the extent applicable, in accordance with the procedural rules specified in 481—Chapter 10, Iowa Administrative Code.

**22.18(3) Suspension of certification.** If the administrative law judge hearing the contested case, or the examiners, as the case may be, find that the voting equipment can be modified to correct the deficiency, certification may be suspended until the deficiency is corrected. If it is found that the deficiency is limited to a specific flaw not present in all models of the equipment, the suspension may

be limited to the deficient models. While certification is suspended, the equipment may not be used for any election.

After the required modifications have been made the vendor may apply for reexamination of the equipment following the procedure described in rule 721—22.17(52).

**22.18(4) Further use prohibited.** If certification of voting equipment is rescinded without qualification, no further use shall be permitted by any county.

[ARC 8244B, IAB 10/21/09, effective 10/2/09]

These rules are intended to implement Iowa Code sections 17A.12, 21.4, 21.5, 52.4, 52.5, 52.6, 52.7, 52.26, and 70A.9.

**721—22.19(52) Examination of voting booths—application.** Rescinded IAB 10/21/09, effective 10/2/09.

**721—22.20(52) Review of application by examiners.** Rescinded IAB 10/21/09, effective 10/2/09.

**721—22.21(52) Contact other users.** Rescinded IAB 10/21/09, effective 10/2/09.

**721—22.22(52) Criteria for approval.** Rescinded IAB 10/21/09, effective 10/2/09.

**721—22.23(52) Report.** Rescinded IAB 10/21/09, effective 10/2/09.

**721—22.24(52) Notification.** Rescinded IAB 10/21/09, effective 10/2/09.

**721—22.25(52) Denial of certification.** Rescinded IAB 10/21/09, effective 10/2/09.

**721—22.26(52) Application for reconsideration.** Rescinded IAB 10/21/09, effective 10/2/09.

**721—22.27(52) Appeal.** Rescinded IAB 10/21/09, effective 10/2/09.

**721—22.28(52) Reexamination following changes in voting booth.** Rescinded IAB 10/21/09, effective 10/2/09.

**721—22.29(52) Rescinding certification.** Rescinded IAB 10/21/09, effective 10/2/09.

**721—22.30(50,52) Electronic transmission of election results.**

**22.30(1) Certification of equipment.** On or after December 17, 2003, new components for transmission of election results by any electronic means may be used in elections in Iowa only if the components are approved by the board of examiners for use with a certified voting system. Existing systems containing electronic transmission components in use before December 17, 2003, may continue to be used until January 1, 2006, when the Help America Vote Act voting system requirements become effective.

The examiners shall review the qualification test report submitted with the application for examination and testing of the voting system. If the test report for the voting system under examination shows that the electronic transmission components have met the voting system standards and the examiners concur, the electronic transmission components may be used in conjunction with the voting system. If the qualification test report or the examiners conclude that the electronic transmission components do not meet the voting system standards, or if this feature is not mentioned in the report, purchasers of the voting system may not transmit election results electronically.

**22.30(2) Procedures on election day.** The election results may be transmitted electronically from voting equipment to the county commissioner of elections' office only after the precinct election officials have produced a written report of the election results as required by Iowa Code section 50.11. All election officials of the precinct shall sign the printed report of the election results. The signed copy shall be the official tabulation from that precinct.

**22.30(3) Procedures after election day.** Before the canvass by the board of supervisors, the county commissioner of elections shall compare the signed, printed report from each precinct with the results transmitted electronically from the precinct on election night. The commissioner shall report any discrepancies between the two sets of election results to the board of supervisors. The signed, printed results produced pursuant to Iowa Code section 50.11 shall be considered the correct results.

This rule is intended to implement Iowa Code sections 50.11 and 52.41.

**721—22.31(52) Acceptance testing.** When the commissioner receives voting equipment from a vendor, the commissioner shall carefully examine and test the equipment to:

**22.31(1)** Verify that the system delivered is certified for use in Iowa. The commissioner shall compare the voting system version numbers with the list of certified voting equipment provided by the state commissioner;

**22.31(2)** Verify that everything in the contract has been delivered by:

- a. Comparing a copy of the purchase contract with the items received;
- b. Making certain that all components, such as power cords, casters, and keys, are included;
- c. Reviewing instruction and maintenance manuals to be sure that the correct version of each manual was provided; and

**22.31(3)** Verify that everything delivered actually works. The commissioner shall run a simulated election to confirm that each part of the system and the system as a whole function properly.

**721—22.32(52) Optical scan voting system purchase program.** Rescinded IAB 4/20/11, effective 5/25/11.

**721—22.33 to 22.38** Reserved.

**721—22.39(52) Public testing for direct recording electronic voting machines.** Rescinded IAB 10/8/08, effective 9/19/08.

**721—22.40(52) Public testing of lever voting machines.** Rescinded IAB 8/1/07, effective 7/13/07.

**721—22.41(52) Public testing of optical scan systems.** All automatic tabulating equipment (including equipment used to tabulate absentee ballots) shall be tested before use at any election, as required by Iowa Code section 52.35. The process and results of the test shall be documented and available for inspection.

**22.41(1)** Each automatic tabulating device (including equipment that will be used for counting absentee ballots) shall be tested to determine the following:

a. The device and its programs will accurately tabulate votes for each candidate and question on the ballot.

b. Votes cast for more candidates for any office than the number to be elected will result in the rejection of all votes cast for that office on that ballot. Votes properly cast for other offices on the same ballot shall be counted.

c. The tabulating equipment records all votes cast and no others. A written tally of the test votes shall be prepared before the test. The results of the test voting shall be recorded. The results of the machine tabulation shall be printed and compared with the test plan.

d. The voter may cast as many write-in votes for each office on the ballot as there are positions to be filled, and the write-in votes are tallied correctly.

e. For primary elections, the tabulating equipment accurately records votes cast for all political parties.

f. For general elections:

(1) A ballot marked with only a straight party vote is recorded with one vote for each candidate of the designated political party, and no other votes are recorded for partisan offices;

(2) The voter may override a straight party vote for any office by voting for any candidate not associated with that political party; and

(3) For offices to which more than one person will be elected, if a voter has chosen to override a straight party vote, only the candidates whose names are marked shall receive a vote.

**22.41(2) Conducting the test.**

a. The commissioner shall follow the process described in rule 721—22.42(52) for preparing test decks.

b. If, during the test, there are differences between the test plan and the results produced by the optical scan device, the cause of the discrepancy shall be determined. If the cause of the discrepancy cannot be determined and corrected, the faulty program or equipment shall not be used in the election.

c. The test decks, the preparer's tally, and the printed results of the test shall be kept with the records of the election and preserved as required by Iowa Code section 50.19.

**721—22.42(52) Preparing test decks.** The commissioner shall prepare test decks from all ballots printed for use in the election, including those for use at the polling places and for absentee balloting. Each of the following test decks shall be prepared for every precinct and ballot style in the election. Commissioners may use additional test methods to supplement the process described in this rule.

**22.42(1) Requirements for all test decks prepared by the commissioner and used in public testing.** The commissioner shall:

a. Replace ballots spoiled during the marking process instead of attempting to correct errors.

b. Fill in each oval completely using the recommended pen, pencil or AutoMARK VAT.

c. Mark each ballot "Test Ballot."

d. Mark at least one valid vote for each candidate and question on the ballot using the OVI unit (if applicable). The ballots marked by the OVI unit may be used as part of the systematic or straight party test deck (if applicable).

**22.42(2) Required test method.** The commissioner shall:

a. Prepare a test plan showing the planned number of votes, including undervotes and overvotes for each oval on the ballot. Follow the instructions in subrules 22.42(3) through 22.42(5) in preparing the test decks.

b. Mark the test ballots according to the test plan.

c. Print a zero totals report from the optical scan tabulator before inserting any ballots.

d. Insert the ballots into the optical scan tabulator and print a report showing the number of votes recorded for all offices, questions and judges, including undervotes and overvotes.

e. Compare the printed report with the test plan to ensure that the correct number of votes was counted for each oval.

f. If the commissioner finds errors, the commissioner shall identify and correct them. The commissioner shall repeat the testing process until the printed results from the tabulator match the test plan. If the commissioner cannot produce an errorless test, the equipment shall not be used in the election.

**22.42(3) Systematic test deck.** The commissioner shall determine a unique number of votes for each candidate in each office, such as one vote for each write-in oval for the office, two votes for the first candidate listed (or "NO" votes on public measures and judges), three votes for the second candidate, etc. It is not necessary to have a different number of votes for each write-in oval for offices for which the voter may select more than one candidate. However, the write-in oval shall have a different number of votes marked than any candidate for the office. The commissioner shall:

a. On general election ballots, leave the straight party choice blank.

b. For offices without candidates, mark all of the write-in ovals for that office.

c. For offices in which the voter may vote for more than one candidate, vote for the maximum allowed on at least one ballot.

d. On a ballot that contains at least one valid vote, overvote one other office or question.

**22.42(4) System-specific testing requirements.** Separate tests are prescribed for each certified voting system.

a. *Election Systems & Software and Unisyn OpenElect—overvote and blank ballot test.* For an overvote and blank ballot test, the commissioner shall:

(1) Overvote all offices and questions (including judges) on one ballot, by marking one more vote than permitted. Do not mark the write-in ovals for any offices for which there are no candidates' names on the ballot.

(2) If the test is for ballots that will be used in a general election, mark two straight party votes on one ballot. Do not mark any other ovals. In the test plan, this ballot should be tallied to show that the straight party selection was overvoted, and to show undervotes for all other offices and questions on the ballot.

(3) When the overvoted ballots are rejected by the optical scan tabulator, override the rejection and include the ballot in the tally. Add to the manual tally the number of overvotes in this test. The tally for this part of the test deck will show no votes for any candidate.

(4) Insert a blank ballot. When the blank ballot is rejected by the optical scan tabulator, override the rejection and include the ballot in the tally. This is a very important test of the accuracy of ballot printing. Printing errors sometimes put readable marks in the voting target area.

(5) Orientation test. Mark the maximum number of choices for each office and question on one ballot.

Scan this ballot in each of the four possible orientations:

- Face up, head first.
- Face down, head first.
- Face up, feet first.
- Face down, feet first.

*b. Premier Election Solutions.*

(1) Blank and fully voted test. The commissioner shall use two ballots for this test.

1. Leave one ballot completely blank.

2. On the second ballot, mark every oval on both sides of the ballot.

3. Select "Test Blank Ballots" and insert the blank ballot in all four orientations:

- Face up, head first.
- Face down, head first.
- Face up, feet first.
- Face down, feet first.

4. Select "Test Fully Voted Ballots" and insert the second ballot in each of the four orientations listed in numbered paragraph "3" above.

5. Reinsert the blank ballot and the fully voted ballot and override the rejection feature.

(2) Overvote. Overvote all offices and questions (including judges) on one ballot, by marking one more vote than permitted. Do not mark the write-in ovals for any offices for which there are no candidates' names on the ballot.

**22.42(5)** *Straight party test for general elections.* For a straight party test, the commissioner shall:

*a.* For each set of ballots:

(1) Mark straight party votes in a pattern, such as one vote for the first straight party choice, two votes for the second, and so on, and tally the expected results. Do not mark anything else on this group of ballots.

(2) On a second set of ballots containing as many ballots as there are straight party choices, mark the straight party option and, for each office affected by the straight party vote, mark the write-in oval, and tally the expected results.

(3) If the election includes an at-large county supervisor race with more than one person to be elected, mark a ballot with only a straight party vote and then vote for one candidate from the same political party as the straight party vote. Only this separately marked candidate should receive a vote.

*b.* Compile the results of the straight party test deck.

[ARC 0238C, IAB 8/8/12, effective 7/11/12]

#### **721—22.43(52) Conducting the public test.**

**22.43(1)** The equipment shall be inspected to determine whether it has been prepared properly for the election at which it will be used. The following information shall be verified:

*a.* The correct program cartridge or memory card is in place for the election and the precinct or precincts in which it will be used.

*b.* All counters are set at zero before the test is begun.

**22.43(2)** The commissioner shall conclude the test not later than 12 hours before the polls open on election day. Following the test, the tabulating equipment shall be inspected to determine that:

*a.* All counters have been returned to zero.

*b.* All required locks or seals are in place.

*c.* The automatic tabulating equipment is ready for operation at the election.

The results tape from each scanner produced during the public test shall be signed by the person conducting the test and by any observers present at the test. The signers shall write their signatures at the end of the tape where it will be detached from the machine. The tape shall be torn or cut across the signatures, so that a portion of the signature is on the tape remaining on the tabulating device. The test results tape, including a part of the tester's signature, shall be retained with the appropriate test deck for the period of time required by Iowa Code section 50.19.

**22.43(3)** Test deck submitted by observers. Any person who is present at the public test may mark ballots to be used to test the voting equipment. The following conditions apply:

*a.* Not more than ten ballots may be submitted by any person.

*b.* Only official ballots provided by the commissioner at the test shall be used.

*c.* The observer submitting the test shall provide a written tally of the test deck.

*d.* The results of the machine tabulation shall be printed and compared with the observer's tally. If there are differences, the cause of the discrepancy shall be determined. If the cause of the discrepancy cannot be determined and corrected, the program or equipment shall not be used at the election.

*e.* The test decks, the tally, and the printed results of the test shall be kept with the records of the election and preserved as required by Iowa Code section 50.19.

Rules 721—22.41(52) through 721—22.43(52) are intended to implement Iowa Code section 52.35.

**721—22.44 to 22.49** Reserved.

**721—22.50(52) Voting system security.** Each county shall have a written security policy. The policy shall include detailed plans to protect the election equipment and data from unauthorized access. The policy shall describe the methods to be used to preserve the integrity of the election and to document the election process.

**22.50(1) Staff access.** The security policy shall describe who shall have access to the voting equipment.

**22.50(2) Computers.** For security purposes, computers used in the commissioner's office to prepare ballots and voting equipment programs or to compile and report election results should not be used for any other function and should not be linked to any computer network or to the Internet.

*a.* If the election computers are linked to a network or to the Internet, the commissioner shall use a firewall to filter network traffic. Data transmissions over the Internet shall be encrypted and password-protected. Information posted to a Web site shall not be considered transmission of data over the Internet.

*b.* Access shall be limited to persons specified by the commissioner in the written security policy. The level of access shall be included in a written security policy.

(1) Uniqueness. Every ID and password shall be unique. The creation of generic or shared user IDs is specifically prohibited. Each user shall have exactly one user ID and password, except where job requirements necessitate the creation of multiple IDs to access different business functions.

(2) Authority. Each user shall be granted only the level of access specifically required by the user's job. Use of "Administrator," "Super User," "Security Administrator," or "SA" levels of authority shall be severely restricted.

(3) Generic user IDs. Staff members with generic user IDs are not allowed to sign on to voting systems.

(4) Password standards.

Account Policy	Recommended Setting
Maximum Password Age	90 days
Minimum Password Age	2 days
Minimum Password Length	8 characters
Enforced Password History	6 passwords (last 6 cannot be used)
Account Lockout (number of unsuccessful log-on attempts)	3 bad attempts
Account Lockout Duration	6 hours
Reset Account Lockout Counter After	6 hours

**22.50(3) Evacuation.** If it is necessary to evacuate the election office, a satellite absentee voting station or a polling place, the precinct election staff or the election officials shall immediately attempt to notify the commissioner and take the following actions:

- a. Keep people safe.
- b. If possible, gather and secure voted ballots, election equipment and critical election documents.

**721—22.51(52) Memory cards.** A memory card is a small, removable device containing data files of the election definition programmed for use in voting equipment for each election. For all voting equipment, the following security measures are required:

**22.51(1) Serial number.** Each memory card shall have a serial number printed on a readily visible label. The label shall include the name of the county.

**22.51(2) Inventory.** Memory cards owned by the county and retained in the custody of the county commissioner shall be maintained under perpetual inventory, with a record of inventory activity. The commissioner shall maintain a similar record of relevant actions if the memory cards are acquired from a vendor for each election. The record of inventory activity shall reflect:

- a. The date each memory card was acquired;
- b. Each use of each memory card in an election;
- c. Each maintenance activity to a memory card, such as changing the battery;
- d. Any problems or errors detected while using the memory card during its life;
- e. Records of the disposal of any memory cards at the end of their useful life or upon return to the vendor for maintenance or warranty claims.

**22.51(3) Custody.**

a. In counties where the commissioner has the necessary software and equipment to program the memory cards locally, the commissioner shall maintain a memory card log for each election as required in subrule 22.51(4) during the period when the memory cards are removed from storage, prepared for an election, and until they are sealed into a voting device. Only county employees and precinct election officials, as applicable, authorized by the county's security policy shall be permitted to handle the memory cards. No one individual should be alone with the unsecured memory cards at any time. If a person who is not authorized by the security policy to have access to the memory cards transports them to another location, such as a warehouse, the memory cards shall be enclosed in a transport container with a tamper-evident seal.

b. In counties where the commissioner purchases programming services from a vendor, the memory cards shall be shipped to and from the vendor by a shipping service that employs tracking numbers. The memory cards shall be enclosed in a package sealed with a numbered, tamper-evident seal. Programmed memory cards shall be shipped in a package sealed with a numbered, tamper-evident seal from the vendor to the commissioner. If the seal is not intact upon arrival, the commissioner shall immediately contact the vendor for replacement cards. Only county employees authorized by the county's security policy (and precinct election officials, as applicable) shall be permitted to handle the memory cards. No one individual should be alone with the unsecured memory cards at any time.

**22.51(4) Memory card log.** For each election, the commissioner shall create a log to record the serial numbers of each memory card, the voting device into which the memory card was installed, the serial





**Instructions to vendor:**

**Check in each card number on the enclosed chain of custody record when unpacking cards.**

By: \_\_\_\_\_ Date: \_\_\_/\_\_\_/\_\_\_ Time: \_\_\_:\_\_\_ a.m./p.m.  
Print name Signature

- If memory cards are removed from this inventory for any reason, make a notation of which card(s) on the Memory Card Record.
- Replacement card(s) if issued should be added to the bottom of the Memory Card Record as a new card. A serial number will be assigned later by the receiving county.

Shipped via: \_\_\_\_\_ Date: \_\_\_\_\_ Tracking number: \_\_\_\_\_

**Received by County Election Department** on Date: \_\_\_/\_\_\_/\_\_\_

Was the package sealed? \_\_\_\_\_ Was the seal intact? \_\_\_\_\_ Notes: \_\_\_\_\_

Keep the memory cards in secure storage after they are received and until they are installed in the voting equipment.

**22.51(5) Preparation and installation.** When memory cards are installed, they shall be sealed immediately into the machine using a numbered, tamper-evident seal. Appropriate log entries shall be completed.

**22.51(6) Replacing seals or memory cards.** If a seal is accidentally broken or a memory card is replaced for any reason, the issuance of a new seal and the entry into the log shall be witnessed by more than one person. The facts of the incident and the names of the individuals who detected and resolved it shall be recorded.

**22.51(7) Opening the polls.** Immediately before the polls open on election day, the precinct election officials shall turn on the voting equipment and print the report showing that all counters are set at zero.

**22.51(8) Verification log.** The commissioner shall provide to each precinct a precinct verification log with the ballot record and receipt. The verification log shall provide places for precinct election officials to record or check the following information before the polls open and again before leaving the polling place at the end of the day:

- Seal numbers from the voting equipment; and
- Condition of seals on ballot containers.

**22.51(9) Election day.**

*a.* Before the polls are opened, the precinct election officials shall verify the required information in the verification log and sign the log.

*b.* After the polls are closed, the precinct election officials shall verify the required information in the verification log and sign the log before leaving the polling place.

*c.* If the precinct election officials remove the memory cards from the voting equipment, the officials shall first print the results report from the voting equipment.

**22.51(10) Return of memory cards.** If the precinct election officials remove the memory cards from the voting equipment on election night, they shall return to the commissioner the memory cards and the seals used to secure them in a sealed envelope or other container. All officials of the precinct shall witness the statement on the envelope or other container. The label on the envelope or other container shall be in substantially the following form:

## Memory Cards

Election Date: \_\_\_\_\_

Precinct: \_\_\_\_\_

This envelope contains Memory Cards and memory card access seals from this precinct.

Machine Number	Memory Card #	Memory Card Seal #

[Signatures of all precinct election officials shall be included on the label.]

**22.51(11) Storage.** If the memory cards are returned inside the voting equipment to the commissioner, the machine serial numbers and the seal numbers shall be verified against the verification log described in subrule 22.51(8). When the memory cards are removed, their serial numbers shall also be verified against the verification log returned by the precinct's election officials. The memory card audit log shall be retained for the time period required by Iowa Code section 50.19.

**22.51(12) Results verified.** Before the conclusion of the canvass of votes, the individual results reports from the precincts, as signed by the precinct election officials at the polls on election night, shall be compared to the election results compiled for the canvass (either manually or electronically) to verify that transmitted and accumulated totals match the results witnessed by the election officials. Any discrepancies in these totals shall be reconciled before the supervisors conclude the canvass.

**22.51(13) Retention of programmed memory cards.** The election information on all memory cards used for an election shall be retained on the memory cards until after the time to file requests for recounts and election contests has passed. If a contest is pending, the memory cards shall be retained until the contest is resolved. Before the memory cards are permanently erased, the commissioner shall print the memory card audit log from each card.

**22.51(14) Retention of program information.** The commissioner shall retain all instructions and other written records of the process for programming the memory cards and the memory card audit logs for the period required by Iowa Code section 50.19. The contents of memory cards and other electronic records of the election process shall be collected and retained in an electronic or other medium and stored with the other election records for the time period required by Iowa Code section 50.19.

**721—22.52(52) Voting equipment malfunction at the polls.** The precinct election officials shall immediately cease using any malfunctioning voting equipment and report the problem to the commissioner. Only a person who is authorized in writing by the commissioner to do so shall be permitted to attempt to repair malfunctioning voting equipment. The person shall show identification to the precinct election official. The commissioner shall keep a written record of all known malfunctions and their resolution. The precinct election officials shall return the voting equipment to service only if the malfunction is corrected.

**22.52(1) Routine resolution.** Some problems may be easily resolved by following simple instructions. If the commissioner and the precinct election officials are able to resolve a problem without replacing the equipment, the officials shall document the problem, the time it occurred, how it was resolved, and by whom.

**22.52(2) Repair or replacement.** Repairs to voting equipment at the polls on election day shall be limited. If the problem cannot be easily resolved, a person who is authorized to do so by the commissioner shall replace the equipment as soon as possible. Two election officials, one from each political party, shall witness repair or replacement of any voting equipment, including memory cards. The authorized person making the repair or replacement and the two election officials shall sign a report of the incident.

721—22.53 to 22.99 Reserved.

OPTICAL SCAN VOTING SYSTEMS

**721—22.100(52) Optical scan ballots, automatic tabulating equipment, and absentee voting.** Rescinded IAB 10/8/08, effective 9/19/08.

**721—22.101(52) Definitions.** The definitions established by this rule shall apply whenever the terms defined appear in relation to an optical scan system used with the type of ballot defined in this rule.

“*Ballot*” means the official document that includes all of the offices or public measures to be voted upon at a single election, whether they appear on one or more optical scan ballots.

“*Optical scan voting system*” means a system employing optical scan ballots under which votes are cast by voters by marking the optical scan ballots with a ballot marking device and thereafter counted by use of automatic tabulating equipment.

“*Overvote*” means to vote for more than the permitted number of choices for any office or question on a ballot.

“*Secrecy envelope*” means a reusable envelope of sufficient construction that when the optical scan ballot is inserted in it all portions indicating voting marks are hidden from view.

“*Tabulating device*” means the portable apparatus which examines and counts the votes recorded on the optical scan ballot and produces a paper printout of the results of the voting.

“*Ticket*” means each list of candidates nominated by a political party or group of petitioners.

“*Undervote*” means to vote for fewer than the permitted number of choices for any office or question on a ballot.

“*Voting system*” means the total combination of mechanical, electromechanical or electronic equipment (including the software, firmware and documentation required to program, control and support the equipment that is used to define ballots, to cast and count votes, to report or display election results and to maintain and produce any audit trail information). “Voting system” also includes the practices and associated documentation used to identify system components and versions of such components, to test the system during its development and maintenance, to maintain records of system errors and defects, to determine specific system changes to be made to a system after the initial qualification of the system and to make available any materials to the voter such as notices, instructions, forms or paper ballots. (See Section 301(b) of HAVA.)

“*Voting target*” means the space on an optical scan ballot which the voter marks to cast a vote for a candidate, judge or question. This target shall be printed according to the requirements of the voting system to be used to read the ballots.

**721—22.102(52) Optical scan ballots.** The optical scan ballots shall be printed pursuant to Iowa Code chapters 43 and 49 and by any relevant provisions of any statutes which specify the form of ballots for special elections, so far as possible within the constraints of the physical characteristics of the system.

**22.102(1)** The optical scan ballots may be printed on both sides of a sheet of paper. If both sides are used, the words “Turn the ballot over” shall be clearly printed on the front and the back of the optical scan ballot, at the bottom.

**22.102(2)** Printed at the top of the front side of the optical scan ballot shall be the name and date of the election; the words “Official Ballot”; a designation of the ballot style or precinct, if any; and a facsimile of the commissioner’s signature.

**22.102(3)** The voting target shall be printed opposite each candidate’s name and write-in line on the optical scan ballot, and opposite the “yes” and “no” for each public measure and judge. The voting target shall be printed on the left side of the name or “yes” and “no”. The voting target shall be an oval unless the voting system requires a target with a different shape.

**22.102(4)** For partisan primary elections, the names of candidates representing each political party shall be printed on separate optical scan ballots. The ballots shall be uniform in quality, texture and size. The name of the political party shall be printed in at least 24-point type (¼” high) at the top of the ballot.

**22.102(5)** There shall be printed on the ballot a line to accommodate the initials of the precinct election official who endorses the ballot as provided in Iowa Code sections 43.36 and 49.82.

**22.102(6)** It is not necessary for public measures to be printed on colored paper.

**22.102(7)** Ballots shall be coded as necessary to allow the tabulation program to identify the appropriate ballots for the precinct. Ballots shall be coded so the tabulating device can identify by precinct the votes cast for each office and question on the ballot by precinct. The votes from the absentee and special voters precinct shall be reported as a single precinct except in general elections pursuant to Iowa Code section 53.20 as amended by 2008 Iowa Acts, House File 2367. Identical ballots shall not be coded to identify groups of voters within a precinct.

**22.102(8)** No office or public measure on any ballot shall be divided to appear in more than one column or on more than one page of a ballot. If the full text of a public measure will not fit on a single column of the ballot, the commissioner shall prepare a summary for the ballot and post the full text in the voting booth as required by Iowa Code section 52.25.

**22.102(9)** Ballots shall be stored in a locked room or storage area. Access to the storage area shall be restricted to those persons identified in the election security plan. Throughout the election process, the commissioner shall keep accurate records of the number of each type of ballot or ballot style printed for the election. This record shall include the number of ballots:

- a. Ordered from the printer.
- b. Printed and delivered by the printer to the commissioner. The commissioner may store sealed, unopened packages of ballots without verifying the number of ballots in the package.
- c. Used for testing as required by Iowa Code sections 52.9 and 52.35 and rule 721—22.41(52).
- d. Held in reserve for emergencies as required by Iowa Code section 49.66.
- e. Delivered to and returned from the polling places as required by Iowa Code sections 49.65 and 50.10.
- f. Used for absentee voting, including any spoiled ballots.
- g. Issued as sample ballots to the public as permitted by Iowa Code section 43.30.
- h. Photocopied ballots used pursuant to Iowa Code section 49.67.
- i. Printed by the commissioner using any voting system program, such as Election Systems & Software's Ballot on Demand program.

**721—22.103 to 22.199** Reserved.

#### PRECINCT COUNT SYSTEMS

##### **721—22.200(52) Security.**

**22.200(1)** At least one tabulating device shall be provided at each precinct polling place for an election. If the tabulating device is delivered to the polling place before election day, it shall be secured against tampering or kept in a locked room.

**22.200(2)** The maintenance key or keys used to gain access to the internal parts of the tabulating device shall be kept in a secure place and in a secure manner, in the custody of the commissioner. On election day, the key used to obtain the paper printout shall be kept by the chairperson of the precinct election officials in a secure manner. Small electronic devices, such as memory cards, cartridges or other data storage devices used to activate tabulation equipment or to store election information, shall be in the custody of the precinct chairperson when the devices are not installed on the voting equipment.

**22.200(3)** If a password is needed for precinct election officials to have routine access to the tabulating device during election day, the password shall be changed for every election. The commissioner shall restrict access to the password in the written security policy.

##### **721—22.201(52) Programming and testing the tabulating devices for precinct count systems.**

**22.201(1)** All programming of tabulating devices shall be performed under the supervision of the commissioner. The devices shall be programmed to ensure that all votes will be counted in accordance with the laws of Iowa. Tabulating devices shall be programmed to return to the voter any ballots:

- a. That are not coded to be used in the precinct.
- b. That are read as blank.
- c. That have one or more overvoted offices or public measures.

**22.201(2)** Rescinded IAB 10/25/06, effective 10/4/06.

**721—22.202(50) Unique race and candidate ID numbers for election night results reporting.** All tabulating devices programmed for primary and general elections and for special elections conducted pursuant to Iowa Code section 69.14 shall be programmed using the unique race and candidate ID numbers assigned by the state commissioner. The unique race and candidate ID numbers will be provided to the county commissioners with the candidate certification prepared by the state commissioner.

This rule is intended to implement Iowa Code chapter 50.

[ARC 9989B, IAB 2/8/12, effective 1/17/12]

**721—22.203(50) Reporting election night results electronically.** For all primary and general elections, the county commissioner shall provide the state commissioner with an electronic results file generated from the county's vote tabulation software system, if any. For special elections conducted pursuant to Iowa Code section 69.14, the county commissioner shall provide election night results in the manner requested by the state commissioner.

This rule is intended to implement Iowa Code chapter 50.

[ARC 9989B, IAB 2/8/12, effective 1/17/12]

**721—22.204 to 22.220** Reserved.

**721—22.221(52) Sample ballots and instructions to voters.** Sample special paper ballots and printed instructions for casting votes on special paper ballots shall be prominently displayed in each polling place. Instructions shall also be displayed inside each voting booth. Each special paper ballot shall also include an example of the method of marking the ballot recommended by the manufacturer of the tabulating device. Further instructions shall be provided to any voter who requests assistance in accordance with Iowa Code section 49.90.

**721—22.222 to 22.230** Reserved.

**721—22.231(52) Emergency ballot box or bin.** Each precinct shall be furnished with an emergency ballot box or bin that is suitably equipped with a lock and key or numbered, tamperproof seal. In the event of power failure or malfunction of the tabulating device, voted ballots shall be deposited in the locked or sealed emergency ballot box or bin. A precinct election official shall put the ballot into the emergency ballot box or bin for the voter. The voted ballots so deposited may be removed from the locked emergency ballot box or bin and tabulated before the polls close whenever a properly functioning tabulating device becomes available, or the voted ballots so deposited may be removed and counted electronically or manually immediately after the polls are closed. If the ballots are counted manually, the precinct election officials shall follow the requirements of 721—Chapter 26.

**721—22.232(52) Manner of voting.** After the precinct election official has endorsed a ballot, the official shall instruct the voter to use only the marker provided. The ballot shall be inserted in a secrecy folder and given to the person who is entitled to receive the ballot in accordance with the provisions of Iowa Code section 49.77.

**22.232(1)** The precinct officials shall provide each voter with a secrecy folder. The commissioner may print basic ballot marking instructions on the secrecy folder. It is not necessary to print information on secrecy folders that will limit the usefulness of the secrecy folder to one or more elections or election types. Upon receipt of the ballot in the secrecy folder, the voter shall retire alone to a voting booth and without delay mark the ballot.

**22.232(2)** The voter shall vote upon the ballot by marking the appropriate voting target with an appropriate pen or pencil in the manner described in the instructions printed on the ballot.

When a write-in vote has been cast, the ballot must also be marked in the corresponding voting target in order to be counted.

**22.232(3)** After marking the ballot, the voter shall replace it in the secrecy folder and leave the voting booth at once.

**22.232(4)** The voter shall at once deposit the ballot, still enclosed in the secrecy folder, in the tabulating device so that the ballot is automatically removed from the secrecy folder, the votes tabulated, and the ballot deposited in the ballot box.

**22.232(5)** If the tabulating device is equipped with a mechanism that will not permit more than one ballot to be inserted at one time, the voter may insert the ballot into the tabulating device. If the tabulating device cannot detect and reject multiple ballots, the voter shall be required to hand the ballot in the secrecy folder to the precinct election official without revealing any of the marks on the ballot. The precinct election official shall at once deposit the ballot in the manner described in subrule 22.232(4).

**22.232(6)** If the tabulating device returns a ballot, the precinct official attending the device shall ask the voter to wait. Without examining the ballot, the official shall enclose the returned ballot in a secrecy folder. If necessary, the official shall read to the voter the information provided by the device about the reason the ballot was returned. The official shall offer the voter the opportunity to correct the ballot. The precinct official shall mark the returned ballot “spoiled” and shall also tear or mark the ballot so that the tabulating device cannot count it. The voter may use the spoiled ballot as a guide for marking the corrected ballot. After the voter has marked the corrected ballot, the precinct officials shall collect the spoiled ballot and keep it with other spoiled ballots.

**22.232(7)** If the voter who cast the returned ballot is not available, or declines to correct the ballot, the precinct official shall not mark the ballot “spoiled.” Either the voter or the official shall reset the tabulating device to accept the ballot. The voter, or the official if the voter has gone, shall insert the ballot into the precinct counter without further examination.

**721—22.233 to 22.239** Reserved.

**721—22.240(52) Results.** After the polls are closed and the tabulating device has processed all of the ballots, including any ballots from the emergency ballot box or bin, the precinct election officials shall:

**22.240(1)** Unlock the tabulating device and obtain a paper printout showing the votes cast for each candidate and public measure.

**22.240(2)** Fasten the paper printout to the official tally sheet.

**22.240(3)** Unlock or remove the seal on the ballot box or bin containing ballots with write-in votes and open it. The precinct officials shall remove the ballots and manually count the write-in votes as required by 721—Chapter 26. The officials shall record the write-in votes in the tally list. A single tally list is sufficient for use when tabulating write-in votes.

**22.240(4)** Seal all ballots in a transfer case to be returned to the commissioner in accordance with Iowa Code section 50.12.

**22.240(5)** It is not necessary for the precinct officials to separate primary election ballots by political party.

**721—22.241(52) Electronic transmission of election results.** If the equipment includes a modem for the electronic transmission of election results, the precinct officials may transmit the results after a printed copy has been made. If the voting system includes a data card, cartridge or other small device that contains an electronic copy of the election results, the precinct chairperson shall secure the device and ensure its safe delivery to the commissioner.

**721—22.242 to 22.249** Reserved.

**721—22.250(52) Absentee voting instructions.** Printed instructions shall be included with the ballot or ballots given to or mailed to each absentee voter. Written instructions to the voter shall be sent with every absentee ballot. For federal elections, the commissioner shall use only the instructions provided by the state commissioner.

**721—22.251(52) Absentee voting instructions.** Rescinded IAB 11/23/05, effective 12/28/05.

**721—22.252 to 22.259** Reserved.

**721—22.260(52) Specific precinct count systems.** Additional rules are provided for each voting system approved for use in Iowa. The requirements in rules 721—22.261(52) through 721—22.265(52) apply only to the voting systems indicated and are in addition to the general provisions set forth in rules 721—22.200(52) through 721—22.250(52).

[ARC 0238C, IAB 8/8/12, effective 7/11/12]

**721—22.261(52) Election Systems & Software Model 100—preparation and use in elections.**

**22.261(1) Security.** The commissioner shall have a written security plan for the voting system. Access to equipment, programs and passwords shall be limited to those persons authorized in writing by the commissioner. The security plan shall be reviewed at least annually.

a. Passwords used at the polling places on election day shall be changed for each election.

b. The control key for the Model 100 shall be in the possession of the precinct chairperson during election day.

**22.261(2) Configuration choices.** The following selections are mandatory for all elections:

a. *Maximum number of votes.* The following description for each office shall be used: “Vote for no more than xx.” Do not include “vote for” language for public measures or judges.

b. *Ballot control.* In an official election, the commissioner shall never program the Model 100 for unconditional acceptance of all ballots; shall not divert blank ballots to the write-in bin; and shall always accept undervoted ballots. The system shall be programmed to query the voter in each of the following situations:

(1) Overvoted ballot.

(2) Blank ballot.

(3) Unreadable ballot.

c. *Unit control.* The commissioner shall not select automatic transmission of election results by modem. The precinct officials must print the official results at the polling place before transmitting them.

d. *Reports.* The following are required reports:

(1) Opening the polls. Print the Zero Certification report.

(2) Closing the polls. Print the poll report before transmitting the election results by modem. The poll report is the official record of the votes cast in the precinct on election day.

(3) Certification text to appear at the end of the poll report:

We, the undersigned Precinct Election Officials of this precinct, hereby attest that this tape shows the results of all ballots cast and counted by the M100 Optical Scan tabulation device at this election.

[print lines for each of the officials to sign]

Precinct Election Officials                      Date: \_\_\_\_\_ Time: \_\_\_\_\_

e. *Reopen polls.* The commissioner shall enable this option, but protect it against unauthorized use. If it is necessary to reopen the polls, the chairperson of the precinct board shall contact the commissioner for the password.

**22.261(3) Ballot printing.**

a. *Format.* The office title, instructions about the maximum number of choices the voter can make for the office, the candidate names and all write-in lines associated with each office on the ballot shall be printed in a single column on the same side of the ballot. All text and the “yes” and “no” choices for each public measure and for each individual judge on a ballot shall be printed in a single column on the same side of the ballot. No office or public measure on any ballot shall be divided to appear in more than one column or on more than one page of a ballot.

b. *Instructions for voters.* The following instructions shall be printed on ballots:

(1) Voting mark. To vote, fill in the oval next to your choice.



(2) Straight party voting. To vote for all candidates from a single party, fill in the oval in front of the party name. Not all parties have nominated candidates for all offices. Marking a straight party vote does not include votes for nonpartisan offices, judges or questions.

(3) Public measures.

Notice to voters. To vote to approve any question on this ballot, fill in the oval in front of the word “Yes”. To vote against a question, fill in the oval in front of the word “No”.

**22.261(4) System error messages.** Precinct election officials shall be provided with the following list of system error messages and the appropriate responses. The officials shall be instructed to contact the commissioner or the commissioner’s designee for all other messages.

**Overvoted ballot returned.** Ask voter to reinsert ballot. If the ballot is returned again, do not look at the voter’s ballot. Put it in a secrecy folder. Tell the voter that for one or more offices the scanner read more votes than the maximum number of votes allowed. To correct the error, the voter must mark a new ballot and may copy votes from the original ballot. Only if the voter agrees to mark a new ballot, write “spoiled” on the original ballot and tear off one corner to prevent it from being accepted by the scanner. Advise the voter to return to the booth and mark the new ballot. Be sure to collect the spoiled ballot before the voter leaves.

**Overvoted ballot accepted.** This message will appear when the scanner accepts an overvoted ballot.

**Unidentified mark—check your ballot.** One or more marks on the ballot are not dark enough to be seen as a vote. Do not look at the voter’s ballot. Put it in a secrecy folder and return the ballot to the voter. Ask the voter to review the ballot and to darken the marks. Then the voter may put the ballot back into the scanner.

If any of the following messages appear more than twice for the same ballot, call the auditor’s office to report the problem:

100—MISSED ORIENTATION MARKS/Turn Ballot Over and Try Again.

101—MISSED TIMING MARKS/Turn Ballot Over and Try Again.

102—NO DATA FOUND/Please Reinsert Ballot After Beeps.

104—ORIENTATION SKIP ERROR.

106—MISSED TIMING MARKS/Turn Ballot Over and Try Again.

If any of the following messages appear, ask the voter to remove the ballot and reinsert it. If the same message appears more than twice for the same ballot, call the auditor’s office to report the problem.

107—BALLOT ERROR: INVALID CC SEQUENCE.

108—BALLOT ERROR: INVALID CC TYPE.

109—BALLOT ERROR: INVALID CC SPLIT.

115—MISSED BACK ORIENTATION MARK/Turn Ballot Over and Try Again.

119—MULTIPLE BALLOTS DETECTED/Please Reinsert Ballot After Beeps. Did the voter actually try to put an extra ballot in? Is the ballot folded?

123—UNABLE TO READ TIMING BAND/Turn Ballot Over and Try Again.

124—BALLOT DRAGGED/Turn Ballot Over and Try Again.

126—BLACK CHECK: FACE DOWN HEAD EDGE/Turn Ballot Over and Try Again.

127—BLACK CHECK: FACE DOWN TAIL EDGE/Turn Ballot Over and Try Again.

128—BLACK CHECK: FACE UP HEAD EDGE/Turn Ballot Over and Try Again.

129—BLACK CHECK: FACE UP TAIL EDGE/Turn Ballot Over and Try Again.

130—POSSIBLE FOLDED BALLOT/Turn Ballot Over and Try Again.

**22.261(5) Record retention.** The Model 100 uses a thermal printer. The maximum anticipated life span of the results from each Model 100 is only five years. In order to preserve the permanent record of the precinct results required by Iowa Code section 50.19, the commissioner shall print a copy of the results of each precinct on permanent paper and store these copies with the tally lists from precincts where the Model 100 was used.

[ARC 9468B, IAB 4/20/11, effective 5/25/11]

**721—22.262(52) Premier Election Solutions' AccuVote OS and AccuVote OSX precinct count devices.**

**22.262(1) Security.** The commissioner shall have a written security plan for the voting system. Access to voting equipment, programs and passwords shall be limited to those persons authorized in writing by the commissioner. The security plan shall be reviewed at least annually.

*a.* Passwords used at polling places shall be changed for each election.

*b.* For each election, the precinct chairperson shall be responsible for the custody and security of the control card and ballot box keys and the security of the voting system.

**22.262(2) Configuration choices.** The following selections are mandatory for all elections:

*a.* Reject settings shall be configured as follows:

(1) Return to voters ballots that include one or more overvoted races and blank-voted ballots. Include on the override log the number of times the override option was used for overvoted and blank-voted ballots.

(2) Divert to the write-in ballot bin only ballots with write-in votes.

(3) Do not include reject settings for blank voted races, undervoted races, straight party overvotes, multiparty overvotes or duplicate votes.

*b.* Tally settings shall be as follows:

(1) The straight party shall be "Exclusive."

(2) The write-in setting shall be "Combined."

**22.262(3) Zero totals reports.** Long form zero totals reports showing all counters at zero shall be printed following memory card programming, before counting ballots in the Pre-Election Mode and as the ballot reader is opened on election day.

**22.262(4) Ballot printing.** Although the Premier Election Solutions' GEMS voting system software includes choices for variations in ballot layout, all ballots shall be prepared according to the requirements of Iowa Code sections 43.26 through 43.29 and 49.30 through 49.48. For all elections the voting target shall be an oval printed on the left side of each choice on the ballot.

**22.262(5) Preelection testing.** All voting equipment shall be tested pursuant to the provisions of Iowa Code section 52.30 and rule 721—22.42(52). At the commissioner's discretion, the commissioner may conduct additional tests.

**721—22.263(52) AutoMARK Voter Assist Terminal (VAT).**

**22.263(1) Acceptance testing.** Upon receipt of the equipment from the vendor, the commissioner shall subject each AutoMARK VAT to an acceptance test. The test shall be in addition to any testing provided by the vendor and shall include a demonstration of all functionalities of the device.

**22.263(2) Audio ballot preparation.** Each candidate shall have the opportunity to provide a record of the proper pronunciation of the candidate's name. The same voice shall be used for recording the entire ballot including instructions, office titles, candidate names and the full text of all public measures.

**22.263(3) Preelection testing.** Each AutoMARK VAT shall be tested before each election in which it will be used. The commissioner may use the AutoMARK VAT to prepare some ballots for test decks required by rule 721—22.42(52). In addition, the commissioner shall:

*a.* Perform the test ballot print, then review the ballot to be sure that all ovals are darkened and the appropriate names are printed on each line.

*b.* Calibrate the touchscreen.

*c.* Select, then deselect each voting position in each race.

*d.* Verify that the overvote and undervote functions are programmed correctly.

*e.* Test the write-in function for each office on one ballot, and test all of the letters in the alphabet.

*f.* Use the audio ballot function to mark one ballot.

*g.* Tabulate the marked ballots from this test on the appropriate optical scanner.

*h.* Ensure that the AutoMARK VAT is available for demonstration at public tests.

**22.263(4) Compact flash memory cartridge or memory card.** The compact flash memory cartridge shall be installed before the AutoMARK VAT is locked, sealed and shipped to the polling place for election day. In addition to locking the memory cartridge access door, the commissioner shall seal the

door with a numbered seal, record the seal number, and provide the number to the precinct election officials as required by rule 721—22.51(52). From the time the AutoMARK VAT is delivered to the polling place until the time the precinct election officials arrive, the AutoMARK VAT shall be stored securely to prevent tampering. On election day, the precinct election officials shall inspect the seal and verify that the original numbered seal is present and undamaged.

**22.263(5) Calibration testing.** The commissioner may provide for printer and touchscreen calibration testing after delivery of the AutoMARK VAT to the polling place. If calibration testing is performed at the polling place, the delivery staff shall complete the testing before the polls open on election day and shall keep a log for each AutoMARK VAT and record the machine serial number, the precinct name or number, the date and time of the test, the name of the person performing the test, and the lifetime printer counter number at the completion of the test. The ballot to be used in the calibration test shall be provided to the tester and shall be labeled with the precinct name and election date. The completed calibration test ballot shall be returned to the commissioner and kept with the election records.

**22.263(6) AutoMARK VAT keys.** Possession of the AutoMARK VAT keys shall be restricted to precinct election officials and authorized members of the commissioner's staff.

**22.263(7) Table.** The table used to support the AutoMARK VAT shall meet the following requirements: The table shall be sturdy enough to hold the 40-pound AutoMARK VAT safely. Clearance shall be at least 27 inches high, 30 inches wide, and 26 inches deep. The top of the table shall be from 28 inches to 34 inches above the floor.

**22.263(8) Privacy.** The commissioner may provide each AutoMARK VAT with a privacy shield to protect the secrecy of each voter's ballot. The commissioner shall instruct the precinct election officials to position the AutoMARK VAT to provide maximum access for voters (especially voters who use wheelchairs) as well as privacy.

**22.263(9) Abandoned ballots.** If a voter or precinct election official discovers that a voter has left the AutoMARK VAT without printing the voter's ballot, the two precinct election officials designated to assist voters shall print the ballot without reviewing the ballot or making any changes, enclose the ballot in a secrecy folder, and immediately deposit the ballot in the tabulating device.

#### **721—22.264(52) Unisyn OpenElect OVO unit—preparation and use in elections.**

**22.264(1) Security.** The commissioner shall have a written security plan for the voting system. Access to equipment, programs and passwords shall be limited to those persons authorized in writing by the commissioner. The security plan shall be reviewed at least annually.

a. Passwords used at the polling places on election day shall be changed for each election.

b. For each election, the precinct chairperson shall be responsible for the custody and security of the keys for the voting equipment, the ballot boxes and the security of the voting system on election day.

**22.264(2) Configuration choices.** The following selections are mandatory for all elections:

a. *Access, messaging and tabulating selections.* In the Election Manager, "Election Options" menu, the following selections shall be made:

(1) "Allow Add Precinct" shall be checked.

(2) "Full Voter Ballot Review" shall not be checked.

(3) "Consolidate Splits" shall be checked.

(4) "Overvote by Voter" shall not be checked.

(5) "No Undervote Check" shall be selected in the Undervote Checking dropdown menu.

b. *Printing selections.* In the Election Manager, "Printing Options" menu, the following selection shall be made:

(1) "Auto Print Alerts" shall not be checked.

(2) "Voter Receipts" shall not be checked.

(3) "Display Contest Results on Summary" shall be checked.

c. *Ballot acceptance by the OVO unit.* In an official election, the commissioner shall not program the OVO for unconditional acceptance of all ballots and shall program the OVO unit to accept undervoted ballots. The system shall also be programmed to query the voter in each of the following situations:

- (1) Overvoted ballot.
- (2) Blank ballot.
- (3) Unreadable ballot.

*d. Reports.* The following are required reports:

- (1) Opening the polls. Print a zero vote totals report.
- (2) Closing the polls. The poll report is the official record of the votes cast in the precinct on election day.
- (3) Certification text. The following shall appear at the end of the poll report:

We, the undersigned precinct election officials of this precinct, hereby attest that this tape shows the results of all ballots cast and counted on this tabulating device at this election.

(Include signature lines for each of the officials to sign.)

**22.264(3) Ballot layout.** Although the Unisyn OpenElect voting system software includes choices for variations in ballot layout, all ballots shall be prepared according to the requirements of Iowa Code sections 43.26 through 43.29 and 49.30 through 49.48.

*a. Format.* The office title, instructions about the maximum number of choices the voter can make for the office, the candidate names and all write-in lines associated with each office on the ballot shall be printed in a single column on the same side of the ballot. All text and the “yes” and “no” choices for each public measure and for each individual judge on a ballot shall be printed in a single column on the same side of the ballot. No office or public measure on any ballot shall be divided to appear in more than one column or on more than one page of a ballot. For all elections, the voting target shall be printed on the left side of each choice on the ballot.

*b. Instructions for voters.* The ballots shall contain instructions for voters including:

- (1) How to mark the ballot;
- (2) Straight party voting instructions in general elections as required by Iowa Code section 49.37;
- (3) Where to find the judicial ballot (if any); and
- (4) Constitutional amendment (if any) as required by Iowa Code section 49.48 and notices to voters on ballots with public measures (if any) as required by Iowa Code section 49.47.

**22.264(4) System error messages.** Precinct election officials shall be provided with a list of known system error messages and the appropriate responses. The officials shall be instructed to contact the commissioner or the commissioner’s designee for all other messages, errors or voting equipment malfunctions on election day.

**22.264(5) Preelection testing.** All voting equipment shall be tested pursuant to the provisions of Iowa Code section 52.30 and rule 721—22.42(52). At the commissioner’s discretion, additional logic and accuracy tests may be conducted.

[ARC 0238C, IAB 8/8/12, effective 7/11/12]

**721—22.265(52) Unisyn OpenElect OVI unit.**

**22.265(1) Acceptance testing.** Upon receipt of the equipment from the vendor, the commissioner shall subject each OVI unit to an acceptance test. The test shall be in addition to any testing provided by the vendor and shall include a demonstration of the functionalities of the device.

**22.265(2) Audio ballot preparation.** Each candidate shall have an opportunity to provide a record of the proper pronunciation of the candidate’s name. The same voice shall be used for recording the entire ballot including instructions, office titles, candidate names and the full text of all public measures.

**22.265(3) Timeout value.** The OVI timeout value shall be set to 600 seconds. Precinct election officials shall monitor the use of the OVI unit to ensure that voting sessions are not automatically terminated due to inactivity. If a voter abandons a voting session initiated on the OVI unit without printing a ballot, the two precinct election officials designated to assist voters shall print the ballot without reviewing it or making any changes to the voter’s choices before the OVI unit times out due to inactivity, enclose the ballot in a secrecy folder, and immediately deposit the ballot in the tabulating device.

**22.265(4) Preelection testing.** Each OVI unit shall be tested before each election in which it will be used. The commissioner must use the OVI unit to prepare some ballots for the test decks as required by paragraph 22.42(1)“d.” In addition, the commissioner shall verify that:

- a. The vote response fields on the screen align with the candidate names or choices.
- b. All contests and candidates appear on the screen for each precinct.
- c. All contests and candidates are included in the audio ballot for each precinct.
- d. All voting positions in each race can be selected, then deselected, using the touchscreen and the keypad.
- e. Selections on the printed ballots accurately reflect the voter’s choices.
- f. Overvote and undervote functions are programmed correctly.
- g. The write-in function for each office is working correctly. All letters in the alphabet must be tested.
- h. There is enough paper on the paper roll to print a minimum of ten ballots for the election in which the OVI unit is being used.

**22.265(5) Availability at public test.** The commissioner shall ensure that the OVI unit is available for demonstration at public tests.

**22.265(6) TM.** The TM device used with the OVI unit shall be installed before the OVI unit is locked, sealed and transported to the polling place for election day. The commissioner shall lock and seal the OVI unit, record the seal number and provide the number to the precinct election officials as required by rule 721—22.51(52). From the time the OVI unit is delivered to the polling place until the time the precinct officials arrive, the OVI unit shall be stored securely to prevent tampering. On election day, the precinct election officials shall inspect the seal and verify that the original numbered seal is present and undamaged.

**22.265(7) Touchscreen and printer testing.** The commissioner may provide for printer and touchscreen testing after delivery of the OVI unit to the polling place. If touchscreen testing is performed at the polling place, the delivery staff shall complete the testing before the polls open on election day. Staff shall keep a log for each OVI unit and record the machine serial number, precinct name or number, nature of the test, date and time of the test and name of the person performing the test.

**22.265(8) OVI unit keys.** Possession of the OVI unit keys shall be restricted to the precinct chairperson and authorized members of the commissioner’s staff.

**22.265(9) Table or voting booth.** The table or voting booth used to support the OVI unit shall meet the following requirements:

- a. The table shall be sturdy enough to hold the OVI unit safely.
- b. Clearance shall be at least 27 inches high, 30 inches wide, and 26 inches deep.
- c. The top of the table shall be from 28 inches to 34 inches above the floor.

**22.265(10) Privacy.** The commissioner shall instruct the precinct election officials to position the OVI unit to provide maximum privacy and access to voters.

**22.265(11) Abandoned ballots.** If a voter or a precinct election official discovers that a voter has left the voter’s ballot at the OVI unit, the two precinct election officials designated to assist voters shall enclose the ballot in a secrecy folder and immediately deposit the ballot in the tabulating device.

**22.265(12) Extra paper rolls.** Each precinct in which an OVI unit is being used shall be equipped with an extra paper roll for the OVI unit, and precinct election officials shall be instructed as to the method of replacing the paper roll.

[ARC 0238C, IAB 8/8/12, effective 7/11/12]

**721—22.266 to 22.339** Reserved.

OPTICAL SCAN VOTING SYSTEM USED FOR ABSENTEE AND SPECIAL VOTERS PRECINCT

**721—22.340(52) Processing.** All scanners used to tabulate absentee and provisional ballots shall be configured to sort blank ballots and ballots containing marks in write-in vote targets for review by the resolution board. The scanners shall not be configured to sort ballots with overvotes. However, if it is

not possible to configure the scanners used to count absentee ballots differently from those used at the polling places, the person operating the scanner shall override the scanner and accept overvoted ballots as they are processed. The resolution board shall follow the requirements of 721—subrule 26.2(2). The commissioner shall provide the resolution board with a copy of 721—Chapter 26, “Counting Votes.”

This rule is intended to implement Iowa Code section 52.33 as amended by 2007 Iowa Acts, Senate File 369, section 9.

**721—22.341(52) Reporting results from absentee ballots and provisional ballots.** Absentee and provisional ballot results shall be reported as a single precinct as required by subrule 22.102(7).

**721—22.342(52) Tally list for absentee and special voters precinct.**

**22.342(1)** Write-in votes shall be reported on a separate tally sheet which provides a column for the names of offices, a column for the names of persons receiving votes, space to tally the votes received, and a column in which to report the total number of votes cast for each person. In tally lists provided for primary elections, separate pages shall be provided to tally the write-in votes for each political party. Each member of the board who participated in the count shall attest to each tally sheet for write-in votes.

**22.342(2)** The officials shall certify the procedures followed. The certification shall be in substantially the following form:

Absentee and Special Voters Tally Certificate

\_\_\_\_\_ County

We, the undersigned officials of the Absentee and Special Voters Precinct for this county, do hereby certify that all ballots delivered to the Board for this election were tabulated as shown in the attached report.

We further certify that a record of any write-in votes or other votes manually counted pursuant to Iowa Code chapter 52 is included in this Tally List, and that the numbers entered in the column headed “Total Votes” are the correct totals of all votes manually counted by us.

Signed at \_\_\_\_\_ on \_\_\_/\_\_\_/\_\_\_, \_\_\_:\_\_\_ a.m./p.m.

[signatures of officials] 1. \_\_\_\_\_  
2. \_\_\_\_\_ (etc.)

**22.342(3)** The record generated by the tabulating equipment shall be attached to or enclosed with the tally list and shall constitute the official return of the precinct.

This rule is intended to implement Iowa Code section 52.33 as amended by 2007 Iowa Acts, Senate File 369, section 9.

**721—22.343(39A,53) Counting absentee ballots on the day before the general election.** When absentee ballots are tabulated on the day before the election as permitted or required by Iowa Code section 53.23 as amended by 2009 Iowa Acts, House File 670, the absentee and special voters precinct board and county commissioner shall implement the following security precautions:

**22.343(1)** *Seal and label voted ballot envelopes or other containers with date of tabulation.* The precinct election officials shall seal all ballots tabulated on the day before the election in a voted ballot envelope or other container labeled with the date of tabulation. The precinct election officials shall seal and sign the envelope or other container in a manner that will make it evident if the envelope or other container is opened.

**22.343(2)** *Ensure secure storage of all ballots.* Before adjourning for the day, the precinct election officials shall transfer custody of all absentee ballots to the commissioner. The commissioner shall ensure all absentee ballots are stored in a secure location until tabulation is resumed on election day.

**22.343(3)** *Ensure memory card security.* Before the absentee and special voters precinct board adjourns for the day, the memory card used in the tabulator(s) on the day before the election shall be secured by the precinct election officials in one of the following ways:

*a.* The memory card may be left in the tabulator when a tamper-evident seal is affixed over the memory card in a manner that will make it evident if the seal is removed.

*b.* The memory card may be removed from the tabulator and placed in an envelope. The precinct election officials shall seal the envelope in a manner that will make it evident if the envelope is opened.

**22.343(4)** *Ensure security of the tabulator(s).* Before adjourning for the day, the precinct election officials shall ensure the security of the tabulator(s). The tabulator(s) must be stored in a secure location until the absentee and special voters precinct board resumes tabulation on election day.

**22.343(5)** *No results tape printing on the day before the election.* No results tapes may be printed from the tabulator(s) on the day before the election.

**22.343(6)** *No upload of results to tabulating software until election day.* No results may be uploaded or input into tabulating software on the day before the election.

**22.343(7)** *Verify no tampering before resuming tabulation on election day.* Before tabulation resumes on election day, the absentee and special voters precinct board shall verify the tabulator(s), memory card(s) and memory card port(s) have not been obviously tampered with overnight.

**22.343(8)** *Resume tabulation.* The absentee and special voters precinct board shall resume tabulation using one of the following methods:

*a.* Using the same memory card(s) used on the day before the election and resuming tabulation.

*b.* Using a new memory card(s) and compiling the results contained on the memory card(s) used on election day and on the day before the election.

**22.343(9)** *Print audit logs.* After the election, the audit logs must be printed and be available for public inspection.

This rule is intended to implement Iowa Code section 39A.5, section 1, paragraph “a,” subparagraph (3), and Iowa Code section 53.23 as amended by 2009 Iowa Acts, House File 670.  
[ARC 8698B, IAB 4/21/10, effective 6/15/10]

**721—22.344 to 22.349** Reserved.

**721—22.350(52) Election Systems & Software models.** Rescinded IAB 10/8/08, effective 9/19/08.

**721—22.351(52) Diebold Election Systems’ AccuVote-OS central count process.** Rescinded IAB 10/8/08, effective 9/19/08.

**721—22.352 to 22.430** Reserved.

#### VOTING MACHINES

**721—22.431(52) Temporary use of printed ballots in voting machine precincts.** Rescinded IAB 10/8/08, effective 9/19/08.

**721—22.432(52) Abandoned ballots.** Rescinded IAB 10/8/08, effective 9/19/08.

**721—22.433(52) Prohibited uses for direct recording electronic voting machines.** Rescinded IAB 10/8/08, effective 9/19/08.

**721—22.434(52) Audio ballot preparation.** Rescinded IAB 10/8/08, effective 9/19/08.

**721—22.435 to 22.460** Reserved.

**721—22.461(52) MicroVote Absentee Voting System.** Rescinded IAB 8/1/07, effective 7/13/07.

**721—22.462(52) Fidlar & Chambers’ Absentee Voting System.** Rescinded IAB 10/30/02, effective 1/1/03.

**721—22.463(52) Election Systems & Software iVotronic.** Rescinded IAB 10/8/08, effective 9/19/08.

**721—22.464(52) Diebold Election Systems AccuVote TSX DRE.** Rescinded IAB 10/8/08, effective 9/19/08.

**721—22.465 to 22.499** Reserved.

**721—22.500(52) Blended systems.** Rescinded IAB 10/8/08, effective 9/19/08.

These rules are intended to implement Iowa Code chapter 52.

[Filed 9/2/75]

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[Filed Emergency ARC 0238C, IAB 8/8/12, effective 7/11/12]

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CHAPTER 90  
ADMINISTRATION OF THE BOILER AND PRESSURE VESSEL PROGRAM

[Prior to 1/14/98, see 347—Chs 41 to 49]

[Prior to 8/16/06, see 875—Chs 200, 202]

**875—90.1(89) Purpose and scope.** These rules institute administrative and operational procedures for implementation of Iowa Code chapter 89. An object shall not be considered “under pressure” and shall not be within the scope of Iowa Code chapter 89 when there is clear evidence that the manufacturer did not intend it to be operated at more than 3 psi and the object is operating at 3 psi or less.

[ARC 0416C, IAB 10/31/12, effective 12/5/12]

**875—90.2(89,261,252J,272D) Definitions.** To the extent they do not conflict with the definitions contained in Iowa Code chapter 89, the definitions in this rule shall be applicable to the rules contained in 875—Chapters 90 to 96.

“*Alteration*” means a change in a boiler or pressure vessel that substantially alters the original design requiring consideration of the effect of the change on the original design. It is not intended that the addition of nozzles smaller than an unreinforced opening size will be considered an alteration.

“*ANSI/ASME CSD-1*” means Control and Safety Devices for Automatically Fired Boilers.

“*ASME*” means the American Society of Mechanical Engineers.

“*Blowoff valve*” means all blowoff valves, drain valves, and pipe connections.

“*Boiler*” means a vessel in which water or other liquids are heated, steam or other vapors are generated, steam or other vapors are superheated, or any combination thereof, under pressure or vacuum by the direct application of heat. “Boiler” includes all temporary boilers.

“*Certificate of noncompliance*” means:

1. A certificate of noncompliance issued by the child support recovery unit, department of human services, pursuant to Iowa Code chapter 252J;
2. A certificate of noncompliance issued by the college student aid commission pursuant to Iowa Code chapter 261; or
3. A certificate of noncompliance issued by the centralized collection unit of the department of revenue pursuant to Iowa Code chapter 272D.

“*CFR*” means Code of Federal Regulations.

“*Construction or installation code*” means the applicable standard for construction or installation in effect at the time of installation.

“*Division*” means the division of labor services, unless another meaning is clear from the context.

“*Electric boilers*” means a power boiler, heating boiler, high or low temperature water boiler in which the source of heat is electricity.

“*External inspection*” means as complete an examination as can be reasonably made of the external surfaces and safety devices while the boiler or pressure vessel is in operation.

“*High temperature water boiler*” means a water boiler intended for operations at pressures in excess of 160 psig or temperatures in excess of 250 degrees F.

“*Hot water heating boiler*” means a boiler in which no steam is generated, from which hot water is circulated for heating purposes and then returned to the boiler, and which operates at a pressure not exceeding 160 psig or a temperature of 250 degrees F at the boiler outlet.

“*Hot water supply boiler*” means a boiler completely filled with water that furnishes hot water to be used externally to itself at pressures not exceeding 160 psig or at temperatures not exceeding 250 degrees F.

“*Institution of health and custodial care*” means any of the following:

1. A health care facility as defined by Iowa Code section 135C.1;
2. An assisted living program as defined by Iowa Code section 231C.2;
3. A boarding home as defined by Iowa Code section 1350.1;
4. A hospice that offers inpatient services in an institutional setting;
5. Any institution or facility in which persons are housed to receive medical, health, or other care or treatment; or

6. Any other institution or facility in which persons are housed to receive assistance with meeting personal needs or activities of daily living.

A facility or office that provides care and services only on an outpatient basis shall not be an “institution of health and custodial care.”

“*Internal inspection*” means as complete an examination as can be reasonably made of the internal and external surfaces of a boiler or pressure vessel while it is shut down and while manhole plates, handhole plates or other inspection opening closures are removed as required by the inspector.

“*ISO*” means International Standards Organization.

“*Labor commissioner*” means the labor commissioner or the commissioner’s designee.

“*Lap seam crack*” means a crack found in lap seams, extending parallel to the longitudinal joint and located either between or adjacent to rivet holes.

“*National Board*” means the National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, Ohio 43229, whose membership is composed of the chief inspectors of jurisdictions who are charged with the enforcement of the provisions of boiler codes.

“*National Board Inspection Code*” means the Manual for Boiler and Pressure Vessel Inspectors (ANSI/NB 23) published by the National Board. Copies of the code may be obtained from the National Board.

“*Object*” means a boiler or pressure vessel.

“*Power boiler*” means a boiler in which steam or other vapor is generated at a pressure of more than 15 pounds per square inch or a water boiler intended for operation at pressures in excess of 160 pounds per square inch or temperatures in excess of 250 degrees Fahrenheit.

“*Process steam generator*” means a vessel or system of vessels comprised of one or more drums and one or more heat exchange surfaces as used in waste heat or heat recovery type steam boilers.

“*Psig*” means pounds per square inch gage.

“*Reinstalled boiler or pressure vessel*” means an object removed from its original setting and reinstalled at the same location or at a new location.

“*Relief valve*” means an automatic pressure-relieving device actuated by a static pressure upstream of the valve that opens further with the increase in pressure over the opening pressure and that is used primarily for liquid service.

“*Repair*” means work necessary to return a boiler or pressure vessel to a safe operating condition.

“*Rupture disk device*” means a nonreclosing pressure-relief device actuated by inlet static pressure and designed to function by the bursting of a pressure-containing disk.

“*Safety appliance*” shall include, but not be limited to:

1. Rupture disk device;
2. Safety relief valve;
3. Safety valve;
4. Temperature limit control;
5. Pressure limit control;
6. Gas switch;
7. Air switch; or
8. Any major gas train control.

“*Safety relief valve*” means an automatic, pressure-actuated relieving device suitable for use as a safety or relief valve, depending on application.

“*Safety valve*” means an automatic, pressure-relieving device actuated by the static pressure upstream of the valve and characterized by full opening pop action. The safety valve is used for gas or vapor service.

“*Special inspection*” means an inspection which is not required by Iowa Code chapter 89.

“*Temperature and pressure relief valve*” means a valve set to relieve at a designated temperature and pressure.

“*Unfired steam boiler*” means a vessel or system of vessels intended for operation at a pressure in excess of 15 psig for the purpose of producing and controlling an output of thermal energy.

“*Unfired steam pressure vessel*” means a vessel or container used for the containment of steam pressure either internal or external in which the pressure is obtained from an external source.

“*U.S. customary units*” means feet, pounds, inches and degrees Fahrenheit.

“*Water heater supply boiler*” means a closed vessel in which water is heated by combustion of fuels, electricity or any other source and withdrawn for use external to the system at pressure not exceeding 160 psig and shall include all controls and devices necessary to prevent water temperatures from exceeding 210 degrees F.

[ARC 8283B, IAB 11/18/09, effective 1/1/10; ARC 9790B, IAB 10/5/11, effective 11/9/11; ARC 0319C, IAB 9/5/12, effective 10/10/12; ARC 0739C, IAB 5/15/13, effective 6/19/13]

**875—90.3(89) Iowa identification numbers.** All objects shall be identified by an Iowa identification number. State inspectors and special inspectors shall assign identification numbers as directed by the division to all jurisdictional objects that lack numbers. Identification numbers shall be attached in plain view to the object using one of the following methods:

1. A yellow sticker 2 inches by 3 inches affixed to the object and bearing the number.
2. A metal tag 1 inch by 2½ inches affixed to the object and bearing the number.
3. Numbers at least 5/16 of an inch high and stamped directly on the object.

**875—90.4(89) National Board registration.** Rescinded IAB 11/18/09, effective 1/1/10.

**875—90.5(89) Preinspection owner or user preparation.**

**90.5(1) Preparation of objects.** Each owner or user shall ensure that each object covered by Iowa Code chapter 89 is prepared for inspection pursuant to this rule.

**90.5(2) Confined space and lockout, tagout procedures.**

a. It is the responsibility of the owner or user to assess all objects for compliance with the confined space and lockout, tagout standards pursuant to 29 CFR 1910.146 and 1910.147. If an object is a non-permit-required confined space or a permit-required confined space as defined by 29 CFR 1910.146, the owner or user must comply with all applicable requirements of 29 CFR 1910.146 and 1910.147 in preparing the object for inspection.

b. It is the duty of the owner or user to inform any inspector of the owner’s or user’s confined space entry and lockout, tagout procedures and supply to the inspector all information necessary to assess whether the confined space is safe for entry. It is the right of an inspector to verify any of the information supplied.

c. If the requirements of 29 CFR 1910.146 and 1910.147 are not met, the inspector shall not enter the space. If there is a breach of the procedure or the procedure is inconsistent with 29 CFR 1910.146 or 1910.147, the inspection process shall cease until the space is reassessed and determined to be safe or the procedure is rewritten in a manner consistent with the standards. No inspector shall violate the owner’s or user’s confined space or lockout, tagout procedures in making an inspection.

d. The owner or user shall have all objects locked and tagged, as applicable, prior to the inspector’s entry for inspection or testing.

e. For entry into a permit-required confined space, the owner or user shall provide the necessary equipment such as air monitors and a qualified attendant who has received all the information relevant to the entry.

**90.5(3) Hydrostatic tests.** The owner or user shall prepare for and apply a hydrostatic test, whenever necessary, on the date specified by the inspector, which date shall be not less than seven days after the date of notification.

**90.5(4) Boilers.** A boiler shall be prepared for internal inspection in the following manner:

- a. Fluid shall be drawn off and the boiler washed thoroughly.
- b. Manhole and handhole plates, washout plugs and inspection plugs in water columns shall be removed as required by the inspector. The furnace and combustion chambers shall be thoroughly cooled and cleaned.
- c. All grates of internally fired boilers shall be removed.

*d.* Brickwork shall be removed as required by the inspector in order to determine the condition of the boiler, header, furnace, supports or other parts.

*e.* Low-water fuel cutoff controls shall be opened or removed to allow for visual inspection.

**90.5(5) Pressure vessels.** The extent of inspection preparation for a pressure vessel will vary. If the inspection is to be external only, advance preparation is not required other than to afford reasonable access to the vessel. For combined internal and external inspections of small vessels of simple construction handling air, steam, nontoxic or nonexplosive gases or vapors, minor preparation is required, including affording reasonable means of access and removing manhole plates and inspection openings. In other cases, preparation shall include removing the internal fittings and appurtenances to permit satisfactory inspection of the interior of the vessel if required by the inspector.

**90.5(6) Removal of covering or brickwork to permit inspection.** If the object is jacketed so that the longitudinal seams of shells, drums, or domes cannot be seen, sufficient jacketing, setting wall, or other form of casing or housing shall be removed to permit reasonable inspection of the seams and so that the size of rivets, pitch of the rivets, and other data necessary to determine the safety of the object may be obtained, providing the information cannot be determined by other means. Brickwork shall be removed as required by the inspector in order to determine the condition of the boiler, header, furnace, supports or other parts.

**90.5(7) Improper preparation for inspection.** If an object has not been properly prepared for an internal inspection, or if the owner or user fails to comply with the requirements for hydrostatic tests as set forth in this chapter, the inspector may decline to make the inspection or test, and the inspection certificate shall be withheld until the owner or user complies with the requirements.

[ARC 9082B, IAB 9/22/10, effective 10/27/10]

### **875—90.6(89) Inspections.**

**90.6(1) General.** All boilers and unfired steam pressure vessels covered by Iowa Code chapter 89 shall be inspected according to the requirements of the National Board Inspection Code (2011), which is hereby adopted by reference. A division inspector or special inspector must perform the inspections.

**90.6(2) Schedule.** Inspections must be performed according to the schedule set forth in Iowa Code section 89.3 and within a 60-day period prior to the expiration date of the operating certificate. Modification of this period will be permitted only upon written application showing just cause for waiver of the 60-day period. Special inspections may be conducted at any time mutually agreed to by the division and the object's owner or user.

**90.6(3) Inspections conducted by special inspectors.** Special inspectors shall provide copies of the completed report to the insured and to the division within 30 days of the inspection. The reports shall list all adverse conditions and all requirements, if any. If the special inspector has not notified the division of the inspection results within 30 days of the expiration of an operating certificate, the division may conduct the inspection.

**90.6(4) Type of inspection.** The inspection shall be an internal inspection when required; otherwise, it shall be as complete an external inspection as possible. Conditions including, but not limited to, the following may also be the basis for an internal inspection:

- a.* Visible metal or insulation discoloration due to excessive heat.
- b.* Visible distortion of any part of the pressure vessel.
- c.* Visible leakage from any pressure-containing boundary.
- d.* Any operating records or verbal reports of a vessel being subjected to pressure above the nameplate rating or to a temperature above or below the nameplate design temperature.
- e.* A suspected or known history of internal corrosion or erosion.
- f.* Evidence or knowledge of a vessel having been subjected to external heat from a fire.
- g.* A welded repair not documented as required.
- h.* Evidence of an accident, incident or malfunction that could affect or may have resulted from a problem with the object's integrity.

**90.6(5) Internal inspections for unfired steam pressure vessels operating at more than 15 pounds per square inch.** The commissioner may require an internal inspection of an unfired steam pressure vessel

operating in excess of 15 psi when an inspector observes any deviation from these rules, Iowa Code chapter 89, the construction code, the installation code, or the National Board Inspection Code.

**90.6(6) *Inspection of inaccessible parts.*** When, in the opinion of the inspector, as a result of conditions disclosed at the time of inspection, it is advisable to remove the interior or exterior lining, covering, or brickwork to expose certain parts of the vessel not normally visible, the owner or user shall remove such material to permit proper inspection and thickness measurement of any part of the vessel. Nondestructive examination is acceptable.

**90.6(7) *Imminent danger.*** If the labor commissioner determines that continued operation of an object constitutes an imminent danger that could seriously injure or cause death to any person, notice to immediately cease operation of that object shall be posted by the labor commissioner. Upon such notice, the owner shall immediately begin the necessary steps to cease operation of the object. The object shall not be used until the necessary repairs have been completed and the object has passed inspection. Operation of an object in violation of this subrule may result in further legal action pursuant to Iowa Code sections 89.11 and 89.13.

**90.6(8) *Internal inspections on a four-year cycle.*** The owner shall demonstrate compliance with the requirements set forth in 2012 Iowa Acts, Senate File 2280, by annually submitting to the labor commissioner a notarized affidavit. The affidavit shall be in a format approved by the labor commissioner and shall be signed by the owner or an officer of the company.

[ARC 8283B, IAB 11/18/09, effective 1/1/10; ARC 0319C, IAB 9/5/12, effective 10/10/12]

#### **875—90.7(89) Fees.**

**90.7(1) *Special inspector commission fee.*** A \$40 fee shall be paid annually to the commissioner to obtain a special inspector commission pursuant to Iowa Code section 89.7.

**90.7(2) *Certificate fee.*** A \$25 fee shall be paid for each one-year certificate, a \$50 fee shall be paid for each two-year certificate, and a \$100 fee shall be paid for each four-year certificate.

**90.7(3) *Fees for inspection.*** An inspection fee for each object inspected by a division inspector shall be paid by the appropriate party as follows:

- a. A \$40 fee for each water heater supply boiler.
- b. An \$80 fee for each boiler, other than a water heater supply boiler, having a working pressure up to and including 450 pounds per square inch or generating between 20,000 and 100,000 pounds of steam per hour.
- c. A \$200 fee for each boiler, other than a water heater supply boiler, having a working pressure in excess of 450 pounds per square inch and generating in excess of 100,000 pounds of steam per hour.
- d. A \$40 fee for each pressure vessel, such as steam stills, tanks, jacket kettles, sterilizers and all other reservoirs having a working pressure of 15 pounds or more per square inch.
- e. In addition to the applicable object's inspection fee, if the division cannot follow normal practice of scheduling inspections in a cost-effective manner due to a request by an owner or user for a customized schedule, travel expenses may be charged at the discretion of the division.
- f. Inspections and code qualification surveys made by the commissioner at the request of a boiler or tank manufacturer shall be charged at a rate set by the commissioner not to exceed the rate currently charged by the various insurance companies for performing a similar service. This charge shall not void the regular fee for inspection or certification when the boiler or tank is installed.
- g. If a boiler or pressure vessel has to be reinspected through no fault of the division, there shall be another inspection fee as specified above. However, there shall be no fee charged for the first scheduled reinspection to verify that ordered repairs have been made.

**90.7(4) *Fees for attempted inspections.*** A \$20 fee shall be charged for each attempt by a division inspector to conduct an inspection which is not completed through no fault of the division.

[ARC 7863B, IAB 6/17/09, effective 7/1/09; ARC 8081B, IAB 8/26/09, effective 9/30/09; ARC 0319C, IAB 9/5/12, effective 10/10/12]

**875—90.8(89) Certificate.** A certificate to operate shall not be issued until the boiler or pressure vessel is in compliance with the applicable rules and all fees have been paid. The current certificate to operate

or a copy of the current certificate to operate shall be conspicuously posted in the room where the object is installed.

**875—90.9(89,252J,261) Special inspector commissions.**

**90.9(1) Application.** A person applying for a commission shall complete, sign, and submit to the division with the required fee the form entitled “Application for Boiler and Pressure Vessel Special Inspector Commission” provided by the division. Additionally, the applicant shall submit a copy of the applicant’s current National Board work card with each application.

**90.9(2) Expiration.** The commission is for no more than one year and ceases when the special inspector leaves employment with the insurance company, or when the commission is suspended or revoked by the labor commissioner. Each commission shall expire no later than June 30 of each year.

**90.9(3) Changes.** The special inspector shall notify the division at the time any of the information on the form or attachments changes.

**90.9(4) Denials.** The labor commissioner may refuse to issue or renew a special inspector’s commission for failure to complete an application package, if the applicant or inspector does not hold a National Board commission, or for any reason listed in subrules 90.9(6) to 90.9(8).

**90.9(5) Investigations.** Investigations shall take place at the time and in the places the labor commissioner directs. The labor commissioner may investigate for any reasonable cause. The labor commissioner may conduct interviews and utilize other reasonable investigatory techniques. Investigations may be conducted without prior notice.

**90.9(6) Reasons for probation.** The labor commissioner may issue a notice of commission probation when an investigation reasonably reveals that the special inspector filed inaccurate reports.

**90.9(7) Reasons for suspension.** The labor commissioner may issue a notice of commission suspension when an investigation reasonably reveals the following:

- a. The special inspector failed to submit and report inspections on a timely basis;
- b. The special inspector abused the special inspector’s authority;
- c. The special inspector misrepresented self as a state inspector or a state employee;
- d. The special inspector used commission authority for inappropriate personal gain;
- e. The special inspector failed to follow the division’s rules for inspection of object repairs, alterations, construction, installation, or in-service inspection;
- f. The special inspector committed numerous violations as described in subrule 90.9(6);
- g. The special inspector used fraud or deception to obtain or retain, or to attempt to obtain or retain, a special inspector commission whether for one’s self or another;
- h. The National Board revoked or suspended the special inspector’s work card;
- i. The division received a certificate of noncompliance; or
- j. The special inspector failed to take appropriate disciplinary actions against a subordinate special inspector who has committed repeated acts or omissions listed in paragraphs “a” to “h” of this subrule.

**90.9(8) Reasons for revocation.** The labor commissioner may issue a notice of revocation of a special inspector’s commission when an investigation reveals any of the following:

- a. The special inspector filed a misleading, false or fraudulent report;
- b. The special inspector failed to perform a required inspection;
- c. The special inspector failed to file a report or filed a report which was not in accordance with the provisions of applicable standards;
- d. The special inspector failed to notify the division in writing of any accident involving an object;
- e. The special inspector committed repeated violations as described in subrule 90.9(7);
- f. The special inspector used fraud or deception to obtain or retain, or to attempt to obtain or retain, a special inspector commission whether for one’s self or another;
- g. The special inspector instructed, ordered, or otherwise encouraged a subordinate special inspector to perform the acts or omissions listed in paragraphs “a” to “f” of this subrule;
- h. The National Board revoked or suspended the special inspector’s work card; or
- i. The division received a certificate of noncompliance.

**90.9(9) Procedures.** The following procedures shall apply except in the event of revocation or suspension due to receipt of a certificate of noncompliance. In instances involving receipt of a certificate of noncompliance, the applicable procedures of Iowa Code chapter 252J, 261, or 272D shall apply.

*a. Notice of actions.* The labor commissioner shall serve a notice on the special inspector by certified mail to an address listed on the commission application form or by other service as permitted by Iowa Code chapter 17A. A copy shall be sent to the insurance company employing the special inspector.

*b. Contested cases.* The special inspector shall have 20 days to file a written notice of contest with the labor commissioner. If the special inspector does not file a written contest within 20 days of receipt of the notice, the action stated in the notice shall automatically be effective.

*c. Hearing procedures.* The hearing procedures in 875—Chapter 1 shall govern.

*d. Emergency suspension.* Pursuant to Iowa Code section 17A.18A, if the labor commissioner finds that public health, safety or welfare imperatively requires emergency action because a special inspector failed to comply with applicable laws or rules, the special inspector's commission may be summarily suspended.

*e. Probation period.* A special inspector may be placed on probation for a period not to exceed one year for each incident causing probation.

*f. Suspension period.* A special inspector's commission may be suspended up to five years for each incident causing a suspension.

*g. Revocation period.* A special inspector's commission that has been revoked shall not be reinstated for five years.

*h. Concurrent actions.* Multiple actions may proceed at the same time against any special inspector.

*i. Revoked or suspended commissions.* Within five business days of final agency action revoking or suspending a special inspector commission, the special inspector shall forfeit the special inspector's commission card to the labor commissioner.

[ARC 8283B, IAB 11/18/09, effective 1/1/10]

#### **875—90.10(89) Quality reviews, surveys and audits.**

**90.10(1)** An entity that manufactures or repairs boilers, pressure vessels or related equipment may request quality reviews, surveys or audits from certifying organizations such as the ASME or the National Board. The division is authorized to conduct the quality reviews, surveys or audits. If the division performs the service, the manufacturer or repairer shall pay all applicable expenses.

**90.10(2)** Quality reviews, surveys and audits for certification to the National Board or ASME standards shall be conducted only by a person or organization designated by the labor commissioner. Any person or organization seeking this designation on behalf of the division shall provide documented evidence of training, examination, experience, and certification for the type of reviews, surveys and audits to be performed. The labor commissioner shall have final authority to determine qualifications and designations.

*a. Assessing quality programs.* The division recognizes the ASME and the National Board as qualified designees for conducting quality reviews, surveys and audits that lead to ASME or National Board program certification.

*b. ISO 9000 assessments.* The division recognizes the ASME and the National Board:

(1) To be acceptable ISO 9000 registrars of quality systems for boilers and pressure vessels and the related pressure-technology equipment industry;

(2) To certify auditors and lead auditors to the requirements of ISO 10011-2 1991(E), Annex A; and

(3) To conduct ISO 9000 assessments for the boiler, pressure vessel, and related pressure-technology equipment industry.

**875—90.11(89) Notification of explosion.** Owners and users of covered objects must report any object explosion by calling (515)281-3647 or (515)281-6533. If the explosion occurs during normal division operating hours, notification shall occur before close of business on that day. If the explosion occurs

when the division office is closed, the notification shall occur no later than close of business on the next division business day. Division hours are 8 a.m. to 4:30 p.m., Monday through Friday, except state holidays.

**875—90.12(89) Publications available for review.** Pursuant to Iowa Code section 89.5, subsection 3, the standards, codes, and publications adopted by reference in these rules are available for review in the office of the Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa.

**875—90.13(89) Notice prior to installation.** Written notice of intent to install objects subject to the jurisdiction of Iowa Code chapter 89 shall be provided to the labor commissioner at least ten days before installation. Written notice shall be accomplished by completing and submitting to the labor commissioner either:

1. The form designated by the labor commissioner, or
2. The National Board's Boiler Installation Report, I-1.

**875—90.14(89) Temporary boilers.** A certificate to operate a temporary boiler shall expire one year from the date of issuance or when the temporary boiler is disconnected. Inspections on temporary boilers that remain in one location longer than one year shall be performed according to the inspection schedule of Iowa Code section 89.3. A temporary boiler that is installed at a different location less than a year since the prior internal inspection of the boiler shall be subjected to a hydrostatic test pursuant to the National Board Inspection Code or to an internal inspection, at the discretion of the inspector.

**875—90.15(89) Conversion of a power boiler to a low-pressure boiler.** The following requirements apply to the conversion of a power boiler to a low-pressure boiler. The owner shall comply with the requirements of subrule 90.15(1) for each conversion. In addition, the owner shall comply with the requirements of subrule 90.15(2) if the converted object will be located outside of a place of public assembly or with the requirements of subrule 90.15(3) if the converted object will be located in a place of public assembly.

**90.15(1) General requirements.**

a. The owner shall provide to the labor commissioner written notice of intent to convert a power boiler to a low-pressure boiler prior to conversion. The required form for a notice of conversion is available at [http://www.iowaworkforce.org/labor/boiler\\_inspection\\_.htm](http://www.iowaworkforce.org/labor/boiler_inspection_.htm). At a minimum the notice shall contain the following:

- (1) Address, uses, and owner of the building where the boiler is located.
- (2) The Iowa identification number assigned to the boiler.
- (3) Name and contact information for the person completing the notice.
- (4) Name and contact information for the contractor or other person planning to perform the conversion.

b. Pressure controls shall not exceed 14 pounds per square inch.

c. All boiler controls shall comply with ASME CSD-1.

d. Safety valves and safety relief valves shall be manufactured in accordance with a national or international standard.

e. One or more spring-pop safety valves meeting the following requirements shall be installed on each steam boiler:

- (1) The valve shall be adjusted and sealed to discharge at a pressure not to exceed 15 psig.
- (2) The valve capacity shall be certified by the National Board.

f. The converted boiler shall be subject to post-conversion external inspection to ensure that the requirements of this rule are met.

**90.15(2) Boilers located outside places of public assembly.** A power boiler that was converted to a low-pressure boiler and that is located outside of a place of public assembly shall not be converted back to a power boiler unless the following requirements are met:

- a. The owner shall notify the labor commissioner at least ten days prior to converting the boiler.

b. The owner shall comply with the editions of ASME Section I and CSD-1 in effect at the time of the second conversion.

c. The owner shall comply with the version of 875—Chapter 92 in effect at the time of the second conversion.

**90.15(3) Boilers located in places of public assembly.** A power boiler converted to a low-pressure boiler that is located in a place of public assembly shall comply with 875—Chapter 94.

[ARC 9232B, IAB 11/17/10, effective 12/22/10]

These rules are intended to implement Iowa Code chapters 17A, 89, 252J, 261, and 272D.

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<sup>◊</sup> Two or more ARCs

<sup>1</sup> Date corrected IAC Supp. 3/26/08