

*State of Iowa*

**Iowa**  
**Administrative**  
**Code**  
**Supplement**

Biweekly  
June 2, 2021



---

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

The Iowa Administrative Code Supplement is published biweekly pursuant to Iowa Code sections 2B.5A and 17A.6. The Supplement contains replacement chapters to be inserted in the loose-leaf Iowa Administrative Code (IAC) according to instructions included with each Supplement. The replacement chapters incorporate rule changes which have been adopted by the agencies and filed with the Administrative Rules Coordinator as provided in Iowa Code sections 7.17 and 17A.4 to 17A.6. To determine the specific changes in the rules, refer to the Iowa Administrative Bulletin bearing the same publication date.

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

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

# INSTRUCTIONS

## FOR UPDATING THE

### IOWA ADMINISTRATIVE CODE

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

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

#### **Chief Information Officer, Office of the[129]**

Replace Chapter 20

Replace Chapter 22

#### **Ombudsman[141]**

Replace Chapters 1 and 2

#### **Economic Development Authority[261]**

Replace Analysis

Replace Chapter 213

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

Replace Analysis

Replace Chapter 1

Replace Chapter 11

Replace Chapter 18

#### **Education Department[281]**

Replace Analysis

Replace Chapters 1 and 2

Replace Chapter 4

Replace Chapter 17

Replace Chapter 48

Replace Chapter 60

Replace Chapter 98

#### **Inspections and Appeals Department[481]**

Replace Chapter 6

Replace Chapter 32

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

Replace Analysis

Replace Chapter 182

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

Replace Chapter 40

**Veterinary Medicine Board[811]**

Replace Analysis

Replace Chapter 1

Replace Chapter 6

Replace Chapter 8

Replace Chapter 12

TITLE II  
BROADBAND

## CHAPTER 20

## BROADBAND INFRASTRUCTURE—TARGETED SERVICE AREAS

**129—20.1(8B,427) Definitions.** The definitions in Iowa Code section 8B.1 shall apply to this chapter. In addition, for purposes of this chapter, the following definitions shall apply.

*“As of date”* means the as of date of the broadband availability maps and corresponding data sources utilized by the office in determining whether a communications service provider facilitates broadband service in a particular broadband block at or above the download and upload speeds specified in the definition of targeted service area and underlying the statewide map published and then in effect in accordance with rules 129—20.3(8B,427) and 129—20.4(8B,427).

*“Broadband block”* means:

1. Until the Federal Communications Commission (FCC) adopts and publishes a publicly available data set identifying a different or more granular unit of measurement(s) by appropriate regulation or order (such as location-specific, address-specific, or polygon-based), a census block.

2. If the FCC adopts and publishes a publicly available data set identifying a different or more granular unit of measurement(s) by appropriate regulation or order (such as location-specific, address-specific, or polygon-based), for purposes of the next iteration of the statewide map published in accordance with rule 129—20.4(8B,427) following the FCC’s adoption of such unit of measurement(s), such unit of measurement(s) as adopted by the FCC and which is located in this state.

*“Broadband unit”* or *“broadband units”* means a home, farm, school, or business within a broadband block as of the as of date. The number of broadband units within a broadband block shall be as represented on the statewide map published in accordance with rule 129—20.4(8B,427).

*“Census block”* means a U.S. Census Bureau census block located in this state, including any crop operation located within the census block.

*“Chief information officer”* or *“CIO”* means the state chief information officer or the state chief information officer’s designee.

*“Installation of the broadband infrastructure”* means the labor, construction, building, and furnishing of new physical infrastructure used for the transmission of data that provides broadband services. “Installation of the broadband infrastructure” does not include the process of removing existing infrastructure, fixtures, or other real property in preparation of installation of the broadband infrastructure.

*“Materially underserved”* means a broadband block within which less than 10 percent of the geographic area comprising the broadband block is facilitated with broadband service exceeding tier 1 upload and download speeds.

*“Meaningfully available”* means broadband service that is facilitated to consumers on a commercially reasonable basis and without significant interruption or delay. In determining whether broadband service is meaningfully available on a commercially reasonable basis, the office may consider product or delivery attributes or characteristics such as availability in terms of average uptime and downtime or latency or delays in the transmission of data.

*“Tier 1 targeted service area”* or *“tier 1 TSA”* means a targeted service area within which broadband speeds do not exceed tier 1 speed levels.

*“Tier 2 targeted service area”* or *“tier 2 TSA”* means a targeted service area within which broadband speeds do not exceed tier 2 speed levels, but are greater than tier 1 speed levels.

*“Tier 3 targeted service area”* or *“tier 3 TSA”* means a targeted service area within which broadband speeds do not exceed tier 3 speed levels, but are greater than tier 2 speed levels.

[ARC 2782C, IAB 10/26/16, effective 11/30/16; ARC 4606C, IAB 8/14/19, effective 9/18/19; ARC 5173C, IAB 9/9/20, effective 10/14/20; ARC 5658C, IAB 6/2/21, effective 5/7/21]

**129—20.2(8B,427) Scope.** This chapter interprets relevant provisions of Iowa Code sections 8B.1, 8B.10, and 8B.11; implements Iowa Code section 427.1(40); and applies to the office’s determinations of whether a broadband block is a targeted service area and to persons who wish to challenge the office’s

finding on whether a broadband block is a targeted service area. References to Iowa Code chapter 8B or its subparts refer to Iowa Code chapter 8B as amended by 2021 Iowa Acts, House File 848, and as will be codified in the 2022 Iowa Code.

[ARC 2782C, IAB 10/26/16, effective 11/30/16; ARC 4606C, IAB 8/14/19, effective 9/18/19; ARC 5173C, IAB 9/9/20, effective 10/14/20; ARC 5658C, IAB 6/2/21, effective 5/7/21]

#### **129—20.3(8B,427) Broadband availability maps and data sources.**

**20.3(1)** To determine whether a communications service provider facilitates broadband service in a particular broadband block at or above the tier 1, tier 2, or tier 3 download and upload speeds specified in the definition of targeted service area as of the as of date, the office may utilize the following data sources:

*a.* Fixed broadband availability maps and corresponding data sources made available by the FCC online.

*b.* Broadband availability maps and corresponding data sources developed or produced by contractors or third parties retained or utilized by the office for such purpose.

*c.* For purposes of identifying or verifying the number and location of broadband units within a broadband block, next generation (NG) 911 structure data, statewide address location data, or United States census data.

*d.* Other data sources made available by or through federal or state agencies, directly or indirectly.

**20.3(2)** In accordance with Iowa Code section 8B.10(3), all data sources relied on by the office in making the determination(s) contemplated by this rule and rule 129—20.4(8B,427) shall exclude mobile wireless or satellite data, capabilities, and delivery mediums.

[ARC 2782C, IAB 10/26/16, effective 11/30/16; ARC 4606C, IAB 8/14/19, effective 9/18/19; ARC 5173C, IAB 9/9/20, effective 10/14/20; ARC 5658C, IAB 6/2/21, effective 5/7/21]

#### **129—20.4(8B,427) Targeted service area determination.**

**20.4(1)** The office will create a statewide map divided into broadband blocks. Based on the maps and data sources referenced in rule 129—20.3(8B,427), the statewide map will designate broadband blocks that qualify as tier 1, tier 2, or tier 3 targeted service areas as of the as of date. The office will publicize the statewide map, which may include publishing online at [ocio.iowa.gov/broadband](https://ocio.iowa.gov/broadband).

**20.4(2)** In accordance with Iowa Code section 8B.10(1), the office shall periodically make renewed determinations of whether a communications service provider facilitates broadband service at or above the tier 1, tier 2, or tier 3 download or upload speeds specified in the definition of targeted service area by publishing an updated version of the statewide map. Such updates shall be made, to the extent updated maps and data sources are available at the time, no less frequently than prior to each round of grant applications solicited by the office pursuant to Iowa Code section 8B.11. The office is not required to make renewed determinations of whether a communication service provider offers or facilitates broadband service at or above the tier 1, tier 2, or tier 3 download and upload speeds specified in the definition of targeted service area more frequently than once per year.

**20.4(3)** As of the date of the office's publication of each version of the statewide map online at [ocio.iowa.gov/broadband](https://ocio.iowa.gov/broadband), targeted service area designations as shown on the statewide map shall be considered the office's final determination and finding of whether a particular broadband block constitutes a targeted service area, unless a person or party successfully challenges the office's determination pursuant to the appeals and contested case process outlined in this chapter, in which case the office will update the statewide map to reflect the outcome of such challenge(s). For the sake of clarity, failure to challenge the office's determination and finding of whether a particular broadband block constitutes a tier 1, tier 2, or tier 3 targeted service area by filing a notice of appeal within the 20-day period established by subrule 20.5(1) shall render the office's determination and finding with respect to that particular broadband block final and no longer subject to challenge. A party's failure to challenge the office's determination and finding of whether a particular broadband block constitutes a targeted service area by filing a notice of appeal within the 20-day period established by subrule 20.5(1) shall be deemed a failure to exhaust administrative remedies.

**20.4(4)** The office will designate all projects as addressing difficult to serve targeted service areas based on the office's determination, made in its sole discretion, of whether a proposal will result in the installation of broadband infrastructure in areas meeting the conditions set forth in Iowa Code section 8B.11(7). For the sake of clarity, the office will identify all tier 1 TSAs as difficult to serve targeted service areas.

[ARC 2782C, IAB 10/26/16, effective 11/30/16; ARC 4606C, IAB 8/14/19, effective 9/18/19; ARC 5173C, IAB 9/9/20, effective 10/14/20; ARC 5658C, IAB 6/2/21, effective 5/7/21]

### **129—20.5(8B,427) Appeals.**

**20.5(1) *Notice of appeal.*** Within 20 days after the office makes its final determination of whether a particular broadband block constitutes a tier 1, tier 2, or tier 3 targeted service area pursuant to rule 129—20.4(8B,427), any person or party aggrieved or adversely affected by such determination may challenge the office's finding by filing a notice of appeal with the office.

*a.* The notice of appeal shall set forth:

(1) The name, address, telephone number, and email address of the person or party;

(2) The particular broadband block(s) designation the person or party is challenging by stating:

1. The broadband block number(s) or other unique identifier as provided on the statewide map referenced in rule 129—20.4(8B,427);

2. The county in which the broadband block(s) is located as provided on the statewide map referenced in rule 129—20.4(8B,427);

(3) The manner in which the person or party is aggrieved or adversely affected by the office's determination; and

(4) The grounds upon which the appeal is based.

*b.* Accompanying the notice of appeal, the person or party shall provide the office with all evidence and information necessary to support the appeal.

**20.5(2) *Filing.*** Except to the extent that electronic filing is not feasible, a notice of appeal and all corresponding evidence and information shall be filed by email at [ociogrants@iowa.gov](mailto:ociogrants@iowa.gov). To the extent electronic filing is not feasible, the notice of appeal and all corresponding evidence and information shall be mailed to: Office of the Chief Information Officer, 200 East Grand Avenue, Des Moines, Iowa 50309. If the notice of appeal and corresponding evidence and information are filed by mail, such filing shall be accompanied by a written explanation of why electronic filing was not feasible.

**20.5(3) *Notification of and input from affected persons or parties.*** Within ten calendar days of receipt of a notice of appeal, the office shall provide notification to any affected persons or parties by posting the notice of appeal at [ocio.iowa.gov/broadband](http://ocio.iowa.gov/broadband). From the date of such posting, any affected persons or parties will have 20 calendar days to submit evidence and information in support of, or in opposition to, such appeal. Except to the extent not feasible, any such evidence and information shall be submitted by email to [ociogrants@iowa.gov](mailto:ociogrants@iowa.gov). To the extent electronic submission is not feasible, such evidence and information shall be mailed to: Office of the Chief Information Officer, 200 East Grand Avenue, Des Moines, Iowa 50309. If such evidence or information is submitted by mail, the evidence or information shall be accompanied by a written explanation of why electronic submission was not feasible.

**20.5(4) *Internal review.*** At the end of the time periods specified in subrules 20.5(1) and 20.5(3), the office shall consolidate all appeals involving the same broadband block(s) and conduct an internal review of the evidence and information submitted by all appellants related thereto, in conjunction with any other evidence and information submitted by any affected persons or parties pursuant to subrule 20.5(3), the maps and data sources identified and originally utilized in rules 129—20.3(8B,427) and 129—20.4(8B,427), and any other information deemed relevant by the office.

**20.5(5) *Final agency decision.*** Following the internal review set forth in subrule 20.5(4), the office will issue a final agency decision stating the reasons for the office's decision concerning the broadband block(s) in question. In issuing the decision, the office shall consider the evidence and information submitted by all appellants related thereto, in conjunction with any other evidence and information submitted by any affected persons or parties pursuant to subrule 20.5(3), the maps and data sources identified and originally utilized in rules 129—20.3(8B,427) and 129—20.4(8B,427), and any

other information deemed relevant by the office. The final agency decision will be posted online at [ocio.iowa.gov/broadband](http://ocio.iowa.gov/broadband). The final agency decision shall become final unless within 30 days of such posting an appellant or an affected person or party that submitted evidence in support of, or in opposition to, the appeal files a request for a contested case proceeding pursuant to rule 129—20.6(8B,427).

**20.5(6) *Time of filing.*** In determining the date on which an appeal or request for a contested case proceeding is filed with the office, the following shall apply: an appeal or request for a contested case proceeding delivered by mail shall be deemed to be filed on the postmark date; an appeal or any other document delivered by any other means shall be deemed to be filed on the date of receipt.

**20.5(7) *Public records.*** The office's release of public records is governed by 129—Chapter 2 and Iowa Code chapter 22. Persons are encouraged to familiarize themselves with 129—Chapter 2 and Iowa Code chapter 22 before submitting evidence or information to the office as part of the appeals and contested case process outlined in this chapter. The office will copy and produce public records upon request as required to comply with Iowa Code chapter 22 and will treat all evidence and information submitted by persons or parties as public, nonconfidential records unless a person or party requests that specific parts of the evidence or information submitted be treated as confidential at the time of the submission to the office.

*a.* A person or party requesting confidential treatment of evidence or information submitted must:

- (1) Fully complete and submit to the office Form 22 (available online at [ocio.iowa.gov/broadband](http://ocio.iowa.gov/broadband));
- (2) Identify the request in the notice of appeal or, if evidence or information is submitted pursuant to subrule 20.5(3), identify the request in the transmittal email or the written explanation of why electronic filing was not feasible;

- (3) Conspicuously mark the outside of any submission as containing confidential evidence or information;

- (4) Mark each page upon which confidential evidence or information appears; and

- (5) Submit a public copy from which claimed confidential evidence and information has been excised. Confidential evidence and information must be excised in such a way as to allow the public to determine the general nature of the evidence and information removed and to retain as much of the otherwise public evidence and information as possible.

*b.* Form 22 will not be considered fully complete unless, for each confidentiality request, the person or party:

- (1) Enumerates the specific grounds in Iowa Code chapter 22 or other applicable law that support treatment of the specific evidence or information as confidential;

- (2) Justifies why the specific evidence or information should be maintained in confidence;

- (3) Explains why disclosure of the specific evidence or information would not be in the best interest of the public; and

- (4) Sets forth the name, address, telephone number, and email address of the individual authorized by the person or party submitting such evidence and information to respond to inquiries from the office concerning the confidential status of such evidence and information.

*c.* Failure to request that evidence or information be treated as confidential as specified herein shall relieve the office and state personnel from any responsibility for maintaining the information in confidence. Persons may not request confidential treatment with respect to a notice of appeal or other similar documents. Blanket requests to maintain all evidence and information submitted as confidential will be categorically rejected.

**20.5(8) *Probative evidence and information.*** Examples of evidence and information the office would consider particularly probative of broadband service at or above the tier 1, tier 2, or tier 3 download and upload speeds specified in the definition of targeted service area as of the as of date for purposes of adjudicating an appeal of the office's determination of whether a particular broadband block constitutes a tier 1, tier 2, or tier 3 TSA include:

*a.* Signed attestations submitted to the office under penalty of perjury on forms provided by the office that the applicable broadband block(s) was or was not served as of the as of date with broadband service at or above the tier 1, tier 2, or tier 3 download and upload speeds specified in the definition of targeted service area.

*b.* Bills or invoices provided to or received by customers in the applicable broadband block(s) which identify the specific download and upload speeds provided or received as of the as of date.  
[ARC 2782C, IAB 10/26/16, effective 11/30/16; ARC 4606C, IAB 8/14/19, effective 9/18/19; ARC 5173C, IAB 9/9/20, effective 10/14/20; ARC 5658C, IAB 6/2/21, effective 5/7/21]

**129—20.6(8B,427) Contested cases.** A contested case initiated pursuant to this chapter shall be a contested case proceeding and shall be conducted in accordance with the provisions of the office's rules governing contested case proceedings (129—Chapter 6) unless the provisions of this rule provide otherwise. The definitions in rule 129—6.2(8B,17A) shall also apply to this rule.

**20.6(1) Notice of hearing.** Upon receipt of a request for a contested case proceeding, the office shall inform the department of inspections and appeals of the filing and of relevant information pertaining to the appeal in question. The department of inspections and appeals shall send a written notice of the date, time and location of the hearing to all affected persons or parties who initiated a contested case related to the broadband block(s) forming the basis of the contested case, or appealed the office's determination of the broadband block(s) forming the basis of the contested case pursuant to subrule 20.5(1), or submitted evidence or information to the office pursuant to subrule 20.5(3) directly related to the broadband block(s) forming the basis of the contested case. The presiding officer shall hold a hearing on the matter within 60 days of the date the notice of appeal was received by the office.

**20.6(2) Consolidation.** In the event any contested cases concerning the same broadband block(s) are initiated separately, such matters shall be consolidated.

**20.6(3) Discovery.** The parties shall serve any discovery requests upon other parties at least 30 days prior to the date set for the hearing. The parties must serve responses to discovery at least 15 days prior to the date set for the hearing.

**20.6(4) Witnesses and exhibits.** The parties shall contact each other regarding witnesses and exhibits at least 10 days prior to the date set for the hearing. In order to avoid duplication or the submission of extraneous materials, the parties must meet, either in person, by telephone, or by electronic means, prior to the hearing regarding the evidence to be presented.

**20.6(5) Telephone hearing.** If the hearing is conducted by telephone or other electronic means, the parties must deliver all exhibits to the office of the presiding officer at least 3 days prior to the time the hearing is conducted. Telephone hearings shall be strongly encouraged.

[ARC 2782C, IAB 10/26/16, effective 11/30/16; ARC 5173C, IAB 9/9/20, effective 10/14/20]

These rules are intended to implement Iowa Code sections 8B.1, 8B.10, and 427.1(40).

[Filed ARC 2782C (Notice ARC 2699C, IAB 8/31/16), IAB 10/26/16, effective 11/30/16]

[Filed ARC 4606C (Notice ARC 4505C, IAB 6/19/19), IAB 8/14/19, effective 9/18/19]

[Filed ARC 5173C (Notice ARC 5110C, IAB 7/29/20), IAB 9/9/20, effective 10/14/20]

[Filed Emergency ARC 5658C, IAB 6/2/21, effective 5/7/21]



CHAPTER 22  
BROADBAND GRANTS PROGRAM

**129—22.1(8B) Definitions.** The definitions in Iowa Code section 8B.1 and rule 129—20.1(8B,427) shall apply to this chapter. In addition, for purposes of this chapter, the following definitions shall apply:

“*Grantee*” means a communications service provider awarded grant funds by the office pursuant to and in accordance with Iowa Code section 8B.11 and these rules.

“*Project*” means an installation of broadband infrastructure by a communications service provider that facilitates broadband service at or above the download and upload speeds specified in Iowa Code section 8B.11(1)“*a*” or “*b*” or 8B.11(6), whichever is applicable, in one or more targeted service areas. [ARC 4098C, IAB 10/24/18, effective 11/28/18; ARC 4606C, IAB 8/14/19, effective 9/18/19; ARC 5173C, IAB 9/9/20, effective 10/14/20; ARC 5658C, IAB 6/2/21, effective 5/7/21]

**129—22.2(8B) Purpose and scope.** This chapter applies to the broadband grants program established by Iowa Code section 8B.11 and administered by the office. This chapter interprets relevant provisions of Iowa Code sections 8B.1 and 8B.11 and establishes program process, management, and measurement rules designed to ensure the effective and efficient administration and oversight of the program, the key objective of which is to reduce or eliminate unserved and underserved areas in the state, leveraging federal funds and public and private partnerships where possible, by awarding grants to communications service providers that reduce or eliminate targeted service areas by installing broadband infrastructure that facilitates broadband service in targeted service areas at or above the download and upload speeds specified in Iowa Code section 8B.11 and this chapter. References to Iowa Code chapter 8B or its subparts refer to Iowa Code chapter 8B as amended by 2021 Iowa Acts, House File 848, and as will be codified in the 2022 Iowa Code.

[ARC 4098C, IAB 10/24/18, effective 11/28/18; ARC 4606C, IAB 8/14/19, effective 9/18/19; ARC 5173C, IAB 9/9/20, effective 10/14/20; ARC 5658C, IAB 6/2/21, effective 5/7/21]

**129—22.3(8B) Notice accepting grant funds.**

**22.3(1)** The office shall provide notice to communications service providers when grant funds become available for distribution by the office by posting a “Notice of Funding Availability” (NOFA) online at [iowagrants.gov](http://iowagrants.gov) and [ocio.iowa.gov/broadband](http://ocio.iowa.gov/broadband).

**22.3(2)** Such NOFA shall:

- a. Generally describe the application process.
- b. State the date, time, and manner by which applications for such grant funds must be submitted to the office in order to be eligible for consideration by the office for an award of grant funds.
- c. State the total amount of grant funds available for distribution under the applicable NOFA and provide an estimate of the date by which the office anticipates it will issue award(s).
- d. Describe the factors the office will consider in determining whether, to which communications service providers, and in what amount(s) to award grant funds.
- e. Set forth any measurement, technical, scoring, or other similar standards, formulas, or criteria the office will utilize in applying any factors considered by the office in determining whether, to which communications service providers, and in what amount(s) to award grant funds.
- f. Identify allowable and not disallowed expenditures which may be included in an applicant’s total project costs and set forth what constitutes sufficient and appropriate documentation for purposes of substantiating subsequent requests for reimbursement for allowable and not disallowed expenditures.
- g. State any other terms, conditions, requirements, or processes applicable to communications service providers submitting applications for grant funds, including but not limited to any grant agreement the office may require a grantee to enter into as a condition of receiving grant funds pursuant to subrule 22.6(1).

[ARC 4098C, IAB 10/24/18, effective 11/28/18]

**129—22.4(8B) Applications for grant funds.**

**22.4(1) Application process.** Following the issuance of a NOFA by the office, communications service providers may apply to the office for grant funds for the installation of broadband infrastructure

that facilitates broadband service in targeted service areas at or above the download and upload speeds specified in Iowa Code section 8B.11. Applications shall be made and submitted in accordance with the terms of these rules and the NOFA.

**22.4(2) Contents of application.** In addition to any other questions or requirements established by the NOFA, an application shall, at a minimum, include:

- a. The communications service provider's legal and business name(s) and address(es);
- b. The name, address, telephone number, and email address of the person authorized by the communications service provider to respond to inquiries regarding the application;
- c. The broadband block number(s) as provided on the statewide map referenced in rule 129—20.4(8B,427) for the targeted service area(s) forming the basis of the application/project (i.e., the targeted service area(s) in which the proposed installation of broadband infrastructure will facilitate broadband service at or above the download and upload speeds specified in Iowa Code section 8B.11;
- d. Attestation that the broadband infrastructure installed will facilitate broadband service at or above the download and upload speeds specified in Iowa Code section 8B.11;
- e. Unless a specific cost allocation methodology is identified or required by the office as set forth in the NOFA, the specific methods or formulas the communications service provider will utilize in allocating the costs of and for broadband infrastructure for which reimbursement may be sought in proportion to such infrastructure's actual facilitation of broadband service at or above the download and upload speeds specified in Iowa Code section 8B.11 in the targeted service areas forming the basis of the project;
- f. An anticipated project completion date in accordance with paragraph 22.6(3)"b." An applicant's anticipated project completion date may be used to determine whether a grantee's failure to complete a project in a timely manner warrants a finding of noncompliance for purposes of subparagraph 22.6(4)"b"(2).

**22.4(3) Deadlines.** The office will only consider applications received on or before the applicable deadline as stated in the NOFA, unless the office, in its sole discretion, establishes a different deadline for the submission of applications. The office may establish a different deadline for all applicants, but will not change the deadline for or at the request of any individual applicant.

**22.4(4) Confidentiality of contents of applications.** The office's release of public records is governed by 129—Chapter 2 and Iowa Code chapter 22. Applicants or other persons or parties submitting information to the office are encouraged to familiarize themselves with 129—Chapter 2 and Iowa Code chapter 22 before submitting applications or other information to the office. The office will copy and produce public records upon request as required to comply with Iowa Code chapter 22 and will treat all information submitted by applicants or other persons or parties as public, nonconfidential records unless an applicant or other person or party requests that specific parts of the evidence or information submitted be treated as confidential at the time of the submission to the office.

a. In addition to any other administrative requirements established by the NOFA, an applicant or other person or party requesting confidential treatment of portions of an application or other information submitted to the office must:

- (1) Fully complete and submit to the office Form 22 as provided by the office.
- (2) Identify the request in the NOFA, or if other information is submitted to the office, identify the request in the transmittal email or cover letter for the written correspondence.
- (3) Conspicuously mark the outside of any submission as containing confidential information.
- (4) Mark each page upon which confidential evidence or information appears.
- (5) Submit a public copy from which claimed confidential evidence and information has been excised. Confidential information must be excised in such a way as to allow the public to determine the general nature of the information removed and to retain as much of the otherwise public evidence and information as possible.

b. Form 22 will not be considered fully complete unless, for each request for confidential treatment, the applicant or other person or party:

- (1) Enumerates the specific grounds in Iowa Code chapter 22 or other applicable law that support treatment of the specific information as confidential.

- (2) Justifies why the specific information should be maintained in confidence.
- (3) Explains why disclosure of the specific information would not be in the best interest of the public.
- (4) Sets forth the name, address, telephone number, and email address of the individual authorized by the applicant or other person or party submitting such information to respond to inquiries from the office concerning the confidential status of such information.

c. Failure to request that information be treated as confidential as specified herein shall relieve the office and state personnel from any responsibility for maintaining the information in confidence. Applicants or other persons or parties may not request confidential treatment with respect to information specifically identified by the office in the NOFA as being subject to public disclosure. Blanket requests to maintain an entire application or all information otherwise submitted to the office as confidential will be categorically rejected.

**22.4(5) Limited exception for broadband infrastructure installed outside of targeted service areas.** Rescinded IAB 8/14/19, effective 9/18/19.  
 [ARC 4098C, IAB 10/24/18, effective 11/28/18; ARC 4606C, IAB 8/14/19, effective 9/18/19; ARC 5173C, IAB 9/9/20, effective 10/14/20; ARC 5658C, IAB 6/2/21, effective 5/7/21]

### **129—22.5(8B) Application review process and award of grant funds.**

**22.5(1) Period for public comment and validation process.** Rescinded IAB 6/2/21, effective 5/7/21.

**22.5(2) Review committee.** Rescinded IAB 6/2/21, effective 5/7/21.

**22.5(3) Office final decision.** The office will review all applications received by the deadline and otherwise warranting review in accordance with the terms, conditions, and requirements of the NOFA, these rules, and Iowa Code chapter 8B and make a final agency decision regarding whether, to which projects, and in what amount(s) to award grant funds for the installation of broadband infrastructure that facilitates broadband service in targeted service areas at or above the download and upload speeds specified in Iowa Code section 8B.11.

a. In so doing, the office will take into consideration the following factors, in accordance with and in the manner specified by the terms, conditions, and requirements of the NOFA, affording the greatest weight to the factors in subparagraphs 22.5(3) “a”(1), 22.5(3) “a”(2), and 22.5(3) “a”(3), and Iowa Code section 8B.11(4) “a”(6):

(1) The relative need for broadband infrastructure in the area and the existing broadband service speeds, including whether the project serves a rural area(s). Existing broadband service speeds may be determined by reference to the statewide map referenced in rule 129—20.4(8B,427).

(2) The applicant’s total proposed budget for the project, including all of the following:

1. The amount or percentage of local or federal matching funds, if any, and any funding obligations shared between public and private entities.

2. The percentage of funding provided directly from the applicant, including whether the applicant requested from the office an amount less than the maximum amount the office could award pursuant to Iowa Code section 8B.11 and, if so, the percentage of the project cost that the applicant is requesting.

(3) The relative download and upload speeds of proposed projects for all the applicants.

(4) The specific product attributes resulting from the proposed project, including technologies that provide higher qualities of service, such as service levels, latency, and other service attributes as determined by the office.

(5) The percentage of broadband units in the targeted service area(s) forming the basis of the project that will be provided access to broadband service at or above the download and upload speeds specified in Iowa Code section 8B.11 as a result of the project. The number of broadband units in a targeted service area shall be determined by reference to the statewide map referenced in rule 129—20.4(8B,427). Considering this factor is the means by which the office ensures underserved areas within targeted service areas are, to the extent possible, reduced or eliminated.

(6) The proportion of proposed projects that will result in the installation of broadband infrastructure in a targeted service area within which the only broadband service available provides the tier 1 download and upload speeds specified in the definition of targeted service area.

(7) Any other factors deemed relevant by the office as stated in the NOFA.

b. In determining whether, to which projects, and in what amount(s) to award grant funds, the office will not make an award that exceeds the following percentages identified in Iowa Code section 8B.11(5) “a,” “b,” or “c” or 8B.11(6) “b,” whichever is applicable, of any communications service provider’s total estimated allowable project costs for a proposed installation of broadband infrastructure; or meeting the buildout speeds referenced in Iowa Code section 8B.11(1) or 8B.11(6), whichever is applicable.

c. In determining whether a project serves difficult to serve areas and thus qualifies for the 20 percent allocation identified in Iowa Code section 8B.11(7), the office will solely consider whether the project serves one or more targeted service areas within which no provider offers or facilitates broadband service that provides download and upload speeds less than or equal to the tier 1 download and upload speeds specified in Iowa Code section 8B.1(13) “a”(1). In such cases, any funds awarded to the project will be assigned to the 20 percent allocation made by the office. In the event that the 20 percent allocation in Iowa Code section 8B.11(7) is not fully subscribed, the office will be permitted to reallocate any unspent funds to projects that do not serve difficult to serve areas.

**22.5(4) Notice to applicants of decision and right to appeal.** The office shall notify each communications service provider awarded a grant by the office of the office’s decision(s) in accordance with the terms and conditions of the NOFA. The office will also post such decision(s) online at [iowagrants.gov](http://iowagrants.gov) and [ocio.iowa.gov/broadband](http://ocio.iowa.gov/broadband). Unsuccessful applicants are solely responsible for reviewing such websites to determine their award status. Such agency decision(s) shall become final unless, within ten days of such email transmission or posting, an applicant which was adversely affected by a decision of the office files a request for a contested case proceeding pursuant to 129—Chapter 6. Failure to challenge the office’s decision under this rule by filing a request for a contested case within the ten-day period shall waive any claims an applicant may have related to the office’s administration of the process and otherwise be deemed a failure to exhaust administrative remedies.

[ARC 4098C, IAB 10/24/18, effective 11/28/18; ARC 4606C, IAB 8/14/19, effective 9/18/19; ARC 5173C, IAB 9/9/20, effective 10/14/20; ARC 5658C, IAB 6/2/21, effective 5/7/21]

#### **129—22.6(8B) Administration of award.**

**22.6(1) Grant agreement required.** The office may require a grantee to enter into a grant agreement with the office in accordance with the terms, conditions, and requirements of the NOFA. Such grant agreement may include, but not be limited to, the total amount of the grant funds awarded to the grantee; a description of the project to be completed by the grantee and specifications related thereto; a description of allowable expenditures; conditions related to the disbursement of grant funds; default and termination procedures; performance, certification, and verification requirements/criteria necessary to confirm project success/completion; and repayment requirements in the event the grantee does not fulfill its obligations under the agreement, these rules, or Iowa Code chapter 8B. In addition to any terms, conditions, or requirements specifically set forth in such agreement, any and all requirements established by Iowa Code chapter 8B, these rules, other applicable law, rule, or regulation, or the NOFA shall be deemed incorporated by reference into such grant agreement as if fully set forth therein.

**22.6(2) Mapping data required.** Upon project completion, a grantee must supply the office with geographic information system (GIS) data in a form acceptable to the office demonstrating specifically where broadband infrastructure for which grant funds have been utilized, in whole or in part, has been installed, regardless of whether such infrastructure actually serves any customers in targeted service area(s) forming a basis of the application at the time such mapping data is supplied to the office. Such GIS data must enable the office to determine which specific broadband units within each targeted service area forming the basis of the project have access to broadband service at or above the download and upload speeds specified in Iowa Code section 8B.11 as a result of the project.

**22.6(3) Reimbursements, record keeping/audits, performance/certification, and repayment.** In the absence of more specific provisions in an agreement executed between a grantee and the office in accordance with these rules establishing conflicting or inconsistent terms and conditions, the following

terms and conditions shall apply by default to any award of grant funds made by the office under Iowa Code section 8B.11 and these rules:

*a. Reimbursement.*

(1) General. A grantee shall only be reimbursed by the office for:

1. Allowable and not disallowed expenditures actually and previously incurred by the grantee. What constitutes allowable or disallowable expenditures shall be further specified in the NOFA or grant agreement;

2. Expenditures for broadband infrastructure solely to the extent such broadband infrastructure facilitates broadband service at or above the download and upload speeds specified in Iowa Code section 8B.11 within targeted service areas forming the basis of the project; and

3. Expenditures for which the grantee is able to supply sufficient and appropriate documentation. What constitutes sufficient or appropriate documentation shall be further specified in the NOFA or grant agreement.

(2) Timing. Requests for reimbursement may be submitted to the office in accordance with the terms and conditions in the NOFA or grant agreement.

*b. Performance/certification.* After the completion of a project and not less than 60 days prior to four years from the date of issuance of the NOFA, or 60 days prior to four years from the appropriation of grant funds, whichever is earlier, a grantee must:

(1) Certify to the office that the project was completed as proposed in the original application, including but not limited to that the final installation facilitates broadband service at or above the download and upload speeds specified in Iowa Code section 8B.11 in each of the applicable targeted service areas identified in the original application, and identify the total number of broadband units actually receiving broadband service in each of the targeted service areas identified in the original application as a result of the project.

(2) Attest that any claimed, allowable expenditures are true and accurate, were directly related to the installation of broadband infrastructure that facilitates broadband service at or above the download and upload speeds specified in Iowa Code section 8B.11 in eligible targeted service areas forming the basis of the project, and were properly allocated in accordance with the terms, conditions, and requirements of the NOFA or grant agreement.

(3) Supply the office with updated GIS data in accordance with subrule 22.6(2).

*c. Performance testing.* The office may, in its discretion, conduct performance tests, on one or multiple occasions, for compliance with the requirements of Iowa Code sections 8B.1 and 8B.11, these rules, and any grant agreement entered into between a grantee and the office pursuant to subrule 22.6(1) for up to five years after broadband service is certified as complete in accordance with paragraph 22.6(3) "b." The office may exercise this right both before and after reimbursing a grantee for any claimed, allowable expenditures, but if the office elects to do so before reimbursing a grantee for any claimed, allowable expenditures, it will do so within a reasonable time, not to exceed one year, after broadband service is certified as complete in accordance with paragraph 22.6(3) "b." Such performance tests may include but not be limited to:

(1) Speed tests anywhere between a grantee's central office and the demarcation at any customer's location in a targeted service area or broadband block in which the project was to be deployed;

(2) In the case of wireless installations, from any location in a targeted service area or broadband block in which the project was to be deployed; or

(3) In the case where a grantee does not have a customer in a targeted service area being served by the installation, certification obtained by the grantee and supplied to the office from an independent third party who is a properly licensed engineer that the installation facilitates broadband service at or above the download and upload speeds specified in Iowa Code section 8B.11 in applicable targeted service areas identified in the original application. The costs of such certification shall be borne by the grantee.

*d. Disbursement/repayments.*

(1) A grantee shall not be entitled to the applicable portion of any grant funds or shall be obligated to repay the office the applicable portion of any grant funds previously distributed by the office to the grantee if the office determines that:

1. Claimed expenditures or a prior reimbursement, in whole or in part, was comprised of expenditures that were not allowable or were disallowed, were improperly or incorrectly allocated, or were not supported by sufficient and appropriate documentation;

2. Claimed expenditures or the total amount previously reimbursed by the office exceeds the amount determined by Iowa Code section 8B.11(5) or 8B.11(6) of the grantee's estimated or final total allowable project costs, whichever is less.

(2) A grantee shall not be entitled to any grant funds or shall be obligated to repay the office the entire amount of any grant funds previously distributed by the office to the grantee if the office determines that:

1. Claimed expenditures or a prior reimbursement, in whole or in part, was used for the installation of broadband infrastructure that was not in or does not facilitate broadband service at or above the download and upload speeds specified in Iowa Code section 8B.11 in a targeted service area identified in the original application;

2. A grantee fails to complete the project as proposed in the original application; or

3. Any representation or warranty made by a grantee in an application for grant funds, a grant agreement entered into between a grantee and the office pursuant to subrule 22.6(1), or in any other representation or statement made by the grantee to the office proves untrue in any material respect as of the date of the issuance or making thereof.

*e. Notice of default.* If the office determines a grantee is not entitled to or is otherwise required to repay the office in accordance with paragraph 22.6(3) "d," the office may issue the grantee a "Notice of Default," which shall afford the grantee 30 days to cure the default. Whether a grantee has sufficiently cured the default shall be determined in the sole discretion of the office. If a grantee fails to cure the default within 30 days, the office may issue an order requiring the grantee to reimburse the office for the amount specified in the "Notice of Default."

**22.6(4) Remedies for noncompliance.** In addition to issuing a "Notice of Default" and subsequent order requiring the grantee to reimburse the office for failing to cure the default pursuant to paragraph 22.6(3) "e" and any other remedies available to the office pursuant to a grant agreement entered into between a grantee and the office pursuant to subrule 22.6(1), the office may, for cause, find that a grantee is not in compliance with the requirements of Iowa Code section 8B.11, these rules, or a grant agreement entered into by the office and a grantee pursuant to subrule 22.6(1).

*a.* At the office's sole discretion, remedies for noncompliance may include, but are not limited to, the following:

(1) Issuing a warning letter stating that further failure to comply with program requirements within a stated period of time will result in a more serious action.

(2) Conditioning a future grant on compliance with program requirements within a stated period of time.

(3) Disallowing future reimbursements.

(4) Requiring that some or all previously issued grant funds be reimbursed to the office.

*b.* Reasons for a finding of noncompliance include, but are not limited to, one or more of the following:

(1) A violation of any of the terms or conditions of a grant agreement entered into between the office and a grantee pursuant to subrule 22.6(1);

(2) A grantee's failure to complete a project in a timely manner;

(3) A grantee's failure to comply with any applicable state or federal laws, rules, or regulations;

(4) Claimed expenditures or a prior reimbursement, in whole or in part, was comprised of expenditures that were not allowable or were disallowed, were improperly or incorrectly allocated, or were not supported by sufficient and appropriate documentation;

(5) Claimed expenditures or a prior reimbursement, in whole or in part, was used for the installation of broadband infrastructure that does not facilitate broadband service at or above the download and upload speeds specified in Iowa Code section 8B.11 in a targeted service area identified in the original application;

(6) A grantee fails to complete the project as proposed in the original application;

(7) The total claimed exceeds amounts allowed by the grant agreement or statute;

(8) Any representation or warranty made by a grantee in an application for grant funds, an agreement entered into between a grantee and the office pursuant to subrule 22.6(1), or in any other representation or statement made by the grantee to the office proves untrue in any material respect as of the date of the issuance or making thereof.

**22.6(5) Office's decision and right to appeal.**

*a.* Any decision of the office entitled “proposed decision,” “final decision,” or other like caption as relating to any issues described in subparagraphs 22.6(5) “a”(1) through (5) below shall become final unless, within 30 days of the transmission of such decision by the office by email to the email address of the individual identified in paragraph 22.4(2) “b” or to the email address of a person otherwise identified by the grantee in writing prior to the issuance of such decision as the person authorized by the grantee to respond to inquiries regarding the administration of the grant, a grantee which is adversely affected by the decision files a request for a contested case proceeding pursuant to 129—Chapter 6.

(1) The interpretation, construction, or application of any terms or conditions or resolution of a dispute under a grant agreement entered into between the office and a grantee or under these rules;

(2) Whether or in what amount a grantee is entitled to reimbursement pursuant to a grant agreement entered into between the office and a grantee, or under these rules;

(3) Whether or in what amount a grantee must repay the office pursuant to a grant agreement entered into between the office and a grantee or under these rules;

(4) The imposition of any remedies for noncompliance in accordance with subrule 22.6(4); or

(5) Any other decision of the office that relates to the administration of a grant awarded pursuant to Iowa Code section 8B.11, these rules, or a grant agreement entered into between the office and a grantee.

*b.* Failure to challenge the office's decision under this rule by filing a request for a contested case within the 30-day period shall waive any claims an applicant may have related to the administration of a grant award and otherwise be deemed a failure to exhaust administrative remedies.

[ARC 4098C, IAB 10/24/18, effective 11/28/18; ARC 4606C, IAB 8/14/19, effective 9/18/19; ARC 5173C, IAB 9/9/20, effective 10/14/20; ARC 5658C, IAB 6/2/21, effective 5/7/21]

**129—22.7(8B) Reallocation of grant funds.** Subject to applicable law, including but not limited to Iowa Code section 8B.11(2) “c,” if grant funds that the office had previously committed to specific grantees are not ultimately issued to a grantee (e.g., because applicable expenditures are not allowed or are disallowed, applicable expenditures were improperly or incorrectly allocated, or a grantee fails to provide sufficient or appropriate documentation to support a claim for reimbursement) or are otherwise repaid to the office pursuant to a grant agreement entered into between the office and a grantee or these rules, the office may award the grant funds to other previous grantees or applicants or open additional rounds for applications. If the office awards additional grant funds to other grantees or applicants, such grantees shall submit documentation establishing how such grant funds will be expended and may, to the extent applicable, be required to execute contract amendments with the office providing for the expenditure of the additional grant funds and will otherwise be subject to Iowa Code section 8B.11 and these rules.

[ARC 4098C, IAB 10/24/18, effective 11/28/18; ARC 5658C, IAB 6/2/21, effective 5/7/21]

**129—22.8(8B,427) Targeted service areas subject to challenge.** If at the time a grantee is awarded grant funds the office's determination of whether a particular broadband block forming the basis of the grantee's application, in whole or in part, is a targeted service area currently subject to challenge pursuant to the appeal and contested case procedures set forth in 129—Chapter 20, or the office's administration of the award process is subject to challenge pursuant to subrule 22.5(4), including any subsequent judicial review or appeal therefrom as outlined in Iowa Code sections 17A.19 and 17A.20, the office may proceed to enter into a grant agreement with the grantee pursuant to subrule 22.6(1). Notwithstanding the foregoing or any contract executed between the parties to the contrary, the aspect(s) of the office's award(s) that is subject to such challenge at the time of such execution shall be valid and enforceable only to the extent the office's original determination or award process, as applicable, is ultimately upheld at the end of the entire appeals and contested case process once final, including judicial review and any subsequent appeal. If a broadband block is ultimately determined

to not constitute a targeted service area, or a portion of an award is later deemed invalid, in whole or in part: the grantee shall not be entitled to any grant funds or reimbursement to the extent of any such noneligibility or invalidity; the office may require the grantee to amend the grant agreement to reflect such result; and the grantee will be required to reimburse the office for any corresponding funds previously distributed by the office.

[ARC 4606C, IAB 8/14/19, effective 9/18/19; ARC 5173C, IAB 9/9/20, effective 10/14/20]

These rules are intended to implement Iowa Code sections 8B.1, 8B.10(1), and 8B.11.

[Filed ARC 4098C (Notice ARC 3728C, IAB 4/11/18), IAB 10/24/18, effective 11/28/18]

[Filed ARC 4606C (Notice ARC 4505C, IAB 6/19/19), IAB 8/14/19, effective 9/18/19]

[Filed ARC 5173C (Notice ARC 5110C, IAB 7/29/20), IAB 9/9/20, effective 10/14/20]

[Filed Emergency ARC 5658C, IAB 6/2/21, effective 5/7/21]

## CHAPTER 1 ORGANIZATION

[Prior to 3/30/94, see 210—Chapter 1]

**141—1.1(2C) Authority and function.** The office of ombudsman was established by the general assembly in 1972 and is charged with the responsibility to investigate complaints from any persons regarding administrative actions of Iowa state or local governmental agencies and to render objective opinions or recommendations on the complaints, in the interests of resolving complaints and improving administrative processes and procedures. In addition to the powers and duties specified in Iowa Code chapter 2C, the office of ombudsman shall investigate complaints received pursuant to Iowa Code section 23A.4.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16; Adopted and published 6/2/21 pursuant to Iowa Code section 2C.9(5), effective 6/2/21]

**141—1.2(2C) Location and access.** The office of ombudsman is located at the Ola Babcock Miller Building, 1112 E. Grand Avenue, Des Moines, Iowa 50319. The office website is [www.legis.iowa.gov/Ombudsman](http://www.legis.iowa.gov/Ombudsman). The office can be reached at the following numbers: telephone (515)281-3592, 1-888-426-6283 (1-888-IA-OMBUD), and TDD/TTY (515)242-5065, and fax (515)242-6007. The office can also be reached by electronic mail at [ombudsman@legis.iowa.gov](mailto:ombudsman@legis.iowa.gov). Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, except designated state holidays.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

### **141—1.3(2C) Composition and duties of staff.**

**1.3(1) Staff.** The office of ombudsman is composed of the following staff positions:

*a. Ombudsman.* The ombudsman is appointed by the legislative council pursuant to Iowa Code section 2C.3. The ombudsman shall meet the qualifications specified in Iowa Code section 2C.4 and serve for the term of office provided in Iowa Code section 2C.5. The ombudsman employs and supervises all staff in the positions and at the salaries authorized by the legislative council.

*b. Deputy ombudsman.* The ombudsman shall designate one of the members of the staff as the deputy ombudsman. The deputy ombudsman shall act as the ombudsman when the ombudsman is absent from the state or becomes disabled, or when the position of ombudsman is vacant, until the vacancy is filled by the legislative council.

*c. Legal counsel.* The legal counsel shall provide legal advice, assistance, and representation to the ombudsman and members of the staff in matters pertaining to their authority and duties and shall perform other assigned duties.

*d. Assistant for corrections.* The assistant ombudsman for corrections is primarily responsible for investigating complaints relating to penal and correctional agencies, and performs other assigned duties.

*e. Assistants.* The assistant ombudsmen receive and investigate complaints and perform other assigned duties.

*f. Support staff.* The support staff performs secretarial, clerical, and other assigned duties.

**1.3(2) Delegation of authority or duties.** The ombudsman may delegate to any staff member any authority or duties of the ombudsman, except the duty of making formal recommendations to agencies or reports to the governor or the general assembly.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

These rules are intended to implement Iowa Code sections 2C.3(2), 2C.6, 2C.9(6), 23A.4, and 217.3A(3).

[Filed 12/15/75, Notice 10/20/75—published 12/29/75, effective 2/2/76]

[Filed 8/26/81, Notice 7/22/81—published 9/16/81, effective 10/21/81]

[Filed 8/1/84, Notice 6/20/84—published 8/29/84, effective 10/3/84]

[Adopted and published 3/30/94 pursuant to Iowa Code section 2C.9(5), effective 5/1/94]

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

[Adopted and published 6/2/21 pursuant to Iowa Code section 2C.9(5), effective 6/2/21]



## CHAPTER 2 PROCEDURES

[Prior to 3/30/94, see 210—Chapter 2, rules 6.1(601G) and 7.1(601G)]

### **141—2.1(2C) Definitions.** As used in this chapter:

*“Administrative action”* means any action, decision, omission, policy, practice, procedure, or rule of an agency or any failure of an agency to act pursuant to law.

*“Agency”* means all governmental entities, departments, boards, commissions, councils or institutions, and any officer, employee or member thereof acting or purporting to act in the exercise of official duties. “Agency” includes any person providing child welfare or juvenile justice services under contract with an agency that is subject to investigation by the ombudsman. “Agency” does not include:

1. Any court or judge or appurtenant judicial staff;
2. The members, committees, or permanent or temporary staffs of the Iowa general assembly;
3. The governor of Iowa or the governor’s personal staff;
4. Any instrumentality formed pursuant to an interstate compact and answerable to more than one state; and
5. Any agency, official or employee of the federal government.

*“Employee”* means any employee of any agency.

*“Officer”* means any officer of any agency.

*“Person”* means an individual, aggregate of individuals, corporation, partnership, or unincorporated association.

*“Records”* or *“documents”* means any writings, drawings, graphs, charts, photographs, phonorecords, audio recordings, video recordings, and any other data or information stored or preserved in any medium.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

### **141—2.2(2C) Complaints.**

**2.2(1) *Persons who may contact office.*** Any person may contact the ombudsman concerning an administrative action by an agency. If a person contacts the ombudsman on behalf of another person whose specific right or interest is directly affected by an administrative action, the ombudsman may request that the affected person contact the ombudsman as the complainant or obtain the consent of the affected person before considering the complaint.

**2.2(2) *Methods of contact.*** The ombudsman may be contacted at the office of ombudsman or at the site of an agency or other location specified by the ombudsman. Contact may be made by mail, email, telephone, facsimile (fax), or any other method deemed acceptable by the ombudsman, except as provided in subrule 2.2(3). Contact may also be made indirectly by the receipt of a person’s correspondence which is referred or forwarded to the office of the ombudsman.

**2.2(3) *Written complaints.*** The ombudsman may require complaints to be submitted in writing or on a form prescribed by the ombudsman.

**2.2(4) *Assistance by the ombudsman.*** If a person is incapable of submitting a written complaint or has difficulty communicating with the ombudsman because of a disability or language barrier, the ombudsman shall assist that person in completing the complaint or make accommodations to facilitate communication with that person.

**2.2(5) *Self-initiated complaints.*** An investigation into an agency’s administrative action may be initiated on the ombudsman’s own motion, if the ombudsman determines it is an appropriate subject for investigation.

**2.2(6) *Anonymous complaints.*** The ombudsman may accept a complaint from an anonymous person. However, if the ombudsman at any time determines the complainant’s identity is needed to pursue an investigation of the complaint, the ombudsman may request that the complainant’s identity be disclosed. If the identity of the complainant is not disclosed as requested, the ombudsman may decline to pursue investigation of the complaint.

**2.2(7) Information requests.** If a person who contacts the ombudsman requests information, the ombudsman may provide such information, if it relates to state and local government, or refer the person to another agency or to any other appropriate entity or source for the information.

**2.2(8) No fee or charge.** The ombudsman shall not assess any monetary or other charge against any person who contacts the office of ombudsman for assistance.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16; Adopted and published 6/2/21 pursuant to Iowa Code section 2C.9(5), effective 6/2/21]

#### **141—2.3(2C) Institutional communications.**

**2.3(1) Correspondence.** Any correspondence from a person confined or residing in an institution or facility under the control of an agency shall be forwarded, unopened and without undue delay, to the office of ombudsman by the institution or facility. Any correspondence from the office of ombudsman to such a person shall be delivered, unopened and without undue delay, by the institution or facility to that person.

**2.3(2) Telephonic communication.** A telephonic communication between a person confined or residing in an institution or facility under an agency's control and any staff member of the office of ombudsman shall not be monitored by any officer or employee of that agency.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

#### **141—2.4(2C,70A) Whistleblower reprisal complaints.**

**2.4(1) State employees.** Notwithstanding the limitations of subrule 2.6(1), the ombudsman may investigate a complaint filed by an employee of a state employment system who alleges that an adverse employment action has been taken against the employee as provided in Iowa Code section 70A.28(2). This provision does not apply to employees of those entities excluded from the definition of "agency" under Iowa Code section 2C.1(2). This provision applies only to employees who are non-merit employees and employees not covered by a collective bargaining agreement. Complaints must be made to the ombudsman within 30 calendar days following the effective date of the adverse employment action.

**2.4(2) Investigation.** If an investigation of the employee's complaint occurs, the ombudsman shall issue findings to the employee and the agency in an expeditious manner.

**2.4(3) Investigative findings.** If the employee files an appeal of the adverse employment action with the public employment relations board pursuant to Iowa Code section 70A.28(6), the written findings issued by the ombudsman may be introduced as evidence before the public employment relations board.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16; Adopted and published 6/2/21 pursuant to Iowa Code section 2C.9(5), effective 6/2/21]

#### **141—2.5(2C) Preliminary review and inquiry.**

**2.5(1) Review of complaint.** The ombudsman shall review and consider each complaint to determine if it is within the ombudsman's jurisdiction, if it is an appropriate subject for investigation, and if it warrants an investigation, under the criteria in rule 141—2.6(2C).

**2.5(2) Preliminary inquiry.** The ombudsman may make a preliminary inquiry to obtain information for the purpose of making the determination required in subrule 2.5(1). A preliminary inquiry may utilize any of the methods available for investigations under subrule 2.9(1). However, a preliminary inquiry shall not be considered an investigation.

**2.5(3) Resolution without investigation.** If, in the course of a preliminary inquiry on the complaint, an agency provides an explanation or response or takes an action which resolves the complaint, the ombudsman may decline to investigate the complaint. The ombudsman shall inform the complainant regarding the resolution of the complaint. However, the resolution of a complaint during a preliminary review and inquiry does not preclude the ombudsman from conducting an investigation into the complaint.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

#### **141—2.6(2C) Criteria for investigation.**

**2.6(1) Jurisdiction.** The ombudsman has jurisdiction to investigate any administrative action of an agency; however, the ombudsman shall not investigate the complaint of an employee of an agency in regard to that employee's employment relationship with the agency, except as provided in rule 141—2.4(2C,70A).

**2.6(2) Subjects for investigation.**

a. An appropriate subject for investigation includes any administrative action which the ombudsman has reason to believe might be:

- (1) Contrary to law or regulation;
- (2) Unreasonable, unfair, oppressive, or inconsistent with the general course of an agency's functioning, even though it is in accordance with the law;
- (3) Based on a mistake of law;
- (4) Arbitrary in ascertainties of fact;
- (5) Based on improper motivation or irrelevant consideration; or
- (6) Unaccompanied by an adequate statement of reasons.

b. The ombudsman may also inquire into an agency's policy, practice or procedure if the ombudsman has reason to believe improvements can be made to the policy, practice or procedure which lessen the risk that objectionable administrative actions will occur.

**2.6(3) Reasons to decline investigation.** The ombudsman may decline to investigate a complaint if the ombudsman finds substantiating facts that:

- a. The complainant has available another remedy or channel of complaint which the complainant could reasonably be expected to use;
- b. The complaint pertains to a matter outside the ombudsman's power;
- c. The complainant has no substantive or procedural interest which is directly affected by the matter complained about;
- d. The complaint is trivial, frivolous, or vexatious or not made in good faith;
- e. Other complaints are more worthy of attention;
- f. The resources of the ombudsman are insufficient for adequate investigation;
- g. The complaint has been delayed too long to justify present examination of its merit;
- h. The complainant does not provide or refuses to provide, without good reason, information in the complainant's possession or knowledge which is requested by the ombudsman;
- i. A previous determination has been made by the ombudsman regarding the subject matter of the complaint; or
- j. The complaint has been resolved due to a change in the complainant's circumstances or in the law, or due to an action taken by the agency during a preliminary review and inquiry on the complaint.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

**141—2.7(2C) Decision not to investigate.**

**2.7(1) Notice of decision.** If, after preliminary review and consideration of a complaint, the ombudsman decides not to investigate the complaint, the complainant shall be informed of the decision and the reasons for the decision. The ombudsman may also inform the agency involved of the decision, if such notice is deemed appropriate.

**2.7(2) Referral of nonjurisdictional complaint.** If the ombudsman does not have jurisdictional authority to investigate a complaint, the complainant may be referred to an agency or other appropriate entity or person for assistance.

**2.7(3) Effect of declining investigation.** A decision to decline investigation of a complaint under subrule 2.6(3) does not preclude the ombudsman from inquiring into the complaint or a related subject matter in the future.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

**141—2.8(2C) Decision to investigate.**

**2.8(1) Notice of decision.** If, after preliminary review and inquiry and consideration, the ombudsman decides to investigate a complaint, the complainant and the agency involved in the complaint shall be notified of the decision.

**2.8(2) Notice to agency.** A notice of investigation to an agency shall be directed to an official or employee of the agency. Such notice may be given simultaneously or in conjunction with any investigative action that is initiated under rule 141—2.9(2C).

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

#### **141—2.9(2C) Investigations.**

**2.9(1) Methods.** The ombudsman may use any one or more of the following methods in conducting an investigation:

- a. Review applicable laws, rules, regulations, and policies;
- b. Request a statement from an agency providing reasons for taking an administrative action;
- c. Make informal verbal or written inquiries to an agency and other persons for assistance or information;
- d. Take testimony from any person as provided under rule 141—2.11(2C).
- e. Examine and copy records or documents of an agency;
- f. Enter and inspect without advance notice any premises within an agency's control;
- g. Attend administrative hearings or proceedings;
- h. Issue a subpoena to compel a person to provide sworn testimony or to produce relevant records or documents;
- i. Hold private hearings;
- j. Convene a public hearing as a forum to obtain public input or comment on a subject of general or broad public concern;
- k. Any other method determined appropriate by the ombudsman.

**2.9(2) Ex parte communications.** A communication or receipt of information by the ombudsman or any person in the course of an investigation shall not be considered an ex parte communication as described in Iowa Code section 17A.17.

**2.9(3) Status reports.** The ombudsman shall report the status of an investigation to the complainant upon request of the complainant or whenever it is deemed appropriate.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

#### **141—2.10(2C) Subpoenas.**

**2.10(1) Issuance.** Pursuant to Iowa Code subsection 2C.9(5), the ombudsman has power to issue a subpoena to compel any person to appear, give sworn testimony, or produce documentary or other evidence relevant to a matter under inquiry.

**2.10(2) Notice.** The ombudsman shall give reasonable notice of the date, time, place, and purpose for the taking of testimony or the production of documentary or other evidence. Notice shall be served in accordance with the law applicable to the service of subpoenas in civil actions.

**2.10(3) Fees.** A person required to give testimony or produce documentary or other evidence is entitled to payment of the same fees and travel allowances as are payable to a witness whose attendance has been required in a district court of this state.

**2.10(4) Enforcement.** If a person fails or refuses to obey a subpoena, the ombudsman may file a petition with the district court having jurisdiction for an order directing obedience to the subpoena under Iowa Code subsection 2C.9(5).

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

#### **141—2.11(2C) The taking of testimony.**

**2.11(1) Purpose.** The taking of testimony is an internal device used by the ombudsman to gather information and to assist in arriving at conclusions or recommendations regarding an agency's actions.

**2.11(2) Witnesses.** Any person may be called to give testimony relating to a matter before the ombudsman.

**2.11(3) Notice.** The ombudsman shall provide to the person whose testimony is sought reasonable notice of the date, time, and place for taking that person's testimony. If the ombudsman issues a subpoena compelling a person to give testimony, notice shall be provided in the subpoena.

**2.11(4) Location.** The ombudsman has discretion to take testimony from a person at the ombudsman's office or at another location deemed appropriate by the ombudsman, or by telephone or other electronic means.

**2.11(5) Rights of witnesses.** A person who gives testimony is accorded the same privileges and immunities as are extended to witnesses in the courts of this state. The witness is entitled to be accompanied and advised by counsel or other representative while being questioned, but only counsel may speak or raise objections to questions on behalf of the witness. Objections to questions shall be noted, but the witness shall answer all questions, except when a privilege or immunity accorded to the witness has been asserted.

**2.11(6) Conduct of testimony.** The ombudsman may administer oaths to persons giving testimony before the ombudsman. The ombudsman determines the order for the taking of testimony and may sequester witnesses or examine a witness privately. Questions will be posed by the ombudsman. At the conclusion of the ombudsman's examination of a witness, counsel for the witness may be permitted to question the witness, after which the ombudsman may inquire further into any matters raised during the examination. The scope of the questions shall be decided and may be limited by the ombudsman.

**2.11(7) Evidence.** Strict rules of evidence shall not apply. The probative nature of any evidentiary matter shall be determined by the ombudsman.

**2.11(8) Record.** The ombudsman may record the testimony by audio or video recording or by use of a certified court reporter. A copy of the witness's testimony record may be provided to the witness upon request at the conclusion of the investigation in order to prepare a comment in response to conclusions or recommendations that criticize the witness, pursuant to Iowa Code section 2C.15.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16; Adopted and published 6/2/21 pursuant to Iowa Code section 2C.9(5), effective 6/2/21]

#### **141—2.12(2C) Disposition after investigation.**

**2.12(1) Complaint unsubstantiated.** If, after completing an investigation, the ombudsman determines the complaint is not substantiated based upon a preponderance of the evidence, the ombudsman shall inform the complainant and the agency involved of such determination.

**2.12(2) Complaint indeterminate.** If, after completing an investigation, the ombudsman is unable to conclusively determine based upon a preponderance of the evidence whether the complaint is substantiated or unsubstantiated, the ombudsman shall inform the complainant and the agency involved of such conclusion.

**2.12(3) Complaint substantiated.** If, after completing an investigation, the ombudsman determines the complaint is substantiated based upon a preponderance of the evidence, the ombudsman shall inform the complainant and the agency involved of the findings of fact and conclusions. If appropriate, the ombudsman shall also inform the agency of any recommendation that:

- a. The matter be further considered by the agency;
- b. The administrative action be modified or canceled;
- c. A rule on which an administrative action is based be altered;
- d. Reasons be given for an administrative action; or
- e. Any other action be taken by the agency.

**2.12(4) Agency response to recommendations.** If the ombudsman requests, the agency shall notify the ombudsman within 20 days in writing of any action taken or to be taken on the recommendations or the reasons for not complying with the recommendations.

**2.12(5) Legislative action.** If the ombudsman believes that a law resulted in administrative action which was unfair or otherwise objectionable, the ombudsman shall notify the general assembly of desirable statutory change. The ombudsman may give notification by submitting a legislative proposal or by presenting testimony or statements to the general assembly or one of its committees or members regarding the statutory change.

**2.12(6) Referral for disciplinary or criminal action.** The ombudsman shall refer a public official, employee or other person for disciplinary or criminal proceeding, if such referral is warranted under rule 141—2.15(2C).

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

**141—2.13(2C) Investigative reports.**

**2.13(1) Issuance of reports.** The ombudsman may prepare a report of the findings of fact, conclusions, and recommendations relevant to an investigation.

*a. Critical reports.* If the ombudsman determines as a result of an investigation that an administrative action of an agency, officer or employee warrants criticism, the ombudsman may issue a critical report containing the findings, conclusions and recommendations relevant to that investigation.

*b. Special reports.* A special report may be issued if the findings of fact, conclusions, or recommendations are not critical of an agency, or an officer or employee of an agency, but are of significant interest to the public.

**2.13(2) Publication of reports.** The ombudsman may publish and send a critical report or a special report to the governor, the general assembly or any of the committees of the general assembly. Any published report sent to the governor, the general assembly or any of its committees becomes public information and may be disseminated to the news media and to any interested members of the general public upon request.

**2.13(3) Prepublication procedure for critical reports.** Before publishing a critical report or announcing a conclusion or recommendation which criticizes an agency, officer or employee, the ombudsman shall consult with that agency, officer or employee.

*a. Transmission to agency.* The ombudsman shall transmit a copy of the critical report to the agency and each officer or employee who is a subject of the criticism and allow the agency, officer or employee a reasonable opportunity to reply to the report in writing.

*b. Reply to report.* The agency, officer or employee shall notify the ombudsman within 7 days from the date the critical report is received of any decision by that agency, officer or employee to make a reply. The agency, officer or employee shall be allowed 30 days from the date of receipt of the critical report to submit a written reply to the ombudsman. The ombudsman may for good cause extend the time allowed to submit the reply, if an extension is requested by the agency, officer or employee.

*c. Comment to reply.* The ombudsman may comment on any reply from an agency, officer or employee. The comments may include modifications by the ombudsman to any findings, conclusions, or recommendations in the critical report. The ombudsman shall transmit in writing any comments to the replying agency, officer or employee.

*d. Reply or comment attached to report.* Any unedited reply made by an agency, officer or employee and any written comments by the ombudsman shall be attached to every critical report which is published, sent, or disseminated by the ombudsman, unless inclusion of the reply is waived by the agency, officer or employee.

*e. Confidential information not published.* The ombudsman may not publish any confidential information which the ombudsman is not authorized to disclose or is prohibited from disclosing by law. The ombudsman may prepare, for the purpose of publication, an edited version of the critical report, from which confidential information has been deleted or excluded. The ombudsman shall transmit the edited version of the critical report to the agency, officer or employee and consult with that agency, officer or employee to ensure the report does not contain confidential information that may not be disclosed. Any reply or comment which is attached to this report and which contains confidential information that may not be disclosed shall likewise be edited to delete or exclude the confidential information.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

**141—2.14(2C) Annual reports.**

**2.14(1) When and to whom submitted.** Pursuant to Iowa Code section 2C.18, the ombudsman shall by December 31 of each year submit an economically designed and reproduced annual report to the general assembly and to the governor concerning the activities and work performed during the preceding calendar year.

**2.14(2) Inclusion of reply by agency or official.** If the annual report summarizes or discusses the findings, conclusions or recommendations in a critical report and names the agency, official or employee

involved, the annual report shall also include any unedited reply made by the agency, official or employee to the critical report, unless inclusion of the reply is waived by the agency or official.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16; Adopted and published 6/2/21 pursuant to Iowa Code section 2C.9(5), effective 6/2/21]

**141—2.15(2C) Referral for disciplinary or criminal action.** If the ombudsman believes that a public official, employee, or other person has acted in a manner warranting a disciplinary or criminal proceeding, the ombudsman shall refer the matter to the appropriate authorities.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

**141—2.16(2C) Privileges and immunities.**

**2.16(1) Immunity of ombudsman.** Except for removal from office as provided in Iowa Code chapter 66 or for employment-related claims, no civil action or other proceeding shall be commenced against the ombudsman or any member of the staff for any official act or omission performed pursuant to the provisions in Iowa Code chapter 2C, unless the act or omission is actuated by malice or is grossly negligent.

**2.16(2) Testimonial privilege.** The ombudsman or any member of the staff shall not be compelled to testify in any judicial or administrative proceeding with respect to any matter involving the exercise of the ombudsman's official duties, except as may be necessary to enforce the provisions of Iowa Code chapter 2C.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

**141—2.17(2C) Penalties for obstruction.**

**2.17(1) Penalties.** As provided in Iowa Code section 2C.22, any person who willfully obstructs or hinders the lawful actions of the ombudsman or any member of the staff, or who willfully misleads or attempts to mislead the ombudsman or a member of the staff in the course of an inquiry or investigation, shall be guilty of a simple misdemeanor.

**2.17(2) Prosecution.** The ombudsman shall refer for prosecution a violation of Iowa Code section 2C.22 to the county attorney in the county where the violation occurred.

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

These rules are intended to implement Iowa Code sections 2C.1, 2C.8 to 2C.22, and 70A.28.

[Filed 12/15/75, Notice 10/20/75—published 12/29/75, effective 2/2/76]

[Filed 8/26/81, Notice 7/22/81—published 9/16/81, effective 10/21/81]<sup>◊</sup>

[Filed 11/5/82, Notice 6/23/82—published 11/24/82, effective 12/29/82]

[Adopted and published 3/30/94 pursuant to Iowa Code section 2C.9(5), effective 5/1/94]

[Adopted and published 10/26/16 pursuant to Iowa Code section 2C.9(5), effective 11/1/16]

[Adopted and published 6/2/21 pursuant to Iowa Code section 2C.9(5), effective 6/2/21]

<sup>◊</sup> Two or more ARCs



**ECONOMIC DEVELOPMENT AUTHORITY[261]**

[Created by 1986 Iowa Acts, chapter 1245]

[Prior to 1/14/87, see Iowa Development Commission[520] and Planning and Programming[630]]

[Prior to 9/7/11, see Economic Development, Iowa Department of[261];  
renamed Economic Development Authority by 2011 Iowa Acts, House File 590]

## PART I

*DEPARTMENT STRUCTURE*

## CHAPTER 1

## ORGANIZATION

- 1.1(15) History and mission
- 1.2(15) Definitions
- 1.3(15) Economic development authority board
- 1.4(15) Authority structure
- 1.5(15) Information

## CHAPTERS 2 and 3

Reserved

## PART II

*WORKFORCE DEVELOPMENT COORDINATION*

## CHAPTER 4

## WORKFORCE DEVELOPMENT ACCOUNTABILITY SYSTEM

- 4.1(15) Purpose
- 4.2(15) Compilation of information

## CHAPTER 5

## IOWA INDUSTRIAL NEW JOBS TRAINING PROGRAM

- 5.1(15,260E) Authority
- 5.2(15,260E) Purpose
- 5.3(15,260E) Definitions
- 5.4(15,260E) Agreements
- 5.5(15,260E) Resolution on incremental property tax
- 5.6(15,260E) New jobs withholding credit
- 5.7(15,260E) Notice of intent to issue certificates
- 5.8(15,260E) Standby property tax levy
- 5.9(15,260E) Reporting
- 5.10(15,260E) Monitoring
- 5.11(15,260E) State administration
- 5.12(15,260E) Coordination with communities
- 5.13(15,76GA,SF2351) Supplemental 1½ percent withholding

## CHAPTER 6

Reserved

## CHAPTER 7

## IOWA JOBS TRAINING PROGRAM

- 7.1(260F) Authority
- 7.2(260F) Purpose
- 7.3(260F) Definitions
- 7.4(260F) Program funding
- 7.5(260F) Funding for projects which include one business
- 7.6(260F) Funding for projects which include multiple businesses
- 7.7(260F) Funding for high technology apprenticeship programs
- 7.8(260F) Matching funds requirement

7.9(260F)	Use of program funds
7.10(260F)	Use of 260F earned interest
7.11	Reserved
7.12(260F)	Separate account
7.13 to 7.17	Reserved
7.18(260F)	Letter of intent
7.19(260F)	Project commencement date
7.20(260F)	Application process
7.21(260F)	Application scoring criteria
7.22(260F)	Training agreement
7.23(260F)	Special requirements for community college consortium projects
7.24(260F)	Special requirements for community college-sponsored business network projects
7.25(260F)	Special requirements for authority-sponsored business network projects
7.26(260F)	Special requirements for community college-sponsored high technology apprenticeship projects
7.27(260F)	Special requirements for authority-sponsored high technology apprenticeship projects
7.28 and 7.29	Reserved
7.30(260F)	Events of default
7.31(260F)	Options and procedures on default
7.32(260F)	Remedies upon default
7.33(260F)	Return of unused funds
7.34(260F)	Open records
7.35(260F)	Required forms

## CHAPTER 8

### WORKFORCE DEVELOPMENT FUND

8.1(15,76GA,ch1180)	Purpose
8.2(15,76GA,ch1180)	Definitions
8.3(15,76GA,ch1180)	Workforce development fund account
8.4(15,76GA,ch1180)	Workforce development fund allocation
8.5(15,76GA,ch1180)	Workforce development fund reporting
8.6(15,76GA,ch1180)	Training and retraining programs for targeted industries
8.7(15,76GA,ch1180)	Projects under Iowa Code chapter 260F
8.8(15,76GA,chs1180,1219)	Apprenticeship programs under Iowa Code section 260C.44 (including new or statewide building trades apprenticeship programs)
8.9(15,76GA,chs1180,1219)	Innovative skill development activities
8.10(15,76GA,ch1180)	Negotiation and award
8.11(15,76GA,ch1180)	Administration
8.12(15,76GA,ch1180)	Training materials and equipment
8.13(15,76GA,ch1180)	Redistribution of funds

## CHAPTER 9

### WORKFORCE TRAINING AND ECONOMIC DEVELOPMENT FUNDS

9.1(15G,260C)	Purpose
9.2(15G,260C)	Definitions
9.3(15G,260C)	Funds allocation
9.4(15G,260C)	Community college workforce and economic development plan and progress report
9.5(15G,260C)	Use of funds
9.6(15G,260C)	Approval of projects
9.7(15G,260C)	Community college workforce and economic development plan
9.8(15G,260C)	Reporting

- 9.9(15G,260C) Annual progress report approval  
 9.10(15G,260C) Options upon default or noncompliance

## CHAPTER 10

Reserved

## CHAPTER 11

## CERTIFIED SCHOOL TO CAREER PROGRAM

- 11.1(15) Purpose  
 11.2(15) Definitions  
 11.3(15) Certified program work site agreement  
 11.4(15) Payroll expenditure refund

## CHAPTER 12

## APPRENTICESHIP TRAINING PROGRAM

- 12.1(15,15B) Authority  
 12.2(15,15B) Purpose  
 12.3(15,15B) Definitions  
 12.4(15,15B) Annual appropriations—amount of assistance available—standard contract—use of funds  
 12.5(15,15B) Eligibility for assistance  
 12.6(15,15B) Determination of financial assistance grants  
 12.7(15,15B) Application submittal and review process  
 12.8(15,15B) Notice and reporting

## CHAPTER 13

## FUTURE READY IOWA REGISTERED APPRENTICESHIP DEVELOPMENT FUND

- 13.1(15,87GA,HF2458) Purpose  
 13.2(15,87GA,HF2458) Definitions  
 13.3(15,87GA,HF2458) Program description  
 13.4(15,87GA,HF2458) Program eligibility, application scoring, and awards  
 13.5(15,87GA,HF2458) Agreement required

## CHAPTER 14

FUTURE READY IOWA EXPANDED REGISTERED  
APPRENTICESHIP OPPORTUNITIES PROGRAM

- 14.1(15C) Purpose  
 14.2(15C) Definitions  
 14.3(15C) Program description  
 14.4(15C) Program eligibility, application scoring, and awards  
 14.5(15C) Agreement required

## CHAPTERS 15 to 19

Reserved

## CHAPTER 20

## ACCELERATED CAREER EDUCATION (ACE) PROGRAM

- 20.1(260G) Purpose  
 20.2(260G) Definitions  
 20.3(260G) Program eligibility and designation  
 20.4(260G) Funding allocation  
 20.5(260G) Program job credits  
 20.6(260G) Program agreements and administration

PART III  
COMMUNITY DEVELOPMENT DIVISION

CHAPTER 21  
DIVISION RESPONSIBILITIES

- 21.1(15) Mission
- 21.2(15) Division responsibilities

CHAPTER 22  
NUISANCE PROPERTY AND ABANDONED BUILDING REMEDIATION ASSISTANCE

- 22.1(15) Authority and purpose
- 22.2(15) Definitions
- 22.3(15) Program description
- 22.4(15) Program eligibility, application scoring, and funding decisions
- 22.5(15) Contract required

CHAPTER 23  
IOWA COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

- 23.1(15) Purpose
- 23.2(15) Definitions
- 23.3(15) Annual action plan
- 23.4(15) Allocation of funds and eligible applicants
- 23.5(15) Common requirements for funding
- 23.6(15) Requirements for the water and sewer and community facilities funds
- 23.7(15) Requirements for the economic development set-aside fund
- 23.8(15) Requirements for the public facilities set-aside fund
- 23.9(15) Requirements for the career link program
- 23.10(15) Requirements for the opportunities and threats fund
- 23.11(15) Requirements for the housing fund program
- 23.12 and 23.13 Reserved
- 23.14(15) Disaster recovery fund
- 23.15(15) Administration of a CDBG award
- 23.16(15) Requirements for the downtown revitalization fund
- 23.17(15) Section 108 Loan Guarantee Program

CHAPTER 24  
EMERGENCY SHELTER GRANTS PROGRAM

- 24.1(PL100-628) Purpose
- 24.2(PL100-628) Definitions
- 24.3(PL100-628) Eligible applicants
- 24.4(PL100-628) Eligible activities
- 24.5(PL100-628) Ineligible activities
- 24.6(PL100-628) Application procedures
- 24.7(PL100-628) Application review process
- 24.8(PL100-628) Matching requirement
- 24.9(PL100-628) Grant awards
- 24.10(PL100-628) Restrictions placed on grantees
- 24.11(PL100-628) Compliance with applicable federal and state laws and regulations
- 24.12(PL100-628) Administration

CHAPTER 25  
HOUSING FUND

- 25.1(15) Purpose
- 25.2(15) Definitions

- 25.3(15) Eligible applicants
- 25.4(15) Eligibility and forms of assistance
- 25.5(15) Application review
- 25.6(15) Minimum application requirements
- 25.7(15) Application review criteria
- 25.8(15) Allocation of funds
- 25.9(15) Administration of awards

#### CHAPTER 26

##### VARIANCE PROCEDURES FOR TAX INCREMENT FINANCING (TIF) HOUSING PROJECTS

- 26.1(403) Goals and objectives
- 26.2(403) Definitions
- 26.3(403) Requirements for benefit to low- and moderate-income families
- 26.4(403) Ability to request a variance
- 26.5(403) Variance request procedure
- 26.6(403) Criteria for review

#### CHAPTER 27

##### NEIGHBORHOOD STABILIZATION PROGRAM

- 27.1(15) Purpose
- 27.2(15) Definitions
- 27.3(15) Program eligibility
- 27.4(15) Allocation of funding
- 27.5(15) Application procedures
- 27.6(15) Plan and application review process
- 27.7(15) Award process
- 27.8(15) Project management

#### CHAPTER 28

##### LOCAL HOUSING ASSISTANCE PROGRAM

- 28.1(15) Purpose
- 28.2(15) Definitions
- 28.3(15) Eligible applicants
- 28.4(15) Eligible activities and forms of assistance
- 28.5(15) Application procedure
- 28.6(15) Minimum application requirements
- 28.7(15) Application review criteria
- 28.8(15) Allocation of funds
- 28.9(15) Administration of awards

#### CHAPTER 29

##### HOMELESS SHELTER OPERATION GRANTS PROGRAM

- 29.1(15) Purpose
- 29.2(15) Definitions
- 29.3(15) Eligible applicants
- 29.4(15) Eligible activities
- 29.5(15) Ineligible activities
- 29.6(15) Application procedures
- 29.7(15) Application review process
- 29.8(15) Matching requirement
- 29.9(15) Grant awards

- 29.10(15) Compliance with applicable federal and state laws and regulations  
 29.11(15) Administration

CHAPTER 30  
 JOB OPPORTUNITIES FOR  
 PERSONS WITH DISABILITIES PROGRAM

- 30.1(76GA,SF2470) Purpose  
 30.2(76GA,SF2470) Definitions  
 30.3(76GA,SF2470) Eligible applicant  
 30.4(76GA,SF2470) Project awards  
 30.5(76GA,SF2470) Eligible and ineligible use of grant funds  
 30.6(76GA,SF2470) General guidelines for applications  
 30.7(76GA,SF2470) Review and award process  
 30.8(76GA,SF2470) Program management

CHAPTER 31  
 ECONOMIC DEVELOPMENT REGION INITIATIVES

- 31.1(15E) Purpose  
 31.2(15E) Types of assistance  
 31.3(15E) Financial assistance  
 31.4(15E) Definitions

DIVISION I  
 ECONOMIC DEVELOPMENT REGION INITIATIVE—FINANCIAL ASSISTANCE

- 31.5(15E) Uses of funds under the economic development region initiative  
 31.6(15E) Application process and approval process  
 31.7(15E) Reporting requirements

DIVISION II  
 ECONOMIC ENTERPRISE AREAS

- 31.8(15E) Description  
 31.9(15E) Funding  
 31.10(15E) Eligible use of funds  
 31.11(15E) Application process and approval process  
 31.12(15E) Reporting requirements

DIVISION III  
 BUSINESS ACCELERATORS

- 31.13(15E) Description and purpose  
 31.14(15E) Definitions  
 31.15(15E) Requirements and qualifications for business accelerator entities  
 31.16(15E) Other considerations  
 31.17(15E) Application procedures  
 31.18(15E) Reporting

CHAPTER 32  
 TAX CREDITS FOR ECONOMIC DEVELOPMENT REGION REVOLVING LOAN FUND

- 32.1(81GA,HF868,HF809) Purpose  
 32.2(81GA,HF868,HF809) Definitions  
 32.3(81GA,HF868,HF809) Allocation of funds  
 32.4(81GA,HF868,HF809) Credit amount  
 32.5(81GA,HF868,HF809) Eligible contributions  
 32.6(81GA,HF868,HF809) Requests for tax credits

## CHAPTER 33

## IOWA WINE AND BEER PROMOTION GRANT PROGRAM

- 33.1(15) Purpose
- 33.2(15) Definitions
- 33.3(15) Application and review processes

## CHAPTER 34

## WELCOME CENTER PROGRAM

- 34.1(15) Purpose
- 34.2(15) Welcome center program

## CHAPTER 35

## REGIONAL TOURISM MARKETING GRANT PROGRAM

- 35.1(82GA,SF302) Purpose
- 35.2(82GA,SF302) Definitions
- 35.3(82GA,SF302) Eligible applicants
- 35.4(82GA,SF302) Use of funds
- 35.5(82GA,SF302) Application procedures and content
- 35.6(82GA,SF302) Application review and approval procedures
- 35.7(82GA,SF302) Funding of grants; contracting

## CHAPTER 36

## FILM, TELEVISION, AND VIDEO PROJECT PROMOTION PROGRAM

- 36.1(15) Purpose
- 36.2(15) Definitions
- 36.3(15) Request for registration of a film, television, or video project
- 36.4(15) IDED list of registered film, television, or video projects
- 36.5(15) Contract administration
- 36.6(15) Benefits available
- 36.7(15) Qualified expenditure tax credit
- 36.8(15) Qualified investment tax credit
- 36.9(15) Reduction of gross income due to payments received from qualified expenditures in registered projects

## CHAPTER 37

## CITY DEVELOPMENT BOARD

- 37.1(368) Expenses, annual report and rules
- 37.2(17A) Forms

## CHAPTER 38

## REGIONAL SPORTS AUTHORITY DISTRICTS

- 38.1(15E) Definitions
- 38.2(15E) Program description
- 38.3(15E) Program eligibility and application requirements
- 38.4(15E) Application scoring and certification of districts
- 38.5(15E) Contract administration
- 38.6(15E) Expenses, records, and reimbursements

## CHAPTER 39

## MAIN STREET IOWA PROGRAM

- 39.1(15) Purpose
- 39.2(15) Definitions
- 39.3(15) Program administration
- 39.4 and 39.5 Reserved

39.6(15)	Application and selection process
39.7(15)	Selection criteria
39.8	Reserved
39.9(15)	Reports
39.10(15)	Noncompliance
39.11(15)	Forms

## CHAPTER 40

## IOWA JOBS MAIN STREET PROGRAM

40.1(83GA,SF2389)	Authority
40.2(83GA,SF2389)	Purpose
40.3(83GA,SF2389)	Definitions
40.4(83GA,SF2389)	Highest-priority list
40.5(83GA,SF2389)	Funding
40.6(83GA,SF2389)	Financial management
40.7(83GA,SF2389)	Reports
40.8(83GA,SF2389)	Signs
40.9(83GA,SF2389)	Noncompliance
40.10(83GA,SF2389)	Great places consideration

## CHAPTER 41

## COMMUNITY DEVELOPMENT FUND

41.1(79GA,HF718)	Purpose
41.2(79GA,HF718)	Program eligibility
41.3(79GA,HF718)	General policies for applications
41.4(79GA,HF718)	Application procedures
41.5(79GA,HF718)	Application contents
41.6(79GA,HF718)	Review process
41.7(79GA,HF718)	Award process
41.8(79GA,HF718)	Project management
41.9(79GA,HF718)	Performance reviews

## CHAPTER 42

## IOWA TOURISM GRANT PROGRAM

42.1(15)	Definitions
42.2(15)	Program description
42.3(15)	Program eligibility and application requirements
42.4(15)	Application scoring and approval process
42.5(15)	Contract administration
42.6(15)	Expenses, records, and reimbursements

## CHAPTER 43

Reserved

## CHAPTER 44

## COG ASSISTANCE

44.1(28H)	Purpose
44.2(28H)	Definitions
44.3(28H)	Eligibility
44.4(28H)	Eligible activities
44.5(28H)	Application procedure
44.6(28H)	Grant awards
44.7(28H)	Funding

- 44.8(28H) Financial management standards
- 44.9(28H) Record keeping and retention
- 44.10(28H) Progress reports
- 44.11(28H) Noncompliance
- 44.12(28H) Grant closeouts
- 44.13(28H) Compliance with state laws and regulations

#### CHAPTER 45

##### COMMUNITY CATALYST BUILDING REMEDIATION PROGRAM

- 45.1(15) Purpose
- 45.2(15) Definitions
- 45.3(15) Program description
- 45.4(15) Program eligibility, application scoring, and funding decisions
- 45.5(15) Agreement required

#### CHAPTER 46

##### ENDOW IOWA GRANTS PROGRAM

- 46.1(81GA, HF868) Purpose
- 46.2(81GA, HF868) Definitions
- 46.3(81GA, HF868) Program procedures
- 46.4(81GA, HF868) Eligible applicants
- 46.5(81GA, HF868) Application and review criteria
- 46.6(81GA, HF868) Reporting requirements

#### CHAPTER 47

##### ENDOW IOWA TAX CREDITS

- 47.1(15E) Purpose
- 47.2(15E) Definitions
- 47.3(15E) Authorization of tax credits to taxpayers
- 47.4(15E) Distribution process and review criteria
- 47.5(15E) Reporting requirements

#### CHAPTER 48

##### WORKFORCE HOUSING TAX INCENTIVES PROGRAM

- 48.1(15) Authority
- 48.2(15) Purpose
- 48.3(15) Definitions
- 48.4(15) Housing project requirements
- 48.5(15) Housing project application and agreement
- 48.6(15) Workforce housing tax incentives
- 48.7(15) Annual program funding allocation, reallocation, and management of excess demand
- 48.8(15) Application submittal and review process

##### DISASTER RECOVERY HOUSING PROGRAM

- 48.9(15) Housing project minimum requirements
- 48.10(15) Housing project application and agreement
- 48.11(15) Disaster recovery housing tax incentives
- 48.12(15) Program funding allocation and management of excess demand
- 48.13(15) Application submittal and review process

CHAPTER 49  
HISTORIC PRESERVATION AND CULTURAL AND  
ENTERTAINMENT DISTRICT TAX CREDITS

49.1(303,404A)	Purpose
49.2(404A)	Program transition
49.3(404A)	Definitions
49.4(404A)	Qualified rehabilitation expenditures
49.5(404A)	Historic preservation and cultural and entertainment district tax credit
49.6(404A)	Management of annual aggregate tax credit award limit
49.7(404A)	Application and agreement process, generally
49.8(404A)	Small projects
49.9(404A)	Who may apply for the tax credit
49.10(404A)	Part 1 application—evaluation of significance
49.11(404A)	Preapplication meeting
49.12(404A)	Part 2 application—description of rehabilitation
49.13(404A)	Registration application
49.14(404A)	Agreement
49.15(404A)	Part 3 application—request for certification of completed work and verification of qualified rehabilitation expenditures
49.16(404A)	Fees
49.17(404A)	Compliance
49.18(404A)	Certificate issuance; claiming the tax credit
49.19(303,404A)	Appeals

PART IV  
*BUSINESS DEVELOPMENT DIVISION*

CHAPTER 50  
DIVISION RESPONSIBILITIES

50.1(15)	Mission
50.2(15)	Division responsibilities

CHAPTER 51  
SELF-EMPLOYMENT LOAN PROGRAM

51.1(15)	Transition
----------	------------

CHAPTER 52  
IOWA TARGETED SMALL BUSINESS CERTIFICATION PROGRAM

52.1(15)	Definitions
52.2(15)	Certification
52.3(15)	Description of application
52.4(15)	Eligibility standards
52.5(15)	Special consideration
52.6(15)	Family-owned business
52.7(15)	Cottage industry
52.8(15)	Decertification
52.9(15)	Request for bond waiver
52.10(15)	Fraudulent practices in connection with targeted small business programs

CHAPTER 53  
COMMUNITY ECONOMIC BETTERMENT ACCOUNT (CEBA) PROGRAM

53.1(15)	Purpose and administrative procedures
53.2(15)	Definitions
53.3	Reserved

- 53.4(15) Eligible applicants
- 53.5(15) Provision of assistance
- 53.6(15) Application for assistance
- 53.7(15) Selection criteria
- 53.8(15) Small business gap financing
- 53.9(15) New business opportunities and new product development components
- 53.10(15) Venture project components
- 53.11(15) Modernization project component
- 53.12(15) Comprehensive management assistance and entrepreneurial development
- 53.13 to 53.17 Reserved
- 53.18(15,83GA,SF344) Applicability of CEBA program after July 1, 2009

#### CHAPTER 54

##### IOWA TARGETED SMALL BUSINESS PROCUREMENT PROGRAM

- 54.1(73) Purpose
- 54.2(73) Definitions
- 54.3(73) Preliminary procedures
- 54.4(73) Identification of targeted small businesses
- 54.5(73) IDED administration
- 54.6(73) Certification
- 54.7(73) Request for review of certification denial
- 54.8(73) Certification review board
- 54.9(73) Decertification
- 54.10(73) Notice of solicitation for bids
- 54.11 Reserved
- 54.12(73) Determination of ability to perform
- 54.13(73) Other procurement procedures
- 54.14(73) Reporting requirements
- 54.15(73) Maintenance of records

#### CHAPTER 55

##### TARGETED SMALL BUSINESS FINANCIAL ASSISTANCE PROGRAM

- 55.1(15) Targeted small business financial assistance program (TSBFAP)
- 55.2(15) Definitions
- 55.3(15) Eligibility requirements
- 55.4(15) Loan and grant program
- 55.5(15) Loan guarantee program
- 55.6(15) Award agreement
- 55.7(15) Monitoring and reporting for loan, grant, and loan guarantee programs

#### CHAPTER 56

##### EMPLOYEE STOCK OWNERSHIP PLAN (ESOP) FORMATION ASSISTANCE

- 56.1(85GA,HF648) Purpose
- 56.2(85GA,HF648) Definitions
- 56.3(85GA,HF648) Program description
- 56.4(85GA,HF648) Program eligibility, application scoring, and funding decisions
- 56.5(85GA,HF648) Contract required

#### CHAPTER 57

##### VALUE-ADDED AGRICULTURAL PRODUCTS AND PROCESSES FINANCIAL ASSISTANCE PROGRAM (VAAPFAP)

- 57.1(15E) Purpose and administrative procedures
- 57.2(15E) Definitions

57.3(15E)	General eligibility
57.4(15E)	Program components and eligibility requirements
57.5(15E)	Ineligible projects
57.6(15E)	Awards
57.7(15E)	Application procedure
57.8(15E)	Review process
57.9	Reserved
57.10(15E)	Evaluation and rating criteria
57.11 to 57.15	Reserved
57.16(15E,83GA,SF344)	Applicability of VAAPFAP program after July 1, 2009

## CHAPTER 58

## NEW JOBS AND INCOME PROGRAM

58.1(15)	Purpose
58.2(15)	Definitions
58.3(15)	Agreement prerequisites
58.4(15)	Program benefits
58.5(15)	Limitation on incentives
58.6(15)	Application
58.7(15)	Eligibility requirements
58.8(15)	Ineligibility
58.9(15)	Application
58.10(15)	Department and board action
58.11(15)	Agreement
58.12	Reserved
58.13(15)	Compliance monitoring; notice of noncompliance and penalties
58.14(15)	Repayment
58.15(15)	Amendments
58.16(81GA,HF868)	Applicability of new jobs and income program after July 1, 2005

## CHAPTER 59

## ENTERPRISE ZONE (EZ) PROGRAM

59.1(15E)	Purpose and administrative procedures
59.2(15E)	Definitions
59.3(15E)	Enterprise zone certification
59.4(15E)	Enterprise zone commission
59.5(15E)	Eligibility and negotiations
59.6(15E)	Eligible business
59.7	Reserved
59.8(15E)	Eligible housing business
59.9	Reserved
59.10(15E)	Commission review of businesses' applications
59.11(15E)	Other commission responsibilities
59.12(15E)	Department action on eligible applications
59.13 and 59.14	Reserved
59.15(15E)	Applicability on or after July 1, 2014

## CHAPTER 60

ENTREPRENEURIAL VENTURES  
ASSISTANCE (EVA) PROGRAM

60.1(15)	Purpose and administrative procedures
60.2(15)	Definitions
60.3(15)	Eligibility requirements

- 60.4(15) Financial assistance
- 60.5(15) Technical assistance
- 60.6(15) Application process
- 60.7(15) Review criteria
- 60.8 and 60.9 Reserved
- 60.10(15,83GA,SF344) Applicability of EVA program after July 1, 2009

#### CHAPTER 61

##### PHYSICAL INFRASTRUCTURE ASSISTANCE PROGRAM (PIAP)

- 61.1(15E) Purpose and administrative procedures
- 61.2(15E) Eligible activities
- 61.3(15E) Eligibility requirements
- 61.4(15E) Application procedures
- 61.5(15E) Application review criteria, performance measures
- 61.6 Reserved
- 61.7(15E) Forms of assistance available; award amount
- 61.8 Reserved
- 61.9(15E) Applicability of PIAP program after July 1, 2009

#### CHAPTER 62

##### COGENERATION PILOT PROGRAM

- 62.1(80GA,HF391) Purpose
- 62.2(80GA,HF391) Eligible activities
- 62.3(80GA,HF391) Eligibility requirements
- 62.4(80GA,HF391) Application procedures
- 62.5(80GA,HF391) Application review
- 62.6(80GA,HF391) Award process
- 62.7(80GA,HF391) Annual progress report

#### CHAPTER 63

##### UNIVERSITY-BASED RESEARCH UTILIZATION PROGRAM

- 63.1(80GA,HF692,HF683) Purpose
- 63.2(80GA,HF692,HF683) Definitions
- 63.3(80GA,HF692,HF683) Business eligibility
- 63.4(80GA,HF692,HF683) Program benefits
- 63.5(80GA,HF692,HF683) Funding appropriation to the regents university
- 63.6(80GA,HF692,HF683) Business application
- 63.7(80GA,HF692,HF683) Application and award process
- 63.8(80GA,HF692,HF683) Program administration

#### CHAPTER 64

##### NEW CAPITAL INVESTMENT PROGRAM

- 64.1(80GA,HF677) Purpose
- 64.2(80GA,HF677) Definitions
- 64.3(80GA,HF677) Applying for benefits
- 64.4(80GA,HF677) Benefits
- 64.5(80GA,HF677) Agreement, compliance, and repayment provisions
- 64.6(80GA,HF677) Amendments
- 64.7(80GA,HF677) Other benefits
- 64.8(81GA,HF868) Applicability of new capital investment program after July 1, 2005

CHAPTER 65  
BROWNFIELD AND GRAYFIELD REDEVELOPMENT

65.1(15)	Purpose
65.2(15)	Definitions
65.3(15)	Eligible applicants
65.4(15)	Eligible forms of assistance and limitations
65.5(15)	Repayment to economic development authority
65.6(15)	General procedural overview
65.7(15)	Application to the brownfield redevelopment program—agreements
65.8(15)	Application to the redevelopment tax credits program—registration of projects—agreements
65.9(15)	Application review criteria
65.10(15)	Administration of awards
65.11(15)	Redevelopment tax credit
65.12(15)	Review, approval, and repayment requirements of redevelopment tax credit

CHAPTER 66  
ASSISTIVE DEVICE TAX CREDIT

66.1(78GA,ch1194)	Purpose
66.2(78GA,ch1194)	Definitions
66.3(78GA,ch1194)	Eligibility criteria
66.4(78GA,ch1194)	Application process
66.5(78GA,ch1194)	Review, decision and award process
66.6(78GA,ch1194)	Certification
66.7(78GA,ch1194)	Monitoring and misuse of funds
66.8(78GA,ch1194)	Tax credit

CHAPTER 67  
LIFE SCIENCE ENTERPRISES

67.1(78GA,ch1197)	Purpose
67.2(78GA,ch1197)	Definitions
67.3(78GA,ch1197)	Filing of notice of intent
67.4(78GA,ch1197)	Filing of life science enterprise plan
67.5(78GA,ch1197)	Review by board
67.6(78GA,ch1197)	Life science enterprise land ownership exemption
67.7(78GA,ch1197)	Amendment of plan
67.8(78GA,ch1197)	Successor enterprise
67.9(78GA,ch1197)	Filing

CHAPTER 68  
HIGH QUALITY JOBS PROGRAM (HQJP)

68.1(15)	Administrative procedures and definitions
68.2(15)	Eligibility requirements
68.3(15)	Application process and review
68.4(15)	Tax incentives
68.5(15)	Project completion assistance

CHAPTER 69  
LOAN AND CREDIT GUARANTEE PROGRAM

69.1(15E,81GA,HF868)	Purpose
69.2(15E,81GA,HF868)	Definitions
69.3(15E,81GA,HF868)	Application and review process
69.4(15E,81GA,HF868)	Application approval or rejection

- 69.5(15E,81GA,HF868) Terms and conditions
- 69.6(15E,81GA,HF868) Administrative costs and program fees
- 69.7(15E,81GA,HF868) Administration of guarantees
- 69.8(15E,83GA,SF344) Applicability of LCG program after July 1, 2009

#### CHAPTER 70

##### PORT AUTHORITY GRANT PROGRAM

- 70.1(81GA,HF2782) Purpose
- 70.2(81GA,HF2782) Definitions
- 70.3(81GA,HF2782) Program procedures
- 70.4(81GA,HF2782) Eligibility
- 70.5(81GA,HF2782) Application and review criteria
- 70.6(81GA,HF2782) Monitoring, reporting and follow-up

#### CHAPTER 71

##### TARGETED JOBS WITHHOLDING TAX CREDIT PROGRAM

- 71.1(403) Definitions
- 71.2(403) Eligibility requirements
- 71.3(403) Pilot project city application process and review
- 71.4(403) Withholding agreements
- 71.5(403) Project approval
- 71.6(403) Reporting requirements
- 71.7(403) Applicability

#### CHAPTER 72

##### IOWA EXPORT TRADE ASSISTANCE PROGRAM

- 72.1(78GA,ch197) Purpose
- 72.2(78GA,ch197) Definitions
- 72.3(78GA,ch197) Eligible applicants
- 72.4(78GA,ch197) Eligible reimbursements
- 72.5(78GA,ch197) Applications for assistance
- 72.6(78GA,ch197) Selection process
- 72.7(78GA,ch197) Limitations
- 72.8(78GA,ch197) Forms

#### CHAPTER 73

Reserved

#### CHAPTER 74

##### GROW IOWA VALUES FINANCIAL ASSISTANCE PROGRAM

- 74.1(83GA,SF344) Purpose and administrative procedures
- 74.2(83GA,SF344) 130 percent wage component
- 74.3(83GA,SF344) 100 percent wage component
- 74.4(83GA,SF344) Entrepreneurial component
- 74.5(83GA,SF344) Infrastructure component
- 74.6(83GA,SF344) Value-added agriculture component
- 74.7(83GA,SF344) Disaster recovery component
- 74.8(15) Applicability of the grow Iowa values financial assistance program on or after July 1, 2012

#### CHAPTER 75

##### OPPORTUNITIES AND THREATS PROGRAM

- 75.1(83GA,SF344) Purpose
- 75.2(83GA,SF344) Administrative procedures

- 75.3(83GA,SF344) Eligible applicants
- 75.4(83GA,SF344) Review criteria
- 75.5(83GA,SF344) Award criteria
- 75.6(15) Applicability of the opportunities and threats program on or after July 1, 2012

CHAPTER 76  
AGGREGATE TAX CREDIT LIMIT FOR  
CERTAIN ECONOMIC DEVELOPMENT PROGRAMS

- 76.1(15) Authority
- 76.2(15) Purpose
- 76.3(15) Definitions
- 76.4(15) Tax credit cap—exceeding the cap—reallocation of declinations
- 76.5(15) Programs subject to the cap
- 76.6(15) Allocating the tax credit cap
- 76.7 Reserved
- 76.8(15) Reporting to the department of revenue

CHAPTER 77  
SITE DEVELOPMENT PROGRAM

DIVISION I  
GENERAL PROVISIONS

- 77.1(15E) Purposes
- 77.2(15E) Authority
- 77.3(15E) Definitions
- 77.4 to 77.10 Reserved

DIVISION II  
CERTIFICATE OF READINESS

- 77.11(15E) Eligibility
- 77.12(15E) Application; review; approval
- 77.13(15E) Evaluation criteria
- 77.14(15E) Certificate of readiness
- 77.15 to 77.20 Reserved

DIVISION III  
CONSULTATION

- 77.21(15E) Consultation

CHAPTER 78  
SMALL BUSINESS DISASTER RECOVERY FINANCIAL ASSISTANCE PROGRAM

DIVISION I  
2008 NATURAL DISASTER SMALL BUSINESS DISASTER RECOVERY  
FINANCIAL ASSISTANCE PROGRAM

- 78.1(15) Purpose
- 78.2(15) Definitions
- 78.3(15) Distribution of funds to administrative entities
- 78.4(15) Eligible business
- 78.5(15) Eligible program activities; maximum amount of assistance
- 78.6(15) Allowable types of assistance to eligible businesses
- 78.7(15) Program administration and reporting
- 78.8 to 78.10 Reserved

DIVISION II  
2010 IOWANS HELPING IOWANS BUSINESS ASSISTANCE PROGRAM

- 78.11(15) Purpose
- 78.12(15) Definitions

- 78.13(15) Eligible business
- 78.14(15) Eligible program activities; maximum amount of assistance
- 78.15(15) Distribution of funds; application
- 78.16(15) Form of assistance available to eligible businesses
- 78.17(15) Grants to administrative entities
- 78.18(15) Award; acceptance

## CHAPTER 79

## DISASTER RECOVERY BUSINESS RENTAL ASSISTANCE PROGRAM

- 79.1(15) Purpose
- 79.2(15) Definitions
- 79.3(15) Eligible business; application review
- 79.4(15) Eligible program activities; maximum amount of assistance
- 79.5(15) Distribution of funds to administrative entities
- 79.6(15) Program administration; reporting requirements

## CHAPTER 80

## IOWA SMALL BUSINESS LOAN PROGRAM

- 80.1(83GA,SF2389) Purpose
- 80.2(83GA,SF2389) Authority
- 80.3(83GA,SF2389) Definitions
- 80.4(83GA,SF2389) Administrator
- 80.5(83GA,SF2389) General loan terms
- 80.6(83GA,SF2389) Eligibility
- 80.7(83GA,SF2389) Application
- 80.8(83GA,SF2389) Application review
- 80.9(83GA,SF2389) Recommendation; loan agreement
- 80.10(83GA,SF2389) Repayment
- 80.11(83GA,SF2389) Default

## CHAPTER 81

## RENEWABLE CHEMICAL PRODUCTION TAX CREDIT PROGRAM

- 81.1(15) Purpose
- 81.2(15) Definitions
- 81.3(15) Eligibility requirements
- 81.4(15) Application process and review
- 81.5(15) Agreement
- 81.6(15) Renewable chemical production tax credit
- 81.7(15) Claiming the tax credit
- 81.8(15) Process to add building block chemicals
- 81.9(15) Additional information—confidentiality—annual report

## CHAPTERS 82 to 100

Reserved

## PART V

*INNOVATION AND COMMERCIALIZATION ACTIVITIES*

## CHAPTER 101

## MISSION AND RESPONSIBILITIES

- 101.1(15) Mission
- 101.2(15) Responsibilities

## CHAPTER 102

## ENTREPRENEUR INVESTMENT AWARDS PROGRAM

- 102.1(15E) Authority
- 102.2(15E) Purpose
- 102.3(15E) Definitions
- 102.4(15E) Program description, application procedures, and delegation of functions
- 102.5(15E) Program funding
- 102.6(15E) Eligibility requirements and competitive scoring process
- 102.7(15E) Contract and report information required

## CHAPTER 103

## INFORMATION TECHNOLOGY TRAINING PROGRAM

- 103.1(15,83GA,SF142) Authority—program termination and transition
- 103.2(15,83GA,SF142) Purpose
- 103.3(15,83GA,SF142) Definitions
- 103.4(15,83GA,SF142) Program funding
- 103.5(15,83GA,SF142) Matching funds requirement
- 103.6(15,83GA,SF142) Use of program funds
- 103.7(15,83GA,SF142) Eligible business
- 103.8(15,83GA,SF142) Ineligible business
- 103.9(15,83GA,SF142) Eligible employee
- 103.10(15,83GA,SF142) Ineligible employee
- 103.11(15,83GA,SF142) Application and review process
- 103.12(15,83GA,SF142) Application scoring criteria
- 103.13(15,83GA,SF142) Contract and reporting

## CHAPTER 104

## INNOVATIVE BUSINESSES INTERNSHIP PROGRAM

- 104.1(15) Authority
- 104.2(15) Purpose
- 104.3(15) Definitions
- 104.4(15) Program funding
- 104.5(15) Eligible business
- 104.6(15) Ineligible business
- 104.7(15) Eligible students
- 104.8(15) Ineligible students
- 104.9(15) Application submittal and review process
- 104.10(15) Application content and other requirements
- 104.11(15) Selection process
- 104.12(15) Application scoring criteria
- 104.13(15) Contract and reporting

## CHAPTER 105

## DEMONSTRATION FUND

- 105.1(15) Authority
- 105.2(15) Purpose
- 105.3(15) Definitions
- 105.4(15) Project funding
- 105.5(15) Matching funds requirement
- 105.6(15) Eligible applicants
- 105.7(15) Ineligible applicants
- 105.8(15) Application and review process

- 105.9(15) Application selection criteria
- 105.10(15) Contract and reporting

## CHAPTER 106

SMALL BUSINESS INNOVATION RESEARCH AND TECHNOLOGY  
TRANSFER OUTREACH PROGRAM

- 106.1(15) Authority
- 106.2(15) Purpose and goals
- 106.3(15) Definitions
- 106.4(15) Program description, application procedures, and delegation of functions
- 106.5(15) Program funding
- 106.6(15) Eligibility requirements
- 106.7(15) Agreement and report information required

## CHAPTER 107

## TARGETED INDUSTRIES NETWORKING FUND

- 107.1(82GA,ch122) Authority—fund termination and transition
- 107.2(82GA,ch122) Purpose
- 107.3(82GA,ch122) Definitions
- 107.4(82GA,ch122) Program funding
- 107.5(82GA,ch122) Eligible applicants
- 107.6(82GA,ch122) Application and review process
- 107.7(82GA,ch122) Application selection criteria
- 107.8(82GA,ch122) Contract and reporting

## CHAPTER 108

## ACCELERATION AND DEVELOPMENT OF INNOVATIVE IDEAS AND BUSINESSES

- 108.1(15) Authority
- 108.2(15) Purpose and description of program components
- 108.3(15) Definitions
- 108.4(15) Program description, application procedures, and delegation of functions
- 108.5(15) Program funding
- 108.6(15) Contract and report information required

## CHAPTER 109

## TARGETED INDUSTRIES CAREER AWARENESS FUND

- 109.1(82GA,ch122) Authority—fund termination and transition
- 109.2(82GA,ch122) Purpose
- 109.3(82GA,ch122) Definitions
- 109.4(82GA,ch122) Program funding
- 109.5(82GA,ch122) Matching funds requirement
- 109.6(82GA,ch122) Eligible applicants
- 109.7(82GA,ch122) Application and review process
- 109.8(82GA,ch122) Application selection criteria
- 109.9(82GA,ch122) Contract and reporting

## CHAPTER 110

## STEM INTERNSHIP PROGRAM

- 110.1(15,85GA,ch1132,86GA,SF510) Authority
- 110.2(15,85GA,ch1132,86GA,SF510) Purpose
- 110.3(15,85GA,ch1132,86GA,SF510) Definitions
- 110.4(15,85GA,ch1132,86GA,SF510) Program funding and disbursement
- 110.5(15,85GA,ch1132,86GA,SF510) Eligible employers

- 110.6(15,85GA,ch1132,86GA,SF510) Ineligible employers
- 110.7(15,85GA,ch1132,86GA,SF510) Eligible students
- 110.8(15,85GA,ch1132,86GA,SF510) Ineligible students
- 110.9(15,85GA,ch1132,86GA,SF510) Application submittal and review process
- 110.10(15,85GA,ch1132,86GA,SF510) Application content and other requirements
- 110.11(15,85GA,ch1132,86GA,SF510) Award process
- 110.12(15,85GA,ch1132,86GA,SF510) Application scoring criteria
- 110.13(15,85GA,ch1132,86GA,SF510) Contract and reporting

#### CHAPTER 111

##### SUPPLY CHAIN DEVELOPMENT PROGRAM

- 111.1(15,83GA,SF142) Authority—program termination and transition
- 111.2(15,83GA,SF142) Purpose
- 111.3(15,83GA,SF142) Definitions
- 111.4(15,83GA,SF142) Program funding
- 111.5(15,83GA,SF142) Matching funds requirement
- 111.6(15,83GA,SF142) Eligible applicants
- 111.7(15,83GA,SF142) Ineligible applicants
- 111.8(15,83GA,SF142) Application process
- 111.9(15,83GA,SF142) Application selection criteria
- 111.10(15,83GA,SF142) Intellectual property
- 111.11(15,83GA,SF142) Contract and reporting

#### CHAPTERS 112 and 113

Reserved

#### CHAPTER 114

##### IOWA INNOVATION COUNCIL

- 114.1(15) Authority
- 114.2(15) Purpose
- 114.3(15) Definitions
- 114.4(15) Iowa innovation council funding
- 114.5(15) Council membership
- 114.6(15) Responsibilities and deliverables
- 114.7(15) Executive committee
- 114.8(15) Application and review process for board-appointed council members
- 114.9(15) Voting
- 114.10(15) Meetings and commitment of time
- 114.11(15) Nonattendance
- 114.12(15) Council work groups
- 114.13(15) Reporting

#### CHAPTER 115

##### TAX CREDITS FOR INVESTMENTS IN QUALIFYING BUSINESSES AND COMMUNITY-BASED SEED CAPITAL FUNDS

- 115.1(15E) Tax credits for investments in qualifying businesses and community-based seed capital funds
- 115.2(15E) Definitions
- 115.3(15E) Cash investments required
- 115.4(15E) Applying for an investment tax credit
- 115.5(15E) Verification of qualifying businesses and community-based seed capital funds
- 115.6(15E) Approval, issuance and distribution of investment tax credits
- 115.7(15E) Claiming the tax credits

- 115.8(15E) Notification to the department of revenue
- 115.9(15E) Rescinding tax credits
- 115.10(15E) Additional information—confidentiality—annual report

#### CHAPTER 116

##### TAX CREDITS FOR INVESTMENTS IN CERTIFIED INNOVATION FUNDS

- 116.1(15E) Tax credit for investments in certified innovation funds
- 116.2(15E) Definitions
- 116.3(15E) Certification of innovation funds
- 116.4(15E) Maintenance, reporting, and revocation of certification
- 116.5(15E) Application for the investment tax credit certificate
- 116.6(15E) Approval, issuance and distribution of investment tax credits
- 116.7(15E) Transferability of the tax credit
- 116.8(15E) Vested right in the tax credit
- 116.9(15E) Claiming the tax credits
- 116.10(15E) Notification to the department of revenue
- 116.11(15E) Additional information

#### CHAPTER 117

##### SSBCI DEMONSTRATION FUND

- 117.1(84GA,HF590) Authority
- 117.2(84GA,HF590) Purposes, goals, and promotion
- 117.3(84GA,HF590) Definitions
- 117.4(84GA,HF590) Project funding
- 117.5(84GA,HF590) Leverage of financial assistance required
- 117.6(84GA,HF590) Eligible applicants
- 117.7(84GA,HF590) Ineligible applicants
- 117.8(84GA,HF590) Application and review process
- 117.9(84GA,HF590) Application selection criteria
- 117.10(84GA,HF590) Contract and reporting

#### CHAPTER 118

##### STRATEGIC INFRASTRUCTURE PROGRAM

- 118.1(15) Authority
- 118.2(15) Purpose
- 118.3(15) Definitions
- 118.4(15) Program description, disbursement of funds, and contract administration
- 118.5(15) Program eligibility and application requirements
- 118.6(15) Application submittal and review process
- 118.7(15) Application scoring criteria
- 118.8(15) Notice of award and reporting

#### CHAPTERS 119 to 162

Reserved

#### PART VI ADMINISTRATION DIVISION

#### CHAPTER 163

##### DIVISION RESPONSIBILITIES

- 163.1(15) Mission
- 163.2(15) Structure

CHAPTER 164  
USE OF MARKETING LOGO

- 164.1(15) Purpose and limitation
- 164.2(15) Definitions
- 164.3(15) Guidelines
- 164.4(15) Review and approval of applications
- 164.5(15) Licensing agreement; use of logo
- 164.6(15) Denial or suspension of use of logo
- 164.7(15) Request for hearing
- 164.8(15) Requests for information

CHAPTER 165  
ALLOCATION OF GROW IOWA VALUES FUND

- 165.1(15G,83GA,SF344) Purpose
- 165.2(15G,83GA,SF344) Definitions
- 165.3(15G,83GA,SF344) Grow Iowa values fund (2009)
- 165.4(15G,83GA,SF344) Allocation of annual appropriation for grow Iowa values fund moneys—\$50M
- 165.5(15G,83GA,SF344) Board allocation of other moneys in fund
- 165.6(15G,83GA,SF344) Annual fiscal year allocations by board
- 165.7(15) Applicability of the grow Iowa values financial assistance program on or after July 1, 2012

CHAPTERS 166 to 170  
Reserved

PART VII  
*ADDITIONAL APPLICATION REQUIREMENTS AND PROCEDURES*

CHAPTER 171  
SUPPLEMENTAL CREDIT OR POINTS

- 171.1(15A) Applicability
- 171.2(15A) Brownfield areas, blighted areas and distressed areas
- 171.3(15A) Good neighbor agreements
- 171.4(82GA,HF647) Iowa great places agreements

CHAPTER 172  
ENVIRONMENTAL LAW COMPLIANCE; VIOLATIONS OF LAW

- 172.1(15A) Environmental law compliance
- 172.2(15A) Violations of law

CHAPTER 173  
STANDARD DEFINITIONS

- 173.1(15) Applicability
- 173.2(15) Definitions

CHAPTER 174  
WAGE, BENEFIT, AND INVESTMENT REQUIREMENTS

- 174.1(15) Applicability
- 174.2(15) Qualifying wage threshold calculations
- 174.3(15) Qualifying wage threshold requirements—prior to July 1, 2009
- 174.4 Reserved
- 174.5(15) Qualifying wage threshold requirements—on or after July 1, 2009, and on or before June 30, 2012
- 174.6(15) Qualifying wage threshold requirements—effective on or after July 1, 2014

- 174.7(15) Job obligations
- 174.8(15) Benefit requirements—prior to July 1, 2009
- 174.9(15) Sufficient benefits requirement—on or after July 1, 2009
- 174.10(15) Capital investment, qualifying investment for tax credit programs, and investment qualifying for tax credits

#### CHAPTER 175

##### APPLICATION REVIEW AND APPROVAL PROCEDURES

- 175.1(15) Applicability
- 175.2(15) Application procedures for programs administered by the authority
- 175.3(15) Standard program requirements
- 175.4(15) Review and approval of applications
- 175.5(15) Local match requirements for project awards

#### CHAPTERS 176 to 186

Reserved

#### PART VIII

##### LEGAL AND COMPLIANCE

#### CHAPTER 187

##### CONTRACTING

- 187.1(15) Applicability
- 187.2(15) Contract required
- 187.3(15) Project completion date and maintenance period completion date
- 187.4(15) Contract and award amendment approval procedures
- 187.5(15) Default
- 187.6(15) Compliance cost fees

#### CHAPTER 188

##### CONTRACT COMPLIANCE AND JOB COUNTING

- 188.1(15) Applicability
- 188.2(15) Contract compliance
- 188.3(15) Job counting and tracking
- 188.4(15) Business's employment base
- 188.5(15) Job counting using base employment analysis
- 188.6(15) Wage determination for contract compliance purposes

#### CHAPTER 189

##### ANNUAL REPORTING

- 189.1(15) Annual reporting by businesses required (for period ending June 30)
- 189.2(15) January 31 report by authority to legislature

#### CHAPTERS 190 to 194

Reserved

#### PART IX

##### UNIFORM PROCEDURES: RECORDS, RULE MAKING, DECLARATORY ORDERS, RULE WAIVERS

#### CHAPTER 195

##### PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

- 195.1(17A,22) Statement of policy, purpose and scope of chapter
- 195.2(17A,22) Definitions
- 195.3(17A,22) Requests for access to records
- 195.4(17A,22) Access to confidential records

195.5(17A,22)	Requests for treatment of a record as a confidential record and its withholding from examination
195.6(17A,22)	Procedure by which additions, dissents, or objections may be entered into certain records
195.7(17A,22)	Consent to disclosure by the subject of a confidential record
195.8(17A,22)	Notice to suppliers of information
195.9(17A,22)	Disclosures without the consent of the subject
195.10(17A,22)	Routine use
195.11(17A,22)	Consensual disclosure of confidential records
195.12(17A,22)	Release to subject
195.13(17A,22)	Availability of records
195.14(17A,22)	Personally identifiable information
195.15(17A,22)	Other groups of records

#### CHAPTER 196

##### DEPARTMENT PROCEDURE FOR RULE MAKING

196.1(17A)	Applicability
196.2(17A)	Advice on possible rules before notice of proposed rule adoption
196.3(17A)	Public rule-making docket
196.4(17A)	Notice of proposed rule making
196.5(17A)	Public participation
196.6(17A)	Regulatory analysis
196.7(17A,25B)	Fiscal impact statement
196.8(17A)	Time and manner of rule adoption
196.9(17A)	Variance between adopted rule and published notice of proposed rule adoption
196.10(17A)	Exemptions from public rule-making procedures
196.11(17A)	Concise statement of reasons
196.12(17A)	Contents, style, and form of rule
196.13(17A)	Department rule-making record
196.14(17A)	Filing of rules
196.15(17A)	Effectiveness of rules prior to publication
196.16(17A)	Review by department of rules
196.17(17A)	Written criticisms of department rules

#### CHAPTER 197

##### PETITION FOR RULE MAKING

197.1(17A)	Petition for rule making
197.2(17A)	Briefs
197.3(17A)	Inquiries
197.4(17A)	Department consideration

#### CHAPTER 198

##### PETITION FOR DECLARATORY ORDER

198.1(17A)	Petition for declaratory order
198.2(17A)	Notice of petition
198.3(17A)	Intervention
198.4(17A)	Briefs
198.5(17A)	Inquiries
198.6(17A)	Service and filing of petitions and other papers
198.7(17A)	Consideration
198.8(17A)	Action on petition
198.9(17A)	Refusal to issue order
198.10(17A)	Contents of declaratory order—effective date

- 198.11(17A) Copies of orders  
 198.12(17A) Effect of a declaratory order

#### CHAPTER 199

##### UNIFORM WAIVER AND VARIANCE RULES

- 199.1(ExecOrd11) Applicability  
 199.2(ExecOrd11) Director/board discretion  
 199.3(ExecOrd11) Requester's responsibilities in filing a waiver or variance petition  
 199.4(ExecOrd11) Notice  
 199.5(ExecOrd11) Department responsibilities regarding petition for waiver or variance  
 199.6(ExecOrd11) Public availability  
 199.7(ExecOrd11) Voiding or cancellation  
 199.8(ExecOrd11) Violations  
 199.9(ExecOrd11) Defense  
 199.10(ExecOrd11,17A) Appeals

#### PART X

##### COMMUNITY ATTRACTION AND INVESTMENT PROGRAMS

#### CHAPTER 200

##### REINVESTMENT DISTRICTS PROGRAM

- 200.1(15J) Purpose  
 200.2(15J) Definitions  
 200.3(15J) Program overview  
 200.4(15J) Preapplication process  
 200.5(15J) Program eligibility and application requirements  
 200.6(15J) Application scoring and determination of benefits  
 200.7(15J) Final application and approval process  
 200.8(15J) Adoption of ordinance and use of funds  
 200.9(15J) Plan amendments and reporting  
 200.10(15J) Cessation of deposits, district dissolution, and requests for extension  
 200.11(15J) Cross reference to department rules

#### CHAPTERS 201 to 210

Reserved

#### CHAPTER 211

##### COMMUNITY ATTRACTION AND TOURISM (CAT) PROGRAMS

#### DIVISION I GENERAL PROVISIONS

- 211.1(15F) Purpose  
 211.2(15F) Definitions  
 211.3(15F) Forms of assistance  
 211.4(15F) Eligible applicants  
 211.5(15F) Eligible projects  
 211.6(15F) Ineligible projects  
 211.7(15F) Application requirements  
 211.8(15F) Application review  
 211.9(15F) Application procedure  
 211.10(15F) Administration  
 211.11 to 211.49 Reserved

DIVISION II  
COMMUNITY ATTRACTION AND TOURISM (CAT) FUND

- 211.50(15F)      Applicability  
211.51(15F)      Allocation of funds  
211.52 to 211.100      Reserved

DIVISION III  
RIVER ENHANCEMENT COMMUNITY ATTRACTION AND TOURISM (RECAT) FUND

- 211.101(15F)      Applicability  
211.102(15F)      Application contents

CHAPTER 212  
VISION IOWA PROGRAM

- 212.1(15F)      Purpose  
212.2(15F)      Definitions  
212.3(15F)      Allocation of funds  
212.4(15F)      Eligible applicants  
212.5(15F)      Eligible projects and forms of assistance  
212.6(15F)      Ineligible projects  
212.7(15F)      Threshold application requirements  
212.8(15F)      Application review criteria  
212.9(15F)      Application procedure  
212.10(15F)      Administration of awards

CHAPTER 213

ENHANCE IOWA BOARD: UNIFORM WAIVER RULES

- 213.1(17A,15F)      Applicability  
213.2(17A,15F)      Board discretion  
213.3(17A,15F)      Requester's responsibilities in filing a waiver petition  
213.4(17A,15F)      Notice  
213.5(17A,15F)      Board responsibilities regarding petition for waiver  
213.6(17A,15F)      Submission of waiver information  
213.7(17A,15F)      Voiding or cancellation  
213.8(17A,15F)      Violations  
213.9(17A,15F)      Defense  
213.10(17A,15F)      Appeals

CHAPTER 214  
ENHANCE IOWA BOARD

- 214.1(15F)      Definitions  
214.2(15F)      Enhance Iowa board  
214.3(15F)      Authority duties

CHAPTER 215  
SPORTS TOURISM PROGRAM

- 215.1(15F)      Definitions  
215.2(15F)      Eligible applicants  
215.3(15F)      Eligible projects  
215.4(15F)      Threshold application requirements  
215.5(15F)      Application process  
215.6(15F)      Administration

CHAPTERS 216 to 219  
Reserved

## CHAPTER 220

## RURAL HOUSING NEEDS ASSESSMENT GRANT PROGRAM

- 220.1(88GA,SF608) Purpose
- 220.2(88GA,SF608) Definitions
- 220.3(88GA,SF608) Program description
- 220.4(88GA,SF608) Program eligibility, application scoring, and funding decisions
- 220.5(88GA,SF608) Agreement required

## CHAPTER 221

## RURAL INNOVATION GRANT PROGRAM

- 221.1(88GA,SF608) Purpose
- 221.2(88GA,SF608) Definitions
- 221.3(88GA,SF608) Program description
- 221.4(88GA,SF608) Program eligibility, application scoring, and funding decisions
- 221.5(88GA,SF608) Agreement required

## CHAPTERS 222 to 299

Reserved

## PART XI

*RENEWABLE FUEL INFRASTRUCTURE BOARD*

## CHAPTERS 300 to 310

Reserved

## CHAPTER 311

## RENEWABLE FUEL INFRASTRUCTURE BOARD—ORGANIZATION

- 311.1(15G) Definitions
- 311.2(15G) Renewable fuel infrastructure board

## CHAPTER 312

RENEWABLE FUEL INFRASTRUCTURE PROGRAM FOR  
RETAIL MOTOR FUEL SITES

- 312.1(15G) Purpose
- 312.2(15G) Eligible applicants

## CHAPTER 313

RENEWABLE FUEL INFRASTRUCTURE PROGRAM FOR  
BIODIESEL TERMINAL GRANTS

- 313.1(15G) Purpose
- 313.2(15G) Eligible applicants

## CHAPTER 314

## RENEWABLE FUEL INFRASTRUCTURE PROGRAM ADMINISTRATION

- 314.1(15G) Allocation of awards by congressional district
- 314.2(15G) Form of award available; award amount
- 314.3(15G) Application process
- 314.4(15G) Review process
- 314.5(15G) Contract administration

## CHAPTERS 315 to 399

Reserved

PART XII  
ENERGY DIVISION

CHAPTER 400  
RULES APPLICABLE TO PART XII

- 400.1(84GA,HF590) Definitions  
400.2(84GA,HF590) Purpose, administrative information, and implementation

CHAPTER 401  
ADMINISTRATION OF FINANCIAL ASSISTANCE

- 401.1(84GA,HF590) Purpose  
401.2(84GA,HF590) Appropriations  
401.3(84GA,HF590) Control of fund assets  
401.4(84GA,HF590) Allocation of fund moneys  
401.5(84GA,HF590) Eligible applicants  
401.6(84GA,HF590) Eligibility criteria for financial assistance  
401.7(84GA,HF590) Forms of assistance  
401.8(84GA,HF590) Application process  
401.9(84GA,HF590) Confidentiality  
401.10(84GA,HF590) Contents of full application  
401.11(84GA,HF590) Selection criteria  
401.12(84GA,HF590) Contract administration

CHAPTER 402  
ENERGY EFFICIENCY COMMUNITY GRANT PROGRAM

- 402.1(84GA,HF590) Purpose  
402.2(84GA,HF590) Definitions  
402.3(84GA,HF590) Requests for applications  
402.4(84GA,HF590) Geographic distribution  
402.5(84GA,HF590) Criteria for review  
402.6(84GA,HF590) Project approval and award of funds

CHAPTER 403  
IOWA ENERGY CENTER

- 403.1(15) Purpose  
403.2(15) Definitions  
403.3(15) Iowa energy center board

CHAPTER 404  
IOWA ENERGY CENTER GRANT PROGRAM

- 404.1(15) Definitions  
404.2(15) Policies and procedures handbook  
404.3(15) Eligibility  
404.4(15) Funding and award terms  
404.5(15) Project budget  
404.6(15) Application process and review  
404.7(15) Administration

CHAPTER 405  
ALTERNATE ENERGY REVOLVING LOAN PROGRAM

- 405.1(15) Definitions  
405.2(15) Loan amounts and terms  
405.3(15) Borrowers  
405.4(15) Eligible projects

- 405.5(15) Eligible and ineligible costs
- 405.6(15) Application process
- 405.7(15) Administration

## CHAPTERS 406 to 409

Reserved

## PART XIII

*IOWA BROADBAND DEPLOYMENT GOVERNANCE BOARD*

## CHAPTER 410

Reserved

## CHAPTER 411

## IOWA BROADBAND DEPLOYMENT PROGRAM

- 411.1(83GA,SF376) Purpose
- 411.2(83GA,SF376) Definitions
- 411.3(83GA,SF376) Eligible applicants
- 411.4(83GA,SF376) Forms of assistance
- 411.5(83GA,SF376) Threshold application requirements
- 411.6(83GA,SF376) Application process
- 411.7(83GA,SF376) Application review procedures
- 411.8(83GA,SF376) Administration of awards

## CHAPTER 412

FAIR INFORMATION PRACTICES, WAIVER AND VARIANCE,  
AND PETITION FOR RULE MAKING

- 412.1(83GA,SF376) Fair information practices
- 412.2(83GA,SF376) Waiver and variance
- 412.3(83GA,SF376) Petition for rule making



CHAPTER 213  
ENHANCE IOWA BOARD: UNIFORM WAIVER RULES

**261—213.1(17A,15F) Applicability.** This chapter outlines a uniform process for the granting of waivers from rules adopted by the board. The intent of this chapter is to allow persons to seek exceptions to the application of rules issued by the board.

**213.1(1) Definitions.**

“Board” or “enhance Iowa board” means the enhance Iowa board established by Iowa Code section 15F.102.

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

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

**213.1(2) Authority.**

a. A waiver from rules adopted by the board may be granted in accordance with this chapter if (1) the board has authority to promulgate the rule from which waiver is requested or has final decision-making authority over a contested case in which a waiver is requested; and (2) no statute or rule otherwise controls the grant of a waiver from the rule from which waiver is requested.

b. No waiver may be granted from a requirement which is imposed by statute. Any waiver must be consistent with statute.

[ARC 4513C, IAB 6/19/19, effective 7/24/19; ARC 5644C, IAB 6/2/21, effective 7/7/21]

**261—213.2(17A,15F) Board discretion.** The decision on whether the circumstances justify the granting of a waiver shall be made at the discretion of the board upon consideration of all relevant factors.

**213.2(1) Criteria for waiver.** The board may, in response to a completed petition, grant a waiver from a rule, in whole or in part, as applied to the circumstances of a specified situation if the board finds each of the following:

a. Application of the rule to the person at issue would result in undue hardship to that person; and

b. Waiver on the basis of the particular circumstances relative to that specified person would be consistent with the public interest; and

c. Waiver in the specific case would not prejudice the substantial legal rights of any person; and

d. Where applicable, substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

In determining whether waiver should be granted, the board shall consider whether the underlying public interest policies and legislative intent of the rules are substantially equivalent to full compliance with the rule. When the rule from which a waiver is sought establishes administrative deadlines, the board shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all licensees, grantees and constituents.

**213.2(2) Special waiver rules not precluded.** These uniform waiver rules shall not preclude the board from granting waivers in other contexts or on the basis of other standards if a statute or other board rule authorizes the board to do so, and the board deems it appropriate to do so.

[ARC 5644C, IAB 6/2/21, effective 7/7/21]

**261—213.3(17A,15F) Requester’s responsibilities in filing a waiver petition.**

**213.3(1) Petition.** All petitions for waiver must be submitted in writing to the Enhance Iowa Board, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315, Attention: Legal Counsel. Petitions for waiver may be delivered, mailed, or sent by email or other electronic means reasonably calculated to reach the intended recipient. If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

**213.3(2) Content of petition.** A petition for waiver shall include the following information where applicable and known to the requester (for an example of a petition for waiver, see Exhibit A at the end of this chapter):

a. A description and citation of the specific rule from which a waiver is requested.

*b.* The specific waiver requested, including the precise scope and operative period that the waiver will extend.

*c.* The relevant facts that the petitioner believes would justify a waiver.

*d.* 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 board and the petitioner relating to the regulated activity, license, grant, loan or other financial assistance affected by the proposed waiver, including a description of each affected license, grant, loan or other financial assistance held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, license, grant or loan within the past five years.

*f.* Any information known to the requester regarding the board'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 that would be adversely affected by the grant of a petition.

*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 board with information relevant to the waiver.

**213.3(3) *Burden of persuasion.*** When a petition is filed for a waiver from a board rule, the burden of persuasion shall be on the petitioner to demonstrate by clear and convincing evidence that the board should exercise its discretion to grant the petitioner a waiver.

[ARC 4513C, IAB 6/19/19, effective 7/24/19; ARC 5644C, IAB 6/2/21, effective 7/7/21]

**261—213.4(17A,15F) Notice.** The board shall acknowledge a petition upon receipt. The board 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 board may give notice to other persons. The board may require the petitioner to serve the notice and a concise summary of the contents of the petition on all persons to whom notice is required by any provision of law or who may be impacted by the requested waiver, and provide a written statement to the board attesting that notice has been provided and attach a copy of the notice and summary to the written statement.

[ARC 5644C, IAB 6/2/21, effective 7/7/21]

**261—213.5(17A,15F) Board responsibilities regarding petition for waiver.**

**213.5(1) *Additional information.*** Prior to issuing an order granting or denying a waiver, the board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the board may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the board's designee, a committee of the board, or a quorum of the board.

**213.5(2) *Hearing procedures.*** The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply in three situations: (a) to any petition for a waiver of rule filed within a contested case; (b) when the board so provides by rule or order; or (c) when a statute so requires.

**213.5(3) *Ruling.*** An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative period of the waiver if one is issued.

**213.5(4) *Conditions.*** The board may condition the grant of the waiver on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means.

**213.5(5) *Time for ruling.*** The board shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the board shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

**213.5(6) When deemed denied.** Failure of the board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the board.

**213.5(7) Service of order.** Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains, and to any other person entitled to such notice by any provision of law.  
[ARC 5644C, IAB 6/2/21, effective 7/7/21]

**261—213.6(17A,15F) Submission of waiver information.** Within 60 days of granting or denying a waiver, the board shall make a submission on the Internet site established pursuant to Iowa Code section 17A.9A for the submission of waiver information. The submission shall identify the rule(s) for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by the waived rules, and a general summary of the reasons justifying the authority’s actions on waiver requests. If practicable, the report shall detail the extent to which granting a waiver has established a precedent for additional waivers and the extent to which the granting of a waiver has affected the general applicability of the rule itself.  
[ARC 5644C, IAB 6/2/21, effective 7/7/21]

**261—213.7(17A,15F) Voiding or cancellation.** A waiver is void if the material facts upon which the request is based are not true or if material facts have been withheld. The board may at any time cancel a waiver upon appropriate notice if the board finds that the facts as stated in the request are not true, material facts have been withheld, the alternative means of compliance provided in the waiver have failed to achieve the objectives of the statute, or the requester has failed to comply with the conditions of the order.  
[ARC 5644C, IAB 6/2/21, effective 7/7/21]

**261—213.8(17A,15F) Violations.** Violation of conditions in the waiver approval is the equivalent of violation of the particular rule for which the waiver is granted and is subject to the same remedies or penalties.  
[ARC 5644C, IAB 6/2/21, effective 7/7/21]

**261—213.9(17A,15F) Defense.** After the board issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.  
[ARC 5644C, IAB 6/2/21, effective 7/7/21]

**261—213.10(17A,15F) Appeals.** Granting or denying a request for waiver is final agency action under Iowa Code chapter 17A. An appeal to district court shall be taken within 30 days of the issuance of the ruling in response to the request unless a contrary time is provided by rule or statute.

Exhibit A

Sample Petition (Request) for Waiver

BEFORE THE ENHANCE IOWA BOARD

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



PETITION FOR  
WAIVER

Requests for waiver from a board rule shall include the following information in the petition for waiver where applicable and known:

- a. Provide the petitioner’s (person asking for a waiver) name, address, and telephone number.
- b. Describe and cite the specific rule from which a waiver is requested.
- c. Describe the specific waiver requested; include the exact scope and time period that the waiver will extend.

*d.* Explain the important facts that the petitioner believes justify a waiver. Include in your answer why (1) applying the rule will result in undue hardship to the petitioner; and (2) granting a waiver to the petitioner is consistent with the public interest; and (3) granting the waiver will not prejudice the substantial legal rights of any person; and (4) where applicable, how substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

*e.* Provide history of prior contacts between the board and petitioner relating to the regulated activity, license, grant, loan or other financial assistance that would be affected by the waiver; include a description of each affected license, grant, loan or other financial assistance held by the petitioner, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, license, grant or loan within the past five years.

*f.* Provide information known to the petitioner regarding the board's treatment of similar cases.

*g.* Provide the name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question, or which might be affected by the grant of a waiver.

*h.* Provide the name, address, and telephone number of any person or entity that would be adversely affected or disadvantaged by the grant of the waiver.

*i.* Provide the name, address, and telephone number of any person with knowledge of the relevant or important facts relating to the requested waiver.

*j.* Provide signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver.

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

---

Petitioner's signature

---

Date

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

1. The petitioner has the burden of proving to the board, by clear and convincing evidence, the following: (a) application of the rule to the petitioner would result in undue hardship to the petitioner; and (b) waiver on the basis of the particular circumstances relative to the petitioner would be consistent with the public interest; and (c) waiver in the specific case would not prejudice the substantial legal rights of any person; and (d) where applicable, how substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

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

3. All petitions for waiver must be submitted in writing to the Enhance Iowa Board, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315, Attention: Legal Counsel. If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

[ARC 4513C, IAB 6/19/19, effective 7/24/19; ARC 5644C, IAB 6/2/21, effective 7/7/21]

These rules are intended to implement Iowa Code sections 17A.9A and 15F.102.

[Filed 10/23/00, Notice 9/6/00—published 11/15/00, effective 12/20/00]

[Filed ARC 4513C (Notice ARC 4329C, IAB 3/13/19), IAB 6/19/19, effective 7/24/19]

[Filed ARC 5644C (Notice ARC 5537C, IAB 3/24/21), IAB 6/2/21, effective 7/7/21]

## IOWA FINANCE AUTHORITY[265]

[Prior to 7/26/85, Housing Finance Authority[495]]  
 [Prior to 4/3/91, Iowa Finance Authority[524]]

### CHAPTER 1

#### GENERAL

- 1.1(16) Purpose
- 1.2(16) Mission
- 1.3(16) Organization, programs and operations
- 1.4(16) Location where the public may submit requests or obtain information
- 1.5(16) Forms

### CHAPTER 2

#### LOAN PROGRAMS

##### GENERAL PROVISIONS

- 2.1(16) Administrative agents

##### TERMS AND CONDITIONS

- 2.2(16) Interest and fees
- 2.3 Reserved
- 2.4(16) Loan conditions
- 2.5(16) Security for loans
- 2.6(16) Types of loans
- 2.7(16) Delinquency and foreclosure
- 2.8(16) Application processing
- 2.9(16) Mortgage purchase or loans to lenders for existing, newly built single-family or multifamily housing—general information
- 2.10(16) Assumption of mortgages

### CHAPTER 3

#### MULTIFAMILY HOUSING

##### MULTIFAMILY LOAN PROGRAM

- 3.1(16) Purpose
- 3.2(16) Available funds
- 3.3(16) Intent of the authority
- 3.4(16) Application procedure
- 3.5(16) Program guidelines
- 3.6 and 3.7 Reserved
- 3.8(16) Multifamily loan program for workforce housing loan assistance
- 3.9 Reserved
- 3.10(16) Authority analysis of applications
- 3.11(16) Discretion of authority board

### CHAPTER 4

#### GENERAL REVENUE BOND PROCEDURES

- 4.1(16) Revenue bonds authorized
- 4.2(16) Participating lenders
- 4.3(16) Procedures for project sponsors
- 4.4(16) Authority review
- 4.5 Reserved
- 4.6(16) Procedures following bond issuance
- 4.7(16) Right to audit

CHAPTERS 5 and 6  
Reserved

CHAPTER 7  
CONTESTED CASES

7.1(17A)	Scope and applicability
7.2(17A)	Definitions
7.3(17A)	Time requirements
7.4(17A)	Requests for contested case proceeding
7.5(17A)	Notice of hearing
7.6(17A)	Presiding officer
7.7(17A)	Waiver of procedures
7.8(17A)	Telephone or video proceedings
7.9(17A)	Disqualification
7.10(17A)	Consolidation—severance
7.11(17A)	Pleadings
7.12(17A)	Service and filing of pleadings and other papers
7.13(17A)	Discovery
7.14(17A)	Subpoenas
7.15(17A)	Motions
7.16(17A)	Prehearing conference
7.17(17A)	Continuances
7.18(17A)	Withdrawals
7.19(17A)	Intervention
7.20(17A)	Hearing procedures
7.21(17A)	Evidence
7.22(17A)	Default
7.23(17A)	Ex parte communication
7.24(17A)	Recording costs
7.25(17A)	Interlocutory appeals
7.26(17A)	Posthearing procedures and orders
7.27(17A)	Appeals and review
7.28(17A)	Applications for rehearing
7.29(17A)	Stays of authority actions
7.30(17A)	No factual dispute contested cases
7.31(17A)	Emergency adjudicative proceedings
7.32(17A,16)	Informal procedure prior to hearing

CHAPTER 8  
PRIVATE ACTIVITY BOND ALLOCATION

8.1(7C)	General
8.2(7C)	Forms and applications
8.3(7C)	Applications for current allocation received prior to the calendar year for such allocation
8.4(7C)	Application for current allocation received during the calendar year
8.5(7C)	Certification of current allocation
8.6(7C)	State ceiling carryforwards
8.7(7C)	Expiration of applications and allocations
8.8(7C)	Resubmission of expired allocations
8.9(7C)	Use by political subdivisions
8.10(7C)	Application and allocation fees

CHAPTER 9  
TITLE GUARANTY DIVISION

9.1(16)	Definitions
9.2(16)	Purpose
9.3(16)	Mission
9.4(16)	Organization
9.5(16)	Operation
9.6(16)	Participants
9.7(16)	Services offered
9.8(16)	Claims
9.9(16)	Mortgage release certificate
9.10(16)	Rules of construction
9.11(16)	Seal

CHAPTER 10  
MORTGAGE CREDIT CERTIFICATES

10.1(16)	General
10.2(16)	Participating lenders
10.3(16)	Eligible borrowers
10.4(16)	MCC procedures

CHAPTER 11  
IOWA MAIN STREET LOAN PROGRAM

11.1(16)	Program description
11.2(16)	Waiver
11.3(16)	Main street loan program
11.4(16)	Definitions
11.5(16)	Application
11.6(16)	Public benefit
11.7(16)	Loan criteria

CHAPTER 12  
LOW-INCOME HOUSING TAX CREDITS

12.1(16)	Qualified allocation plans
12.2(16)	Location of copies of the plans

CHAPTER 13  
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES  
(Uniform Rules)

13.1(17A,22)	Definitions
13.3(17A,22)	Requests for access to records
13.4(17A,22)	Access to confidential records
13.6(17A,22)	Procedure by which additions, dissents, or objections may be entered into certain records
13.9(17A,22)	Availability of records

CHAPTER 14  
Reserved

CHAPTER 15  
PURCHASING

15.1(16)	Applicability of competitive bidding
15.2(16)	Methods of obtaining bids or proposals used by the authority
15.3(16)	Items purchased through the department of administrative services

15.4(16)	Posting solicitations
15.5(16)	Contract purchases
15.6(16)	Blanket purchase agreements
15.7(16)	Bids and proposals to conform to specifications
15.8(16)	Time of delivery
15.9(16)	Cash discounts
15.10(16)	Ties
15.11(16)	Time of submission
15.12(16)	Modification or withdrawal of bids
15.13(16)	Financial security
15.14(16)	Rejection of bids and proposals
15.15(16)	Vendor appeals

#### CHAPTER 16 DECLARATORY ORDERS

16.1(17A)	Petition for declaratory order
16.2(17A)	Notice of petition
16.3(17A)	Intervention
16.4(17A)	Briefs
16.5(17A)	Inquiries
16.6(17A)	Service and filing of petitions and other papers
16.7(17A)	Consideration
16.8(17A)	Action on petition
16.9(17A)	Refusal to issue order
16.10(17A)	Contents of declaratory order—effective date
16.11(17A)	Copies of orders
16.12(17A)	Effect of a declaratory order

#### CHAPTER 17 PROCEDURE FOR RULE MAKING

17.1(17A)	Applicability
17.2(17A)	Advice on possible rules before notice of proposed rule adoption
17.3(17A)	Public rule-making docket
17.4(17A)	Notice of proposed rule making
17.5(17A)	Public participation
17.6(17A)	Regulatory analysis
17.7(17A,25B)	Fiscal impact statement
17.8(17A)	Time and manner of rule adoption
17.9(17A)	Variance between adopted rule and published notice of proposed rule adoption
17.10(17A)	Exemptions from public rule-making procedures
17.11(17A)	Concise statement of reasons
17.12(17A)	Contents, style, and form of rule
17.13(17A)	Authority rule-making record
17.14(17A)	Filing of rules
17.15(17A)	Effectiveness of rules prior to publication
17.16(17A)	General statements of policy
17.17(17A)	Review by authority of rules

#### CHAPTER 18 WAIVERS FROM ADMINISTRATIVE RULES

18.1(17A,16)	Definitions
18.2(17A,16)	Scope
18.3(17A,16)	Applicability of chapter

18.4(17A,16)	Criteria for waiver
18.5(17A,16)	Filing of petition
18.6(17A,16)	Content of petition
18.7(17A,16)	Additional information
18.8(17A,16)	Notice
18.9(17A,16)	Hearing procedures
18.10(17A,16)	Ruling
18.11(17A,16)	Public availability
18.12(17A,16)	Submission of waiver information
18.13(17A,16)	Voiding or cancellation
18.14(17A,16)	Violations
18.15(17A,16)	Defense
18.16(17A,16)	Judicial review

CHAPTER 19  
STATE HOUSING TRUST FUND

19.1(16)	Trust fund allocation plans
19.2(16)	Location of copies of the plans

CHAPTER 20  
SENIOR LIVING REVOLVING LOAN PROGRAM

20.1(16)	Purpose
20.2(16)	Priority of loan awards
20.3(16)	Application process
20.4(16)	Program guidelines
20.5(16)	Authority analysis of applications
20.6(16)	Discretion of authority board
20.7(16)	Closing/advance of funds

CHAPTER 21  
HOME AND COMMUNITY-BASED SERVICES REVOLVING LOAN PROGRAM

21.1(16)	Purpose
21.2(16)	Available funds
21.3(16)	Intent of the authority
21.4(16)	Application procedure
21.5(16)	Program guidelines
21.6(16)	Authority analysis of applications
21.7(16)	Discretion of authority board
21.8(16)	Closing/advance of funds

CHAPTER 22  
IOWA AFTERCARE SERVICES RENT SUBSIDY PROGRAM

22.1(16,PL106-169)	Purpose
22.2(16,PL106-169)	Definitions
22.3(16,PL106-169)	Eligibility requirements for direct rent subsidy
22.4(16,PL106-169)	Application for direct rent subsidy
22.5(16,PL106-169)	Amount of rent subsidy
22.6(16,PL106-169)	Redetermination of direct rent subsidy eligibility
22.7(16,PL106-169)	Termination of rent subsidy payments
22.8(16,PL106-169)	Eligibility requirements for transitional apartment subsidy
22.9(16,PL106-169)	Application for transitional apartment subsidy
22.10(16,PL106-169)	Amount of transitional apartment subsidy
22.11(16,PL106-169)	Redetermination of transitional apartment subsidy eligibility

- 22.12(16,PL106-169) Termination of transitional apartment subsidy payments
- 22.13(16,PL106-169) Fraudulent practices relating to the aftercare rent subsidy program
- 22.14(16,PL106-169) Appeals

#### CHAPTER 23

##### TRANSITIONAL HOUSING REVOLVING LOAN PROGRAM

- 23.1(16) Purpose
- 23.2(16) Priority of loan awards
- 23.3(16) Application process
- 23.4(16) Program guidelines
- 23.5(16) Authority analysis of applications
- 23.6(16) Discretion of authority board
- 23.7(16) Closing/advance of funds

#### CHAPTER 24

##### HOME AND COMMUNITY-BASED SERVICES RENT SUBSIDY PROGRAM

- 24.1(16) Purpose
- 24.2(16) Definitions
- 24.3(16) Eligibility requirements
- 24.4(16) Application
- 24.5(16) Amount of rent subsidy
- 24.6(16) Redetermination of eligibility
- 24.7(16) Termination of rent subsidy payments

#### CHAPTER 25

Reserved

#### CHAPTER 26

##### WATER POLLUTION CONTROL WORKS AND DRINKING WATER FACILITIES FINANCING

- 26.1(16) Statutory authority
- 26.2(16) Purpose
- 26.3(16) Definitions
- 26.4(16) Project funding
- 26.5(16) WPCSRF/DWSRF infrastructure construction loans
- 26.6(16) Planning and design loans
- 26.7(16) Disadvantaged community status
- 26.8(16) WPCSRF nonpoint source set-aside loan programs
- 26.9(16) Termination and rectification of disputes

#### CHAPTER 27

##### MILITARY SERVICE MEMBER HOME OWNERSHIP ASSISTANCE PROGRAM

- 27.1(16) Purpose
- 27.2(16) Definitions
- 27.3(16) Application procedure and determination of eligibility
- 27.4(16) MHOA award

#### CHAPTER 28

##### WASTEWATER AND DRINKING WATER TREATMENT FINANCIAL ASSISTANCE PROGRAM

- 28.1(16) Overview
- 28.2(16) Definitions
- 28.3(16) Project funding
- 28.4(16) Termination; rectification of deficiencies; disputes

## CHAPTER 29

## JUMP-START HOUSING ASSISTANCE PROGRAM

- 29.1(16) Purpose
- 29.2(16) Definitions
- 29.3(16) Grants to local government participants
- 29.4 Reserved
- 29.5(16) Eligible uses
- 29.6(16) Loan terms
- 29.7(16) Financial assistance subject to availability of funding
- 29.8(16) Funds allocated pursuant to 2009 Iowa Acts, House File 64, division I

## CHAPTER 30

## QUALIFIED MIDWESTERN DISASTER AREA BOND ALLOCATION

- 30.1(16) General
- 30.2(16) Forms
- 30.3(16) Eligibility for allocation
- 30.4(16) Allocation limit and Iowa department of economic development set-aside
- 30.5(16) Application for allocation
- 30.6(16) Certification of allocation
- 30.7(16) Expiration of allocations
- 30.8(16) Resubmission of expired allocations
- 30.9(16) Application and allocation fees

## CHAPTER 31

## COUNCIL ON HOMELESSNESS

- 31.1(16) Organization
- 31.2(16) Duties of the council

## CHAPTER 32

## IOWA JOBS PROGRAM

- 32.1(16) Purpose
- 32.2(16) Definitions
- 32.3(16) Allocation of funds
- 32.4(16) Local infrastructure competitive grant program
- 32.5(16) Noncompetitive grants
- 32.6(16) General grant conditions
- 32.7(16) Calculation of jobs created
- 32.8(16) Grant awards
- 32.9(16) Administration of awards

## CHAPTER 33

## WATER QUALITY FINANCIAL ASSISTANCE PROGRAM

- 33.1(16,83GA,SF376) Overview
- 33.2(16,83GA,SF376) Definitions
- 33.3(16,83GA,SF376) Small community assistance fund
- 33.4(16,83GA,SF376) Large community assistance fund
- 33.5(16,83GA,SF376) Project priority
- 33.6(16,83GA,SF376) Project funding
- 33.7(16,83GA,SF376) Termination and rectification of disputes

## CHAPTERS 34 and 35

Reserved

## CHAPTER 36

## PUBLIC SERVICE SHELTER GRANT FUND

- 36.1(16,83GA,SF376) Public service shelter grant fund allocation plan
- 36.2(16,83GA,SF376) Location of copies of the plan

## CHAPTER 37

## RECOVERY ZONE BOND ALLOCATION

- 37.1(16) General
- 37.2(16) Forms
- 37.3(16) Notice from the authority to issuers
- 37.4(16) Notice from issuers to the authority
- 37.5(16) Waiver of RZ bonding authority
- 37.6(16) Application for allocation of recaptured or waived RZ bond authority
- 37.7(16) Allocations
- 37.8(16) Certification of allocation
- 37.9(16) Expiration of allocations
- 37.10(16) Resubmission of expired allocations
- 37.11(16) Application and allocation fees

## CHAPTER 38

## IOWA JOBS II PROGRAM

- 38.1(16) Purpose
- 38.2(16) Definitions
- 38.3(16) Allocation of funds
- 38.4(16) Iowa jobs II program
- 38.5(16) General grant conditions
- 38.6(16) Calculation of jobs created
- 38.7(16) Grant awards
- 38.8(16) Administration of awards

## CHAPTER 39

## HOME INVESTMENT PARTNERSHIPS PROGRAM

- 39.1(16) Purpose
- 39.2(16) Definitions
- 39.3(16) Eligible applicants
- 39.4(16) Eligible activities and forms of assistance
- 39.5(16) Application procedure
- 39.6(16) Application requirements
- 39.7(16) Application review criteria
- 39.8(16) Allocation of funds
- 39.9(16) Administration of awards

## CHAPTER 40

## IOWANS HELPING IOWANS HOUSING ASSISTANCE PROGRAM

- 40.1(16) Purpose
- 40.2(16) Definitions
- 40.3(16) Grants to local government participants
- 40.4 Reserved
- 40.5(16) Eligible uses
- 40.6(16) Loan terms
- 40.7(16) Financial assistance subject to availability of funding

CHAPTER 41  
SHELTER ASSISTANCE FUND

- 41.1(16) Purpose
- 41.2(16) Definitions
- 41.3(16) Eligible applicants
- 41.4(16) Eligible activities
- 41.5(16) Ineligible activities
- 41.6(16) Application procedures
- 41.7(16) Application review process
- 41.8(16) Matching contributions
- 41.9(16) Funding awards
- 41.10(16) Requirements placed on recipients
- 41.11(16) Compliance with applicable federal and state laws and regulations
- 41.12(16) Administration

CHAPTER 42  
EMERGENCY SOLUTIONS GRANT PROGRAM

- 42.1(16) Purpose
- 42.2(16) Definitions
- 42.3(16) Eligible applicants
- 42.4(16) Eligible activities
- 42.5(16) Ineligible activities
- 42.6(16) Application procedures
- 42.7(16) Application review process
- 42.8(16) Matching requirement
- 42.9(16) Funding awards
- 42.10(16) Compliance with applicable federal and state laws and regulations
- 42.11(16) Administration

CHAPTER 43  
COMMUNITY HOUSING AND SERVICES FOR PERSONS WITH DISABILITIES  
REVOLVING LOAN PROGRAM

- 43.1(16) Purpose
- 43.2(16) Definitions
- 43.3(16) Award of loan funds
- 43.4(16) Application process
- 43.5(16) Program guidelines
- 43.6(16) Authority analysis of applications
- 43.7(16) Discretion of authority board
- 43.8(16) Closing/advance of funds

CHAPTER 44  
IOWA AGRICULTURAL DEVELOPMENT DIVISION

- 44.1(16) General
- 44.2(16) Definitions
- 44.3(16) Beginning farmer loan program eligibility
- 44.4(16) Beginning farmer loan program
- 44.5(16) Loan participation program
- 44.6(16) Beginning farmer tax credit program

CHAPTER 45  
MANUFACTURED HOUSING  
PROGRAM FUND

- 45.1(16) Purpose
- 45.2(16) Definitions
- 45.3(16) Sources of funds
- 45.4(16) Program overview
- 45.5(16) Eligible financing
- 45.6(16) Linked deposits
- 45.7(16) Limits on linked deposits
- 45.8(16) Availability of moneys for linked deposits

CHAPTER 46  
WATER QUALITY FINANCING PROGRAM

- 46.1(16) Overview
- 46.2(16) Definitions
- 46.3(16) Program administration
- 46.4(16) Project funding
- 46.5(16) Financial agreements
- 46.6(16) Project scoring
- 46.7(16) Scoring criteria
- 46.8(16) Termination; rectification of deficiencies; disputes

CHAPTER 1  
GENERAL

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

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

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

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

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

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

**1.3(2) Authority board and staff.** The powers of the authority are vested in and exercised by a board of nine voting members, appointed by the governor and subject to confirmation by the senate. The authority also includes one ex officio, voting member of the agricultural development board created in Iowa Code section 16.2C, who must be designated by that board. The ex officio, voting member designated by the agricultural development board shall serve at the pleasure of that board. The authority also includes four ex officio, nonvoting legislative members, as set forth in Iowa Code section 16.2(3). A chairperson, vice-chairperson and treasurer are elected annually by the members, generally at the July board meeting each year. Authority staff consists of an executive director, also appointed by the governor and subject to confirmation by the senate, and additional staff as approved by the executive director.

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

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

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

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

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

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

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

[ARC 4319C, IAB 2/27/19, effective 4/3/19; ARC 5094C, IAB 7/15/20, effective 8/19/20; ARC 5643C, IAB 6/2/21, effective 7/7/21]

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

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

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

[Filed 5/11/77, Notice 4/6/77—published 6/1/77, effective 7/6/77]

[Filed emergency 6/11/82—published 7/7/82, effective 6/11/82]

[Filed 12/17/82, Notice 7/7/82—published 1/5/83, effective 2/9/83]

[Filed emergency 12/23/83—published 1/18/84, effective 12/23/83]

[Filed emergency 6/28/84—published 7/18/84, effective 7/1/84]

[Filed emergency 7/26/85—published 8/14/85, effective 7/26/85]

[Filed 3/19/91, Notice 10/17/90—published 4/3/91, effective 5/8/91]

[Filed emergency 9/3/99 after Notice 4/21/99—published 9/22/99, effective 9/3/99]

[Filed emergency 7/14/00 after Notice 5/3/00—published 8/9/00, effective 7/14/00]

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

[Filed 11/6/03, Notice 9/3/03—published 11/26/03, effective 12/31/03]

[Filed ARC 1944C (Notice ARC 1764C, IAB 12/10/14), IAB 4/1/15, effective 5/6/15]

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

[Filed ARC 5094C (Notice ARC 4959C, IAB 3/11/20), IAB 7/15/20, effective 8/19/20]

[Filed ARC 5643C (Notice ARC 5414C, IAB 2/10/21), IAB 6/2/21, effective 7/7/21]

CHAPTER 11  
IOWA MAIN STREET LOAN PROGRAM

**265—11.1(16) Program description.** This program is intended to provide financing to facilitate upper floor housing, infill development projects and commercial properties situated in the downtown area of communities participating in the Iowa main street program administered by the Iowa department of economic development pursuant to 261—Chapter 39. Loans will be made from a pool of funds legally available to the authority. Community development corporations, community-initiated development groups and owners or others having an interest in property in selected Iowa main street program communities may apply for such loans. Applications first reviewed and approved by the Iowa department of economic development main street program for project appropriateness shall be reviewed by the authority for underwriting purposes.

**265—11.2(16) Waiver.** The authority may by resolution waive particular provisions of these rules in accordance with 265—Chapter 18.  
[ARC 5642C, IAB 6/2/21, effective 7/7/21]

**265—11.3(16) Main street loan program.** The purpose of the program is to assist in stimulating downtown economic development within the context of historic preservation and to establish a strong public/private partnership to revitalize downtowns and their communities by providing financing to facilitate upper floor housing, infill development projects and commercial properties situated in the downtown area of communities participating in the Iowa main street program.

**265—11.4(16) Definitions.** As used in connection with the Iowa main street loan program, the following terms have the meanings indicated.

“*Applicant*” means an eligible borrower that applies for an Iowa main street loan.

“*Application*” means those documents required by the participating lender and the authority, which shall include all of the information required by rule 265—2.8(16).

“*Commercial property*” means property formerly or currently used primarily for business, retail, governmental or professional purposes.

“*Department*” means the Iowa department of economic development.

“*Downtown area*” means the business area of a community that is centrally located within the community within the context of the Iowa main street program.

“*Eligible borrower*” means owners or others having an interest in property situated within the downtown area of a participating city, community development corporations associated with a participating city, Iowa main street program organizations associated with a participating city, community-initiated development groups associated with a participating city, or other organization associated with a participating city for purposes of implementing the Iowa main street program.

“*Financing*” includes loans, mortgages, and other financing arrangements to participants in the Iowa main street loan program to finance projects approved pursuant to rule 11.7(16).

“*Housing*” means housing as defined in Iowa Code section 16.1(14).

“*Infill development*” means new construction on a vacant commercial lot currently held as open space.

“*Participating city*” means a city participating in the Iowa main street program.

“*Property*” means property owned by the applicant or in which the applicant has an interest and for which the applicant proposes to expend the funds to be borrowed from the Iowa main street loan program.

“*Time of application*” means the date a participating lender receives an application from a participating community.

“*Upper floor housing*” means any housing that is attached to or contained in the same building as commercial property, whether located on the ground floor behind the traditional storefront or on other floors of the property.

[ARC 2046C, IAB 6/24/15, effective 7/29/15]

**265—11.5(16) Application.** Eligible borrowers for Iowa main street loans shall apply to the department in accordance with the procedures outlined in 265—Chapter 2.

**265—11.6(16) Public benefit.** Before approving an Iowa main street loan, the department and the authority must find that the proposed project will result in one or more of the following:

1. Rehabilitation of upper floor housing or commercial properties or new construction development on infill vacant lots located in the downtown area of a participating city;
2. Housing in downtown areas located in a participating city; or
3. Stimulation of downtown area economic development within the context of historic preservation of the downtown area in a participating city.

**265—11.7(16) Loan criteria.**

**11.7(1) Evaluation by the department.** The department shall evaluate each application for an Iowa main street loan to ensure that the following criteria are met:

- a. The property for which the applicant is applying for an Iowa main street loan is situated in the downtown area of a city participating in the Iowa main street program.
- b. Strong local community support is evidenced by local contributing effort including, but not limited to, contributions by the city or county, grants, tax abatement, local private contributions and investments, and establishment of community development corporations or community-initiated development groups.
- c. The loan proceeds will be used in a manner that will enhance the property in a manner that will stimulate downtown economic development within the context of historic preservation.
- d. The loan proceeds will be used in a manner that will enhance the property in a manner that will assist in establishing a strong public/private partnership to revitalize the downtown area of the community in which the property is situated.

**11.7(2) Evaluation by the authority.** Once approval for the loan is given by the department, the authority shall evaluate each application for an Iowa main street loan to ensure that the following criteria are met:

- a. The applicant shall show evidence that it is able to manage the property in a manner to show economic feasibility. This shall include an overall business management plan including, but not limited to, the following:
  - (1) A generalized projection of revenues and expenditures for the three-year period beginning the month of anticipated loan closing;
  - (2) Capital formation plans, if any;
  - (3) To the extent possible, identification and analysis of risk;
  - (4) Plans for record keeping, personnel and financial management;
  - (5) Plans for marketing the rental of the property;
  - (6) Appraisal of the property provided by the applicant.
- b. The applicant shall contribute a minimum of 10 percent of the overall project cost.
- c. There is reasonable assurance that the loan will be repaid. The authority may require any collateral, security or mortgage documents or other filings or protection, including without limitation personal or corporate guarantees, or both, as are reasonably necessary to insure security.
- d. The business's past earnings record and future prospects shall indicate an ability to repay the loan out of income from the property. The applicant shall provide financial statements and projections of future earnings prospects for the business as required by the authority and shall allow the authority reasonable access to its books and records.

**11.7(3) Amount of loans.** The principal amount of each loan shall not be less than \$50,000 and shall not exceed \$250,000.

**11.7(4) Term of loan.** Loans shall be amortized over not more than 30 years; the actual term of the loan shall be determined by the authority depending on the economic feasibility of the project.

**11.7(5) Interest rate.** Interest shall be charged on the loan at a rate related to the community investment program as determined and announced by the authority from time to time.

**11.7(6)** *Loan fee.* The applicant shall pay a fee in the amount of 1 percent of the initial loan amount. The loan fee shall be payable at closing.

These rules are intended to implement Iowa Code sections 16.1, 16.4, 16.4D, 16.5C, 16.19, and 16.51.

[Filed Emergency 6/8/01 after Notice 5/2/01—published 6/27/01, effective 6/8/01]

[Filed ARC 2046C (Notice ARC 1761C, IAB 12/10/14), IAB 6/24/15, effective 7/29/15]

[Filed ARC 5642C (Notice ARC 5412C, IAB 2/10/21), IAB 6/2/21, effective 7/7/21]



CHAPTER 18  
WAIVERS FROM ADMINISTRATIVE RULES

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

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

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

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

“*Waiver*” means an action by the authority which suspends in whole or in part the requirements or provisions of a rule as applied to a person on the basis of the particular circumstances of that person.  
[ARC 5642C, IAB 6/2/21, effective 7/7/21]

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

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

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

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

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

[ARC 5642C, IAB 6/2/21, effective 7/7/21]

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

**18.5(1) Contested cases.** If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case. A copy of the request shall also be served on all parties to the contested case proceeding.

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

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

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

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

[ARC 5642C, IAB 6/2/21, effective 7/7/21]

**265—18.7(17A,16) Additional information.** Prior to issuing an order granting or denying a waiver, the executive director may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the executive director may schedule a telephonic or in-person meeting between the petitioner and the authority's executive director, or authority staff.

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

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

**265—18.10(17A,16) Ruling.** An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains. The order shall include a statement of the relevant facts and reasons upon which the action is based and a description of the precise scope and duration of the waiver if one is issued.

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

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

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

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

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

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

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

**18.10(7) Time period of waiver.** A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the authority, a waiver may be renewed if the authority finds that grounds for a waiver continue to exist.

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

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

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

**265—18.11(17A,16) Public availability.** All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying a waiver petition are public records under Iowa Code chapter 22. Some petitions or orders may contain information the authority is authorized or required to keep confidential. The authority may accordingly redact confidential information from petitions or orders prior to public inspection.

**265—18.12(17A,16) Submission of waiver information.** Within 60 days of granting or denying a waiver, the authority shall make a submission on the Internet site established pursuant to Iowa Code section 17A.9A for the submission of waiver information. The submission shall identify the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the authority's actions on waiver requests. If practicable, the report shall detail the extent to which granting a waiver has established a precedent for additional waivers and the extent to which the granting of a waiver has affected the general applicability of the rule itself.

[ARC 5642C, IAB 6/2/21, effective 7/7/21]

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

1. That the petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or
2. That the alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or
3. That the subject of the waiver order has failed to comply with all conditions contained in the order.

[ARC 5642C, IAB 6/2/21, effective 7/7/21]

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

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

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

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

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

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

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

[Filed ARC 5642C (Notice ARC 5412C, IAB 2/10/21), IAB 6/2/21, effective 7/7/21]

Exhibit A
Sample Petition for Waiver

BEFORE THE IOWA FINANCE AUTHORITY

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



PETITION FOR WAIVER

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

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

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

Petitioner's signature

Date

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

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

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

3. All petitions for waiver must be submitted in writing to the attention of the executive director of the Iowa finance authority at the address set forth in rule 265—1.3(16). If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.  
[ARC 5642C, IAB 6/2/21, effective 7/7/21]

## EDUCATION DEPARTMENT[281]

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

### TITLE I GENERAL INFORMATION— DEPARTMENT OPERATIONS

#### CHAPTER 1 ORGANIZATION AND OPERATION

- 1.1(17A,256) State board of education
- 1.2(17A,256) Student member of state board of education
- 1.3(17A,256) Director of education
- 1.4(17A,256) Department of education

#### CHAPTER 2 AGENCY PROCEDURE FOR RULE MAKING AND PETITIONS FOR RULE MAKING (Uniform Rules)

- 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) Exemptions 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 agency of rules
- 2.18(17A) Petition for rule making
- 2.19(17A) Rule-making Internet site
- 2.20(17A) Inquiries

#### CHAPTER 3 DECLARATORY ORDERS (Uniform Rules)

- 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

## WAIVERS FROM ADMINISTRATIVE RULES

4.1(17A,ExecOrd11)	Definitions
4.2(17A,ExecOrd11)	Scope of chapter
4.3(17A,ExecOrd11)	Applicability of chapter
4.4(17A,ExecOrd11)	Criteria for waiver
4.5(17A,ExecOrd11)	Filing of petition
4.6(17A,ExecOrd11)	Content of petition
4.7(17A,ExecOrd11)	Additional information
4.8(17A,ExecOrd 11)	Notice
4.9(17A,ExecOrd11)	Hearing procedures
4.10(17A,ExecOrd11)	Ruling
4.11(17A,ExecOrd11)	Public availability
4.12(17A,ExecOrd11)	Submission of waiver information
4.13(17A,ExecOrd11)	Cancellation
4.14(17A,ExecOrd11)	Violations
4.15(17A,ExecOrd11)	Defense
4.16(17A,ExecOrd11)	Judicial review
4.17(17A,ExecOrd11)	Exception

## CHAPTER 5

## PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

(Uniform Rules)

5.1(256)	Definitions
5.3(256)	Requests for access to records
5.6(256)	Procedure by which additions, dissents, or objections may be entered into certain records
5.9(256)	Disclosures without the consent of the subject
5.10(256)	Routine use
5.11(256)	Consensual disclosure of confidential records
5.12(256)	Release to a subject
5.13(256)	Availability of records
5.14(256)	Personally identifiable information
5.15(256)	Other groups of records
5.16(256)	Applicability

## CHAPTER 6

## APPEAL PROCEDURES

6.1(290)	Scope of appeal
6.2(256,290,17A)	Definitions
6.3(290,17A)	Manner of appeal
6.4(17A)	Continuances
6.5(17A)	Intervention
6.6(17A)	Motions
6.7(17A)	Disqualification
6.8(290)	Subpoena of witnesses and costs
6.9(17A)	Discovery
6.10(17A)	Consolidation—severance
6.11(17A)	Waiver of procedures
6.12(17A)	Appeal hearing
6.13	Reserved
6.14(17A)	Ex parte communication
6.15(17A)	Record

6.16(17A)	Recording costs
6.17(290,17A)	Decision and review
6.18(290)	Finality of decision
6.19(17A)	Default
6.20(17A)	Application for rehearing of final decision
6.21(17A)	Rehearing
6.22(17A)	Emergency adjudicative proceedings
6.23(256,17A)	Additional requirements for specific programs

CHAPTER 7  
CRITERIA FOR GRANTS

7.1(256,17A)	Purpose
7.2(256,17A)	Definitions
7.3(256,17A)	Requirements
7.4(256,17A)	Review process
7.5(290,17A)	Appeal of grant denial or termination

CHAPTERS 8 to 10  
Reserved

TITLE II  
*ACCREDITED SCHOOLS AND SCHOOL DISTRICTS*

CHAPTER 11  
UNSAFE SCHOOL CHOICE OPTION

11.1(PL107-110)	Purpose
11.2(PL107-110)	Definitions
11.3(PL107-110)	Whole school option
11.4(PL107-110)	Individual student option
11.5(PL107-110)	District reporting

CHAPTER 12  
GENERAL ACCREDITATION STANDARDS

DIVISION I  
GENERAL STANDARDS

12.1(256)      General standards

DIVISION II  
DEFINITIONS

12.2(256)      Definitions

DIVISION III  
ADMINISTRATION

12.3(256)      Administration

DIVISION IV  
SCHOOL PERSONNEL

12.4(256)      School personnel

DIVISION V  
EDUCATION PROGRAM

12.5(256)      Education program

DIVISION VI  
ACTIVITY PROGRAM

12.6(256)      Activity program

DIVISION VII  
STAFF DEVELOPMENT

12.7(256,284,284A)      Professional development

DIVISION VIII  
ACCOUNTABILITY

12.8(256)      Accountability for student achievement

DIVISION IX  
EXEMPTION REQUEST PROCESS

12.9(256)      General accreditation standards exemption request

DIVISION X  
INDEPENDENT ACCREDITING AGENCIES

12.10(256)      Independent accrediting agencies

DIVISION XI  
HIGH-QUALITY STANDARDS FOR COMPUTER SCIENCE

12.11(256)      High-quality standards for computer science

CHAPTER 13

Reserved

CHAPTER 14

SCHOOL HEALTH SERVICES

14.1(256)      Medication administration

14.2(256)      Special health services

14.3(256)      School district and accredited nonpublic school stock epinephrine auto-injector  
voluntary supply

14.4(279)      Suicide prevention, identification of adverse childhood experiences, and strategies  
to mitigate toxic stress response

14.5(256,280)      Severability

CHAPTER 15  
USE OF ONLINE LEARNING AND TELECOMMUNICATIONS  
FOR INSTRUCTION BY SCHOOLS

15.1(256)

Purpose

15.2(256)

Definitions

DIVISION I

USE OF TELECOMMUNICATIONS FOR INSTRUCTION BY SCHOOLS

15.3(256)

Interactivity

15.4(256)

Course eligibility

15.5(256)

Teacher preparation and accessibility

15.6(256)

School responsibilities

DIVISION II

ONLINE LEARNING OFFERED BY A SCHOOL DISTRICT

15.7(256)

School district responsibilities

15.8(256)

Data reporting

15.9(256)

Special education services

DIVISION III

IOWA LEARNING ONLINE (ILO)

15.10(256)

Appropriate applications of ILO coursework

15.11(256)

Conditions under which ILO coursework may be used to satisfy general accreditation requirements

15.12(256)

School and school district responsibilities

15.13(256)

Department responsibilities

15.14(256)

Responsibilities of individuals providing private instruction under Iowa Code chapter 299A

15.15(256)

Enrollment in an ILO course

15.16(256)

Private providers of online coursework

CHAPTER 16

STATEWIDE VOLUNTARY PRESCHOOL PROGRAM

16.1(256C)

Purpose

16.2(256C)

Definitions

16.3(256C)

Preschool program standards

16.4(256C)

Collaboration requirements

16.5(256C)

Applications for funding

16.6(256C)

Application process

16.7(256C)

Award contracts

16.8(256C)

Contract termination

16.9(256C)

Criteria for applications for funding

16.10(256C)

Appeal of application denial or termination

16.11(256C)

Finance

16.12(256C)

Transportation

16.13(256C)

Accountability requirements

16.14(256C)

Monitoring

16.15(256C)

Open enrollment not applicable

CHAPTER 17

OPEN ENROLLMENT

17.1(282)

Intent and purpose

17.2(282)

Definitions

17.3(282)

Application process

17.4(282)

Filing after the March 1 deadline—good cause

17.5(282)	Filing after the March 1 deadline—harassment or serious health condition
17.6(282)	Restrictions to open enrollment requests
17.7(282)	Open enrollment for kindergarten
17.8(282)	Requirements applicable to parents/guardians and students
17.9(282)	Transportation
17.10(282)	Method of finance
17.11(282)	Special education students
17.12	Reserved
17.13(282)	Applicability
17.14(282)	Voluntary diversity plans or court-ordered desegregation plans
17.15(282)	Open enrollment and online coursework

CHAPTER 18  
SCHOOL FEES

18.1(256)	Policy
18.2(256)	Fee policy
18.3(256)	Eligibility for waiver, partial waiver or temporary waiver of student fees
18.4(256)	Fees covered
18.5(256)	Effective date

CHAPTERS 19 and 20  
Reserved

TITLE III  
*COMMUNITY COLLEGES*

CHAPTER 21  
COMMUNITY COLLEGES

DIVISION I  
APPROVAL STANDARDS

21.1(260C)	Definitions
21.2(260C)	Administration
21.3(260C)	Associate of arts and associate of science transfer major programs
21.4(260C)	Curriculum and evaluation
21.5(260C)	Library or learning resource center
21.6(260C)	Student services
21.7(260C)	Laboratories, equipment and supplies
21.8(260C)	Physical plant
21.9(260C)	Nonreimbursable facilities
21.10 to 21.19	Reserved

DIVISION II  
COMMUNITY COLLEGE ENERGY APPROPRIATIONS

21.20 to 21.29	Reserved
----------------	----------

DIVISION III  
INSTRUCTIONAL COURSE FOR DRINKING DRIVERS

21.30(321J)	Purpose
21.31(321J)	Course
21.32(321J)	Tuition fee established
21.33(321J)	Administrative fee established
21.34(321J)	Advisory committee

DIVISION IV  
JOBS NOW CAPITALS ACCOUNT

21.35 to 21.44	Reserved
----------------	----------

DIVISION V  
STATE COMMUNITY COLLEGE FUNDING PLAN

21.45(260C) Purpose

DIVISION VI  
INTERCOLLEGIATE ATHLETIC COMPETITION

21.46 to 21.56 Reserved

DIVISION VII  
QUALITY INSTRUCTIONAL CENTER INITIATIVE

21.57 to 21.63 Reserved

DIVISION VIII  
PROGRAM AND ADMINISTRATIVE SHARING INITIATIVE

21.64 to 21.71 Reserved

DIVISION IX  
APPRENTICESHIP PROGRAM

21.72(260C) Purpose  
21.73(260C) Definitions  
21.74(260C) Apprenticeship programs

DIVISION X  
MISCELLANEOUS PROVISIONS

21.75(260C,82GA,SF358) Used motor vehicle dealer education program

## CHAPTER 22 SENIOR YEAR PLUS PROGRAM

DIVISION I  
GENERAL PROVISIONS

22.1(261E) Scope  
22.2(261E) Student eligibility  
22.3(261E) Teacher eligibility, responsibilities  
22.4(261E) Institutional eligibility, responsibilities  
22.5 Reserved

DIVISION II  
DEFINITIONS

22.6(261E) Definitions

DIVISION III  
ADVANCED PLACEMENT PROGRAM

22.7(261E) School district obligations  
22.8(261E) Obligations regarding registration for advanced placement examinations  
22.9 and 22.10 Reserved

DIVISION IV  
CONCURRENT ENROLLMENT PROGRAM

22.11(261E) Applicability  
22.12 Reserved  
22.13(261E) Accredited nonpublic school concurrent enrollment option

DIVISION V  
POSTSECONDARY ENROLLMENT OPTIONS PROGRAM

22.14(261E) Availability  
22.15(261E) Notification  
22.16(261E) Student eligibility  
22.17(261E) Eligible postsecondary courses  
22.18(261E) Application process  
22.19(261E) Credits  
22.20(261E) Transportation

- 22.21(261E) Tuition payments  
 22.22(261E) Tuition reimbursements and adjustments  
 22.23 Reserved

DIVISION VI  
 CAREER ACADEMIES

- 22.24(261E) Career academies  
 22.25 Reserved

DIVISION VII  
 REGIONAL ACADEMIES

- 22.26(261E) Regional academies  
 22.27(261E) Waivers for certain regional academies

DIVISION VIII  
 INTERNET-BASED AND ICN COURSEWORK

- 22.28(261E) Internet-based coursework  
 22.29(261E) ICN-based coursework  
 22.30 and 22.31 Reserved

DIVISION IX  
 PROJECT LEAD THE WAY

- 22.32(261E) Project lead the way

DIVISION X  
 SUMMER COLLEGE CREDIT PROGRAM

- 22.33(261E) Summer college credit program

CHAPTER 23

ADULT EDUCATION AND LITERACY PROGRAMS

- 23.1(260C) Definitions  
 23.2(260C) State planning  
 23.3(260C) Program administration  
 23.4(260C) Career pathways  
 23.5(260C) Student eligibility  
 23.6(260C) Qualification of staff  
 23.7(260C) High-quality professional development  
 23.8(260C) Performance and accountability

CHAPTER 24

COMMUNITY COLLEGE ACCREDITATION

- 24.1(260C) Purpose  
 24.2(260C) Scope  
 24.3(260C) Definitions  
 24.4(260C) Accreditation components and criteria—Higher Learning Commission  
 24.5(260C) Accreditation components and criteria—additional state standards  
 24.6(260C) Accreditation process

CHAPTER 25

PATHWAYS FOR ACADEMIC CAREER AND EMPLOYMENT PROGRAM;  
 GAP TUITION ASSISTANCE PROGRAM

DIVISION I  
 GENERAL PROVISIONS

- 25.1(260H,260I) Scope  
 25.2(260H,260I) Definitions  
 25.3 to 25.10 Reserved

DIVISION II  
PATHWAYS FOR ACADEMIC CAREER AND EMPLOYMENT (PACE) PROGRAM

25.11(260H)	Purpose
25.12(260H)	Target populations
25.13(260H)	Eligibility criteria for projects
25.14(260H)	Program component requirements
25.15(260H)	Pipeline program
25.16(260H)	Career pathways and bridge curriculum development program
25.17(260H)	Pathway navigators
25.18(260H)	Regional industry sector partnerships
25.19	Reserved

DIVISION III  
GAP TUITION ASSISTANCE PROGRAM

25.20(260I)	Purpose
25.21(260I)	Applicants for tuition assistance
25.22(260I)	Eligible costs
25.23(260I)	Eligible certificate programs
25.24(260I)	Initial assessment
25.25(260I)	Program interview
25.26(260I)	Participation requirements
25.27(260I)	Oversight
25.28(260I)	Redistribution of funds

TITLE IV  
*DRIVER AND SAFETY EDUCATION*

CHAPTER 26  
Reserved

CHAPTER 27  
WORKFORCE TRAINING AND ECONOMIC DEVELOPMENT FUNDS

27.1(260C)	Purpose
27.2(260C)	Definitions
27.3(260C)	Funds allocation
27.4(260C)	Community college workforce and economic development fund plans and progress reports
27.5(260C)	Use of funds
27.6(260C)	Prior approval
27.7(260C)	Annual plan and progress report approval
27.8(260C)	Options upon default or noncompliance

CHAPTERS 28 to 30  
Reserved

TITLE V  
*NONTRADITIONAL STUDENTS*

CHAPTER 31  
PRIVATE INSTRUCTION AND DUAL ENROLLMENT

31.1(299,299A)	Purpose and definitions
31.2(299)	Reports as to competent private instruction
31.3(299,299A)	Duties of privately retained licensed practitioners
31.4(299,299A)	Duties of licensed practitioners, home school assistance program
31.5(299A)	School district duties related to competent private instruction
31.6(299A)	Dual enrollment

- 31.7(299) Open enrollment
- 31.8(299A) Baseline evaluation and annual assessment
- 31.9(299A) Reporting assessment results
- 31.10(299A) Special education students
- 31.11(299,299A) Independent private instruction
- 31.12(299,299A) Miscellaneous provisions

#### CHAPTER 32

##### HIGH SCHOOL EQUIVALENCY DIPLOMA

- 32.1(259A) Purpose
- 32.2(259A) Definitions
- 32.3(259A) Eligibility to participate
- 32.4(259A) By whom administered
- 32.5(259A) Diploma, transcript, verification fees
- 32.6(259A) Application, course, and testing fees
- 32.7(259A) High school equivalency diploma program based on a department-approved test
- 32.8(259A) High school equivalency diploma program based on attainment of high school credits
- 32.9(259A) High school equivalency diploma program based on postsecondary degree
- 32.10(259A) High school equivalency diploma program based on foreign postsecondary degree

#### CHAPTER 33

##### EDUCATING HOMELESS CHILDREN AND YOUTH

- 33.1(256) Purpose
- 33.2(256) Definitions
- 33.3(256) Responsibilities of the board of directors
- 33.4(256) School records; student transfers
- 33.5(256) Immunization requirements
- 33.6(256) Waiver of fees and charges encouraged
- 33.7(256) Waiver of enrollment requirements encouraged; placement
- 33.8(256) Residency of homeless child or youth
- 33.9(256) Dispute resolution
- 33.10(256) Transportation of homeless children and youth
- 33.11(256) School services

#### CHAPTER 34

##### FUNDING FOR CHILDREN RESIDING IN STATE INSTITUTIONS OR MENTAL HEALTH INSTITUTES

- 34.1(218) Scope
- 34.2(218) Definitions
- 34.3(218) General principles
- 34.4(218) Notification
- 34.5(218) Program submission and approval
- 34.6(218) Budget submission and approval
- 34.7(218) Payments
- 34.8(218) Payments to the AEA
- 34.9(218) Contracting for services
- 34.10(218) Accounting for average daily attendance
- 34.11(218) Accounting for actual program costs
- 34.12(218) Audit
- 34.13(218) Hold-harmless provision
- 34.14(218,256B,34CFR300) AEA services
- 34.15(218,233A,261C) Postsecondary credit courses

CHAPTER 35  
EDUCATIONAL STANDARDS AND PROGRAM REQUIREMENTS FOR CHILDREN'S  
RESIDENTIAL FACILITIES

35.1(282)	Scope
35.2(282)	Intent
35.3(282)	Definitions
35.4(282)	Establishing an appropriate educational program
35.5(282)	Display of notices; fees
35.6(282)	Provision of appropriate educational services
35.7(282)	Reporting

TITLE VI  
*INTERSCHOLASTIC COMPETITION*

CHAPTER 36  
EXTRACURRICULAR INTERSCHOLASTIC COMPETITION

36.1(280)	Definitions
36.2(280)	Registered organizations
36.3(280)	Filings by organizations
36.4(280)	Executive board
36.5(280)	Federation membership
36.6(280)	Salaries
36.7(280)	Expenses
36.8(280)	Financial report
36.9(280)	Bond
36.10(280)	Audit
36.11(280)	Examinations by auditors
36.12(280)	Access to records
36.13(280)	Appearance before state board
36.14(280)	Interscholastic athletics
36.15(280)	Eligibility requirements
36.16(280)	Executive board review
36.17(280)	Appeals to director
36.18(280)	Organization policies
36.19(280)	Eligibility in situations of district organization change
36.20(280)	Cooperative student participation

CHAPTER 37  
EXTRACURRICULAR ATHLETIC ACTIVITY  
CONFERENCE FOR MEMBER SCHOOLS

37.1(280)	Policy and purpose
37.2(280)	Initial responsibility
37.3(280)	Complaint to the director, department of education
37.4(280)	Mediation
37.5(280)	Resolution or recommendation of the mediation team
37.6(280)	Decision
37.7(280)	Effective date of the decision

CHAPTERS 38 to 40  
Reserved

TITLE VII  
*SPECIAL EDUCATION*

CHAPTER 41  
SPECIAL EDUCATION

DIVISION I  
PURPOSE AND APPLICABILITY

- 41.1(256B,34CFR300) Purposes
- 41.2(256B,34CFR300) Applicability of this chapter

DIVISION II  
DEFINITIONS

- 41.3(256B,34CFR300) Act
- 41.4(256B,273) Area education agency
- 41.5(256B,34CFR300) Assistive technology device
- 41.6(256B,34CFR300) Assistive technology service
- 41.7(256B,34CFR300) Charter school
- 41.8(256B,34CFR300) Child with a disability
- 41.9(256B,34CFR300) Consent
- 41.10(256B,34CFR300) Core academic subjects
- 41.11(256B,34CFR300) Day; business day; school day
- 41.12(256B,34CFR300) Educational service agency
- 41.13(256B,34CFR300) Elementary school
- 41.14(256B,34CFR300) Equipment
- 41.15(256B,34CFR300) Evaluation
- 41.16(256B,34CFR300) Excess costs
- 41.17(256B,34CFR300) Free appropriate public education
- 41.18 Reserved
- 41.19(256B,34CFR300) Homeless children
- 41.20(256B,34CFR300) Include
- 41.21(256B,34CFR300) Indian and Indian tribe
- 41.22(256B,34CFR300) Individualized education program
- 41.23(256B,34CFR300) Individualized education program team
- 41.24(256B,34CFR300) Individualized family service plan
- 41.25(256B,34CFR300) Infant or toddler with a disability
- 41.26(256B,34CFR300) Institution of higher education
- 41.27(256B,34CFR300) Limited English proficient
- 41.28(256B,34CFR300) Local educational agency
- 41.29(256B,34CFR300) Native language
- 41.30(256B,34CFR300) Parent
- 41.31(256B,34CFR300) Parent training and information center
- 41.32(256B,34CFR300) Personally identifiable
- 41.33(256B,34CFR300) Public agency; nonpublic agency; agency
- 41.34(256B,34CFR300) Related services
- 41.35 Reserved
- 41.36(256B,34CFR300) Secondary school
- 41.37(34CFR300) Services plan
- 41.38(34CFR300) Secretary
- 41.39(256B,34CFR300) Special education
- 41.40(34CFR300) State
- 41.41(256B,34CFR300) State educational agency
- 41.42(256B,34CFR300) Supplementary aids and services
- 41.43(256B,34CFR300) Transition services

- 41.44(34CFR300) Universal design
- 41.45(256B,34CFR300) Ward of the state
- 41.46 to 41.49 Reserved
- 41.50(256B,34CFR300) Other definitions associated with identification of eligible individuals
- 41.51(256B,34CFR300) Other definitions applicable to this chapter
- 41.52 to 41.99 Reserved

DIVISION III  
RULES APPLICABLE TO THE STATE AND TO ALL AGENCIES

- 41.100(256B,34CFR300) Eligibility for assistance
- 41.101(256B,34CFR300) Free appropriate public education (FAPE)
- 41.102(256B,34CFR300) Limitation—exceptions to FAPE for certain ages
- 41.103(256B,34CFR300) FAPE—methods and payments
- 41.104(256B,34CFR300) Residential placement
- 41.105(256B,34CFR300) Assistive technology
- 41.106(256B,34CFR300) Extended school year services
- 41.107(256B,34CFR300) Nonacademic services
- 41.108(256B,34CFR300) Physical education
- 41.109(256B,34CFR300) Full educational opportunity goal (FEOG)
- 41.110(256B,34CFR300) Program options
- 41.111(256B,34CFR300) Child find
- 41.112(256B,34CFR300) Individualized education programs (IEPs)
- 41.113(256B,34CFR300) Routine checking of hearing aids and external components of surgically implanted medical devices
- 41.114(256B,34CFR300) Least restrictive environment (LRE)
- 41.115(256B,34CFR300) Continuum of alternative services and placements
- 41.116(256B,34CFR300) Placements
- 41.117(256B,34CFR300) Nonacademic settings
- 41.118(256B,34CFR300) Children in public or private institutions
- 41.119(256B,34CFR300) Technical assistance and training activities
- 41.120(256B,34CFR300) Monitoring activities
- 41.121(256B,34CFR300) Procedural safeguards
- 41.122(256B,34CFR300) Evaluation
- 41.123(256B,34CFR300) Confidentiality of personally identifiable information
- 41.124(256B,34CFR300) Transition of children from the Part C program to preschool programs
- 41.125 to 41.128 Reserved
- 41.129(256B,34CFR300) Responsibility regarding children in private schools
- 41.130(256,256B,34CFR300) Definition of parentally placed private school children with disabilities
- 41.131(256,256B,34CFR300) Child find for parentally placed private school children with disabilities
- 41.132(256,256B,34CFR300) Provision of services for parentally placed private school children with disabilities: basic requirement
- 41.133(256,256B,34CFR300) Expenditures
- 41.134(256,256B,34CFR300) Consultation
- 41.135(256,256B,34CFR300) Written affirmation
- 41.136(256,256B,34CFR300) Compliance
- 41.137(256,256B,34CFR300) Equitable services determined
- 41.138(256,256B,34CFR300) Equitable services provided
- 41.139(256,256B,34CFR300) Location of services and transportation
- 41.140(256,256B,34CFR300) Due process complaints and state complaints
- 41.141(256,256B,34CFR300) Requirement that funds not benefit a private school
- 41.142(256,256B,34CFR300) Use of personnel
- 41.143(256,256B,34CFR300) Separate classes prohibited
- 41.144(256,256B,34CFR300) Property, equipment, and supplies

- 41.145(256B,34CFR300) Applicability of rules 281—41.146(256B,34CFR300) to 281—41.147(256B,34CFR300)
- 41.146(256B,34CFR300) Responsibility of department
- 41.147(256B,34CFR300) Implementation by department
- 41.148(256B,34CFR300) Placement of children by parents when FAPE is at issue
- 41.149(256B,34CFR300) SEA responsibility for general supervision
- 41.150 Reserved
- 41.151(256B,34CFR300) Adoption of state complaint procedures
- 41.152(256B,34CFR300) Minimum state complaint procedures
- 41.153(256B,34CFR300) Filing a complaint
- 41.154(256B,34CFR300) Methods of ensuring services
- 41.155(256B,34CFR300) Hearings relating to AEA or LEA eligibility
- 41.156(256B,34CFR300) Personnel qualifications
- 41.157 to 41.159 Reserved
- 41.160(256B,34CFR300) Participation in assessments
- 41.161 Reserved
- 41.162(256B,34CFR300) Supplementation of state, local, and other federal funds
- 41.163(256B,34CFR300) Maintenance of state financial support
- 41.164 Reserved
- 41.165(256B,34CFR300) Public participation
- 41.166(256B,34CFR300) Rule of construction
- 41.167(256B,34CFR300) State advisory panel
- 41.168(256B,34CFR300) Advisory panel membership
- 41.169(256B,34CFR300) Advisory panel duties
- 41.170(256B,34CFR300) Suspension and expulsion rates
- 41.171 Reserved
- 41.172(256B,34CFR300) Access to instructional materials
- 41.173(256B,34CFR300) Overidentification and disproportionality
- 41.174(256B,34CFR300) Prohibition on mandatory medication
- 41.175 Reserved
- 41.176(256B) Special school provisions
- 41.177(256B) Facilities
- 41.178(256B) Materials, equipment and assistive technology
- 41.179 to 41.185 Reserved
- 41.186(256B,34CFR300) Assistance under other federal programs
- 41.187(256B) Research, innovation, and improvement
- 41.188 to 41.199 Reserved

DIVISION IV  
LEA AND AEA ELIGIBILITY, IN GENERAL

- 41.200(256B,34CFR300) Condition of assistance
- 41.201(256B,34CFR300) Consistency with state policies
- 41.202(256B,34CFR300) Use of amounts
- 41.203(256B,34CFR300) Maintenance of effort
- 41.204(256B,34CFR300) Exception to maintenance of effort
- 41.205(256B,34CFR300) Adjustment to local fiscal efforts in certain fiscal years
- 41.206(256B,34CFR300) Schoolwide programs under Title I of the ESEA
- 41.207(256B,34CFR300) Personnel development
- 41.208(256B,34CFR300) Permissive use of funds
- 41.209(256B,34CFR300) Treatment of charter schools and their students
- 41.210(256B,34CFR300) Purchase of instructional materials
- 41.211(256B,34CFR300) Information for department
- 41.212(256B,34CFR300) Public information

- 41.213(256B,34CFR300) Records regarding migratory children with disabilities
- 41.214 to 41.219 Reserved
- 41.220(256B,34CFR300) Exception for prior local plans
- 41.221(256B,34CFR300) Notification of AEA or LEA or state agency in case of ineligibility
- 41.222(256B,34CFR300) AEA or LEA and state agency compliance
- 41.223(256B,34CFR300) Joint establishment of eligibility
- 41.224(256B,34CFR300) Requirements for jointly establishing eligibility
- 41.225 Reserved
- 41.226(256B,34CFR300) Early intervening services
- 41.227 Reserved
- 41.228(256B,34CFR300) State agency eligibility
- 41.229(256B,34CFR300) Disciplinary information
- 41.230(256B,34CFR300) SEA flexibility
- 41.231 to 41.299 Reserved

#### DIVISION V

##### EVALUATION, ELIGIBILITY, IEPs, AND PLACEMENT DECISIONS

- 41.300(256B,34CFR300) Parental consent and participation
- 41.301(256B,34CFR300) Full and individual initial evaluations
- 41.302(256B,34CFR300) Screening for instructional purposes is not evaluation
- 41.303(256B,34CFR300) Reevaluations
- 41.304(256B,34CFR300) Evaluation procedures
- 41.305(256B,34CFR300) Additional requirements for evaluations and reevaluations
- 41.306(256B,34CFR300) Determination of eligibility
- 41.307(256B,34CFR300) Specific learning disabilities
- 41.308(256B,34CFR300) Additional group members
- 41.309(256B,34CFR300) Determining the existence of a specific learning disability
- 41.310(256B,34CFR300) Observation
- 41.311(256B,34CFR300) Specific documentation for the eligibility determination
- 41.312(256B,34CFR300) General education interventions
- 41.313(256B,34CFR300) Systematic problem-solving process
- 41.314(256B,34CFR300) Progress monitoring and data collection
- 41.315 to 41.319 Reserved
- 41.320(256B,34CFR300) Definition of individualized education program
- 41.321(256B,34CFR300) IEP team
- 41.322(256B,34CFR300) Parent participation
- 41.323(256B,34CFR300) When IEPs must be in effect
- 41.324(256B,34CFR300) Development, review, and revision of IEP
- 41.325(256B,34CFR300) Private school placements by public agencies
- 41.326(256B,34CFR300) Other rules concerning IEPs
- 41.327(256B,34CFR300) Educational placements
- 41.328(256B,34CFR300) Alternative means of meeting participation
- 41.329 to 41.399 Reserved

#### DIVISION VI

##### ADDITIONAL RULES RELATED TO AEAs, LEAs, AND SPECIAL EDUCATION

- 41.400(256B,34CFR300) Shared responsibility
- 41.401(256B,34CFR300) Licensure (certification)
- 41.402(256B,273,34CFR300) Authorized personnel
- 41.403(256B) Paraprofessionals
- 41.404(256B) Policies and procedures required of all public agencies
- 41.405 Reserved
- 41.406(256B) Additional requirements of LEAs
- 41.407(256B,273,34CFR300) Additional requirements of AEAs

- 41.408(256B,273,34CFR300) Instructional services
- 41.409(256B,34CFR300) Support services
- 41.410(256B,34CFR300) Itinerant services
- 41.411(256B,34CFR300) Related services, supplementary aids and services
- 41.412(256B,34CFR300) Transportation
- 41.413(256,256B,34CFR300) Additional rules relating to accredited nonpublic schools
- 41.414 to 41.499 Reserved

DIVISION VII  
PROCEDURAL SAFEGUARDS

- 41.500(256B,34CFR300) Responsibility of SEA and other public agencies
- 41.501(256B,34CFR300) Opportunity to examine records; parent participation in meetings
- 41.502(256B,34CFR300) Independent educational evaluation
- 41.503(256B,34CFR300) Prior notice by the public agency; content of notice
- 41.504(256B,34CFR300) Procedural safeguards notice
- 41.505(256B,34CFR300) Electronic mail
- 41.506(256B,34CFR300) Mediation
- 41.507(256B,34CFR300) Filing a due process complaint
- 41.508(256B,34CFR300) Due process complaint
- 41.509(256B,34CFR300) Model forms
- 41.510(256B,34CFR300) Resolution process
- 41.511(256B,34CFR300) Impartial due process hearing
- 41.512(256B,34CFR300) Hearing rights
- 41.513(256B,34CFR300) Hearing decisions
- 41.514(256B,34CFR300) Finality of decision
- 41.515(256B,34CFR300) Timelines and convenience of hearings
- 41.516(256B,34CFR300) Civil action
- 41.517(256B,34CFR300) Attorneys' fees
- 41.518(256B,34CFR300) Child's status during proceedings
- 41.519(256B,34CFR300) Surrogate parents
- 41.520(256B,34CFR300) Transfer of parental rights at age of majority
- 41.521 to 41.529 Reserved
- 41.530(256B,34CFR300) Authority of school personnel
- 41.531(256B,34CFR300) Determination of setting
- 41.532(256B,34CFR300) Appeal
- 41.533(256B,34CFR300) Placement during appeals and mediations
- 41.534(256B,34CFR300) Protections for children not determined eligible for special education and related services
- 41.535(256B,34CFR300) Referral to and action by law enforcement and judicial authorities
- 41.536(256B,34CFR300) Change of placement because of disciplinary removals
- 41.537(256B,34CFR300) State enforcement mechanisms
- 41.538 to 41.599 Reserved

DIVISION VIII  
MONITORING, ENFORCEMENT, CONFIDENTIALITY, AND PROGRAM INFORMATION

- 41.600(256B,34CFR300) State monitoring and enforcement
- 41.601(256B,34CFR300) State performance plans and data collection
- 41.602(256B,34CFR300) State use of targets and reporting
- 41.603(256B,34CFR300) Department review and determination regarding public agency performance
- 41.604(256B,34CFR300) Enforcement
- 41.605(256B,34CFR300) Withholding funds
- 41.606(256B,34CFR300) Public attention
- 41.607 Reserved
- 41.608(256B,34CFR300) State enforcement

- 41.609(256B,34CFR300) State consideration of other state or federal laws
- 41.610(256B,34CFR300) Confidentiality
- 41.611(256B,34CFR300) Definitions
- 41.612(256B,34CFR300) Notice to parents
- 41.613(256B,34CFR300) Access rights
- 41.614(256B,34CFR300) Record of access
- 41.615(256B,34CFR300) Records on more than one child
- 41.616(256B,34CFR300) List of types and locations of information
- 41.617(256B,34CFR300) Fees
- 41.618(256B,34CFR300) Amendment of records at parent's request
- 41.619(256B,34CFR300) Opportunity for a hearing
- 41.620(256B,34CFR300) Result of hearing
- 41.621(256B,34CFR300) Hearing procedures
- 41.622(256B,34CFR300) Consent
- 41.623(256B,34CFR300) Safeguards
- 41.624(256B,34CFR300) Destruction of information
- 41.625(256B,34CFR300) Children's rights
- 41.626(256B,34CFR300) Enforcement
- 41.627 to 41.639 Reserved
- 41.640(256B,34CFR300) Annual report of children served—report requirement
- 41.641(256B,34CFR300) Annual report of children served—information required in the report
- 41.642(256B,34CFR300) Data reporting
- 41.643(256B,34CFR300) Annual report of children served—certification
- 41.644(256B,34CFR300) Annual report of children served—criteria for counting children
- 41.645(256B,34CFR300) Annual report of children served—other responsibilities of the SEA
- 41.646(256B,34CFR300) Disproportionality
- 41.647(256B,34CFR300) Determining significant disproportionality
- 41.648 to 41.699 Reserved

#### DIVISION IX

##### ALLOCATIONS BY THE SECRETARY TO THE STATE

- 41.700 to 41.703 Reserved
- 41.704(256B,34CFR300) State-level activities
- 41.705(256B,34CFR300) Subgrants to AEAs
- 41.706 to 41.799 Reserved

#### DIVISION X

##### PRESCHOOL GRANTS FOR CHILDREN WITH DISABILITIES

- 41.800(256B,34CFR300) General rule
- 41.801 and 41.802 Reserved
- 41.803(256B,34CFR300) Definition of state
- 41.804(256B,34CFR300) Eligibility
- 41.805 Reserved
- 41.806(256B,34CFR300) Eligibility for financial assistance
- 41.807 to 41.811 Reserved
- 41.812(256B,34CFR300) Reservation for state activities
- 41.813(256B,34CFR300) State administration
- 41.814(256B,34CFR300) Other state-level activities
- 41.815(256B,34CFR300) Subgrants to AEAs
- 41.816(256B,34CFR300) Allocations to AEAs
- 41.817(256B,34CFR300) Reallocation of AEA funds
- 41.818(256B,34CFR300) Part C of the Act inapplicable
- 41.819 to 41.899 Reserved

DIVISION XI  
ADDITIONAL RULES CONCERNING FINANCE AND PUBLIC ACCOUNTABILITY

- 41.900(256B,282) Scope
- 41.901(256B,282) Records and reports
- 41.902(256B,282) Audit
- 41.903(256B,282) Contractual agreements
- 41.904(256B) Research and demonstration projects and models for special education program development
- 41.905(256B,273) Additional special education
- 41.906(256B,273,282) Extended school year services
- 41.907(256B,282,34CFR300,303) Program costs
- 41.908(256B,282) Accountability
- 41.909 to 41.999 Reserved

DIVISION XII  
PRACTICE BEFORE MEDIATORS AND ADMINISTRATIVE LAW JUDGES

- 41.1000(17A,256B,290) Applicability
- 41.1001(17A,256B,290) Definitions
- 41.1002(256B,34CFR300) Special education mediation conference
- 41.1003(17A,256B) Procedures concerning due process complaints
- 41.1004(17A,256B) Participants in the hearing
- 41.1005(17A,256B) Convening the hearing
- 41.1006(17A,256B) Stipulated record hearing
- 41.1007(17A,256B) Evidentiary hearing
- 41.1008(17A,256B) Mixed evidentiary and stipulated record hearing
- 41.1009(17A,256B) Witnesses
- 41.1010(17A,256B) Rules of evidence
- 41.1011(17A,256B) Communications
- 41.1012(17A,256B) Record
- 41.1013(17A,256B) Decision and review
- 41.1014(17A,256B) Finality of decision
- 41.1015(256B,34CFR300) Disqualification of mediator
- 41.1016(17A) Correcting decisions of administrative law judges
- 41.1017 to 41.1099 Reserved

DIVISION XIII  
ADDITIONAL RULES NECESSARY TO IMPLEMENT AND APPLY THIS CHAPTER

- 41.1100(256B,34CFR300) References to Code of Federal Regulations
- 41.1101(256B,34CFR300) Severability

CHAPTER 42

Reserved

TITLE VIII  
*SCHOOL TRANSPORTATION*

CHAPTER 43  
PUPIL TRANSPORTATION

DIVISION I  
TRANSPORTATION ROUTES

- 43.1(285) Intra-area education agency routes
- 43.2(285) Interarea education agency routes

DIVISION II  
PRIVATE CONTRACTORS

- 43.3(285) Contract required
- 43.4(285) Uniform charge
- 43.5(285) Board must be party
- 43.6(285) Contract with parents
- 43.7(285) Vehicle requirements

DIVISION III  
FINANCIAL RECORDS AND REPORTS

- 43.8(285) Required charges
- 43.9(285) Activity trips deducted

DIVISION IV  
USE OF SCHOOL BUSES OTHER THAN FOR ROUTES

- 43.10(285) Permitted uses listed
- 43.11(285) Teacher transportation

DIVISION V  
THE BUS DRIVER

- 43.12(285) Driver qualifications
- 43.13(285) Stability factors
- 43.14(285) Driver age
- 43.15(285) Physical fitness
- 43.16 Reserved
- 43.17(285) Insulin-dependent diabetics
- 43.18(285) Authorization to be carried by driver
- 43.19 and 43.20 Reserved
- 43.21(285) Experience, traffic law knowledge and driving record
- 43.22(321) Fee collection and distribution of funds
- 43.23(285) Driver authorization
- 43.24(321) Authorization denials and revocations

DIVISION VI  
PURCHASE OF BUSES

- 43.25(285) Local board procedure
- 43.26(285) Financing
- 43.27 to 43.29 Reserved

DIVISION VII  
MISCELLANEOUS REQUIREMENTS

- 43.30(285) Semiannual inspection
- 43.31(285) Maintenance record
- 43.32(285) Drivers' schools
- 43.33(285) Insurance
- 43.34(285) Contract—privately owned buses
- 43.35(285) Contract—district-owned buses
- 43.36 Reserved
- 43.37(285) Railroad crossings
- 43.38(285) Driver restrictions
- 43.39(285) Civil defense projects
- 43.40(285) Pupil instruction
- 43.41(285) Trip inspections
- 43.42(285) Loading and unloading areas
- 43.43(285) Communication equipment

DIVISION VIII  
COMMON CARRIERS

43.44(285) Standards for common carriers

CHAPTER 44  
SCHOOL BUSES

44.1(285) Requirements for manufacturers  
 44.2(285) School bus—type classifications  
 44.3(285) School bus body and chassis specifications  
 44.4(285) Construction of vehicles for children with mobility challenges  
 44.5(285) Type III vehicles  
 44.6(285) Repair, replacement of school bus body and chassis components following original equipment manufacture

CHAPTER 45  
Reserved

TITLE IX  
*VOCATIONAL EDUCATION*

CHAPTER 46  
CAREER AND TECHNICAL EDUCATION

46.1(258) Federal Act accepted  
 46.2(258) Definitions  
 46.3(258) State board for career and technical education  
 46.4(258) Career and technical education service areas  
 46.5(258) Standards for career and technical education  
 46.6(258) Career and technical education program approval and review  
 46.7(258) Accreditation standards not met  
 46.8(258) Advisory council  
 46.9(258) Distribution of career and technical education funds  
 46.10(258) Regional career and technical education planning partnerships  
 46.11(258) Career academies  
 46.12(258) Regional centers  
 46.13(423F) Career academy incentive fund

CHAPTER 47  
Reserved

CHAPTER 48  
WORK-BASED LEARNING

DIVISION I  
STATEWIDE WORK-BASED LEARNING INTERMEDIARY NETWORK

48.1(256) Purpose  
 48.2(256) Definitions  
 48.3(256) Statewide work-based learning intermediary network  
 48.4(256) Regional work-based learning intermediary network

DIVISION II  
FUTURE READY IOWA STATE-RECOGNIZED WORK-BASED LEARNING PROGRAMS

48.5(256) Program established

CHAPTER 49  
INDIVIDUAL CAREER AND ACADEMIC PLAN

49.1(279) Purpose  
 49.2(279) Definitions

- 49.3(279) Individualized career and academic plan
- 49.4(279) Essential components
- 49.5(279) District plan
- 49.6(279) Career information and decision-making systems
- 49.7(279) Compliance

## CHAPTER 50

Reserved

## TITLE X

*VETERANS' TRAINING*

## CHAPTER 51

APPROVAL OF ON-THE-JOB TRAINING ESTABLISHMENTS  
UNDER THE MONTGOMERY G.I. BILL

- 51.1(256) Application
- 51.2(256) Content and approval of application
- 51.3(256) Wage schedules

## CHAPTER 52

APPROVAL OF EDUCATIONAL INSTITUTIONS  
FOR THE EDUCATION AND TRAINING OF ELIGIBLE VETERANS  
UNDER THE MONTGOMERY G.I. BILL

- 52.1(256) Colleges
- 52.2(256) High schools
- 52.3 Reserved
- 52.4(256) Schools of Bible or theology
- 52.5(256) Schools of nursing
- 52.6(256) Hospitals
- 52.7(256) Schools of cosmetology
- 52.8(256) Schools of barbering
- 52.9 Reserved
- 52.10(256) Schools of business
- 52.11(256) Trade schools
- 52.12(256) Correspondence schools
- 52.13(256) Successful operation on a continuous basis
- 52.14(256) Nonaccredited schools
- 52.15(256) Evaluation standards

## CHAPTERS 53 to 55

Reserved

## TITLE XI

*VOCATIONAL REHABILITATION EDUCATION*

## CHAPTER 56

## IOWA VOCATIONAL REHABILITATION SERVICES

## DIVISION I

SCOPE AND GENERAL PRINCIPLES

- 56.1(259) Responsibility of division
- 56.2(259) Nondiscrimination

DIVISION II  
DEFINITIONS

56.3(259) Definitions

DIVISION III  
ELIGIBILITY

56.4(259) Individuals who are recipients of SSD/SSI  
56.5(259) Eligibility for vocational rehabilitation services  
56.6(259) Other eligibility and service determinations

DIVISION IV  
CASE MANAGEMENT

56.7(259) Case finding and intake  
56.8(259) Case diagnosis used in case recording  
56.9(259) Individualized plan for employment (IPE)

DIVISION V  
SERVICES

56.10(259) Scope of services  
56.11(259) Training  
56.12(259) Maintenance  
56.13(259) Transportation  
56.14(259) Rehabilitation technology  
56.15(259) Placement  
56.16(259) Miscellaneous or auxiliary services  
56.17(259) Facilities  
56.18(259) Exceptions to payment for services  
56.19(259) Exceptions to duration of services  
56.20(259) Maximum rates of payment to training facilities

DIVISION VI  
PURCHASING PRINCIPLES

56.21(259) Purchasing principles for job candidate-specific purchases

DIVISION VII  
SUPERVISOR REVIEW, MEDIATION, HEARINGS, AND APPEALS

56.22(259) Review process  
56.23(259) Supervisor review  
56.24(259) Mediation  
56.25(259) Hearing before impartial hearing officer

DIVISION VIII  
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

56.26(259) Collection and maintenance of records  
56.27(259) Personally identifiable information  
56.28(259) Other groups of records routinely available for public inspection

DIVISION IX  
STATE REHABILITATION COUNCIL

56.29(259) State rehabilitation council

DIVISION X  
IOWA SELF-EMPLOYMENT PROGRAM  
(A/K/A ENTREPRENEURS WITH DISABILITIES PROGRAM)

56.30(259) Purpose  
56.31(259) Program requirements  
56.32(259) Application procedure  
56.33(259) Award of technical assistance funds  
56.34(259) Business plan feasibility study procedure  
56.35(259) Award of financial assistance funds

## CHAPTER 57

Reserved

TITLE XII  
PROGRAMS ADMINISTRATION

## CHAPTER 58

SCHOOL BREAKFAST AND LUNCH PROGRAM; NUTRITIONAL CONTENT STANDARDS  
FOR OTHER FOODS AND BEVERAGES

58.1(283A,256) Authority

## DIVISION I

## SCHOOL BREAKFAST AND LUNCH PROGRAM

58.2(283A) Definitions  
 58.3(283A) Agreement required  
 58.4(283A) State plan  
 58.5(283A) Service area defined  
 58.6(283A) School breakfast program  
 58.7(283A) School lunch program  
 58.8(283A) Procurement

## DIVISION II

## NUTRITIONAL CONTENT STANDARDS FOR OTHER FOODS AND BEVERAGES

58.9(256) Definitions  
 58.10(256) Scope  
 58.11(256) Nutritional content standards

## CHAPTER 59

## GIFTED AND TALENTED PROGRAMS

59.1(257) Scope and general principles  
 59.2(257) Definitions  
 59.3 Reserved  
 59.4(257) Program plan  
 59.5(257) Responsibilities of school districts  
 59.6(257) Responsibilities of area education agencies  
 59.7(257) Responsibilities of the department

## CHAPTER 60

## PROGRAMS FOR STUDENTS OF LIMITED ENGLISH PROFICIENCY

60.1(280) Scope  
 60.2(280) Definitions  
 60.3(280) School district responsibilities  
 60.4(280) Department responsibility  
 60.5(280) Nonpublic school participation  
 60.6(280) Funding

## CHAPTER 61

## IOWA READING RESEARCH CENTER

61.1(256) Establishment  
 61.2(256) Purpose  
 61.3(256) Intensive summer literacy program  
 61.4(256) First efforts of the center  
 61.5(256) Nature of the center's operation  
 61.6(256) Nature of the center's products  
 61.7(256) Governance and leadership of the center

- 61.8(256) Financing of the center
- 61.9(256) Annual report

## CHAPTER 62

## STATE STANDARDS FOR PROGRESSION IN READING

- 62.1(256,279) Purpose
- 62.2(256,279) Assessment of reading proficiency
- 62.3(256,279) Tools for evaluating and reevaluating reading proficiency
- 62.4(256,279) Identification of a student as being persistently at risk in reading
- 62.5 Reserved
- 62.6(256,279) Successful progression for early readers
- 62.7 and 62.8 Reserved
- 62.9(256,279) Ensuring continuous improvement in reading proficiency
- 62.10(256,279) Miscellaneous provisions

## CHAPTER 63

EDUCATIONAL PROGRAMS AND SERVICES  
FOR PUPILS IN JUVENILE HOMES

- 63.1(282) Scope
- 63.2(282) Definitions
- 63.3(282) Forms
- 63.4(282) Budget amendments
- 63.5(282) Area education agency responsibility
- 63.6(282) Educational program
- 63.7(282) Special education
- 63.8(282) Educational services
- 63.9(282) Media services
- 63.10(282) Other responsibilities
- 63.11(282) Curriculum
- 63.12(282) Disaster procedures
- 63.13(282) Maximum class size
- 63.14(282) Teacher certification and preparation
- 63.15(282) Aides
- 63.16(282) Accounting
- 63.17(282) Revenues
- 63.18(282) Expenditures
- 63.19(282) Claims
- 63.20(282) Audits
- 63.21(282) Waivers

## CHAPTER 64

## CHILD DEVELOPMENT COORDINATING COUNCIL

- 64.1(256A,279) Purpose
- 64.2(256A,279) Definitions
- 64.3(256A,279) Child development coordinating council
- 64.4(256A,279) Procedures
- 64.5(256A,279) Duties
- 64.6(256A,279) Eligibility identification procedures
- 64.7(256A,279) Primary eligibility
- 64.8(256A,279) Secondary eligibility
- 64.9(256A,279) Grant awards criteria
- 64.10(256A,279) Application process
- 64.11(256A,279) Request for proposals

64.12(256A,279)	Grant process
64.13(256A,279)	Award contracts
64.14(256A,279)	Notification of applicants
64.15(256A,279)	Grantee responsibilities
64.16(256A,279)	Withdrawal of contract offer
64.17(256A,279)	Evaluation
64.18(256A,279)	Contract revisions and budget reversions
64.19(256A,279)	Termination for convenience
64.20(256A,279)	Termination for cause
64.21(256A,279)	Responsibility of grantee at termination
64.22(256A,279)	Appeal from terminations
64.23(256A,279)	Refusal to issue ruling
64.24(256A,279)	Request for Reconsideration
64.25(256A,279)	Refusal to issue decision on request
64.26(256A,279)	Granting a Request for Reconsideration

#### CHAPTER 65

##### PROGRAMS FOR AT-RISK EARLY ELEMENTARY STUDENTS

65.1(279)	Purpose
65.2(279)	Definitions
65.3(279)	Eligibility identification procedures
65.4(279)	Award allocation procedure
65.5(279)	Award acceptance process
65.6(279)	Awardee responsibilities
65.7(279)	Allowable expenditures
65.8(279)	Evaluation
65.9(279)	Budget revisions
65.10(279)	Termination for convenience
65.11(279)	Termination for cause
65.12(279)	Responsibility of awardee at termination
65.13(279)	Appeals from terminations

#### CHAPTER 66

##### SCHOOL-BASED YOUTH SERVICES PROGRAMS

66.1(279)	Scope, purpose and general principles
66.2(279)	Definitions
66.3(279)	Development of a program plan
66.4(279)	Program plan
66.5(279)	Evaluation of financial support
66.6(279)	Responsibilities of area education agencies
66.7(279)	Responsibilities of the department of education

#### CHAPTER 67

##### EDUCATIONAL SUPPORT PROGRAMS FOR PARENTS OF AT-RISK CHILDREN AGED BIRTH THROUGH FIVE YEARS

67.1(279)	Purpose
67.2(279)	Definitions
67.3(279)	Eligibility identification procedures
67.4(279)	Eligibility
67.5(279)	Secondary eligibility
67.6(279)	Grant awards criteria
67.7(279)	Application process
67.8(279)	Request for proposals

67.9(279)	Award contracts
67.10(279)	Notification of applicants
67.11(279)	Grantee responsibilities
67.12(279)	Withdrawal of contract offer
67.13(279)	Evaluation
67.14(279)	Contract revisions
67.15(279)	Termination for convenience
67.16(279)	Termination for cause
67.17(279)	Responsibility of grantee at termination
67.18(279)	Appeal from terminations
67.19(279)	Refusal to issue ruling
67.20(279)	Request for Reconsideration
67.21(279)	Refusal to issue decision on request
67.22(279)	Granting a Request for Reconsideration

CHAPTER 68  
IOWA PUBLIC CHARTER AND INNOVATION ZONE SCHOOLS

DIVISION I  
GENERAL PROVISIONS

68.1(256F,83GA,SF2033)	Purpose
68.2(256F,83GA,SF2033)	Definitions

DIVISION II  
CHARTER SCHOOLS

68.3(256F,83GA,SF2033)	Application to a school board
68.4(256F,83GA,SF2033)	Review process
68.5(256F,83GA,SF2033)	Ongoing review by department
68.6(256F,83GA,SF2033)	Renewal of charter
68.7(256F,83GA,SF2033)	Revocation of charter
68.8 to 68.10	Reserved

DIVISION III  
INNOVATION ZONE SCHOOLS

68.11(256F,83GA,SF2033)	Application process
68.12(256F,83GA,SF2033)	Review process
68.13(256F,83GA,SF2033)	Ongoing review by department
68.14(256F,83GA,SF2033)	Renewal of contract
68.15(256F,83GA,SF2033)	Revocation of contract

CHAPTER 69  
Reserved

TITLE XIII  
*AREA EDUCATION AGENCIES*

CHAPTERS 70 and 71  
Reserved

CHAPTER 72  
ACCREDITATION OF AREA EDUCATION AGENCIES

72.1(273)	Scope
72.2(273)	Definitions
72.3(273)	Accreditation components
72.4(273)	Standards for services
72.5 to 72.8	Reserved
72.9(273)	Comprehensive improvement plan

- 72.10(273) Annual budget and annual progress report  
 72.11(273) Comprehensive site visit

TITLE XIV  
 TEACHERS AND PROFESSIONAL LICENSING

CHAPTERS 73 to 76  
 Reserved

CHAPTER 77

STANDARDS FOR TEACHER INTERN PREPARATION PROGRAMS

- 77.1(256) General statement  
 77.2(256) Definitions  
 77.3(256) Institutions affected  
 77.4(256) Criteria for Iowa teacher intern preparation programs  
 77.5(256) Approval of programs  
 77.6(256) Periodic reports  
 77.7(256) Approval of program changes

TEACHER INTERN PREPARATION PROGRAM STANDARDS

- 77.8(256) Governance and resources standard  
 77.9(256) Faculty standard  
 77.10(256) Program of study standard  
 77.11(256) Assessment standard

CHAPTER 78  
 Reserved

CHAPTER 79

STANDARDS FOR PRACTITIONER AND ADMINISTRATOR  
 PREPARATION PROGRAMS

DIVISION I

GENERAL STANDARDS APPLICABLE TO ALL PRACTITIONER PREPARATION PROGRAMS

- 79.1(256) General statement  
 79.2(256) Definitions  
 79.3(256) Institutions affected  
 79.4(256) Criteria for practitioner preparation programs  
 79.5(256) Approval of programs  
 79.6(256) Visiting teams  
 79.7(256) Periodic reports  
 79.8(256) Reevaluation of practitioner preparation programs  
 79.9(256) Approval of program changes

DIVISION II

SPECIFIC EDUCATION STANDARDS APPLICABLE TO ALL PRACTITIONER PREPARATION PROGRAMS

- 79.10(256) Governance and resources standard  
 79.11(256) Diversity standard  
 79.12(256) Faculty standard  
 79.13(256) Assessment system and unit evaluation standard

DIVISION III

SPECIFIC EDUCATION STANDARDS APPLICABLE ONLY TO INITIAL PRACTITIONER PREPARATION  
 PROGRAMS FOR TEACHER CANDIDATES

- 79.14(256) Teacher preparation clinical practice standard  
 79.15(256) Teacher candidate knowledge, skills and dispositions standard

## DIVISION IV

## SPECIFIC EDUCATION STANDARDS APPLICABLE ONLY TO ADMINISTRATOR PREPARATION PROGRAMS

- 79.16(256) Administrator preparation clinical practice standard
- 79.17(256) Administrator knowledge, skills, and dispositions standard
- 79.18 Reserved

## DIVISION V

SPECIFIC EDUCATION STANDARDS APPLICABLE ONLY TO PRACTITIONER PREPARATION PROGRAMS  
OTHER THAN TEACHER OR ADMINISTRATOR PREPARATION PROGRAMS

- 79.19(256) Purpose
- 79.20(256) Clinical practice standard
- 79.21(256) Candidate knowledge, skills and dispositions standard

## CHAPTER 80

## STANDARDS FOR PARAEDUCATOR PREPARATION PROGRAMS

- 80.1(272) General statement
- 80.2(272) Definitions
- 80.3(272) Institutions affected
- 80.4(272) Criteria for Iowa paraeducator preparation programs
- 80.5(272) Application; approval of programs
- 80.6(272) Periodic reports
- 80.7(272) Reevaluation of paraeducator preparation programs
- 80.8(272) Approval of program changes
- 80.9(272) Organizational and resource standards
- 80.10(272) Diversity standards
- 80.11(272) Faculty standards
- 80.12(272) Program assessment and evaluation standards
- 80.13(272) Clinical practice standards

## CHAPTER 81

## STANDARDS FOR SCHOOL BUSINESS OFFICIAL PREPARATION PROGRAMS

- 81.1(256) Definitions
- 81.2(256) Institutions eligible to provide a school business official preparation program
- 81.3(256) Approval of programs
- 81.4(256) Governance and resources standard
- 81.5(256) Instructor standard
- 81.6(256) Assessment system and institution evaluation standard
- 81.7(256) School business official candidate knowledge and skills standards and criteria
- 81.8(256) School business official mentoring program
- 81.9(256) Periodic reports
- 81.10(256) Reevaluation of school business official preparation programs
- 81.11(256) Approval of program changes

## CHAPTER 82

## STANDARDS FOR SCHOOL ADMINISTRATION MANAGER PROGRAMS

- 82.1(272) Definitions
- 82.2(272) Organizations eligible to provide a school administration manager training program
- 82.3(272) Approval of training programs
- 82.4(272) Governance and resources standard
- 82.5(272) Trainer and coach standard
- 82.6(272) Assessment system and organization evaluation standard
- 82.7(272) School administration manager knowledge and skills standards and criteria
- 82.8(272) Periodic reports
- 82.9(272) Reevaluation of school administration manager programs

- 82.10(272) Approval of program changes and flexibility of programs  
 82.11(272) Fees

## CHAPTER 83

## TEACHER AND ADMINISTRATOR QUALITY PROGRAMS

## DIVISION I

GENERAL STANDARDS APPLICABLE TO BOTH ADMINISTRATOR AND  
TEACHER QUALITY PROGRAMS

- 83.1(284,284A) Purposes  
 83.2(284,284A) Definitions

## DIVISION II

## SPECIFIC STANDARDS APPLICABLE TO TEACHER QUALITY PROGRAMS

- 83.3(284) Mentoring and induction program for beginning teachers  
 83.4(284) Iowa teaching standards and criteria  
 83.5(284) Evaluator approval training  
 83.6(284) Professional development for teachers  
 83.7(284) Teacher quality committees

## DIVISION III

## SPECIFIC STANDARDS APPLICABLE TO ADMINISTRATOR QUALITY PROGRAMS

- 83.8(284A) Administrator quality program  
 83.9(284A) Mentoring and induction program for administrators  
 83.10(284A) Iowa school leadership standards for administrators  
 83.11(284A) Evaluation  
 83.12(284A) Professional development of administrators

## CHAPTER 84

## FINANCIAL INCENTIVES FOR NATIONAL BOARD CERTIFICATION

- 84.1(256) Purpose  
 84.2(256) Definitions  
 84.3(256) Registration fee reimbursement program  
 84.4(256) NBC annual award  
 84.5(256) Appeal of denial of a registration fee reimbursement award or an NBC annual  
award

## CHAPTERS 85 to 93

Reserved

## TITLE XV

*EDUCATIONAL EXCELLENCE*

## CHAPTER 94

Reserved

## CHAPTER 95

EQUAL EMPLOYMENT OPPORTUNITY  
AND AFFIRMATIVE ACTION IN EDUCATIONAL AGENCIES

- 95.1(256) Purpose  
 95.2(256) Definitions  
 95.3(256) Equal employment opportunity standards  
 95.4(256) Duties of boards of directors  
 95.5(256) Plan components  
 95.6(256) Dissemination  
 95.7(256) Reports

TITLE XVI  
SCHOOL FACILITIES

CHAPTER 96  
STATEWIDE SALES AND  
SERVICES TAX FOR SCHOOL INFRASTRUCTURE

96.1(423E,423F)	Definitions
96.2(423E,423F)	Reports to the department
96.3(423E,423F)	Combined actual enrollment
96.4(423E,423F)	Application and certificate of need process
96.5(423E,423F)	Review process
96.6(423E,423F)	Award process
96.7(423E,423F)	Applicant responsibilities
96.8(423E,423F)	Appeal of certificate denial

CHAPTER 97  
SUPPLEMENTARY WEIGHTING

97.1(257)	Definitions
97.2(257)	Supplementary weighting plan
97.3(257)	Supplementary weighting plan for at-risk students
97.4(257)	Supplementary weighting plan for a regional academy
97.5(257)	Supplementary weighting plan for whole-grade sharing
97.6(257)	Supplementary weighting plan for ICN video services
97.7(257)	Supplementary weighting plan for operational services
97.8(261E)	Concurrent enrollment program contracts between accredited nonpublic schools and community colleges

CHAPTER 98  
FINANCIAL MANAGEMENT OF CATEGORICAL FUNDING

DIVISION I  
GENERAL PROVISIONS

98.1(256,257)	Definitions
98.2(256,257)	General finance
98.3 to 98.10	Reserved

DIVISION II  
APPROPRIATE USE OF BUDGETARY ALLOCATIONS

98.11(257)	Categorical and noncategorical student counts
98.12(257,299A)	Home school assistance program
98.13(256C,257)	Statewide voluntary four-year-old preschool program
98.14(257)	Supplementary weighting
98.15(257)	Operational function sharing supplementary weighting
98.16(257,280)	Limited English proficiency (LEP) weighting
98.17(256B,257)	Special education weighting
98.18(257)	At-risk program, alternative program or alternative school, and potential or returning dropout prevention program formula supplementary weighting
98.19(257)	Reorganization incentive weighting
98.20(257)	Gifted and talented program
98.21(257)	At-risk program, alternative program or alternative school, and potential or returning dropout prevention program—modified supplemental amount
98.22(257)	Use of the unexpended general fund balance
98.23(257)	Early intervention supplement
98.24(257,284)	Teacher salary supplement
98.25(257,284)	Teacher leadership supplement

- 98.26(257,284) Educator quality professional development, also known as professional development supplement
- 98.27(257,298A) Flexibility account
- 98.28 to 98.39 Reserved

DIVISION III  
APPROPRIATE USE OF GRANTS IN AID

- 98.40(256,257,298A) Grants in aid
- 98.41 Reserved
- 98.42(257,284) Beginning teacher mentoring and induction program
- 98.43(257,284A) Beginning administrator mentoring and induction program
- 98.44(257,301) Nonpublic textbook services
- 98.45(279) Early literacy
- 98.46 to 98.59 Reserved

DIVISION IV  
APPROPRIATE USE OF SPECIAL TAX LEVIES AND FUNDS

- 98.60(24,29C,76,143,256,257,274,275,276,279,280,282,283A,285,291,296,298,298A,300,301,423E,423F,565,670) Levies and funds
- 98.61(24,143,257,275,279,280,285,297,298,298A,301,473,670) General fund
- 98.62(279,296,298,670) Management fund
- 98.63(298) Library levy fund
- 98.64(279,283,297,298) Physical plant and equipment levy (PPEL) fund
- 98.65(276,300) Public educational and recreational levy (PERL) fund
- 98.66(257,279,298A,565) District support trust fund
- 98.67(257,279,298A,565) Permanent funds
- 98.68(76,274,296,298,298A) Debt service fund
- 98.69(76,273,298,298A,423E,423F) Capital projects fund
- 98.70(279,280,298A) Student activity fund
- 98.71(298A) Entrepreneurial education fund
- 98.72(256B,257,298A) Special education instruction fund
- 98.73(282,298A) Juvenile home program instruction fund
- 98.74(283A,298A) School nutrition fund
- 98.75(279,298A) Child care and before- and after-school programs fund
- 98.76(298A) Regular education preschool fund
- 98.77(298A) Student construction fund
- 98.78(298A) Other enterprise funds
- 98.79 to 98.81 Reserved
- 98.82(298A) Internal service funds
- 98.83 to 98.91 Reserved
- 98.92(257,279,298A,565) Private purpose trust funds
- 98.93(298A) Other trust funds
- 98.94 to 98.100 Reserved
- 98.101(298A) Custodial funds
- 98.102 to 98.110 Reserved
- 98.111(24,29C,257,298A) Emergency levy fund
- 98.112(275) Equalization levy fund

CHAPTER 99  
BUSINESS PROCEDURES AND DEADLINES

- 99.1(257) Definitions
- 99.2(256,257,285,291) Submission deadlines
- 99.3(257) Good cause for late submission
- 99.4(24,256,257,291) Budgets, accounting and reporting

## CHAPTER 100

Reserved

## TITLE XVII

*PROTECTION OF CHILDREN*

## CHAPTER 101

Reserved

## CHAPTER 102

PROCEDURES FOR CHARGING AND  
INVESTIGATING INCIDENTS OF ABUSE  
OF STUDENTS BY SCHOOL EMPLOYEES

102.1(280)	Statement of intent and purpose
102.2(280)	Definitions
102.3(280)	Jurisdiction
102.4(280)	Exceptions
102.5(280)	Duties of school authorities
102.6(280)	Filing of a report
102.7(280)	Receipt of report
102.8(280)	Duties of designated investigator—physical abuse allegations
102.9(280)	Duties of designated investigator—sexual abuse allegations
102.10(280)	Content of investigative report
102.11(280)	Founded reports—designated investigator’s duties
102.12(280)	Level-two investigator’s duties
102.13(280)	Retention of records
102.14(280)	Substantial compliance
102.15(280)	Effective date

## CHAPTER 103

CORPORAL PUNISHMENT, PHYSICAL RESTRAINT, SECLUSION, AND OTHER PHYSICAL  
CONTACT WITH STUDENTS

103.1(256B,280)	Purpose and objectives
103.2(256B,280)	Definitions
103.3(256B,280)	Ban on corporal punishment and prone and mechanical restraints
103.4(256B,280)	Activities that are not considered corporal punishment
103.5(256B,280)	Use of reasonable and necessary force
103.6(256B,280)	Reasonable force
103.7(256B,280)	Reasonable and necessary force—use of physical restraint or seclusion
103.8(256B,280)	Training, documentation, debriefing, and reporting requirements
103.9(256B,280)	Seclusion room requirements
103.10(256B,280)	Department responsibilities
103.11(256B,280)	Other provisions

## CHAPTERS 104 to 119

Reserved

TITLE XVIII  
*EARLY CHILDHOOD*CHAPTER 120  
EARLY ACCESS INTEGRATED SYSTEM OF  
EARLY INTERVENTION SERVICESDIVISION I  
PURPOSE AND APPLICABILITY

- 120.1(34CFR303) Purposes and outcomes of the Early ACCESS Integrated System of Early Intervention Services
- 120.2(34CFR303) Applicability of this chapter
- 120.3(34CFR303) Applicable federal regulations

DIVISION II  
DEFINITIONS

- 120.4(34CFR303) Act
- 120.5(34CFR303) At-risk infant or toddler
- 120.6(34CFR303) Child
- 120.7(34CFR303) Consent
- 120.8(34CFR303) Council
- 120.9(34CFR303) Day
- 120.10(34CFR303) Developmental delay
- 120.11(34CFR303) Early intervention service program
- 120.12(34CFR303) Early intervention service provider
- 120.13(34CFR303) Early intervention services
- 120.14(34CFR303) Elementary school
- 120.15(34CFR303) Free appropriate public education
- 120.16(34CFR303) Health services
- 120.17(34CFR303) Homeless children
- 120.18(34CFR303) Include; including
- 120.19(34CFR303) Indian; Indian tribe
- 120.20(34CFR303) Individualized family service plan
- 120.21(34CFR303) Infant or toddler with a disability
- 120.22(34CFR303) Lead agency
- 120.23(34CFR303) Local educational agency
- 120.24(34CFR303) Multidisciplinary
- 120.25(34CFR303) Native language
- 120.26(34CFR303) Natural environments
- 120.27(34CFR303) Parent
- 120.28(34CFR303) Parent training and information center
- 120.29(34CFR303) Personally identifiable information
- 120.30(34CFR303) Public agency
- 120.31(34CFR303) Qualified personnel
- 120.32(34CFR303) Scientifically based research
- 120.33(34CFR303) Secretary
- 120.34(34CFR303) Service coordination services (case management)
- 120.35(34CFR303) State
- 120.36(34CFR303) State educational agency
- 120.37(34CFR303) Ward of the state
- 120.38(34CFR303) Other definitions used in this chapter
- 120.39 to 120.99 Reserved

DIVISION III  
STATE ELIGIBILITY FOR A GRANT AND REQUIREMENTS  
FOR A STATEWIDE SYSTEM: GENERAL AUTHORITY AND ELIGIBILITY

120.100(34CFR303)	General authority
120.101(34CFR303)	State eligibility—requirements for a grant under Part C of the Act
120.102(34CFR303)	State conformity with Part C of the Act
120.103 and 120.104	Reserved
120.105(34CFR303)	Positive efforts to employ and advance qualified individuals with disabilities
120.106 to 120.109	Reserved
120.110(34CFR303)	Minimum components of a statewide system
120.111(34CFR303)	State definition of developmental delay
120.112(34CFR303)	Availability of early intervention services
120.113(34CFR303)	Evaluation, assessment, and nondiscriminatory procedures
120.114(34CFR303)	Individualized family service plan (IFSP)
120.115(34CFR303)	Comprehensive child find system
120.116(34CFR303)	Public awareness program
120.117(34CFR303)	Central directory
120.118(34CFR303)	Comprehensive system of personnel development (CSPD)
120.119(34CFR303)	Personnel standards
120.120(34CFR303)	Lead agency role in supervision, monitoring, funding, interagency coordination, and other responsibilities
120.121(34CFR303)	Policy for contracting or otherwise arranging for services
120.122(34CFR303)	Reimbursement procedures
120.123(34CFR303)	Procedural safeguards
120.124(34CFR303)	Data collection
120.125(34CFR303)	State interagency coordinating council
120.126(34CFR303)	Early intervention services in natural environments
120.127 to 120.199	Reserved

DIVISION IV  
STATE APPLICATION AND ASSURANCES

120.200(34CFR303)	State application and assurances
120.201(34CFR303)	Designation of lead agency
120.202(34CFR303)	Certification regarding financial responsibility
120.203(34CFR303)	Statewide system and description of services
120.204	Reserved
120.205(34CFR303)	Description of use of funds
120.206(34CFR303)	Referral policies for specific children
120.207(34CFR303)	Availability of resources
120.208(34CFR303)	Public participation policies and procedures
120.209(34CFR303)	Transition to preschool and other programs
120.210(34CFR303)	Coordination with Head Start and Early Head Start, early education, and child care programs
120.211	Reserved
120.212(34CFR303)	Additional information and assurances
120.213 to 120.219	Reserved
120.220(34CFR303)	Assurances satisfactory to the Secretary
120.221(34CFR303)	Expenditure of funds
120.222(34CFR303)	Payor of last resort
120.223(34CFR303)	Control of funds and property
120.224(34CFR303)	Reports and records
120.225(34CFR303)	Prohibition against supplanting; indirect costs
120.226(34CFR303)	Fiscal control

120.227(34CFR303)	Traditionally underserved groups
120.228(34CFR303)	Subsequent state application and modifications of application
120.229 to 120.299	Reserved

## DIVISION V

## CHILD FIND; EVALUATIONS AND ASSESSMENTS; INDIVIDUALIZED FAMILY SERVICE PLANS

120.300(34CFR303)	General
120.301(34CFR303)	Public awareness program—information for parents
120.302(34CFR303)	Comprehensive child find system
120.303(34CFR303)	Referral procedures
120.304 to 120.309	Reserved
120.310(34CFR303)	Post-referral timeline (45 calendar days)
120.311 to 120.319	Reserved
120.320(34CFR303)	Screening procedures
120.321(34CFR303)	Evaluation of the child and assessment of the child and family
120.322(34CFR303)	Determination that a child is not eligible
120.323 to 120.339	Reserved
120.340(34CFR303)	Individualized family service plan—general
120.341	Reserved
120.342(34CFR303)	Procedures for IFSP development, review, and evaluation
120.343(34CFR303)	IFSP team meeting and periodic review
120.344(34CFR303)	Content of an IFSP
120.345(34CFR303)	Interim IFSPs—provision of services before evaluations and assessments are completed
120.346(34CFR303)	Responsibility and accountability
120.347 to 120.399	Reserved

## DIVISION VI

## PROCEDURAL SAFEGUARDS

120.400(34CFR303)	General responsibility of lead agency for procedural safeguards
120.401(34CFR303)	Confidentiality and opportunity to examine records
120.402(34CFR303)	Confidentiality
120.403(34CFR303)	Definitions
120.404(34CFR303)	Notice to parents
120.405(34CFR303)	Access rights
120.406(34CFR303)	Record of access
120.407(34CFR303)	Records on more than one child
120.408(34CFR303)	List of types and locations of information
120.409(34CFR303)	Fees for records
120.410(34CFR303)	Amendment of records at a parent's request
120.411(34CFR303)	Opportunity for a hearing
120.412(34CFR303)	Result of hearing
120.413(34CFR303)	Hearing procedures
120.414(34CFR303)	Consent prior to disclosure or use
120.415(34CFR303)	Safeguards
120.416(34CFR303)	Destruction of information
120.417(34CFR303)	Enforcement
120.418 and 120.419	Reserved
120.420(34CFR303)	Parental consent and ability to decline services
120.421(34CFR303)	Prior written notice and procedural safeguards notice
120.422(34CFR303)	Surrogate parents
120.423 to 120.429	Reserved
120.430(34CFR303)	State dispute resolution options
120.431(34CFR303)	Mediation

120.432(34CFR303)	Adoption of state complaint procedures
120.433(34CFR303)	Minimum state complaint procedures
120.434(34CFR303)	Filing a complaint
120.435(34CFR303)	Appointment of an administrative law judge
120.436(34CFR303)	Parental rights in due process hearing proceedings
120.437(34CFR303)	Convenience of hearings and timelines
120.438(34CFR303)	Civil action
120.439(34CFR303)	Limitation of actions
120.440(34CFR303)	Rule of construction
120.441(34CFR303)	Attorney fees
120.442 to 120.448	Reserved
120.449(34CFR303)	State enforcement mechanisms
120.450 to 120.499	Reserved

## DIVISION VII

## USE OF FUNDS; PAYOR OF LAST RESORT

120.500(34CFR303)	Use of funds, payor of last resort, and system of payments
120.501(34CFR303)	Permissive use of funds by the department
120.502 to 120.509	Reserved
120.510(34CFR303)	Payor of last resort
120.511(34CFR303)	Methods to ensure the provision of, and financial responsibility for, Early ACCESS services
120.512 to 120.519	Reserved
120.520(34CFR303)	Policies related to use of public benefits or insurance or private insurance to pay for Early ACCESS services
120.521(34CFR303)	System of payments and fees
120.522 to 120.599	Reserved

## DIVISION VIII

## STATE INTERAGENCY COORDINATING COUNCIL

120.600(34CFR303)	Establishment of council
120.601(34CFR303)	Composition
120.602(34CFR303)	Meetings
120.603(34CFR303)	Use of funds by the council
120.604(34CFR303)	Functions of the council; required duties
120.605(34CFR303)	Authorized activities by the council
120.606 to 120.699	Reserved

## DIVISION IX

FEDERAL AND STATE MONITORING AND ENFORCEMENT;  
REPORTING; AND ALLOCATION OF FUNDS

120.700(34CFR303)	State monitoring and enforcement
120.701(34CFR303)	State performance plans and data collection
120.702(34CFR303)	State use of targets and reporting
120.703(34CFR303)	Department review and determination regarding EIS program performance
120.704(34CFR303)	Enforcement
120.705(34CFR303)	Withholding funds
120.706(34CFR303)	Public attention
120.707	Reserved
120.708(34CFR303)	State enforcement
120.709(34CFR303)	State consideration of other state or federal laws
120.710 to 120.719	Reserved
120.720(34CFR303)	Data requirements—general
120.721(34CFR303)	Annual report of children served—report requirement
120.722(34CFR303)	Data reporting

120.723(34CFR303) Annual report of children served—certification  
120.724(34CFR303) Annual report of children served—other responsibilities of the department  
120.725 to 120.800 Reserved

DIVISION X  
OTHER PROVISIONS

120.801(34CFR303) Early ACCESS system—state level  
120.802(34CFR303) Interagency service planning  
120.803(34CFR303) System-level disputes  
120.804(34CFR303) Early ACCESS system—regional and community levels  
120.805(34CFR303) Provision of year-round services  
120.806(34CFR303) Evaluation and improvement  
120.807(34CFR303) Research  
120.808(34CFR303) Records and reports  
120.809(34CFR303) Information for department  
120.810(34CFR303) Public information  
120.811(34CFR303) Dispute resolution: practice before mediators and administrative law judges  
120.812(34CFR303) References to federal law  
120.813(34CFR303) Severability



TITLE I  
GENERAL INFORMATION—  
DEPARTMENT OPERATIONS

CHAPTER 1  
ORGANIZATION AND OPERATION

[Prior to 9/7/88, see Public Instruction Department[670] Ch 49]

**281—1.1(17A,256) State board of education.** The state board of education, authorized by Iowa Code chapter 256, is the governing and policy-forming body for the department of education.

**1.1(1) Membership.** The board consists of nine voting members appointed by the governor, with approval of two-thirds of the members of the senate, with not more than five members from the same political party, and not more than five members of the same gender. Effective May 1, 2003, the board shall also consist of one nonvoting student member as outlined in rule 281—1.2(17A,256). The nonvoting student member shall be appointed without regard to political affiliation. The nonvoting student member shall not be considered for purposes of constituting the necessary quorum.

**1.1(2) Officers.** The board shall elect from its voting members a president and a vice president, each to serve a term of two years.

**1.1(3) Terms.** The voting members of the board are appointed for six-year terms, from May 1 to April 30, with the terms of three members expiring every two years. There is no statutory limitation to the number of terms a voting member may serve. The nonvoting student member shall serve a one-year term, from May 1 to April 30, as described in subrule 1.2(1).

**1.1(4) Meetings.** The board is required to hold no fewer than six meetings each year. The majority of the meetings are held in the state board room at the department of education in Des Moines, which is located on the second floor of the Grimes State Office Building on the corner of East 14th Street and Grand Avenue. By notice of the regularly published meeting agenda, the board may hold meetings in other areas of the state.

**1.1(5) Compensation.** All voting board members and the nonvoting student member are entitled to receive their necessary expenses while engaged in official duties. In addition, they shall be paid a per diem at the rate specified in Iowa Code section 7E.6. If the student member's parent or guardian provides supervision pursuant to subrule 1.2(4), the parent or guardian shall receive necessary expenses but not the per diem. Per diem and expense payments shall be made from appropriations to the department of education.

**1.1(6) Additional board functions.** In addition to its functions as the state board of education, the board constitutes:

- a. The state board for vocational education, Iowa Code section 256.7(2).
- b. The state board for vocational rehabilitation, Iowa Code section 259.3.
- c. The state board for community colleges, Iowa Code section 260C.3.

**1.1(7) Advisory groups.** The following advisory groups have been established by statute to provide advice to the state board in the indicated areas:

- a. Nonpublic schools advisory committee, Iowa Code section 256.15, to advise the board on matters affecting nonpublic schools.
- b. Community college council, Iowa Code section 256.31, to assist the state board of education with substantial issues which are directly related to the community college system.

**281—1.2(17A,256) Student member of state board of education.** The governor shall appoint a public high school student to serve as a nonvoting member of the state board of education.

**1.2(1) Term.** The nonvoting student member shall serve a term from May 1 to April 30. The student member may serve a second year as the nonvoting student member without having to reapply for the position if the student has another year of high school eligibility remaining before graduation. A vacancy in the membership of the nonvoting student member shall not be filled until the expiration of the term.

**1.2(2) Qualifications.** At the time of making application, the nonvoting student member shall meet all of the following qualifications:

a. The student must be a full-time, regularly enrolled tenth or eleventh grade student in an Iowa school district.

b. The student must have been regularly enrolled as a full-time student in the district of present enrollment for at least two consecutive semesters or the equivalent thereof.

c. The student must have a minimum cumulative grade point average in high school of 3.0 on a 4.0 scale (3.75 on a 5.0 scale).

d. The student must demonstrate participation in extracurricular and community activities, as well as an interest in serving on the state board.

e. The student must have the consent of the student's parent or guardian, as well as the approval of the student's district.

**1.2(3)** *Application process.* The application process for the nonvoting student member is as follows:

a. The department shall, on behalf of the state board, prepare and disseminate application forms to all school districts in Iowa. In addition to the application itself, the student shall submit all of the following:

(1) A consent form signed by the student's parent or guardian.

(2) An approval of the application signed by the superintendent of the student's district of enrollment or the superintendent's designee.

(3) A letter of recommendation from a high school teacher from whom the student received instruction.

(4) A letter of recommendation from a person in the community familiar with the student's community activities.

b. The number of applicants in a year from any one district is limited as follows:

(1) If district enrollment for grades 10 through 12 is less than 400 students, there may be no more than one applicant from the district.

(2) If district enrollment for grades 10 through 12 is from 400 to 1199 students, there may be no more than two applicants from the district.

(3) If district enrollment for grades 10 through 12 is 1200 students or more, there may be no more than three applicants from the district.

c. All applications shall be submitted on or before February 1 of the year in which the term is to begin. Applications may be hand-delivered or postmarked on or before February 1 to the Iowa Department of Education, Office of the Director, Grimes State Office Building, Des Moines, Iowa 50319-0146.

d. All applications shall be initially screened by a committee to be appointed by the director of the department. The initial screening committee shall select not more than 20 semifinalists. If fewer than a total of 20 applications are received, the initial screening process may be omitted, at the discretion of the director of the department.

e. The applications of the semifinalists shall be reviewed by a committee appointed by the president of the state board. The committee shall submit a list of two to five finalists to the governor, who shall appoint the student member from the list submitted by the committee on behalf of the state board of education.

**1.2(4)** *Participation of student member in official board activities.* Upon appointment to the board, the student member shall, at minimum, fulfill the following requirements to remain eligible to serve:

a. The student shall maintain enrollment as a full-time student in an Iowa public school district. If the student moves or transfers from the district of application, the student must obtain the approval of the superintendent or the superintendent's designee in the student's new district of enrollment.

b. The student shall maintain a minimum cumulative grade point average in high school of 3.0 on a 4.0 scale or 3.75 on a 5.0 scale.

c. The student shall attend regularly scheduled board meetings as required of voting board members. As a nonvoting member, the student may not participate in any closed session of the board.

d. The student member's absences from school to participate in official state board activities shall not be shown by the student's district as unexcused absences. The student member's participation in

board activities outside the regularly scheduled meetings of the state board shall be approved by the president of the board and the student's superintendent or the superintendent's designee.

*e.* If the student member is a minor, the student's parent or guardian must accompany the student while the student is participating in official state board activities at a location other than the student's resident community, unless the parent or guardian submits to the state board a signed release indicating that the parent or guardian has determined that such supervision is unnecessary.

[ARC 1330C, IAB 2/19/14, effective 3/26/14]

**281—1.3(17A,256) Director of education.** The director is responsible for exercising general supervision over the state system of public education and nonpublic schools to the extent that is necessary to ascertain compliance with provisions of the Iowa school laws. The director performs the function of executive officer of the state board of education.

**1.3(1) Appointment, term, and salary.** The director is appointed by the governor, appointment subject to approval of two-thirds of the members of the senate. The director serves at the pleasure of the governor. A salary range for this position is established by the general assembly with the governor setting the specific salary from within this range.

**1.3(2) Qualifications.** The director shall possess a background in education and administrative experience.

**281—1.4(17A,256) Department of education.** The department of education is established by the general assembly to act in a policy-making and advisory capacity and to exercise general supervision over the state system of education including (1) public elementary and secondary schools, (2) community colleges, (3) area education agencies, (4) vocational rehabilitation, (5) educational supervision over the elementary and secondary schools under the control of the department of human services, and (6) nonpublic schools to the extent necessary for compliance with the Iowa school laws.

The department shall also:

1. Stimulate and encourage educational radio and television and other educational communications services as necessary to aid in accomplishing the educational objectives of the state;
2. Meet the informational needs of the three branches of state government; and
3. Provide for the improvement of library services to all Iowa citizens and foster development and cooperation among libraries.

The department of education shall act as an administrative, supervisory, and consultative agency.

**1.4(1) Organization.**

*a. Office of the director.* The director is the chief administrator of the department and serves as chief executive officer of the state board of education. Within the office of the director, there are two offices, each headed by a deputy director: the office of learning, results, and programs, and the office of operations and initiatives.

*b. Division of learning, results, and programs.* The division consists of bureaus that oversee instructional services; practitioner preparation; administration and school improvement services; food and nutrition services; and planning, research, and evaluation services. The division is within the office of learning, results, and programs.

*c. Division of community colleges and workforce preparation.* The division oversees career and technical education as well as the community colleges. The division is within the office of operations and initiatives.

*d. Division of finance and support services.* The division provides accounting and internal operations and information technology to the agency, and it also oversees school business operations. The division is within the office of operations and initiatives. The division administrator is the department's chief financial officer.

*e. Division of library and information services.* The division is responsible for the state library, library development, and audio-visual services.

*f. Iowa public television.* This is the division of public broadcasting and related services.

*g. Division of vocational rehabilitation services.* This division provides disability determination services and related services for clients with disabilities.

**1.4(2) Organizational responsibility.** Each division is under the direction of an administrator. Each bureau is under the direction of a chief for administrative purposes.

**1.4(3) Employees.** It is the responsibility of the director to appoint all employees of the department excluding the state librarian and the employees of Iowa public television with due regard to their qualifications for the duties to be performed, designate their titles and prescribe their duties.

**1.4(4) Mailing addresses.** The mailing address for the state board of education and all divisions of the department, with the exception of the division of library services, the division of public broadcasting, and vocational rehabilitation services, is Grimes State Office Building, Des Moines, Iowa 50319-0146. The mailing address for the division of library services is East 12th and Grand Avenue, Des Moines, Iowa 50319. The mailing address for Iowa public television is P.O. Box 6450, Johnston, Iowa 50131. The mailing address for the vocational rehabilitation services division is 510 East 12th Street, Des Moines, Iowa 50319-0146.

**1.4(5) Information or submissions.** Information inquiries should be addressed to the appropriate administrator of the desired organizational unit shown in subrule 1.4(1). Requests for hearings, declaratory rulings, participation in rule-making procedures of the board, and scheduling of presentations to the board should be addressed to the director of education.

[ARC 5645C, IAB 6/2/21, effective 7/7/21]

These rules are intended to implement Iowa Code section 17A.3.

[Filed 2/28/77, Notice 12/15/76—published 3/23/77, effective 4/27/77]

[Filed 8/19/88, Notice 6/29/88—published 9/7/88, effective 10/12/88]

[Filed emergency 12/14/90—published 1/9/91, effective 12/14/90]

[Filed 2/15/91, Notice 1/9/91—published 3/6/91, effective 4/10/91]

[Filed 11/19/93, Notice 9/29/93—published 12/8/93, effective 1/12/94]

[Filed emergency 11/21/02—published 12/11/02, effective 11/21/02]

[Filed 1/17/03, Notice 12/11/02—published 2/5/03, effective 3/12/03]

[Filed ARC 1330C (Notice ARC 1244C, IAB 12/11/13), IAB 2/19/14, effective 3/26/14]

[Filed ARC 5645C (Notice ARC 5479C, IAB 2/24/21), IAB 6/2/21, effective 7/7/21]

CHAPTER 2  
AGENCY PROCEDURE FOR RULE MAKING  
AND PETITIONS FOR RULE MAKING

**281—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.

**281—2.2(17A) Advice on possible rules before notice of proposed rule adoption.** In addition to seeking information by other methods, the agency 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 agency by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

**281—2.3(17A) Public rule-making docket.**

**2.3(1) Docket maintained.** The agency 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 agency. 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 director for subsequent proposal under the provisions of Iowa Code section 17A.4(1) “a,” the name and address of agency personnel with whom persons may communicate with respect to the matter, and an indication of the present status within the agency of that possible rule. The agency 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, 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 agency determinations with respect thereto;
- h. Any known timetable for agency 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.

**281—2.4(17A) Notice of proposed rule making.**

**2.4(1) Contents.** At least 35 days before the adoption of a rule the agency 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 agency 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 agency 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 agency 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 agency 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 agency 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 ten days.

### **281—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 Department of Education, Legal Consultant's Office, Grimes State Office Building, Des Moines, Iowa 50319-0146, or the person designated in the Notice of Intended Action.

**2.5(2) *Oral proceedings.*** The agency may, at any time, schedule an oral proceeding on a proposed rule. The agency 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 agency 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" as amended by 1998 Iowa Acts, chapter 1202, section 8, or this chapter.

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

*c. Presiding officer.* The agency, a member of the agency, or another person designated by the agency who will be familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule. If the agency does not preside, the presiding officer shall prepare a memorandum for consideration by the agency summarizing the contents of the presentations made at the oral proceeding unless the agency determines that such a memorandum is unnecessary because the agency 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 agency 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 agency 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 agency.

(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.

**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 agency may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

**2.5(5) Accessibility.** The agency shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the Legal Consultant's Office, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146, or telephone (515)281-5295 in advance to arrange access or other needed services.

## **281—2.6(17A) Regulatory analysis.**

**2.6(1) Definition of small business.** A "small business" is defined in 1998 Iowa Acts, chapter 1202, section 10(7).

**2.6(2) Mailing list.** Small businesses or organizations of small businesses may be registered on the agency's small business impact list by making a written application addressed to Legal Consultant's Office, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146. The application for registration shall state:

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

The agency 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 agency 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.

**2.6(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 agency shall mail to all registered small businesses or organizations of small businesses, in accordance with their request, either a copy of the Notice of Intended Action or notice of the subject of that proposed rule making. In the case of a rule that may have an impact on small business adopted in reliance upon Iowa Code section 17A.4(2), the agency 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.

**2.6(4) *Qualified requesters for regulatory analysis—economic impact.*** The agency shall issue a regulatory analysis of a proposed rule that conforms to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2a), after a proper request from:

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

**2.6(5) *Qualified requesters for regulatory analysis—business impact.*** The agency shall issue a regulatory analysis of a proposed rule that conforms to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2b), after a proper request from:

- a. The administrative rules review committee;
- b. The administrative rules coordinator;
- c. At least 25 or more persons who sign the request provided that each represents a different small business;
- d. An organization representing at least 25 small businesses. That organization shall list the name, address and telephone number of not less than 25 small businesses it represents.

**2.6(6) *Time period for analysis.*** Upon receipt of a timely request for a regulatory analysis, the agency shall adhere to the time lines described in 1998 Iowa Acts, chapter 1202, section 10(4).

**2.6(7) *Contents of request.*** A request for a regulatory analysis is made when it is mailed or delivered to the agency. The request shall be in writing and satisfy the requirements of 1998 Iowa Acts, chapter 1202, section 10(1).

**2.6(8) *Contents of concise summary.*** The contents of the concise summary shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10(4,5).

**2.6(9) *Publication of a concise summary.*** The agency shall make available, to the maximum extent feasible, copies of the published summary in conformance with 1998 Iowa Acts, chapter 1202, section 10(5).

**2.6(10) *Regulatory analysis contents—rules review committee or rules coordinator.*** When a regulatory analysis is issued in response to a written request from the administrative rules review committee, or the administrative rules coordinator, the regulatory analysis shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2a), unless a written request expressly waives one or more of the items listed in the section.

**2.6(11) *Regulatory analysis contents—substantial impact on small business.*** When a regulatory analysis is issued in response to a written request from the administrative rules review committee, the administrative rules coordinator, at least 25 persons signing that request who each qualify as a small

business or by an organization representing at least 25 small businesses, the regulatory analysis shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2b).

**281—2.7(17A,25B) Fiscal impact statement.**

**2.7(1)** A proposed rule that necessitates additional combined annual expenditures of at least \$100,000, or additional combined expenditures of at least \$500,000 within five years, by all affected persons, 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 agency determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the agency shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

**2.7(3) *Jobs impact statement.*** The agency shall prepare a jobs impact statement for each proposed rule, as required by Iowa Code section 17A.4B, unless waived by the administrative rules coordinator. The analysis in the jobs impact statement shall give particular weight to jobs in production sectors of the economy, which includes the manufacturing and agricultural sectors of the economy, and shall include analysis, where applicable, of the impact of the rule on expansion of existing businesses or facilities.

If a jobs impact statement is revised after a notice of intended action or a rule filed without notice pursuant to Iowa Code section 17A.4(3) is published, the revised jobs impact statement shall be published as part of the preamble to the adopted version of the rule, unless the administrative rules coordinator determines that publication of the entire jobs impact statement would be unnecessary or impractical.

[ARC 5646C, IAB 6/2/21, effective 7/7/21]

**281—2.8(17A) Time and manner of rule adoption.**

**2.8(1) *Time of adoption.*** The agency 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 agency 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 agency 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 agency expertise.*** Except as otherwise provided by law, the agency may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

**281—2.9(17A) Variance between adopted rule and published notice of proposed rule adoption.**

**2.9(1)** The agency 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 agency 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.

**2.9(3)** The agency 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 agency 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 agency to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

#### **281—2.10(17A) Exemptions from public rule-making procedures.**

**2.10(1)** *Omission of notice and comment.* To the extent the agency 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 agency 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 agency 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 agency 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 agency 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 agency 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.

#### **281—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 agency shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to Legal Consultant's Office, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146. 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 agency's reasons for overruling the arguments made against the rule.

**2.11(3)** *Time of issuance.* After a proper request, the agency 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.

#### **281—2.12(17A) Contents, style, and form of rule.**

**2.12(1)** *Contents.* Each rule adopted by the agency shall contain the text of the rule and, in addition:

- a. The date the agency adopted the rule;

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

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

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

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

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

g. The effective date of the rule.

**2.12(2) *Incorporation by reference.*** The agency 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 agency finds that the incorporation of its text in the agency proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the agency 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 agency may incorporate such matter by reference in a proposed or adopted rule only if the agency 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 agency, 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 agency shall retain permanently a copy of any materials incorporated by reference in a rule of the agency.

If the agency 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. The agency may establish alternative procedures providing for public access to an electronic or printed copy of a publication containing standards adopted by reference if the publication is proprietary or contains proprietary information.

**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 agency 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 agency. The agency 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 agency 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 agency shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

[ARC 5646C, IAB 6/2/21, effective 7/7/21]

## **281—2.13(17A) Agency rule-making record.**

**2.13(1) Requirement.** The agency 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 agency 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 agency submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based;

*b.* Copies of any portions of the agency'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 agency, 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 agency and considered by the director, 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 agency 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 agency 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 agency 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 agency rule-making record required by this rule need not constitute the exclusive basis for agency action on that rule.

**2.13(4) Maintenance of record.** The agency 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."

**281—2.14(17A) Filing of rules.** The agency 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 agency shall use the standard form prescribed by the administrative rules coordinator.

**281—2.15(17A) Effectiveness of rules prior to publication.**

**2.15(1) Grounds.** The agency 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 agency 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 agency 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 agency 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 agency 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 agency 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).

#### **281—2.16(17A) General statements of policy.**

**2.16(1) *Compilation, indexing, public inspection.*** The agency 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 agency 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.

#### **281—2.17(17A) Review by agency 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 agency to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the agency 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 agency 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 agency 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 agency’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 agency or granted by the agency. 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 agency’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.

**2.17(3)** Beginning July 1, 2012, over each five-year period of time, the agency shall conduct an ongoing and comprehensive review of all of the agency’s rules. The goal of the review is the identification and elimination of all rules of the agency that are outdated, redundant, or inconsistent or incompatible

with statute or its own rules or those of other agencies. The agency shall commence its review by developing a plan of review in consultation with major stakeholders and constituent groups. When the agency completes the five-year review of the agency's own rules, the agency shall provide a summary of the results to the administrative rules coordinator and the administrative rules review committee.

[ARC 5646C, IAB 6/2/21, effective 7/7/21]

**281—2.18(17A) Petition for rule making.** A petition requesting the adoption, amendment, or repeal of a rule shall be filed with the department of education at the Grimes State Office Building, Second Floor, Des Moines, Iowa 50319-0146. A petition is deemed filed when it is received by that office. The department of education shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the department an extra copy for this purpose.

**2.18(1) Form.** The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

DEPARTMENT OF EDUCATION		
Petition by (Name of Petitioner) for the Adoption/Amendment/Repeal of (Cite rule involved).	}	PETITION FOR RULE MAKING

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the petition is based.
2. The precise citation to the present rule if the petition is for the amendment or repeal of the same.
3. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, and any other relevant law.
4. A summary of the reasons for requesting the adoption, amendment or repeal of a rule.
5. Full disclosure of the petitioner's interest in the outcome of the petition.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the issue(s) raised by the petition and whether, to the petitioner's knowledge, those issues have been decided by, are pending determination by, or are under investigation by, any other 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 issue(s) presented in the petition.

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) Response to petition.** Within 60 days after submission of a petition, the agency either shall deny the petition in writing on the merits, stating its reasons for the denial, or initiate rule-making proceedings in accordance with this chapter, or adopt a rule if it is not required to be filed according to the procedures of this chapter and Iowa Code section 17A.4(1). The agency shall submit the petition and the disposition of the petition to the administrative rules review committee.

[ARC 5646C, IAB 6/2/21, effective 7/7/21]

**281—2.19(17A) Rule-making Internet site.** Subject to the direction of the administrative rules coordinator, the agency shall make available to the public a uniform, searchable, and user-friendly rules database, published on an Internet site. An agency's rule-making Internet site shall also make available to the public all of the following:

**2.19(1)** A brief summary of the rule-making process, including a description of any opportunity for public participation in the process.

**2.19(2)** Process forms for filing comments or complaints concerning proposed or adopted rules.

**2.19(3)** Process forms and instructions for filing a petition for rule making pursuant to rule 281—2.18(17A), a petition for a declaratory order pursuant to 281—Chapter 3, or a petition for a waiver of an administrative rule pursuant to 281—Chapter 4.

**2.19(4)** Any other material prescribed by the administrative rules coordinator.  
[ARC 5646C, IAB 6/2/21, effective 7/7/21]

**281—2.20(17A) Inquiries.** Inquiries concerning the status of a petition for rule making may be made to the Legal Consultant, Grimes State Office Building, Des Moines, Iowa 50319-0146.  
[ARC 5646C, IAB 6/2/21, effective 7/7/21]

These rules are intended to implement Iowa Code section 256.7(3) and chapter 17A.

[Filed 8/19/88, Notice 6/29/88—published 9/7/88, effective 10/12/88]

[Filed 3/11/94, Notice 12/8/93—published 3/30/94, effective 5/4/94]

[Filed 4/13/99, Notice 3/10/99—published 5/5/99, effective 6/9/99]

[Filed 4/20/05, Notice 2/16/05—published 5/11/05, effective 6/15/05]

[Filed ARC 5646C (Notice ARC 5466C, IAB 2/24/21), IAB 6/2/21, effective 7/7/21]



CHAPTER 4  
WAIVERS FROM ADMINISTRATIVE RULES

**281—4.1(17A,ExecOrd11) Definitions.** For purposes of this chapter:

“*Board*” means the state board of education.

“*Department*” means the department of education.

“*Director*” means the director of the department of education.

“*Person*” means an individual, school corporation, government or governmental subdivision or agency, nonpublic school, partnership or association, or any legal entity.

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

[ARC 5647C, IAB 6/2/21, effective 7/7/21]

**281—4.2(17A,ExecOrd11) Scope of chapter.** This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules in situations where no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

**281—4.3(17A,ExecOrd11) Applicability of chapter.** A waiver from a rule may be granted only if the department has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. Statutory duties or requirements created by statute may not be waived.

**281—4.4(17A,ExecOrd11) Criteria for waiver.** In response to a petition completed pursuant to rule 281—4.6(17A,ExecOrd11), the director may in the director’s sole discretion issue an order waiving in whole or in part the requirements of a rule if the director finds, based on clear and convincing evidence, all of the following:

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

**281—4.5(17A,ExecOrd11) Filing of petition.** All petitions for waiver must be submitted in writing to the Director, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146. 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.

**281—4.6(17A,ExecOrd11) Content of petition.** A petition for waiver shall include the following information where applicable and known to the requester:

1. The name, address, and telephone number of the person for whom a waiver is being requested, and the case number of any related contested case.
2. A description and citation of the specific rule from which a waiver is requested.
3. The specific waiver requested, including the precise scope and duration.
4. The relevant facts that the petitioner believes would justify a waiver under each of the five criteria described in rule 281—4.4(17A,ExecOrd11). This statement shall include a signed statement

from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver.

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

6. A detailed statement of the impact on student achievement for any person affected by the granting of a waiver.

7. Any information known to the requester regarding the board's or department's treatment of similar cases.

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

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

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

[ARC 5647C, IAB 6/2/21, effective 7/7/21]

**281—4.7(17A,ExecOrd11) Additional information.** Prior to issuing an order granting or denying a waiver, the department 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 department may on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the department.

**281—4.8(17A,ExecOrd 11) Notice.** The department shall acknowledge a petition upon receipt. The department shall ensure that, within 30 days of the receipt of the petition, notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law. In addition, the department may give notice to other persons. To accomplish this notice provision, the department 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 department attesting that notice has been provided.

**281—4.9(17A,ExecOrd11) Hearing procedures.** The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply in three situations: (1) to any petition for a waiver filed within a contested case; (2) when provided by rule or order; or (3) when required to do so by statute.

**281—4.10(17A,ExecOrd11) Ruling.** An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and the reasons upon which the action is based, and a description of the precise scope and operative period of the waiver if one is issued.

**4.10(1) Discretion.** The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the director, upon consideration of all relevant factors. Each petition for a waiver shall be evaluated by the director based on the unique, individual circumstances set out in the petition.

**4.10(2) Burden of persuasion.** The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the director should exercise the director's discretion to grant a waiver from a rule.

**4.10(3) Narrowly tailored.** A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

**4.10(4) Administrative deadlines.** When the rule from which a waiver is sought establishes administrative deadlines, the director shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

**4.10(5) Conditions.** The director may place any condition on a waiver that the director finds desirable to protect the public health, safety, and welfare.

**4.10(6) Time period of waiver.** A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the director, a waiver may be renewed if the director finds that grounds for a waiver continue to exist.

**4.10(7) Time for ruling.** The director 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 director shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

**4.10(8) When deemed denied.** Failure of the director to grant or deny a petition within the required time period shall be deemed a denial of that petition by the director. However, the director shall remain responsible for issuing an order denying a waiver.

**4.10(9) Service of order.** Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains, and to any other person entitled to such notice by any provision of law.

**281—4.11(17A,ExecOrd11) 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. The director may accordingly redact confidential information from petitions or orders prior to public inspection. Waiver information is available as described in rule 281—4.12(17A,ExecOrd11).

[ARC 5647C, IAB 6/2/21, effective 7/7/21]

**281—4.12(17A,ExecOrd11) Submission of waiver information.** When the department grants or denies a waiver, the department shall submit the information required by this rule on the Internet site established pursuant to Iowa Code section 17A.9A(4) within 60 days. The Internet site shall identify the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the department's actions on waiver requests. If practicable, the submission shall include information detailing the extent to which the granting of a waiver has established a precedent for additional waivers and has affected the general applicability of the rule itself.

[ARC 5647C, IAB 6/2/21, effective 7/7/21]

**281—4.13(17A,ExecOrd11) Cancellation.** A waiver issued pursuant to this chapter may be withdrawn, canceled or modified if, after appropriate notice and hearing, the director issues an order finding any of the following:

1. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or
2. The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or
3. The subject of the waiver order has failed to comply with all conditions contained in the order.

**281—4.14(17A,ExecOrd11) Violations.** Violation of conditions in the waiver approval is the equivalent of violation of the particular rule for which the waiver is granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

**281—4.15(17A,ExecOrd11) Defense.** After the director 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.

**281—4.16(17A,ExecOrd11) Judicial review.** Judicial review of the director’s decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

**281—4.17(17A,ExecOrd11) Exception.** This rule does not apply to 281—Chapters 36 and 37 or to specific waiver provisions adopted in other chapters.

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

[Filed 3/20/01, Notice 12/13/00—published 4/18/01, effective 5/23/01]

[Filed ARC 5647C (Notice ARC 5465C, IAB 2/24/21), IAB 6/2/21, effective 7/7/21]

CHAPTER 17  
OPEN ENROLLMENT

**281—17.1(282) Intent and purpose.** It is the intent of Iowa Code section 282.18 to maximize parental choice in providing a wide range of educational opportunities which are not available for pupils because of where they live. It is the purpose of this chapter to give guidance and direction to parents/guardians, public school district administrators and boards in making quality decisions regarding school district choice for the education of pupils.

**281—17.2(282) Definitions.** For the purpose of this chapter the indicated terms are defined as follows:

*“Alternative receiving district”* means a district to which a parent/guardian petitions for the open enrollment of a pupil from a receiving district. An alternative receiving district could be the district of residence of the parents/guardians.

*“Attendance center”* means a public school building that contains classrooms used for instructional purposes for elementary, middle, or secondary school students.

*“Court-ordered desegregation plan”* means a plan that is under direct court order to avoid racial isolation in the district.

*“Department”* means the department of education.

*“Director”* means the director of the department of education or the director’s designee.

*“Diversity plan”* or *“voluntary diversity plan”* means a plan that is voluntarily adopted by a local school board to promote diversity and to avoid minority student isolation in the district.

*“Eligible district”* means a school district whose board had adopted a voluntary desegregation plan under this chapter prior to June 28, 2007.

*“Minority student”* shall be defined by a local school board in its diversity plan, and may include consideration of any one characteristic or a combination of any of the following characteristics except that race may not be either the sole or the determinative characteristic: socioeconomic status, ethnicity/national origin, English language learner status, or race.

*“Open enrollment”* is the procedure allowing a parent/guardian to enroll one or more pupils in a public school district other than the district of residence at no tuition cost.

*“Receiving district”* is the public school district in which a parent/guardian desires to have the pupil enrolled or the district accepting the application for enrollment of a pupil under the provisions of Iowa Code section 282.18.

*“Resident district”* is the district of residence for school purposes of the parent/guardian and the district in which an open enrollment pupil shall be counted for the purpose of generating state aid regardless of the district in which the pupil is enrolled.

*“Sending district”* is synonymous with the term resident district.

*“Sibling”* means a child residing primarily in the same household as the child for whom an open enrollment request is filed and who is related by adoption, blood or marriage to the child for whom an open enrollment request is filed. “Sibling” also includes a foster child who is placed in the same household as the child for whom an open enrollment request is filed.

*“Socioeconomic status”* means the income level of a student or the student’s family, and shall be measured by whether a student or the student’s family meets the financial eligibility criteria for free meals or reduced price meals offered under the Child Nutrition Program.

**281—17.3(282) Application process.** The following procedure shall be used by parents/guardians and school districts in processing open enrollment applications.

**17.3(1) Parent/guardian responsibilities.** On or before March 1 of the school year preceding the school year for which open enrollment is requested, a parent/guardian shall formally notify both the district of residence and the receiving district of the request for open enrollment. The request for open enrollment shall be made on forms provided by the department of education. Failure by the parent to send the form to the resident district and receiving district by the deadline may cause the application to be considered untimely. The parent/guardian is required to indicate on the form if the request is for a pupil

requiring special education, as provided by Iowa Code chapter 256B. The forms for open enrollment application are available from each public school district and area education agency and from the state department of education.

**17.3(2) School district responsibilities.**

*a.* The board of the resident district shall take no action on an open enrollment request except for a request made under rule 281—17.5(282) or 281—17.14(282).

*b.* The board of the receiving district shall act on an open enrollment request no later than June 1 of the school year preceding the school year for which the request is made.

(1) The receiving district superintendent shall provide notification of either approval or denial of the request to the parent/guardian and to the resident district within five days of board action.

(2) As an alternative procedure, the receiving board may by policy authorize the superintendent to approve, but not deny, applications filed on or before March 1. The board of directors of a receiving school district may adopt a policy granting the superintendent of the school district authority to approve open enrollment applications submitted after the March 1 deadline, but the board of the receiving district shall take action to approve the request if good cause exists. The board shall have the discretion to determine the scope of the authorization. The authorization may be for regular applications filed on or before March 1, good cause applications, and kindergarten applications filed on or before September 1, or any combination that the board determines. The same timelines for approval, forwarding, and notification shall apply.

*c.* The parent/guardian may withdraw an open enrollment request anytime prior to the first day of school in the resident district. After the first day of school, an open enrollment request can only be changed during the term of the approval by the procedures of subrules 17.8(4), 17.8(5), 17.8(6), and 17.8(7).

*d.* The board of the receiving district shall comply with the provisions of rule 281—17.11(282) if the application for open enrollment is for a pupil requiring special education as provided by Iowa Code chapter 256B.

*e.* Notification to parents.

(1) By September 30 of each school year, all districts shall notify parents of the following:

1. Open enrollment deadlines;

2. Transportation assistance;

3. That within 30 days of a denial of an open enrollment request by a district board of education, the parent/guardian may file an appeal with the state board of education only if the open enrollment request was based on repeated acts of harassment or a serious health condition of the pupil that the district cannot adequately address; and that all other denials must be appealed to the district court in the county in which the primary business office of the district is located; and

4. Possible loss of athletic eligibility for open enrollment pupils.

(2) This notification may be published in a school newsletter, a newspaper of general circulation, a website, or a parent handbook provided to all patrons of the district. This information shall also be provided to any parent/guardian of a pupil who enrolls in the district during the school year.

**17.3(3) Exception to process when resident district is under voluntary or court-ordered desegregation.** If the resident district has a voluntary or court-ordered desegregation plan requiring the district to maintain minority and nonminority student ratios, the request for open enrollment shall be filed solely with the district of residence on or before March 1 of the school year preceding the school year for which open enrollment is requested. The superintendent of the resident district may deny a request under this subrule unless the request is made on behalf of a student whose sibling already actively participates in open enrollment to the same receiving district to which open enrollment is sought for this student. A denial by the superintendent may be appealed to the board of the district in which the request was denied. A decision of the local board to uphold the denial may only be appealed to the district court in the county in which is located the primary business office of the district that upheld the denial of the open enrollment request.

[ARC 2746C, IAB 10/12/16, effective 11/16/16]

**281—17.4(282) Filing after the March 1 deadline—good cause.** A parent/guardian may apply for open enrollment after the filing deadline of March 1 of the school year preceding the school year for which open enrollment is requested and before the date specified in Iowa Code section 257.6, subsection 1, of that calendar year if good cause exists for the failure to meet the deadline. Good cause is a change in the status of the pupil's residence or a change in the status of the pupil's resident district taking place after March 1, or the closing or loss of accreditation of a nonpublic school of attendance after March 1 resulting in the desire of the parent/guardian to obtain open enrollment for the following school year. If good cause can be established, the parent/guardian shall be permitted to apply for open enrollment in the same manner as if the deadline had been met pursuant to rule 17.3(282).

Consideration of an open enrollment request filed under the provision of good cause does not preclude the authority, as appropriate, for the resident or receiving district to administer board policy related to insufficient classroom space or the requirements of a desegregation plan or order in acting to approve or deny the request. (See subrules 17.6(2) and 17.6(3).)

**17.4(1)** Good cause related to change in the pupil's residence shall include:

*a.* A change in the family residence due to the family's moving from the district of residence anytime after March 1 of the school year preceding the school year for which open enrollment is requested.

*b.* A change in the state of residence allowing a parent/guardian moving into an Iowa school district from out of state to obtain open enrollment to a different district from their new district of residence.

*c.* A change in the marital status of the pupil's parents.

*d.* A guardianship or custody proceeding.

*e.* Placement of the child in foster care.

*f.* Adoption.

*g.* Participation in a foreign exchange program.

*h.* Participation in a substance abuse or mental health treatment program.

**17.4(2)** Good cause related to change in status of the pupil's resident district or nonpublic school of attendance shall include:

*a.* Reorganization action.

(1) Failure of the area education board to vote in favor of a reorganization proposal,

(2) Failure of the area education board to act on objections to exclude territory from a reorganization proposal,

(3) Failure of a reorganization election,

(4) Rescinded IAB 3/8/00, effective 4/12/00.

*b.* Dissolution action.

(1) Failure of a dissolution commission to make a recommendation to the board of directors,

(2) Failure of the board to take positive action on objections filed by residents of the district to a dissolution proposal,

(3) Failure of contiguous districts to accept a dissolution proposal,

(4) Failure of an election on a dissolution proposal.

*c.* Whole grade sharing action.

(1) Failure of the board to pursue negotiations for a whole grade sharing proposal for which it has given public notice by board action of its intent to pursue,

(2) Failure of the board to approve a request by a parent/guardian to send an affected pupil to a contiguous district rather than to the district party to the agreement,

(3) Failure of the board to extend or renew a whole grade sharing agreement,

(4) Unilateral rejection by one board of a whole grade sharing agreement prior to expiration of the term of the agreement.

*d.* Loss of accreditation.

(1) Removal of accreditation by the state board after March 1.

(2) Surrender of accreditation after March 1.

(3) Permanent closure of a nonpublic school after March 1.

*e.* Rescinded IAB 8/21/02, effective 9/25/02.

On open enrollment requests for good cause related to a change in status of the pupil's school district of residence, action by a parent/guardian must be taken to file notification within 45 days of the last board action or within 30 days of the certification of an election, whichever circumstance is applicable.

**17.4(3)** Good cause shall not include:

*a.* Actions of a board of education in the designation of attendance centers within a school corporation and in the assignment of pupils to such centers as provided by Iowa Code section 279.11.

*b.* Actions of a board of education in making its own rules of government for the internal organization and operation of the school corporation as provided by Iowa Code section 279.8.

**17.4(4)** Rescinded IAB 8/21/02, effective 9/25/02.

**17.4(5)** Timelines for board action on applications filed after March 1 for good cause. The board of the receiving district shall act on the request within 30 days of its receipt. The same timelines for approval, forwarding, and notification shall apply.

The receiving district superintendent shall provide notification of either approval or denial of the request to the parent/guardian and to the resident district within five days of board action.

**17.4(6)** If the resident district believes that the board of the receiving district approved a late-filed open enrollment request that does not meet the definition of "good cause" under Iowa Code section 282.18(4) "b," the resident district may appeal to the director.

*a.* Upon affirmative vote of a majority of its board to do so, the resident district shall file a written appeal to the director within 30 days of receipt by the resident district of notification by the board of the receiving district of the approval by the receiving district of a late-filed open enrollment request. The written appeal shall state the name and grade level of the affected student, the name of the receiving district, the date of approval by the board of the receiving district, the date the resident district was notified of the approval, and a brief statement explaining why the resident district board believes there is no good cause for the request to have been filed and approved after March 1. The appeal shall be signed by the president of the board of the resident district and shall have attached to it a copy of the disputed open enrollment request and the minutes of the board meeting at which the resident district board voted to appeal. An appeal is timely filed if it is postmarked or delivered personally or via facsimile transmission to the director within the 30-day time period.

*b.* The director shall, upon receipt of an appeal, first attempt to mediate the dispute. If mediation is unsuccessful, the director shall schedule a telephonic hearing for the purpose of hearing testimony from both boards.

*c.* If a hearing is necessary, the boards may stipulate to any or all facts to be considered by the director. At the sole discretion of the director, an in-person hearing may be scheduled. The director shall issue a written decision within ten days of the hearing, upholding or reversing the decision of the board of the receiving district.

*d.* Within five days of the issuance of the decision of the director, the aggrieved board may appeal the decision to the state board of education under the procedures in Iowa Code chapter 290.

**281—17.5(282) Filing after the March 1 deadline—harassment or serious health condition.** A parent/guardian may apply for open enrollment after the filing deadline of March 1 of the school year preceding the school year for which open enrollment is requested if the parent's/guardian's child is the victim of repeated acts of harassment or if the child has a serious health condition that the resident district cannot adequately address. If either of these conditions exists, the parent/guardian shall be permitted to apply for open enrollment by sending notification to both the resident and receiving districts.

**17.5(1)** The board of the resident district shall act on the request within 30 days of its receipt. If the request is denied, the parent/guardian shall be notified by the district superintendent within 3 days following board action. If the request is approved, the district superintendent shall forward the approved application form to the receiving district within 5 days following board action and shall notify the parent/guardian within 3 days of this action. The board of the receiving district shall act to approve or deny an open enrollment request within 30 days following receipt of the notice of approval from the

resident district. The receiving district superintendent shall provide notification of either approval or denial of the request to the parent/guardian and to the resident district within 15 days of board action.

**17.5(2)** A denial by either board of a request made under this rule involving repeated acts of harassment of the student or serious health condition of the student that the resident district cannot adequately address may be appealed by a parent/guardian to the state board of education pursuant to Iowa Code section 290.1. The state board shall exercise broad discretion to achieve just and equitable results that are in the best interest of the affected child or children.

**281—17.6(282) Restrictions to open enrollment requests.** A district board may exercise the following restrictions related to open enrollment requests.

**17.6(1)** *Enrollment loss caps.* Rescinded IAB 12/8/93, effective 1/12/94.

**17.6(2)** *Voluntary diversity plans or court-ordered desegregation plans.* In districts with court-ordered desegregation or voluntary diversity plans where there is a requirement to maintain minority and nonminority student ratios according to the plan, the superintendent of the district may deny a request for open enrollment if it is found that the enrollment or release of a pupil will adversely affect the district's court-ordered desegregation plan or voluntary diversity plan. Open enrollment requests that would facilitate the court-ordered desegregation plan or voluntary diversity plan shall be given priority over other open enrollment requests received by the district. A parent/guardian whose request for open enrollment is denied by the superintendent of the district on the basis of its adverse effect on the district's court-ordered desegregation plan or voluntary diversity plan may appeal that decision to the district board.

**17.6(3)** *Policy on insufficient classroom space.* No receiving district shall be required to accept an open enrollment request if it has insufficient classroom space to accommodate the pupil(s). Each district board shall adopt a policy which defines the term "insufficient classroom space" for that district. This policy shall establish a basis for the district to make determinations on the acceptance or denial, as a receiving district, of an open enrollment request. This policy may include, but shall not be limited to, one or more of the following: nature of the educational program, grade level, available instructional staff, instructional method, physical space, pupil-teacher ratio, equipment and materials, facilities either being planned or under construction, facilities planned to be closed, finances available, sharing agreement in force or planned, bargaining agreement in force, special education class size or caseload established pursuant to rule 281—41.408(256B,273,34CFR300), or board-adopted district educational goals and objectives. This policy shall be reviewed annually by the district board.

**17.6(4)** *Designation of attendance center.* The right of a parent/guardian to request open enrollment is to a district other than the district of residence, not to an attendance center within the nonresident district. In accepting an open enrollment pupil, the receiving district board has the same authority it has in regard to its resident pupils as provided by Iowa Code section 279.11, to "determine the particular school which each child shall attend." In the application process, however, the parent or guardian may request an attendance center of preference.

[ARC 5651C, IAB 6/2/21, effective 7/7/21]

**281—17.7(282) Open enrollment for kindergarten.** While the regular time frame in requesting open enrollment is that an application should be made no later than March 1 of the school year preceding the school year for which the enrollment is requested, a parent/guardian requesting to enroll a kindergarten pupil in a district other than the district of residence may make such application on or before September 1 of that school year. In considering an application for a kindergarten pupil, the resident and the receiving district are not precluded from administering board-adopted policies related to insufficient classroom space or the requirements of a desegregation plan or order.

As an alternative procedure, the receiving board may by policy authorize the superintendent to approve, but not deny, applications filed on or before September 1 under this rule. The timelines established in rule 17.4(282) shall apply to applications for a kindergarten pupil.

**281—17.8(282) Requirements applicable to parents/guardians and students.**

**17.8(1) *Expelled or suspended students.*** A pupil who has been suspended or expelled by action of the administration or board of the resident district shall not be permitted to enroll if an open enrollment request is filed until the pupil is reinstated for school attendance in the resident district. Once reinstated, the application for open enrollment shall be considered in the same manner as any other open enrollment request. If a pupil for whom an open enrollment request has been filed is subsequently expelled by action of the resident district board, the pupil may be denied enrollment by the receiving district board until the pupil is reinstated for school attendance by the resident district. The provisions of this subrule shall also apply to a pupil who has been suspended or expelled in a receiving district and is requesting open enrollment to an alternative receiving district or is seeking to return to the resident district as outlined in subrule 17.8(4).

**17.8(2) *Restrictions on participation in interscholastic athletic contests and competitions.*** Subject to rule 281—17.15(282), a pupil who changes school districts under open enrollment in any of the grades 9 through 12 shall not be eligible to participate in varsity interscholastic athletic contests and competitions during the first 90 school days of enrollment. This restriction also shall apply to enrollments resulting from an approved petition filed by a parent/guardian to open enroll to an alternative receiving district and when the pupil returns to the district of residence using the process outlined in subrule 17.8(4). This 90-school-day restriction does not prohibit the pupil from practicing with an athletic team during the 90 school days of ineligibility. This 90-school-day restriction is not applicable to a pupil who:

*a.* Participates in an athletic activity in the receiving district that is not available in the district of residence.

*b.* Participates in an athletic activity for which the resident district and the receiving district have a “cooperative student participation agreement” in place as provided by rule 281—36.20(280).

*c.* Has paid tuition for one or more years to the receiving school district prior to making application and being approved for open enrollment.

*d.* Has attended the receiving district for one or more years, prior to making application and being approved for open enrollment, under a sharing or mutual agreement between the resident district and the receiving district.

*e.* Has been participating in open enrollment and whose parents/guardians move out of their district of residence but exercise the option of maintaining the open enrollment agreement as provided in subrule 17.8(6) except that the period of 90 school days of ineligibility shall apply to a pupil who open enrolls to another school district. If the pupil has established athletic eligibility under open enrollment, it is continued despite the parent’s or guardian’s change in residence.

*f.* Obtains open enrollment as provided in subrule 17.8(7) except that the period of 90 school days of ineligibility shall apply to a pupil who open enrolls to another school district.

*g.* Obtains open enrollment due to the dissolution and merger of the former district of residence under Iowa Code subsection 256.11(12).

*h.* Obtains open enrollment due to the pupil’s district of residence entering into a whole-grade sharing agreement on or after July 1, 1990, including the grade in which the pupil would be enrolled at the start of the whole-grade sharing agreement.

*i.* Participates in open enrollment and the parent/guardian is an active member of the armed forces and resides in permanent housing on government property provided by a branch of the armed services.

*j.* Open enrolls from a district of residence that has determined that the pupil was previously subject to a founded incident of harassment or bullying as defined in Iowa Code section 280.28 while attending school in the district of residence.

**17.8(3) *Term of enrollment.*** Rescinded IAB 10/9/96, effective 11/13/96.

**17.8(4) *Petition for attendance in an alternative receiving district.*** Once the pupil of a parent/guardian has been accepted for open enrollment, attendance in an alternative receiving district under open enrollment can be initiated by filing a petition for change with the receiving district. The petition shall be filed by the parent/guardian with the receiving district on or before March 1 of the year preceding the school year for which the change is requested. The timelines and notification requirements for such a request shall be the same as outlined in subrule 17.3(2). If the request is approved, the alternative district shall send notice of this action to the parent/guardian, to the original

receiving district, and to the resident district of the pupil. Petitions for change shall be effectuated at the start of the next school year.

As an alternative procedure, the receiving and alternative receiving district boards by mutual agreement may effectuate the change in enrollment of an open enrollment pupil at any time following receipt of a written request for such change which is approved by the two boards. The parent/guardian and the resident district board shall be notified of the approval and the date for change in open enrollment within 15 days of the mutual agreement action of the receiving and alternative receiving boards.

A pupil in good standing may return to the district of residence at any time following written notice from the parent/guardian to both the resident district and the receiving district.

**17.8(5) *Renewal of an open enrollment agreement.*** An open enrollment agreement shall remain in place unless canceled by the parent/guardian or terminated as outlined in the provisions of subrule 17.8(10).

**17.8(6) *Change in residence when participating in open enrollment.*** If the parent/guardian of a pupil who is participating in open enrollment changes the school district of residence during the term of the agreement, the parent/guardian shall have the option to leave the pupil in the receiving district under open enrollment, to open enroll to another school district, or to enroll the pupil in the new district of residence, thus terminating the open enrollment agreement. If the choice is to leave the pupil under open enrollment or to open enroll to another school district, the original district of residence shall be responsible for payment of the cost per pupil plus any applicable weightings or special education costs for the balance of the school year, if any, in which the move took place, providing the move took place on or after the date specified in Iowa Code section 257.6, subsection 1. The new district of residence shall be responsible for these payments during succeeding years of the agreement.

If the move takes place between the end of one school year and the date specified in Iowa Code section 257.6, subsection 1, of the following school year, the new district of residence shall be responsible for that year's payment as well as succeeding years.

If the pupil is to remain under open enrollment or to open enroll to another school district, the parent/guardian shall write a letter, delivered by mail or by hand on or before the date specified in Iowa Code section 257.6, subsection 1, to notify the original resident district, the new resident district, and the receiving district of this decision.

Timely requests under this rule shall not be denied. If the request is for a high school pupil, the pupil shall not be subject to the initial 90-school-day ineligibility period of subrule 17.8(2).

**17.8(7) *Change in residence when not participating in open enrollment.*** If a parent/guardian moves out of the school district of residence, and the pupil is not currently under open enrollment, the parent/guardian has the option for the pupil to remain in the original district of residence as an open enrollment pupil with no interruption in the education program or to open enroll to another school district. This option is not available to the parent/guardian of a student who is entering kindergarten for the first time. The parent/guardian exercising this option shall file an open enrollment request form with the new district of residence for processing and record purposes. This request shall be made on or before the date specified in Iowa Code section 257.6, subsection 1. Timely requests under this subrule shall not be denied. If the request is for a high school pupil, the pupil shall not be subject to the initial 90-school-day ineligibility period of subrule 17.8(2). If the move is on or after the date specified in Iowa Code section 257.6, subsection 1, the new district of residence is not required to pay per-pupil costs or applicable weighting or special education costs to the receiving district until the first full year of the open enrollment.

**17.8(8) *Pupil governance.*** An open enrollment pupil, and where applicable the pupil's parent/guardian, shall be governed by the rules and policies established by the board of directors of the receiving district. Any complaint or appeal by the parent/guardian concerning the educational system, its process, or administration in the receiving district shall be initially directed to the board of directors of that district in compliance with the policy of that district.

**17.8(9) *Appeal procedure.*** A parent/guardian may appeal the decision of the board of directors of a school district (resident or receiving) only on an application for open enrollment under Iowa Code section 282.18(5) as amended by 2002 Iowa Acts, House File 2515. This appeal is to the state board of

education and shall comply with the provisions of Iowa Code section 290.1. The appeal shall be filed within 30 days of the decision of the district board and shall be in the form of an affidavit signed by the parent/guardian. It shall state in a plain and concise manner what the parent/guardian feels to be the basis for appeal.

**17.8(10) *Open enrollment termination.*** Open enrollment ends when:

*a.* The pupil graduates, moves into the receiving district, moves into a third district and does not elect to continue attending in the receiving district, moves out of state, elects to attend a nonpublic school instead of the receiving district, or any other circumstance not excepted below that results in the pupil no longer attending the receiving district.

EXCEPTIONS: This rule shall not apply if the pupil is placed temporarily in foster care, a juvenile detention center, mental health or substance abuse treatment facility, or other similar placement. In such cases, the open enrollment status will automatically be reinstated when the pupil returns.

*b.* The pupil drops out of school. In this instance, if the pupil desires to return to the resident district during the term of the original open enrollment, notice must be given as outlined in the provisions of subrule 17.8(4).

[ARC 2746C, IAB 10/12/16, effective 11/16/16; ARC 4296C, IAB 2/13/19, effective 3/20/19]

### **281—17.9(282) Transportation.**

**17.9(1) *Parent responsibilities.*** The parent/guardian of a pupil who has been accepted for open enrollment shall be responsible to transport the pupil without reimbursement, except as provided in subrule 17.9(2), to and from a point on a regular school bus route of the receiving district. This point shall be a designated stop on the bus route of the receiving district. If this point—designated stop—is within the distances established by Iowa Code section 285.1 from the school designated for attendance by the receiving district, that district may, but is not required to, provide transportation for an open enrollment pupil. A receiving district may send buses into a resident district solely for the purpose of transporting an open enrollment pupil if the boards of both the sending and receiving districts agree to this arrangement. Bus routes that are outside the boundary of the receiving district that have been authorized by an area education agency board of directors, as provided by Iowa Code subsection 285.9(3), may be used to transport open enrollment pupils if boards of directors of the resident and receiving districts have both taken action to approve such an arrangement. Bus routes that have been established by the receiving district for the purpose of transporting nonpublic school or special education pupils that operate in the resident district of an open enrollment pupil shall not be utilized for the transportation of such pupil for the portion of the route that is within the resident district unless the boards of directors of the resident and receiving districts have both taken action to approve such an arrangement. Bus routes transporting pupils for the purpose of whole-grade sharing shall not be used to transport open enrollment pupils for the portion of the route that is within the resident district unless the boards of directors of the resident and receiving districts have both taken action to approve such an arrangement.

**17.9(2) *Qualifications and provisions for transportation assistance.*** Open enrollment pupils that meet the economic eligibility requirements established by the department of education shall receive transportation assistance from their resident district under the following conditions. The resident district is not required to provide any transportation assistance for a pupil involved in open enrollment with a district that is not contiguous with the pupil's resident district. The resident district shall provide transportation for the pupil to a point that is a designated stop on a regular bus route of a contiguous receiving district, or as an alternative, the resident district shall pay the parent/guardian for providing this transportation. In either situation the resident district is not obligated to expend more than the average cost per pupil transported amount established for that district for the previous school year. If the resident district provides the transportation, it shall determine that it is able to perform this function at a cost not in excess of the average cost per pupil transported for the resident district as established the previous year. It shall not assess any additional cost to the parent/guardian for providing transportation. If the district chooses to reimburse the parent/guardian for providing transportation, to determine the amount to be reimbursed, the district shall use the provisions of Iowa Code subsection 285.1(3). This reimbursement

shall not exceed the average cost per pupil transported for the resident district as established the previous year. The resident district may withhold from the amount it is required to pay to a receiving district for an open enrollment pupil the actual amount or the average cost per pupil transported amount it pays for transportation assistance, whichever is the lesser amount.

**17.9(3) *Economic eligibility requirements for transportation.*** A parent/guardian shall be eligible for transportation assistance from the resident district if the household income of the parent/guardian is at or below 160 percent of the federal income poverty guidelines as stated by household size. Since the federal income poverty guidelines are adjusted each year, the department of education shall provide revised eligibility guidelines to school districts each year.

**281—17.10(282) Method of finance.** Open enrollment options shall be made available for pupils at no instructional cost to their parents/guardians. Open enrollment pupils shall be considered enrolled resident pupils in the resident district and shall be included in the certified enrollment count of that district for the purposes of generating school foundation aid.

**17.10(1) *Full-time pupils.*** Unless otherwise agreed to in the mediation under paragraph 17.4(6) “b,” for full-time pupils, the resident district shall pay each year to the receiving district an amount equal to the sum of the state cost per pupil for the previous year; plus any moneys received for the pupil as a result of non-English speaking weighting provided by Iowa Code section 280.4; plus either the teacher leadership supplement state cost per pupil for the previous year as provided in Iowa Code section 257.9(11) or the teacher leadership supplement foundation aid allocation for fiscal year 2017 as provided in Iowa Code section 284.13(1) “e,” whichever the district received, if both the district of residence and the receiving district received either of the supplements. If the pupil participating in open enrollment is also an eligible pupil under Iowa Code section 261E.6 (postsecondary enrollment options program), the receiving district shall pay the tuition reimbursement amount to an eligible postsecondary institution as provided in Iowa Code section 261E.7.

**17.10(2) *Dual enrolled pupils.*** Unless otherwise agreed to in the mediation under paragraph 17.4(6) “b,” for pupils who receive competent private instruction and are dual enrolled, the resident district shall pay each year to the receiving district an amount equal to .1 times the state cost per pupil for the previous year plus any moneys received for the pupil as a result of non-English speaking weighting provided by Iowa Code section 280.4. However, a pupil dual enrolled in grades nine through twelve shall be counted by the receiving district in the same manner as a shared-time pupil under Iowa Code section 257.6(1) “c.”

**17.10(3) *Home school assistance program pupils.*** Unless otherwise agreed to in the mediation under paragraph 17.4(6) “b,” for pupils who receive competent private instruction and are registered for a home school assistance program, the resident district shall pay each year to the receiving district an amount equal to .3 times the state cost per pupil under Iowa Code chapter 257 for the previous year plus any moneys received for the pupil as a result of non-English speaking weighting provided by Iowa Code section 280.4.

**17.10(4) *Transportation assistance.*** The resident district may deduct any transportation assistance funds for which the pupil is eligible as provided by subrule 17.9(2).

**17.10(5) *Method of payment.*** These moneys shall be paid to the receiving district by the first resident district according to the timeline in Iowa Code section 282.20(3) (on or before February 15 and July 15 of each year). Payments shall be made to the receiving district in a timely manner. The district cost per pupil for nonspecial education students shall be the cost calculated each year for the school year preceding the school year for which the open enrollment takes place. Costs for special education students shall be as outlined in rule 281—17.11(282).

**17.10(6) *Partial-year situations.*** In the event that the pupil who is under open enrollment withdraws from school, moves into the district of attendance, moves out of state, moves to another district in the state of Iowa and elects to attend that district, graduates at midyear, is allowed to return to the district of residence during the school year, or other similar set of circumstances that result in the pupil no longer attending in the receiving district, payment of cost per pupil will be prorated.

**17.10(7) *Late changes of open enrollment.*** The resident district and the receiving district boards by mutual agreement may effectuate the change in enrollment of an open enrollment pupil at any time following receipt of a petition for such change which is approved by the two boards. A change due to good cause is a late change in enrollment. If any change in enrollment is made on or after the date specified in Iowa Code section 257.6, subsection 1, the resident district is not required to pay per-pupil costs or applicable weighting or special education costs to the receiving district until the first full year of the open enrollment.

**17.10(8) *Supplemental weighting.*** A student under open enrollment is eligible to be counted for supplementary weighting pursuant to 281—subrule 97.2(5) for qualifying concurrent enrollment classes in which the student is enrolled, including concurrent enrollment classes provided via the ICN, or supplementary weighting for project lead the way (PLTW) enrollment through sharing with a community college pursuant to 281—subrule 97.2(6). An open enrolled student who is under competent private instruction (CPI) shall be weighted in the student's receiving district, and no tuition shall be billed to the resident district. An open enrolled student who is not under CPI shall be weighted in the resident district, and the funding shall be sent to the receiving district in addition to open enrollment tuition.

*a.* If the open enrolled student is present in the resident district on October 1 of the school year, the resident district shall count the student, excluding a student under CPI, for supplementary weighting.

*b.* The concurrent enrollment course must qualify for supplementary weighting in the receiving district pursuant to 281—subrule 97.2(5), and the PLTW course must qualify for supplementary weighting in the receiving district pursuant to 281—subrule 97.2(6).

*c.* The resident district shall forward the weighting generated for the concurrent or PLTW enrollment for that student using the district cost per pupil of the school year. The amount generated is calculated as the supplementary weighting full-time-equivalency for that one student for each qualified concurrent or PLTW enrollment course multiplied by the current school year's district cost per pupil in the resident district.

*d.* The receiving district shall pay the community college the tuition negotiated for the course. The tuition negotiated may cost the receiving district a different amount than that received from the resident district. No additional amount may be charged to the resident district, the student, or the parent, guardian, or legal custodian.

*e.* If the student was not present in the resident district on October 1 of the school year and is a late transfer, the receiving district bears all the tuition cost and shall not bill the resident district in the first year pursuant to subrule 17.10(7).

**17.10(9) *Open enrollment pursuant to rule 281—17.15(282).*** If a pupil participates in cocurricular or extracurricular activities in accordance with subrule 17.15(2), the district of residence may deduct up to \$200 per activity, for up to two activities, from the amount calculated in this rule. For a cocurricular activity, one semester shall equal one activity. Extracurricular activities for which such a resident district may charge up to \$200 per activity for up to two activities under this subrule include interscholastic athletics, music, drama, and any other activity with a general fund expenditure exceeding \$5,000 annually. A pupil may participate in additional extracurricular activities at the discretion of the resident district. The school district of residence may charge the pupil a fee for participation in such cocurricular or extracurricular activities equivalent to the fee charged to and paid in the same manner by other resident pupils.

[ARC 9261B, IAB 12/15/10, effective 1/19/11; ARC 0521C, IAB 12/12/12, effective 1/16/13; ARC 2746C, IAB 10/12/16, effective 11/16/16; ARC 3181C, IAB 7/5/17, effective 8/9/17; ARC 4296C, IAB 2/13/19, effective 3/20/19]

**281—17.11(282) *Special education students.*** If a parent/guardian requests open enrollment for a pupil requiring special education, as provided by Iowa Code chapter 256B and 281—Chapter 41, this request shall receive consideration under the following conditions.

**17.11(1) *Appropriateness of program.*** The request shall be granted only if the receiving district is able to provide within that district the appropriate special education program for that student in accordance with Iowa rules of special education, 281—Chapter 41. This determination shall be

made by the receiving district in consultation with the resident district and the appropriate area education agency(ies) before approval of the application. In a situation where the appropriateness of the program is in question, the pupil shall remain enrolled in the program of the resident district until a final determination is made, unless all parties otherwise agree, as provided in 281—Chapter 41. If the appropriateness of the special education program in the receiving district is at issue, the final determination of the appropriateness of a special education instructional program shall be the responsibility of the child's individualized education program team, which shall include a representative from the resident district that has the authority to commit district resources, and which decision is subject to the parent's procedural safeguards under 281—Chapter 41.

**17.11(2) *Class size and caseload.*** The provisions of subrule 17.6(3) apply to requests for open enrollment for a child with a disability. The following conditions apply:

*a.* The enrollment of the child in the receiving district's program would not cause the size of the class or caseload in that special education instructional program in the receiving district to exceed the maximum class size or caseload set forth in subrule 17.6(3).

*b.* If the child would be assigned to a general education class, there is sufficient classroom space, as established in subrule 17.6(3), for the general education class to which the child would be assigned.

**17.11(3) *Transportation.*** District transportation requirements, parent/guardian responsibilities and, where applicable, financial assistance for an open enrollment special education pupil shall be as provided by rules 281—17.9(282) and 281—41.412(256B,34CFR300).

**17.11(4) *Finance.*** The district of residence shall pay to the receiving district on the schedule set forth in subrule 17.10(5) the actual costs incurred by the receiving district in providing the appropriate special education program. These costs shall be based on the current year expenditures with needed adjustments made in the final payment. The responsibility for ensuring that an appropriate program is maintained for an open enrollment special education pupil shall rest with the resident district. The receiving district and the receiving area education agency director shall provide, at least on an annual basis, evaluation reports and information to the resident district on each special education open enrollment pupil. The receiving district shall provide notice to the resident district of all staffings scheduled for each open enrollment pupil. For an open enrolled special education pupil where the receiving district is located in an area education agency other than the area education agency within which the resident district is located, the resident district and the receiving district are required to forward a copy of any approved open enrollment request to the director of special education of their respective area education agencies. Any moneys received by the area education agency of the resident district for an approved open enrollment special education pupil shall be forwarded to the receiving district's area education agency.

[ARC 3181C, IAB 7/5/17, effective 8/9/17; ARC 5651C, IAB 6/2/21, effective 7/7/21]

**281—17.12(282) Laboratory school provisions.** Rescinded ARC 2746C, IAB 10/12/16, effective 11/16/16.

**281—17.13(282) Applicability.** For implementing the open enrollment provisions of Iowa Code section 282.18, the provisions of this chapter shall be retroactively applicable to June 5, 1989.

**281—17.14(282) Voluntary diversity plans or court-ordered desegregation plans.**

**17.14(1) *Applicability.*** These rules govern only the components of a voluntary diversity plan or court-ordered desegregation plan as the plan affects open enrollments. Nothing herein shall prohibit a district from implementing a lawful voluntary diversity plan or court-ordered desegregation plan or components thereof for transfers other than open enrollment.

**17.14(2) *Eligibility to adopt and implement a plan applicable to open enrollments.***

*a. Adoption.* The board of an eligible school district may adopt a voluntary diversity plan with a component that applies to open enrollments if either of the following conditions exists: (1) The percentage of minority students in the district exceeds the percentage of minority students in the state by at least 20 percentage points; or (2) the percentage of minority students in one or more attendance

centers in the district exceeds the percentage of minority students in the district as a whole by at least 20 percentage points.

*b. Implementation.* The open enrollment component of the plan adopted by the district board shall only be implemented by the district if other components of the diversity plan describe the steps the district is taking internally to avoid or reduce minority student isolation, and the district demonstrates the extent to which it has implemented those steps. For districts with multiple attendance centers at the same grade level, such steps may include intradistrict student transfer policies, pairing of attendance centers, revision of boundaries of attendance centers, selecting school sites, realignment of feeder systems, magnet schools, and the placement of specialized programs and services. In a district without multiple attendance centers at the same grade level, such steps may include pupil assignments to classrooms, classroom pairing, community and family outreach programs, student-to-student mentoring or grouping designed to promote understanding and acceptance of and positive interactions with all groups of minority students, and professional development activities designed to promote understanding and acceptance of and positive interactions with all groups of minority students. The open enrollment component of the plan adopted by the district board may remain in effect for so long as the district's total minority student population exceeds 15 percent, and shall remain in effect for so long as the district demonstrates is necessary to avoid minority student isolation in the district.

**17.14(3)** *Open enrollment elements of a diversity plan.*

*a.* All applicable deadlines for the filing and determination of open enrollment requests, including the exceptions for good cause under rule 17.4(282), apply to open enrollment requests filed in a district that has adopted an open enrollment component in its voluntary diversity plan.

*b.* The plan shall establish a districtwide ratio of minority-to-nonminority students to be maintained, consistent with subrule 17.14(2). All open enrollment requests, both those into and out of the district, shall be acted on according to whether the request will adversely affect or will positively affect the implementation of the plan. Under Iowa Code section 282.18, if an open enrollment request would positively affect the plan, the district shall give priority to granting the request over other requests.

*c.* A district with multiple attendance centers at the same grade level shall specify in the open enrollment component of its diversity plan which attendance centers are affected by the open enrollment component. For each of those attendance centers, the district shall establish and specify the individual attendance center ratios of minority-to-nonminority students, consistent with subrule 17.14(2). The plan may provide for an initial determination of whether a requested open enrollment will negatively affect the specific attendance center ratio. With respect to a request to open enroll out of the district, if such enrollment will negatively affect the ratio established for the student's current attendance center, the request may be denied by the district with no further determination of the impact of the request on the districtwide ratio. For a request to open enroll either into or out of the district, if the open enrollment will not negatively affect the attendance center ratio, the request shall be denied only if there would be a negative impact on the districtwide ratio. As of July 1, 2003, if a district's plan sets a threshold lower than allowed in paragraph 17.14(2) "a" and that plan has not been disapproved by a court of competent jurisdiction, the district may implement its individual attendance center ratios in addition to its districtwide ratio.

*d.* The plan shall include provision for the formation and operation of a waiting list for those requests that could not be granted immediately. A parent/guardian of a child on the waiting list must be informed by the district of the details of the operation of the list and whether the parent/guardian must refile a timely request for open enrollment in order to remain on the waiting list.

*e.* The plan shall specify a district contact person to whom questions may be directed from parents/guardians.

*f.* The plan shall include a provision whereby a parent/guardian has a means to request that the district determine whether a hardship exists for granting a request that may not otherwise be granted under the plan.

**17.14(4)** *Exceptions.* The following exceptions shall apply:

*a.* If an open enrollment request is filed on behalf of a student whose sibling is already participating in open enrollment to the same district to which the student desires open enrollment, the request shall be granted.

*b.* If an open enrollment request is filed on behalf of a student whose parent/guardian moves out of the school district of residence and who wishes to remain in the district of residence as an open enrolled student without interruption in the student's educational program under subrule 17.8(7), the request shall be granted. This option is not available to the parent/guardian of a student who is entering kindergarten for the first time.

*c.* A request for open enrollment based on repeated acts of harassment of the student shall not be denied on the basis that such request would have an adverse impact on the district's ratio of minority-to-nonminority students.

*d.* A request for open enrollment based on a serious health condition of the student that the district cannot adequately address shall not be denied on the basis that such request would have an adverse impact on the district's ratio of minority-to-nonminority students.

**17.14(5) Review by department.** All voluntary desegregation plans adopted under this rule prior to June 28, 2007, are no longer valid. An eligible district whose board desires to adopt a voluntary diversity plan for open enrollment must do so by March 1, 2008. The district shall submit a copy of its plan to the department for review within 10 days of the adoption of the plan. Open enrollment requests received prior to March 1, 2008, by a district that has a voluntary diversity plan may be held by the district for action pursuant to the district's new voluntary diversity plan.

The department shall inform the district within 10 days of receipt of the district's voluntary diversity plan whether the plan complies with this rule. All changes to voluntary diversity plans for open enrollment shall be submitted to the department within 60 days of local board action.

### **281—17.15(282) Open enrollment and online coursework.**

**17.15(1) General.** A school district may provide courses developed by private providers and delivered primarily over the Internet to pupils who are participating in open enrollment under Iowa Code section 282.18. However, if a student's participation in open enrollment to receive educational instruction and course content delivered primarily over the Internet results in the termination of enrollment in the receiving district, the receiving district shall, within 30 days of the termination, notify the district of residence of the termination and the date of the termination.

**17.15(2) Participation in activities in resident district.** A pupil participating in open enrollment for purposes of receiving educational instruction and course content primarily over the Internet in accordance with Iowa Code section 256.7(32) may participate in any cocurricular or extracurricular activities offered to children in the pupil's grade or group and sponsored by the district of residence under the same conditions and requirements as the pupils enrolled in the district of residence. The pupil may participate in not more than two cocurricular or extracurricular activities during a school year unless the resident district approves the student's participation in additional activities. The student shall comply with the eligibility, conduct, and other requirements relating to the activity that are established by the district of residence for any student who applies to participate or who is participating in the activity.

[ARC 4296C, IAB 2/13/19, effective 3/20/19]

These rules are intended to implement Iowa Code section 282.18.

[Filed emergency 7/7/89—published 7/26/89, effective 7/7/89]

[Filed 2/2/90, Notices 7/26/89, 8/9/89—published 2/21/90, effective 3/28/90]

[Filed emergency 5/25/90—published 6/13/90, effective 5/25/90]

[Filed 9/28/90, Notice 6/13/90—published 10/17/90, effective 11/21/90]

[Filed 11/22/91, Notice 10/2/91—published 12/11/91, effective 1/15/92]

[Filed 8/26/92, Notice 6/24/92—published 9/16/92, effective 10/21/92]

[Filed 11/19/93, Notice 9/29/93—published 12/8/93, effective 1/12/94]

[Filed 11/17/94, Notice 9/28/94—published 12/7/94, effective 1/11/95]

[Filed 11/21/95, Notice 9/13/95—published 12/20/95, effective 1/24/96]

[Filed 9/13/96, Notice 7/17/96—published 10/9/96, effective 11/13/96]

[Filed 3/20/98, Notice 2/11/98—published 4/8/98, effective 5/13/98]  
[Filed 2/11/00, Notice 12/15/99—published 3/8/00, effective 4/12/00]  
[Filed emergency 8/4/00—published 8/23/00, effective 8/7/00]  
[Filed 4/19/02, Notice 2/6/02—published 5/15/02, effective 6/19/02]  
[Filed 8/2/02, Notice 6/26/02—published 8/21/02, effective 9/25/02]  
[Filed emergency 11/21/02—published 12/11/02, effective 11/21/02]  
[Filed 1/17/03, Notice 12/11/02—published 2/5/03, effective 3/12/03]  
[Filed 6/17/04, Notice 5/12/04—published 7/7/04, effective 8/11/04]  
[Filed 11/15/06, Notice 10/11/06—published 12/6/06, effective 1/10/07]  
[Filed 7/27/07, Notice 5/9/07—published 8/15/07, effective 9/19/07]  
[Filed 2/8/08, Notice 12/19/07—published 2/27/08, effective 4/2/08]  
[Filed 11/20/08, Notice 8/27/08—published 12/17/08, effective 1/21/09]  
[Filed ARC 9261B (Notice ARC 9143B, IAB 10/6/10), IAB 12/15/10, effective 1/19/11]  
[Filed ARC 0521C (Notice ARC 0384C, IAB 10/3/12), IAB 12/12/12, effective 1/16/13]  
[Filed ARC 2746C (Notice ARC 2609C, IAB 7/6/16), IAB 10/12/16, effective 11/16/16]  
[Filed ARC 3181C (Notice ARC 3031C, IAB 4/26/17), IAB 7/5/17, effective 8/9/17]  
[Filed ARC 4296C (Notice ARC 4159C, IAB 12/5/18), IAB 2/13/19, effective 3/20/19]  
[Filed ARC 5651C (Notice ARC 5463C, IAB 2/24/21), IAB 6/2/21, effective 7/7/21]

CHAPTER 48  
WORK-BASED LEARNING

DIVISION I  
STATEWIDE WORK-BASED LEARNING INTERMEDIARY NETWORK

**281—48.1(256) Purpose.** The statewide work-based learning intermediary network is established to prepare students for the workforce by connecting business and the education system and offering relevant, work-based learning activities to students and teachers.  
[ARC 1781C, IAB 12/10/14, effective 1/14/15]

**281—48.2(256) Definitions.** For purposes of this chapter, the following definitions shall apply:

“*Core services*” means services related to work-based learning including, but not limited to, student job shadowing, student internships, and teacher or student tours.

“*Department*” means the Iowa department of education.

“*Region*” means a community college region.

“*Regional work-based learning intermediary network*” means the entity responsible for providing the services defined in subrule 48.4(1) to students in a region.

“*Targeted industries*” means those industries identified pursuant to Iowa Code section 15.102, including advanced manufacturing, biosciences, and information technology.

“*Work-based learning*” means planned and supervised connections of classroom, laboratory and work experiences that prepare students for current and future careers.

“*Work-based learning plan*” means the regional work-based learning intermediary network’s annual grant application.

[ARC 1781C, IAB 12/10/14, effective 1/14/15]

**281—48.3(256) Statewide work-based learning intermediary network.** The statewide work-based learning intermediary network program is established by the department and shall be administered by the department through the division of community colleges.

**48.3(1) Statewide work-based learning intermediary network fund.** A separate, statewide work-based learning intermediary network fund is created in the state treasury under the control of the department pursuant to Iowa Code section 256.40(1).

*a.* Moneys deposited in the statewide work-based learning intermediary network fund established under Iowa Code section 256.40(1) shall be distributed annually to each region for the implementation of the work-based learning plan pursuant to Iowa Code section 256.40(7).

*b.* If the balance in the statewide work-based learning intermediary network fund on July 1 of a fiscal year is \$1.5 million or less, the department shall distribute moneys in the fund to the regional work-based learning intermediary networks or consortium of regions on a competitive basis. If the balance in the statewide work-based learning intermediary network fund on July 1 of a fiscal year is greater than \$1.5 million, the department shall distribute \$100,000 to each region and distribute the remaining moneys pursuant to the state aid distribution formula established in Iowa Code section 260C.18C.

**48.3(2) Steering committee.** The department shall establish and facilitate a steering committee comprised of representatives from the department of workforce development, the economic development authority, community colleges, institutions under the control of the state board of regents, accredited private institutions, area education agencies, school districts, and business and industry including, but not limited to, construction trade industry professionals. The steering committee shall:

*a.* Make recommendations to the department regarding the development and implementation of the statewide work-based learning intermediary network.

*b.* Develop a design for a statewide network comprised of 15 regional work-based learning intermediary networks aligned with community college boundaries. The design shall include network specifications, strategic functions, and desired outcomes.

*c.* Recommend program parameters and reporting requirements to the department.

**48.3(3) Providers.** No more than one entity from each region will be designated as the regional work-based learning intermediary network. A consortium of entities may collaborate to form a single work-based learning intermediary network in a region.

[ARC 1781C, IAB 12/10/14, effective 1/14/15]

**281—48.4(256) Regional work-based learning intermediary network.**

**48.4(1)** A regional work-based learning intermediary network shall prepare students for the workforce by connecting businesses and the education system and shall offer relevant, work-based learning activities to students and teachers within the region. The network shall:

*a.* Conduct a needs assessment in collaboration with school districts within the region to inform the development of core services. Evidence that a needs assessment was conducted shall be maintained and made available upon request by the department.

*b.* Provide core services as defined in rule 281—48.2(256).

*c.* Prepare students to make informed postsecondary education and career decisions. Services shall be integrated with other career exploration-related activities such as the student core curriculum plan and the career information and decision-making system developed and administered pursuant to Iowa Code section 279.61, where appropriate.

*d.* Build and sustain relationships between employers and local youth, the education system, and the community through communication and coordination.

*e.* Connect students to local career opportunities.

*f.* Provide a one-stop contact point for information useful to both educators and employers, including information on internships, job shadowing experiences, and other core services for students, particularly related to science, technology, engineering, or mathematics occupations, occupations related to critical infrastructure and commercial and residential construction, or targeted industries.

*g.* Facilitate the attainment of portable, industry-recognized credentials such as the National Career Readiness Certificate, where appropriate.

**48.4(2)** Work-based learning plan. Each network or consortium of networks shall annually submit a work-based learning plan to the department. Each plan shall detail how the intermediary network will provide core services to all school districts within the region and support the integration of job shadowing and other work-based learning activities into secondary career and technical education programs.

**48.4(3)** Funding. All funds are to be used to develop or expand work-based learning opportunities within the intermediary network region.

*a. Match.* Of the funds received pursuant to subrule 48.3(1), each regional work-based learning intermediary network shall contribute a match of resources equal to 25 percent pursuant to Iowa Code section 256.40(9). The financial resources used to provide the match may include private donations, in-kind contributions, or public moneys other than the moneys received pursuant to subrule 48.3(1).

*b. Staffing.* Funds may be used to support personnel responsible for the implementation of the intermediary network program components outlined under subrule 48.3(1).

**48.4(4)** Collaboration. Regional work-based learning intermediary networks shall work collaboratively with the statewide intermediary network and stakeholders. Evidence of collaboration shall be documented in each region's annual report.

**48.4(5)** Advisory council. Each regional work-based learning intermediary network shall establish an advisory council consisting of intermediary network stakeholders from business and industry representatives, including construction trade industry professionals, to provide guidance and assistance in developing the intermediary network's work-based learning plan. Advisory councils shall meet at least annually. Meeting minutes shall be maintained and be made available upon request by the department. The advisory council shall be subject to open meetings laws under Iowa Code chapter 21.

**48.4(6)** Annual report. Each regional work-based learning intermediary network shall submit an annual report to the department in a manner prescribed by the department. The report shall include, but not be limited to, performance metrics prescribed by the department and a summary of financial expenses.

[ARC 1781C, IAB 12/10/14, effective 1/14/15]

DIVISION II  
FUTURE READY IOWA STATE-RECOGNIZED WORK-BASED LEARNING PROGRAMS

**281—48.5(256) Program established.** The provisions of this division implement the future ready Iowa state-recognized work-based learning program as authorized under Iowa Code sections 256.7 and 261.131.

**48.5(1) Definitions.** As used in this rule:

“*Apprenticeship program*” means an apprenticeship program authorized under federal statute or by the state board of education pursuant to this chapter.

“*Eligible program*” means a program eligible under the future ready Iowa skilled workforce last-dollar scholarship program.

**48.5(2) Alignment with last-dollar scholarship.** Except as provided in this chapter, the rules governing eligibility for students, programs, and institutions shall be the same as the eligibility criteria specified in 283—Chapter 15 for the future ready Iowa skilled workforce last-dollar scholarship program.

**48.5(3) Eligibility.** Pursuant to 283—subparagraph 15.3(1)“j”(2), a student enrolled in an apprenticeship program aligned to an eligible program may be enrolled in an eligible program on a part-time basis.

This rule is intended to implement Iowa Code section 256.7.

[ARC 5649C, IAB 6/2/21, effective 7/7/21]

These rules are intended to implement Iowa Code section 256.40.

[Filed ARC 1781C (Notice ARC 1598C, IAB 9/3/14), IAB 12/10/14, effective 1/14/15]

[Filed ARC 5649C (Notice ARC 5467C, IAB 2/24/21), IAB 6/2/21, effective 7/7/21]



CHAPTER 60  
PROGRAMS FOR STUDENTS OF LIMITED ENGLISH PROFICIENCY

[Prior to 9/7/88, see Public Instruction Department[670] Ch 57]

**281—60.1(280) Scope.** These rules apply to the identification of students and provision of programs for limited English proficient students and to the application procedures for securing fiscal support.

**281—60.2(280) Definitions.** As used in these rules, the following definitions apply:

*“Educational and instructional model”* means an instructional model, strategy, method, or skill that provides a framework of instructional approaches to guide decision making about teaching and learning. Based on the needs of particular students, “educational and instructional model” may include but is not limited to a specific set of instructional services or a fully developed curriculum or other supplementary services.

*“English as a second language”* refers to a structured language acquisition program designed to teach English to students whose native language is other than English, until the student demonstrates a functional ability to speak, read, write, and listen to English language at the age- and grade-appropriate level.

*“Fully English proficient”* refers to a student who is able to read, understand, write, and speak the English language and to use English to ask questions, to understand teachers and reading materials, to test ideas, and to challenge what is being asked in the classroom.

*“Limited English proficient”* refers to a student who has a language background other than English, and the proficiency in English is such that the probability of the student’s academic success in an English-only classroom is below that of an academically successful peer with an English language background.

*“Research-based”* means based on a body of research showing that the educational and instructional model, or other educational practice, has a high likelihood of improving teaching and learning. To determine whether research meets this standard for purposes of this chapter, research reports must be reviewed for the following:

1. The specific population studied;
2. Research that involves the application of rigorous, systematic, and objective procedures to obtain reliable results and provide a basis for valid inferences relevant to education activities and programs;
3. Whether the research employs systematic, empirical methods that draw on observation or experiment;
4. Reliance on measurement or observational methods that provide reliable and valid data;
5. Inclusion of rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions or inferences drawn;
6. Description of the magnitude of the impact on student learning results; and
7. Inclusion of the level of the review of the study.

*“Transitional bilingual instruction”* refers to a program of instruction in English and the native language of the student until the student demonstrates a functional ability to speak, read, write, and listen to the English language at the age- and grade-appropriate level.

[ARC 8383B, IAB 12/16/09, effective 1/20/10; ARC 1776C, IAB 12/10/14, effective 1/14/15]

**281—60.3(280) School district responsibilities.**

**60.3(1) Student identification and assessment.** A school district shall use the following criteria in determining a student’s eligibility:

- a. In order to determine the necessity of conducting an English language assessment of any student, the district shall, at the time of registration, ascertain the place of birth of each student and whether there is a prominent use of any language(s) other than English in the home. If the student’s registration form indicates the prominent use of another language in the student’s home, the district shall determine the first language acquired by the student and the languages spoken by the student and by others in the student’s home. School district personnel shall be prepared to conduct oral or

native language interviews with those adults in the student's home who may not have sufficient skills in English.

*b.* Students identified as prominently using a language other than English in the home shall be assessed by the district. The assessment shall include (1) an assessment of the student's English proficiency in the areas of speaking, listening, reading, and writing; and (2) an assessment of the student's academic skills in relation to their grade or age level. A consistent plan of evaluation which includes ongoing evaluation of student progress shall be developed and implemented by the district for the above areas for each student so identified.

**60.3(2) Staffing.** Teachers in an English as a second language (ESL) program must possess a valid Iowa teaching license. Individuals who were licensed in Iowa prior to October 1, 1988, and were allowed to teach English as a second language without completing the endorsement requirements must complete the endorsement requirements by July 1, 2012, in order to teach or continue to teach English as a second language. A waiver provision is available through the board of educational examiners for individuals who have been successfully teaching English as a second language.

**60.3(3) Limited English proficient student placement.** Placement of students identified as limited English proficient shall be in accordance with the following:

*a.* Mainstream classes. Students will be placed in classes with chronological peers or, when absolutely necessary, within two years of the student's age.

*b.* Limited English proficient program placement.

(1) Students enrolled in a program for limited English proficient students shall receive language instruction with other limited English proficient students with similar language needs.

(2) When students of different age groups or educational levels are combined in the same class, the school shall ensure that the instruction given is appropriate to each student's level of educational attainment.

(3) A program of transitional bilingual instruction may include the participation of students whose native language is English.

(4) Exit from program. An individual student may exit from an ESL or Transitional Bilingual Education (TBE) program after an assessment has shown both that the student can function in English (in speaking, listening, reading, and writing) at a level commensurate with the student's grade or age peers and that the student can function academically at the same level as the English speaking grade level peers. These assessments shall be conducted by utilizing state, local, or nationally recognized tests as well as teacher observations and recommendations.

(5) Professional development. All district instructional staff and area education agency staff responsible for implementing the educational and instructional models defined in rule 281—60.2(280) shall receive such professional development as may be necessary to implement those educational and instructional models. Such professional development may be part of a district or area education agency professional development plan, an attendance center professional development plan, an individual professional development plan, or some combination thereof. The necessity for such professional development shall be determined based on the framework in rule 281—83.6(284). Providers of professional development required by this subrule shall meet the standards in 281—subrule 83.6(3). In determining whether providers meet the standards in 281—subrule 83.6(3), the following nonexhaustive factors may be considered, as they are relevant to the particular professional development to be provided:

1. English as a second language endorsement or equivalent;
2. Five years of English as a second language teaching experience; or
3. A graduate degree in teaching English to speakers of other languages or in a related field.

**60.3(4) Medium of instruction.** Instruction in all secular subjects taught in both public and nonpublic schools shall be in the English language, except when the use of a world language is deemed appropriate because the student is limited English proficient. When the student is limited English proficient, both public and nonpublic schools shall provide special instruction, which shall include but need not be limited to either instruction in English as a second language or transitional bilingual instruction until the student

is fully English proficient or demonstrates a functional ability to speak, read, write, and understand the English language.

**60.3(5) *Research-based educational and instructional models.*** Districts shall utilize research-based educational and instructional models as defined in rule 281—60.2(280) with limited English proficient students so that such students may acquire English proficiency and meet high academic standards.

[ARC 8383B, IAB 12/16/09, effective 1/20/10; ARC 1776C, IAB 12/10/14, effective 1/14/15; ARC 4528C, IAB 7/3/19, effective 8/7/19]

**281—60.4(280) Department responsibility.** The department of education shall provide technical assistance to school districts, including advising and assisting schools in planning, implementation, and evaluation of programs for limited English proficient students.

**60.4(1) to 60.4(3) Rescinded** IAB 2/2/94, effective 3/9/94.

**281—60.5(280) Nonpublic school participation.** English as a second language and transitional bilingual programs offered by a public school district shall be made available to students attending an accredited nonpublic school located within the district. The district obtains funding for such students in accordance with Iowa Code sections 257.31(5) “j” and 280.4.

[ARC 8383B, IAB 12/16/09, effective 1/20/10]

**281—60.6(280) Funding.** Additional weighting for students in programs provided under this chapter is available in accordance with Iowa Code sections 257.31(5) “j” and 280.4.

**60.6(1) *Weighting.*** A weighting is included in the weighted enrollment of the school district of residence for a period not exceeding five years to provide funds for the excess costs of instruction of limited English proficient students above the costs of instruction of pupils in a regular curriculum.

*a.* A student may be included for weighting if the student meets the definition of a limited English proficient student and the student is being provided instruction related to limited English proficiency above the level of instruction provided to pupils in the regular curriculum.

*b.* A student may be included for weighting up to five years, which need not be consecutive.

*c.* A student’s eligibility for additional weighting is transferable to another district of residence.

**60.6(2) *Supplemental aid or modified supplemental amount.*** In addition to weighting, the school budget review committee (SBRC) may grant supplemental aid or a modified supplemental amount for an unusual need to continue funding beyond the five years of weighting or for costs in excess of the weighting to provide instruction to limited English proficient students above the costs of regular instruction.

*a.* A school district of residence may apply to the SBRC by the date specified in rule 289—6.3(257) for supplemental aid or a modified supplemental amount for an unusual need for funding beyond the amount generated from weighting for students identified as limited English proficient who are provided instruction beyond the regular instruction. The eligible supplemental aid or modified supplemental amount will be calculated as the total actual limited English proficient program (more commonly referred to as “English language learner program”) expenditures for the previous year, reduced by the limited English proficient funding generated in the previous budget year based on the limited English proficient count on the certified enrollment in the previous year, and reduced by any other grants, carryover, or other resources provided to the district for this program.

*b.* A district of residence may apply to the SBRC for supplemental aid or a modified supplemental amount for an unusual need to continue funding beyond the five years of weighting no later than December 1 following the date specified in Iowa Code section 257.6(1) for the certified enrollment. The supplemental aid or modified supplemental amount will be calculated by multiplying the number of resident students identified as limited English proficient who are provided instruction beyond the regular instruction, and who are being served beyond the five years of weighting on the certified enrollment, by the weighting provided under subrule 60.6(1), multiplied by the district cost per pupil in the current year.

*c.* The SBRC will act on the requests described in paragraphs 60.6(2) “a” and “b” no later than its March regular meeting. If the SBRC grants the district’s request for supplemental aid or a modified

supplemental amount, the department of management will increase the district's budget authority by that amount.

The SBRC may require the district to appear at a hearing to discuss its request for supplemental aid or a modified supplemental amount.

**60.6(3) *Appropriate expenditures.*** Appropriate expenditures for the limited English proficiency program are those that are direct costs of providing instruction which supplement, but do not supplant, the costs of the regular curriculum. These expenditures are delineated in 281—Chapter 98.

**60.6(4) *Inappropriate expenditures.*** Inappropriate expenditures are delineated in 281—Chapter 98.

**60.6(5) *Financial management.*** Limited English proficient funding is categorical funding and follows the general provisions in 281—Chapter 98.

**60.6(6) *Annual reporting.*** Districts shall include and identify the detail of financial transactions related to limited English proficient resources, expenditures, and carryforward balances on their certified annual report. School districts shall use the account coding appropriate to the limited English proficient program as defined by Uniform Financing Accounting for Iowa School Districts and AEAs. Each district shall submit its certified annual report following the close of the fiscal year but no later than September 15.

[ARC 8383B, IAB 12/16/09, effective 1/20/10; ARC 5648C, IAB 6/2/21, effective 7/7/21]

These rules are intended to implement Iowa Code sections 256.7(31)“c,” 257.31(5)“j” and 280.4.

[Filed 9/12/80, Notice 5/28/80—published 10/1/80, effective 11/5/80]

[Filed 1/16/81, Notice 11/12/80—published 2/4/81, effective 3/11/81]

[Filed 8/19/88, Notice 6/29/88—published 9/7/88, effective 10/12/88]

[Filed 1/14/94, Notice 9/29/93—published 2/2/94, effective 3/9/94]

[Filed ARC 8383B (Notice ARC 8051B, IAB 8/26/09), IAB 12/16/09, effective 1/20/10]

[Filed ARC 1776C (Notice ARC 1675C, IAB 10/15/14), IAB 12/10/14, effective 1/14/15]

[Filed ARC 4528C (Notice ARC 4403C, IAB 4/24/19), IAB 7/3/19, effective 8/7/19]

[Filed ARC 5648C (Notice ARC 5464C, IAB 2/24/21), IAB 6/2/21, effective 7/7/21]

CHAPTER 98  
FINANCIAL MANAGEMENT OF CATEGORICAL FUNDING

DIVISION I  
GENERAL PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**281—98.3 to 98.10** Reserved.

DIVISION II  
APPROPRIATE USE OF BUDGETARY ALLOCATIONS

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

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

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

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

**281—98.12(257,299A) Home school assistance program.** The home school assistance program (HSAP) is a program for a specific category of students and is provided outside the basic educational program provided to regularly enrolled students by the school district. If a district offers a home school assistance program, the state foundation aid that the district receives pursuant to Iowa Code section 257.6(1) “a”(5), and any amount designated for this purpose from the flexibility account as described in rule 281—98.27(257,298A), shall be expended for purposes of providing the home school assistance program. However, a district may use items and materials purchased for the home school assistance program for other purposes so long as this use does not prevent or interfere with the item’s or material’s use by parents or students utilizing the program.

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

- a. Instruction for students and assistance for parents with instruction.
- b. Services to support students enrolled in a home school assistance program, to support the teaching parents of the students, and to support home school assistance program staff.
- c. Salary and benefits for the supervising teacher of the home school assistance program. If the teacher is a part-time home school assistance program teacher and a part-time regular classroom teacher, then the portion of time that is related to providing the home school assistance program can be charged to the program, but the regular classroom portion cannot.
- d. Salary and benefits for clerical and office staff of the home school assistance program. If the staff member’s employment supports other programs of the school district, only that portion of the staff member’s salary and benefits that is related to providing the home school assistance program can be charged to the program.
- e. Staff development for the home school assistance program teacher.
- f. Travel for the home school assistance program teacher.
- g. Resources, materials, computer software, supplies, equipment, and purchased services (1) that are necessary to provide the services of home school assistance and (2) that will remain with the school district for its home school assistance program.
- h. A copier and computer hardware that support the home school assistance program.
- i. Student transportation exclusively for home school assistance program-approved field trips or other educational activities.

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

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

[ARC 8054B, IAB 8/26/09, effective 9/30/09 (See Delay note at end of chapter); ARC 9267B, IAB 12/15/10, effective 1/19/11; ARC 0012C, IAB 2/22/12, effective 3/28/12 (See Delay note at end of chapter); ARC 1967C, IAB 4/15/15, effective 5/20/15; ARC 3632C, IAB 2/14/18, effective 3/21/18; ARC 4298C, IAB 2/13/19, effective 3/20/19]

**281—98.13(256C,257) Statewide voluntary four-year-old preschool program.** The statewide voluntary four-year-old preschool program is a program for a specific category of students. Funding for the program is for the purpose of providing a high-quality early learning environment for four-year-old children whose families choose to access such programs.

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

- a. Functions of instruction, including instructional equipment and supplies and material and equipment designed to develop students' large and small motor skills.
- b. Functions of student support services, including translation services.
- c. Functions of staff support services, including professional development for preschool teachers.
- d. Up to 5 percent of the allocation can be used for actual documented costs of program administration, outreach activities, and rent for facilities not owned by the school district.
- e. Food and beverages used by enrolled students.
- f. Safety equipment.
- g. Playground equipment and repair costs.
- h. Costs of transportation involving children participating in the approved program. The costs of transporting other children associated with the preschool program or transporting as provided in Iowa Code section 256C.3(3) "h" may be prorated by the school district.
- i. Other direct costs that enhance the approved local program, including contracting with community providers for such services.
- j. Costs of attendance for a child who is younger or older than four years old and is enrolled in the program may be paid from these funds, or from another school district account or fund from which preschool program expenditures are authorized by law, if space and funding are available; however, the child shall not be counted for statewide voluntary preschool program funding purposes.

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

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

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

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

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

**98.13(4) *Flexibility account.*** All or a portion of the amount remaining unexpended and unobligated at the end of a budget year beginning on or after July 1, 2017, may be transferred for deposit into the flexibility account established under Iowa Code section 298A.2 and described in rule

281—98.27(257,298A), provided the board of directors of the school district has determined all statutory requirements for the use of such funding have been met.

In order to transfer funds to the flexibility account, the district must have provided preschool programming during the fiscal year for which funding remained unexpended and unobligated to all eligible students for whom a timely application for enrollment was submitted.

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

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

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

**281—98.15(257) Operational function sharing supplementary weighting.** Operational function sharing supplementary weighting provides funding in addition to the student count that generates general purpose revenues and is for the purpose of incenting sharing of management-level staff. It is assumed that operational function sharing supplementary weighting covers only a portion of the costs of sharing management-level staff, a curriculum director, a school guidance or licensed mental health counselor, or a licensed independent social worker and shall be fully expended within the period of sharing. Therefore, school districts are not required to account for the operational function sharing supplementary weighting funding separate from the general purpose revenues.

[ARC 8054B, IAB 8/26/09, effective 9/30/09; ARC 1967C, IAB 4/15/15, effective 5/20/15; ARC 4529C, IAB 7/3/19, effective 8/7/19]

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

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

**98.16(2) *Inappropriate uses of categorical funding.*** Inappropriate uses of funding for the limited English proficiency program include, but are not limited to, indirect costs, operational or maintenance costs, capital expenditures other than equipment, student transportation, administrative costs, or any other expenditures not directly related to providing the limited English proficiency program beyond the scope of the regular classroom.

[ARC 8054B, IAB 8/26/09, effective 9/30/09; ARC 1967C, IAB 4/15/15, effective 5/20/15]

**281—98.17(256B,257) Special education weighting.** Special education weighting provides funding in addition to the student count that generates general purpose revenues for the purpose of providing additional instruction and services to an identified group of students.

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

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

**98.18(1) Appropriate uses of categorical funding.** Appropriate uses of at-risk formula supplementary weighting funding include costs to develop or maintain programs for at-risk pupils, alternative programs and alternative schools for secondary students, and returning dropout and dropout prevention programs. Appropriate uses include those identified in subrule 98.21(2).

**98.18(2) Inappropriate uses of categorical funding.** Inappropriate uses of at-risk formula supplementary weighting program funding include those identified in subrule 98.21(3).

[ARC 8054B, IAB 8/26/09, effective 9/30/09; ARC 9267B, IAB 12/15/10, effective 1/19/11; ARC 1967C, IAB 4/15/15, effective 5/20/15; ARC 2310C, IAB 12/9/15, effective 1/13/16; ARC 3632C, IAB 2/14/18, effective 3/21/18; ARC 4298C, IAB 2/13/19, effective 3/20/19]

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

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

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

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

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

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

*b.* Staff development for the gifted and talented teacher.

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

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

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

- (3) Are necessary to provide the services listed on the gifted students' individualized plans, and
- (4) Will remain with the K through 12 gifted and talented program.

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

**98.20(2) *Inappropriate uses of categorical funding.*** Inappropriate uses of the gifted and talented program funding include, but are not limited to, indirect costs or use charges, operational or maintenance costs, capital expenditures other than equipment, student transportation other than field trips exclusive to this program, administrative costs, or any other expenditures not directly related to providing the gifted and talented program beyond the scope of the regular classroom.

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

**281—98.21(257) At-risk program, alternative program or alternative school, and potential or returning dropout prevention program—modified supplemental amount.** A modified supplemental amount is available through a school district-initiated request to the school budget review committee pursuant to Iowa Code sections 257.38 through 257.41. This amount must account for no more than 75 percent of the school district's total at-risk program, alternative program or alternative school, and potential or returning dropout budget. The school district must also provide a local match from the school district's regular program district cost, and the local match portion must be a minimum of 25 percent of the total program budget. In addition, school districts may receive donations and grants, and the school district may contribute more local school district resources toward the program. The 75 percent portion, local match, previous year carryforward, amounts designated from the flexibility account as described in rule 281—98.27(257,298A), and all donations and grants shall be accounted for as categorical funding.

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

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

*b.* Potential dropouts are resident pupils who are enrolled in a school district who demonstrate poor school adjustment as indicated by two or more of the following:

- (1) High rate of absenteeism, truancy, or frequent tardiness.
- (2) Limited or no extracurricular participation or lack of identification with school, including but not limited to expressed feelings of not belonging.
- (3) Poor grades, including but not limited to failing in one or more school subjects or grade levels.
- (4) Low achievement scores in reading or mathematics which reflect achievement at two years or more below grade level.
- (5) Children in grades kindergarten through 3 who meet the definition of at-risk children adopted by the department of education.

**98.21(2) *Appropriate uses of categorical funding.*** Appropriate uses of the funding for a board-adopted program include, but are not limited to:

*a.* Salary and benefits for staff, including but not limited to instructional staff, instructional support staff, administrative staff, and guidance counselors; salary and benefits or contract payments for psychologists licensed under Iowa Code chapter 154B, licensed independent social workers or master social workers under Iowa Code chapter 154C, licensed mental health counselors under Iowa Code chapter 154D; and salaries and benefits for school-based youth services staff dedicated to providing services directly and exclusively to the identified students participating in the adopted program beyond the services provided by the school district to students who are not identified as at risk or as potential or returning dropouts. However, if the staff person works part-time or on a contract basis with students

who are participating in the approved program and has another unrelated staff assignment, only the portion of the person's time that is related to the program or with such students may be charged to the program funding. The school district shall have the authority to designate in its adopted program plan the portion of the person's time and related salary and benefits or contract payment amount dedicated to this purpose.

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

*b.* Professional development for all staff identified in paragraph 98.21(2)“*a*” working with identified students under an adopted program.

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

- (1) Meet the needs of K through grade 12 identified students,
- (2) Are beyond those provided by the regular school program,
- (3) Are necessary to provide the services listed in the school district's adopted at-risk or returning dropout and dropout prevention program plan, and
- (4) Will remain with the K through grade 12 at-risk program, alternative program or alternative school, or returning dropout and dropout prevention program.

*d.* Transportation provided by the school district exclusively to transport identified students to an alternative school or alternative program outside a student's regular attendance center, located in and provided by another Iowa school district, or an extended school year program.

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

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

- (1) The child does not require special education.
- (2) The child is not placed by the department of human services or a court in a residential or day treatment program where the treatment necessary to address the student's behavior was included in the contract with the placement agency.
- (3) The child is not placed in a hospital unit, health care facility, psychiatric medical institution for children or other treatment facility where the cost of treatment necessary to address the student's behavior is covered by insurance or Medicaid.
- (4) The board of directors of the district of residence has determined that the child is likely to inflict self-harm or likely to harm another student.

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

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

*i.* School security personnel costs.

*j.* Any purpose determined by the board of directors that directly benefits students participating in the adopted program.

**98.21(3) *Inappropriate uses of categorical funding.*** Inappropriate uses of the modified supplemental amount program funding include, but are not limited to, indirect costs or use charges, operational or maintenance costs, capital expenditures other than equipment, expenses related to the routine duties and

activities performed by a staff member under paragraph 98.21(2) “a” with identified students that are also provided to all students, or any other expenditures not directly related to providing the board-adopted program beyond the scope of the regular classroom.

[ARC 8054B, IAB 8/26/09, effective 9/30/09; ARC 9267B, IAB 12/15/10, effective 1/19/11; ARC 0518C, IAB 12/12/12, effective 1/16/13; ARC 1967C, IAB 4/15/15, effective 5/20/15; ARC 2310C, IAB 12/9/15, effective 1/13/16; ARC 3632C, IAB 2/14/18, effective 3/21/18; ARC 4298C, IAB 2/13/19, effective 3/20/19; ARC 4813C, IAB 12/18/19, effective 1/22/20]

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

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

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

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

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

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

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

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

**281—98.23(257) Early intervention supplement.**

**98.23(1) Appropriate uses of categorical funding.** Appropriate uses of the early intervention-supplement funding include any general fund-appropriate use described in rule 281—98.61(24,143,257,275,279,280,285,297,298,298A,301,473,670).

**98.23(2) Inappropriate uses of categorical funding.** Inappropriate uses of the early intervention-supplement funding include those which are inappropriate to the general fund as described in rule 281—98.61(24,143,257,275,279,280,285,297,298,298A,301,473,670).

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

This rule is intended to implement Iowa Code section 257.9(8).

[ARC 8054B, IAB 8/26/09, effective 9/30/09; ARC 9267B, IAB 12/15/10, effective 1/19/11; ARC 1967C, IAB 4/15/15, effective 5/20/15; ARC 3632C, IAB 2/14/18, effective 3/21/18; ARC 4298C, IAB 2/13/19, effective 3/20/19]

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

**98.24(1) Appropriate use of categorical funding.** Appropriate use of the teacher salary supplement funding is limited to additional salary for teachers, including amounts necessary for the district to comply with statutory teacher salary minimums; the amount required to pay the employers’ share of the federal social security and Iowa public employees’ retirement system, or a pension and annuity retirement system established under Iowa Code chapter 294; and payments to another school district

or districts as negotiated in a whole grade sharing agreement pursuant to Iowa Code section 282.10, subsection 4. Teacher salary supplement funding shall be fully expended in the fiscal year for which it is allocated; however, in the event that a small amount is remaining and it would not be cost-effective to reallocate the remainder to teachers in the fiscal year, the school district or area education agency shall carry forward the remainder and add it to the amount to be allocated to teachers in the subsequent fiscal year.

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

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

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

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

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

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

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

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

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

and individual professional development plans, and every reasonable effort to provide equal access to all teachers shall be made.

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

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

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

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

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

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

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

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

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

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

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

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

*b.* Support of the approved statewide voluntary preschool program.

*c.* Professional development requirements under the professional development supplement.

*d.* Support of the home school assistance program.

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

*f.* Support of the approved gifted and talented program.

*g.* Deposit into the unpaid student meals account as described in subrule 98.74(4).

*h.* Any other general fund purpose.

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

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

[ARC 3632C, IAB 2/14/18, effective 3/21/18; ARC 4298C, IAB 2/13/19, effective 3/20/19]

**281—98.28 to 98.39** Reserved.

DIVISION III  
APPROPRIATE USE OF GRANTS IN AID

**281—98.40(256,257,298A) Grants in aid.** The state provides a large amount of categorical funding for various purposes to school districts and area education agencies in the form of grants in aid. Only those grants in aid allocated to a substantial number of the school districts and area education agencies through the department of education are included in these rules.

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

**281—98.41** Reserved.

**281—98.42(257,284) Beginning teacher mentoring and induction program.** The purpose of the beginning teacher mentoring and induction program is to promote excellence in teaching, enhance student achievement, build a supportive environment within school districts and area education agencies, increase the retention of promising beginning teachers, and promote the personal and professional well-being of teachers. Effective July 1, 2017, as established by 2017 Iowa Acts, chapter 172, this program is addressed within educator quality professional development as described in rule 281—98.26(257,284).

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

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

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

**98.43(2) *Inappropriate uses of categorical funding.*** Inappropriate uses of beginning administrator mentoring and induction program funding shall include any costs that are not listed in subrule 98.43(1) as appropriate uses.

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

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

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

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

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

In the event that a participating accredited nonpublic school ceases operation, textbooks purchased for the nonpublic school with funds appropriated for that purpose in accordance with the Iowa Code shall be returned to the public school district in which the nonpublic school was located. Funds provided for the purpose of purchasing textbooks for the nonpublic school that are unexpended shall be reverted to the department of education.

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

[ARC 8054B, IAB 8/26/09, effective 9/30/09; ARC 9267B, IAB 12/15/10, effective 1/19/11; ARC 4298C, IAB 2/13/19, effective 3/20/19]

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

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

- a. Intensive supplemental instructional programs, instructional support, and assessment for identified students;
- b. Professional development for staff regarding early literacy program requirements, instructional materials, and assessments;
- c. Purchase of supplemental or specialized curriculum or instructional materials and assessments that are scientific, research-based and meet the standards of Iowa Code section 279.68 for identified students;
- d. If not already being provided with other sources of funding or general program funding, tutoring, mentoring, and extended school day, week, or year programs for identified students;
- e. Intensive summer literacy programs for identified students;
- f. Transportation services for identified students participating in intensive summer literacy programs;
- g. The fee charged by the department for implementation of the early warning assessment for literacy provided in accordance with Iowa Code sections 256.7(31) and 279.68, effective with the budget year beginning July 1, 2017, pursuant to 2017 Iowa Acts, chapter 172.

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

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

**281—98.46 to 98.59** Reserved.

DIVISION IV  
APPROPRIATE USE OF SPECIAL TAX LEVIES AND FUNDS

**281—98.60(24,29C,76,143,256,257,274,275,276,279,280,282,283A,285,291,296,298,298A,300,301,423E,423F,565,670) Levies and funds.** Tax levies or funds that are required by law to be expended only for the specific items listed in statute shall be accounted for in a similar way to categorical funding. Each fund is mutually exclusive and completely independent of any other fund. No fund shall be used as a clearing account for another fund, no fund may retire the debt of another fund unless specifically authorized in statute, and transfers between funds shall be accomplished only as authorized in statute or as approved by the school budget review committee. Public funds shall not be used for private purposes. [ARC 8054B, IAB 8/26/09, effective 9/30/09; ARC 9267B, IAB 12/15/10, effective 1/19/11; ARC 1967C, IAB 4/15/15, effective 5/20/15]

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

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

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

- a. Providing day-to-day operations to the district or area education agency, such as salaries, employee benefits, purchased services, supplies, and expenditures for instructional equipment.
- b. Purchasing school buses from unobligated funds on hand.
- c. Establishing and maintaining dental clinics for children and offering courses of instruction on oral hygiene.
- d. Employing public health nurses.
- e. Funding insurance agreements if the district has not certified a district management levy.
- f. Purchasing books and other supplies to be loaned, rented, or sold at cost to students.
- g. Purchasing safety eye-protective devices and safety ear-protective devices.
- h. Purchasing bonds and premiums for bonds for employees who have custody of funds belonging to the school district or area education agency or funds derived from extracurricular activities and other sources in the conduct of their duties.
- i. Paying assessed costs related to changes in boundaries, reorganization, or dissolution.
- j. Publishing the notices and estimates and the actual and necessary expenses of preparing the budget.
- k. Engraving and printing school bonds, in the case of a school district.
- l. Transferring interest and principal to the debt service fund when due for loans to purchase equipment authorized under Iowa Code section 279.48 and loans to be used for energy conservation measures under Iowa Code section 473.20, in the case of a school district, where the original proceeds were accounted for in the general fund.
- m. Transferring interest and principal to the debt service fund when due for lease purchase agreements related to capital projects authorized under Iowa Code subsection 273.3(7), in the case of an area education agency.

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

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

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

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

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

*s.* Beginning with the budget year beginning July 1, 2016, transferring, by board resolution, to the student activity fund an amount necessary to purchase or, beginning with the budget year beginning July 1, 2018, recondition protective and safety equipment required for any extracurricular interscholastic athletic contest or competition that is sponsored or administered by an organization as defined in Iowa Code section 280.13, as allowed under Iowa Code section 298A.2 pursuant to Iowa Code section 298A.8(2).

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

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

*a.* Purchasing land or improvements.

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

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

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

*e.* Funding lease-purchases.

*f.* Purchasing portable buildings.

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

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

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

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

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

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

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

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

(2) Inappropriate uses of educational improvement program funding. Inappropriate uses of educational improvement program funding include any expenditure not appropriate to the general fund. [ARC 8054B, IAB 8/26/09, effective 9/30/09; ARC 1967C, IAB 4/15/15, effective 5/20/15; ARC 3632C, IAB 2/14/18, effective 3/21/18; ARC 4298C, IAB 2/13/19, effective 3/20/19]

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

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

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

- a. Costs of unemployment benefits as provided in Iowa Code section 96.31.
- b. Costs of liability insurance to protect the school districts from tort liability, loss of property, and environmental hazards.
- c. Costs of a final court judgment entered against the district or a settlement made for a tort liability claim including interest accruing on the judgment or settlement to the expected date of payment.
- d. Costs, including prepaid costs, of insurance agreements to protect the school districts from tort liability, loss of property, environmental hazards, or other risk associated with operations, but not including employee benefit plans.
- e. Costs of early retirement benefits to employees under Iowa Code section 279.46 to pay a monetary bonus, continuation of health or medical insurance coverage, or other incentives for encouraging employees to retire before the normal retirement date for employees 55 years of age or older who notify the board of directors prior to April 1 of the fiscal year that they intend to retire not later than the start of the next following school calendar.
- f. Costs of a physical inventory conducted solely for the purpose of insurance.
- g. Transfers to the debt service fund for payment of principal and interest when due on general obligation bonds issued under Iowa Code section 296.7 to protect the school district from tort liability, loss of property, environmental hazards, or other risk associated with operations.
- h. Transfers to the appropriate fund for the portion of an insurance claim which was eligible under the insurance agreement but was denied because it was within the deductible limit.
- i. Payment of costs of mediation and arbitration, including but not limited to legal fees associated with such mediation or arbitration, but not including the results of the mediation or arbitration if those costs do not qualify under paragraph 98.62(2) "c" above.

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

- a. Costs for employee health benefit plans.
- b. Costs to conduct physical inventories of property for purposes other than insurance.
- c. Costs to conduct actuarial studies.
- d. Costs for supplies or capital outlay.
- e. Transfer to a trust fund for other postemployment benefit (OPEB) cost or estimated cost calculated pursuant to Governmental Accounting Standards Board (GASB) Statement 45.
- f. Any other costs not expressly authorized in the Iowa Code.

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

**281—98.63(298) Library levy fund.** The board of directors of a school district in which there is no free public library may contract with any free public library for the free use of such library by the residents of the school district and pay the library the amount agreed upon for the use of the library as provided

by law. During the existence of the contract, the board shall certify annually a tax sufficient to pay the library the agreed-upon consideration.

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

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

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

- a. Capital expenditures related to land or buildings.
- b. Debt service.
- c. Any other costs not necessary to provide a free public library.

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

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

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

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

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

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

c. Construction of schoolhouses or buildings.

d. Construction of roads to schoolhouses or buildings.

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

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

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

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

g. Procuring or acquisition of library facilities.

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

*i.* Energy conservation projects.

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

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

*l.* Purchase of transportation equipment for transporting students and for repairing such transportation equipment when the cost of the repair exceeds \$2,500. “Repairing,” for purposes of this paragraph, means restoring an existing item of transportation equipment to its original condition, as near as may be, after gradual obsolescence of physical and functional use due to wear and tear, corrosion and decay, or partial destruction, and includes maintenance that meets the definition of equipment and repair and the cost of which exceeds \$2,500. Effective October 2, 2019, “repairing” also means retrofitting transportation equipment when such retrofitting aligns to the school bus construction standards in 281—Chapter 44.

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

*n.* Purchase of equipment for recreational purposes.

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

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

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

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

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

*t.* Demolition of a district-owned building.

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

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

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

*b.* Salaries and benefits.

*c.* Travel.

*d.* Supplies.

*e.* Facility, vehicle, or equipment maintenance.

*f.* Printing costs or media services.

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

[ARC 8054B, IAB 8/26/09, effective 9/30/09; ARC 0012C, IAB 2/22/12, effective 3/28/12 (See Delay note at end of chapter); ARC 1967C, IAB 4/15/15, effective 5/20/15; ARC 2310C, IAB 12/9/15, effective 1/13/16; ARC 4931C, IAB 2/12/20, effective 3/18/20]

**281—98.65(276,300) Public educational and recreational levy (PERL) fund.** Boards of directors of school districts may establish and maintain for children and adults public recreation places and playgrounds, and necessary accommodations for the recreation places and playgrounds, in the public school buildings and on the grounds of the district. Financial support for the community education program shall be provided from funds raised pursuant to Iowa Code chapter 300 and from any private funds and any federal funds made available for the purpose of implementing community education. The authority to establish a levy for a PERL fund is available to school districts but not to area education agencies.

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

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

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

*b.* Providing free public educational and recreational activities.

*c.* Establishing and supervising a free community education program.

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

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

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

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

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

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

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

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

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

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

**281—98.67(257,279,298A,565) Permanent funds.** Permanent funds are used to account for resources received that are legally restricted to the extent that only earnings, and not principal, may be used for purposes that support the school district's programs. The school district or area education agency shall not transfer its own resources to a permanent fund. The board of directors of the school district must take action to accept or establish each gift, devise, or bequest in permanent funds. It is the board's responsibility to ensure that the terms of the gift, devise, or bequest are compatible with the mission of and legal restrictions on the school district. Once accepted, gifts, devises, and bequests become public funding under the stewardship of the school district. If the purpose for which the moneys are to be spent is not in keeping with the overall objectives of the school district or legal authority of the school district, the board shall not assume responsibility of the moneys.

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

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

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

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

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

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

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

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

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

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

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

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

**98.68(3) *Inappropriate uses of the debt service fund.*** Inappropriate expenditures in the debt service fund include payment of debt issued by one fund from resources transferred from a different fund unless expressly authorized by the Iowa Code and any other expenditure not listed in subrule 98.68(2).  
[ARC 8054B, IAB 8/26/09, effective 9/30/09]

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

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

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

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

(1) Purchasing, constructing, furnishing, equipping, reconstructing, repairing, improving, or remodeling a schoolhouse or schoolhouses and additions thereto, gymnasium, stadium, field house, school bus garage, or teachers' or superintendents' home(s). Prior to approving the use of revenues for an athletic facility infrastructure project within the scope of the school district's approved revenue purpose statement, the board of directors shall adopt a resolution setting forth the proposal for the athletic facility infrastructure project and hold an additional public hearing on the issue of construction of the athletic facility as stipulated in Iowa Code section 423F.3(7).

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

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

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

(5) School safety and security infrastructure listed in Iowa Code section 423F.3(6).

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

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

(2) Reduction of debt service levies.

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

(4) Reduction of the PERL levy.

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

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

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

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

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

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

5. Expenditures listed in Iowa Code section 298.3.

6. Expenditures listed in Iowa Code section 300.2.

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

(8) School safety and security infrastructure listed in Iowa Code section 423F.3(6).

**98.69(3)** *Inappropriate uses of the capital projects fund.* Inappropriate expenditures in a capital projects fund include any expenditure not expressly authorized in the Iowa Code. Additionally, expenditures from the state sales and services tax for new construction or for payments for bonds issued for new construction in any district that has a certified enrollment of fewer than 250 pupils in the district or a certified enrollment of fewer than 100 pupils in the high school without a certificate of need issued by the department of education. This restriction does not apply to payment of outstanding general obligation bonded indebtedness issued pursuant to Iowa Code section 296.1 before April 1, 2003. This restriction also does not apply to costs to repair school buildings; purchase of equipment, technology or transportation equipment authorized under Iowa Code section 298.3; or for construction necessary to comply with the federal Americans With Disabilities Act.

[ARC 8054B, IAB 8/26/09, effective 9/30/09; ARC 1967C, IAB 4/15/15, effective 5/20/15; ARC 4813C, IAB 12/18/19, effective 1/22/20]

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

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

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

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

- a. Maintenance of funds raised by outside organizations.
- b. The cost of bonds for employees having custody of funds derived from cocurricular and extracurricular activities in the conduct of their duties. These are costs to the general fund.
- c. Expenditures that lack public purpose.

- d.* Payments to any private organization unless a fundraiser was held expressly for that purpose and the purpose of the fundraiser was specifically identified.
  - e.* Transfers to any other fund of any surplus within the fund.
  - f.* Payments more properly accounted for in another fund such as public tax funds, trust funds, state and federal grants, textbook/library book fines, fees, rents, purchases or sales, sales of school supplies, or curricular activities.
    - g.* Use of the student activity fund as a clearing account for any other fund.
    - h.* Cash payments to student members of activity groups.
    - i.* The cost of optional equipment or customizing uniforms.
    - j.* The cost of uniforms when the following two tests are not met:
      - (1) The activity is a part of the school's educational program, and
      - (2) The wearing of the uniform or equipment is necessary in order to participate.
    - k.* Hospital or medical claims for student injuries or procurement of student medical insurance.
    - l.* Optional costs related to activities that are not necessary to the cocurricular and extracurricular program such as promotional costs.
  - m.* Membership fees in student activity-related associations if the fees are optional, i.e., nonmember schools may participate in sponsored events.
  - n.* Costs to participate in or to allow students to participate in any cocurricular and extracurricular interscholastic athletic contest or competition not sponsored or administered by either the Iowa High School Athletic Association or the Iowa Girls High School Athletic Union.
- [ARC 8054B, IAB 8/26/09, effective 9/30/09; ARC 3632C, IAB 2/14/18, effective 3/21/18]

**281—98.71(298A) Entrepreneurial education fund.** The entrepreneurial education fund is used to enhance student learning by encouraging students to develop and practice entrepreneurial skills at an early age and to foster a business-ready workforce in this state. A school corporation may establish an entrepreneurial education fund at the request of a student organization or club and upon approval by the school board.

**98.71(1) Sources of revenue in the entrepreneurial education fund.** Sources of revenue in the entrepreneurial education fund shall consist only of moneys earned through entrepreneurial activities or returns on investments made for entrepreneurial purposes by the student organization or club, private donations and private contributions, and any interest earned on such moneys that are deposited in the fund. At the request of a student organization or club and upon approval by the school board, a school corporation shall transfer moneys in a student activity fund established under Iowa Code section 298A.8, for deposit by the student organization or club in an entrepreneurial education fund. However, a school corporation shall not transfer such moneys unless the moneys are attributable through appropriate documentation to the specific student organization or club and unless the student organization or club shows through appropriate documentation that the student organization or club earned the moneys through entrepreneurial activities of starting, maintaining, or expanding a business venture, including a seasonal business venture, or rendering other labor or services in return for compensation. Entrepreneurial activities do not include charitable contributions or other donations or gifts received by the student organization or club for which no labor or services are rendered.

**98.71(2) Appropriate uses of the entrepreneurial education fund.** Appropriate uses of the entrepreneurial education fund are limited to expending only for investments made, or activities undertaken, for board-approved entrepreneurial purposes which include investing in a start-up company, early-stage company, or existing company developing a new product or new technology if the investment is in keeping with the education program of the school corporation; if the student organization or club or its members will, as a stated condition of the investment, take an active role in the company which active role directly relates to and furthers the educational purposes for which the student organization or club is established; and if a reasonable return upon the investment is expected.

**98.71(3) Inappropriate uses of the entrepreneurial education fund.** A student organization or club shall not invest moneys from an entrepreneurial education fund for an entrepreneurial purpose in which

a member of the student organization or club, an advisor or supervisor of the student organization or club, or an immediate family member of such persons, has a financial interest.

**98.71(4) *Fund closure.*** An entrepreneurial education fund may be closed at the request of the student organization or club for which the school corporation established the fund. All moneys in the fund on the date of closure and any subsequent return on an investment made with moneys from the fund shall be deposited in the school district's student activity fund.

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

**281—98.72(256B,257,298A) Special education instruction fund.** The special education instruction fund is used to account for the revenues and expenditures of the special education instructional program that an area education agency provides for its member districts under Iowa Code subsection 273.9(2). This does not include special education support services as provided by Iowa Code subsection 274.9(3) which are accounted for in the general fund.

**98.72(1) *Sources of revenue in the special education instruction fund.*** Sources of revenue in the special education instruction fund include sales of instructional services to districts with students in the special education instruction program and interest on the investment of those moneys.

**98.72(2) *Appropriate uses of the special education instruction fund.*** Appropriate expenditures in the special education instruction fund include those authorized to a school district pursuant to Iowa Code chapter 256B and 281—Chapter 41 and included in the written agreement with the school districts.

**98.72(3) *Inappropriate uses of the special education instruction fund.*** Inappropriate expenditures in the special education instruction fund include expenditures not allowed to school districts pursuant to Iowa Code chapter 256B and 281—Chapter 41, expenditures for special education support services provided pursuant to Iowa Code subsection 273.9(3), or expenditures for costs not included in the written agreement with the school districts.

[ARC 8054B, IAB 8/26/09, effective 9/30/09; ARC 1967C, IAB 4/15/15, effective 5/20/15]

**281—98.73(282,298A) Juvenile home program instruction fund.** The juvenile home program instruction fund is used to account for the revenues and expenditures for the educational program for students residing in juvenile homes as provided by Iowa Code section 282.30. The juvenile home program supplements, but does not supplant, expenditures required of an area education agency under Iowa Code chapter 273. Revenues and expenditures related to federal or state grants serving students in the juvenile homes that supplement, rather than supplant, the juvenile home program are included in the general fund, rather than the juvenile home fund. Educational program costs for students served pursuant to individualized education programs (IEPs) shall not be included in the claim described in Iowa Code section 282.31 in lieu of billing those costs to the resident district. Educational program costs for out-of-state resident students shall not be included in the claim described in Iowa Code section 282.31 in lieu of billing those costs to the resident state agency. The area education agency (AEA) is responsible for stewardship of public funds and ensuring that all costs are ordinary and necessary costs of instruction and that classrooms are not overstaffed for the number of students. The AEA shall compare its costs, services, and staffing to the costs, services, and staffing of a similar classroom in the school district in which the juvenile home is located to ensure that they are comparable.

**98.73(1) *Sources of revenue in the juvenile home program instruction fund.*** Sources of revenue in the juvenile home program instruction fund include an advance paid pursuant to Iowa Code section 282.31, tuition billed to Iowa resident districts or to out-of-state agencies, grants in aid and interest on the investment of those moneys.

**98.73(2) *Appropriate uses of the juvenile home program instruction fund.*** Appropriate expenditures in the juvenile home program instruction fund are ordinary and necessary expenditures approved by the department to provide an instructional program to students residing in juvenile homes and include:

*a.* Salary and benefits for classroom teachers and aides providing instruction to students placed in a juvenile home.

*b.* Professional development which is specific to strategies to meet the needs of students in placement for all classroom teachers and aides working with students placed in a juvenile home.

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

- (1) Meet the needs of school-age students placed in juvenile homes,
- (2) Will remain with the AEA juvenile home program, and
- (3) Do not duplicate support services responsibilities of the AEA or the responsibilities of the juvenile home in its agreement with the placement agencies.

d. Summer school when necessary for a valid, established educational reason such as being included in the student's IEP or required pursuant to Iowa Code section 279.68.

e. Student support and instructional support expenditures to the extent that they are exclusively devoted to the juvenile home instructional program and are not administrative or clerical. This would include guidance services, curriculum development and instructional technology.

f. Administrative support to the extent the administrator is exclusively assigned to the juvenile home locations and is exclusively providing school-level administrative services directly for the student placed in the juvenile home or the classroom teachers. If the administrator is assigned part-time to the juvenile home locations, then the portion of time that is exclusively and directly related to the juvenile home instructional programs may be charged to the program, but the portion of time that is related to other purposes shall not. The total administrative cost shall not exceed 10 percent of the total of all allowable costs for the juvenile home program.

g. When the students are not required by the placement agency to remain at the juvenile home facility and the juvenile home has no responsibility for treatment in its agreement with the placement agency beyond custodial care, then rent may be allowed. Rent must be approved by the department. The space must be classroom space occupied exclusively by the AEA's instructional program and not include restrooms or any other common spaces. Only if rent is approved may any costs for operation or maintenance of that classroom space be allowed. The total administrative cost in paragraph 98.73(2) "f" and the total of rent and associated operation and maintenance shall not exceed 20 percent of the total of all allowable costs for the juvenile home program.

h. Transportation provided by the AEA exclusively to transport students placed at the juvenile home to the students' resident school districts located in Iowa or to the school district in which the juvenile home is located.

**98.73(3) *Inappropriate uses of the juvenile home program instruction fund.*** Inappropriate expenditures in the juvenile home program instruction fund include the following:

a. Costs estimated or allocated that are expenditures of the agency, such as insuring agency property.

b. Costs that are not ordinary and necessary to provide instruction.

c. Costs related to the juvenile home facility, its responsibilities under the Iowa Code or its agreements with the placement agencies.

d. Costs that were or could have been filed with Medicaid for reimbursement.

e. Debt service.

f. Capital outlay related to facilities. This includes any costs for facility acquisition or construction services, including remodeling and facility repair.

g. Support services that are AEA responsibilities pursuant to the Iowa Code.

h. Rental when adequate space is available at the AEA or at the district of location or when the students require treatment provided by the juvenile home or are required to remain at the juvenile home pursuant to the agreement between the juvenile home and the placement agency.

i. Costs of an audit.

j. Indirect costs.

[ARC 8054B, IAB 8/26/09, effective 9/30/09; ARC 1967C, IAB 4/15/15, effective 5/20/15]

**281—98.74(283A,298A) School nutrition fund.** All school districts shall operate or provide for the operation of lunch programs at all attendance centers in the school district. A school district may operate or provide for the operation of school breakfast programs at all attendance centers in the district, or

provide access to a school breakfast program at an alternative site to students who wish to participate in a school breakfast program.

**98.74(1) Sources of revenue in the school nutrition fund.** Sources of revenue in the school nutrition fund include food sales to pupils and adults, ancillary food services, state and federal grants in aid for the operation of a nutrition program, gifts, sales of services to other funds, donated government commodities, and interest on investment of school nutrition fund moneys. Also included are fees charged for providing food services to staff meetings and authorized organizations for meetings on the premises in accordance with the rules of the board. The charges for such services must be no less than the actual costs involved in providing the services including the value of donated government commodities.

**98.74(2) Appropriate uses of the school nutrition fund.** Appropriate expenditures in the school nutrition fund include the following:

*a.* Expenditures necessary to operate a school breakfast or lunch program such as salaries and benefits for employees necessary to operate the food service program, food, purchased services, supplies, and school nutrition equipment not included in Iowa Code section 283A.9.

*b.* Costs to provide food service for school staff and ancillary food services to staff meetings and authorized organizations for meetings on the premises in accordance with the rules of the board of directors of the school district if those costs are reimbursed by another fund, organization, or individual.

**98.74(3) Inappropriate uses of the school nutrition fund.** Inappropriate expenditures in the school nutrition fund include the following:

*a.* Costs to provide food service for school staff and ancillary food services to staff meetings and authorized organizations for meetings on the premises at less than actual costs involved in providing the services including the value of donated government commodities.

*b.* Operating transfers to any other fund other than to claim indirect costs.

*c.* Costs to purchase, construct, reconstruct, repair, remodel, or otherwise acquire or equip a building for use as a school meal facility. These costs are permitted from the PPEL fund.

*d.* Costs estimated or allocated that are expenditures of the district.

**98.74(4) Unpaid student meals account.** Beginning with the budget year beginning July 1, 2018, in accordance with Iowa Code section 283A.11, a school district may establish an unpaid student meals account in the school nutrition fund and may deposit in the account moneys received from private sources for purposes of paying student meal debt accrued by individual students as well as amounts designated for the account from the school district's flexibility account as described in rule 281—98.27(257,298A). Moneys deposited in the unpaid student meals account shall be used by the school district only to pay individual student meal debt. The school district shall set fair and equitable procedures for such expenditures.

[ARC 8054B, IAB 8/26/09, effective 9/30/09; ARC 1967C, IAB 4/15/15, effective 5/20/15; ARC 4298C, IAB 2/13/19, effective 3/20/19; ARC 4813C, IAB 12/18/19, effective 1/22/20]

**281—98.75(279,298A) Child care and before- and after-school programs fund.** The board of directors of a school district may operate or contract for the operation of a program to provide child care to children not enrolled in school or to students enrolled in kindergarten through grade 6 before and after school, or to both.

**98.75(1) Sources of revenue in the child care fund.** Sources of revenue in the child care fund include a fee established by the board for the cost of participation in the program. The fee shall be established pursuant to a sliding fee schedule based upon staffing costs and other expenses and a family's ability to pay. If a fee is established, the parent or guardian of a child participating in a program shall be responsible for payment of any agreed-upon fee. The board may require the parent or guardian to furnish transportation of the child. If the board does not establish a fee, it must finance the program through grants or donations. The board may utilize or make application for program subsidies from any existing child care funding streams.

**98.75(2) Appropriate uses of the child care fund.** Appropriate expenditures in the child care fund include salaries and benefits for employees necessary to operate the child care program or before- and after-school program, purchased services, supplies, and equipment.

Effective with the budget year beginning July 1, 2018, if the balance in the before- and after-school program exceeds the amount necessary to operate the before- and after-school program, the excess amount may, following a public hearing, be transferred to the general fund by a resolution of the board of directors of the school corporation which meets all requirements stipulated in Iowa Code section 298A.12. A transfer under this subrule does not increase a school district's authorized expenditures as defined in Iowa Code section 257.7.

**98.75(3) *Inappropriate uses of the child care fund.*** Inappropriate expenditures in the child care fund include debt service, capital outlay related to facilities, or any other expenditure not ordinary and necessary to operate the child care program or before- and after-school program.

[ARC 8054B, IAB 8/26/09, effective 9/30/09; ARC 1967C, IAB 4/15/15, effective 5/20/15; ARC 4298C, IAB 2/13/19, effective 3/20/19]

**281—98.76(298A) Regular education preschool fund.** The board of directors of a school district may establish a preschool for students who are not of school age.

**98.76(1) *Sources of revenue in the regular education preschool fund.*** Sources of revenue in the regular education preschool fund include a fee established by the board for the cost of participation in the program. If a fee is established, the parent or guardian of a child participating in a program shall be responsible for payment of any agreed-upon fee. If the board does not establish a fee, it must finance the program through grants or donations. The statewide voluntary four-year-old preschool program established under Iowa Code chapter 256C shall not be accounted for in the regular education preschool fund.

**98.76(2) *Appropriate uses of the regular education preschool fund.*** Appropriate expenditures in the regular education preschool fund include salaries and benefits for employees necessary to operate the regular education preschool program, purchased services, instructional supplies, and instructional equipment.

**98.76(3) *Inappropriate uses of the regular education preschool fund.*** Inappropriate expenditures in the regular education preschool fund include debt service, capital outlay related to facilities, or any other expenditure not ordinary and necessary to operate the regular education preschool program or before- and after-school program.

[ARC 8054B, IAB 8/26/09, effective 9/30/09; ARC 1967C, IAB 4/15/15, effective 5/20/15]

**281—98.77(298A) Student construction fund.** If the board of directors of a school district establishes a construction program whereby students learn a construction trade and the facility constructed is sold to cover costs of construction, the revenues and expenses will be accounted for in the student construction fund.

[ARC 8054B, IAB 8/26/09, effective 9/30/09; ARC 1967C, IAB 4/15/15, effective 5/20/15]

**281—98.78(298A) Other enterprise funds.** Enterprise funds are used to account for any activity for which a fee is charged to external users for goods and services. Enterprise funds are required to be used to account for any activity whose principal revenue sources are fees and charges to recover the costs of providing goods or services where those fees and charges are permitted by the Iowa Code. Funds discussed in rules 281—98.74(283A,298A) through 281—98.77(298A) are enterprise funds. In addition, enterprise funds include those activities related to community service enterprises or enterprises that support the school curricular program. Community service enterprises are activities provided by the district for a fee to the general community or segment of the community that are not in the PERL or library funds such as public libraries, community pool, community wellness center, and community or adult education. Enterprises that support the school program include activities such as a student farm, greenhouse, cooperative purchasing, school stores, or major resale activities.

[ARC 8054B, IAB 8/26/09, effective 9/30/09; ARC 1967C, IAB 4/15/15, effective 5/20/15]

**281—98.79 to 98.81** Reserved.

**281—98.82(298A) Internal service funds.** Internal service funds are used to account for the financing of services provided within the district to provide goods or services to other funds, component units, or

other governments on a cost-reimbursement basis. The use of an internal service fund is appropriate only for activities in which the agency, school district or area education agency is the predominant participant in the activity. If the district or area education agency is not the primary user of the goods or services provided by the internal service fund, then the activity should be accounted for in an enterprise fund rather than an internal service fund. Internal service funds include, but are not limited to, self-insurance funds, flex-benefit (cafeteria) plan funds, print shops, health reimbursement arrangements (HRAs), central warehousing and purchasing, and central data processing.  
[ARC 8054B, IAB 8/26/09, effective 9/30/09]

**281—98.83 to 98.91** Reserved.

**281—98.92(257,279,298A,565) Private purpose trust funds.** Private purpose trust funds are fiduciary funds established to account for gifts the school district receives to be used for a particular purpose or to account for moneys and property received and administered by the school district as trustee. These trust funds are not irrevocable trusts and are used to account for assets held by a school district in a trustee capacity to benefit individuals, private organizations, or other governments, and therefore cannot be used to support the school district's own programs. These trust funds include both those that allow use of only the interest on the investments and those that allow use of both principal and interest. Scholarship trust funds are an example of private purpose trust funds. If a school district has more than one scholarship trust, the school district shall use project codes in accordance with Uniform Financial Accounting for Iowa School Districts and Area Education Agencies to separately account for the trusts. The district or area education agency shall not transfer its own resources to a private purpose trust fund.

**98.92(1) Sources of revenue in private purpose trust funds.** Sources of revenue in the private purpose trust fund include donations of cash, investment instruments, property, and interest on investments held.

**98.92(2) Appropriate uses of private purpose trust funds.** Appropriate expenditures in the private purpose trust fund include those that are consistent with the terms of the agreement or are for the benefit of a private purpose other than the school district. None of the expenditures will be for the benefit of the school district's programs.

**98.92(3) Inappropriate uses of private purpose trust funds.** Inappropriate expenditures in the private purpose trust fund include any expenditure which is not consistent with the terms of the agreement, not legal to a school district, or that benefits the school district's programs.

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

**281—98.93(298A) Other trust funds.** Trust funds are fiduciary funds established to account for gifts the school district receives to be used for a particular purpose or to account for moneys and property received and administered by the school district as trustee. These trust funds are used to account for assets held by a school district in a trustee capacity to benefit individuals, private organizations, or other governments, and cannot be used to support the school district's own programs. These trust funds include both those that allow use of only the interest on the investments and those that allow use of both principal and interest. The school district or area education agency shall not transfer its own resources to a trust fund. Other trust funds may include but not be limited to pension trust funds and investment trust funds. Pension trust funds are used to account for resources that are required to be held in trust for members and beneficiaries of defined benefit pension plans, defined contribution plans, other postemployment benefit plans, or other benefit plans. Typically, these pension trust funds are used to account for local pension and other employee benefit funds that are provided by a school district in lieu of or in addition to any state retirement system. Investment trust funds are used to account for the external portion (i.e., the portion that does not belong to the school district) of investment pools operated by the school district.

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

**281—98.94 to 98.100** Reserved.

**281—98.101(298A) Custodial funds.** Custodial funds are used to account for funds that are held in a custodial capacity by the school district for individuals, private organizations, or other governments.

Custodial funds may include moneys collected for another government, a grant consortium when the school district serves as fiscal agent for the other school districts but has no managerial responsibilities, or funds for a teacher or a parent-teacher organization which has its own federal identification number (FIN). In a custodial fund, the school district or area education agency merely renders a service as a custodian of the assets for the organization owning the assets and the school district or area education agency is not an owner. Custodial funds typically involve only the receipt, temporary investment and remittance of assets to their rightful owners.

**98.101(1)** *Sources of receipts in custodial funds.* Sources of receipts in custodial funds include temporary receipts of cash, investment instruments, property, and interest on investments held.

**98.101(2)** *Appropriate uses of custodial funds.* Appropriate disbursements from a custodial fund depend on the nature of the rightful owners' conditions or the responsibilities of the custodian. Typically, disbursement will involve remittance of assets to their rightful owners or to a third party on behalf and at the request of the rightful owners. The school district cannot disburse more funds at any point in time than it has received from the rightful owner.

**98.101(3)** *Inappropriate uses of custodial funds.* Inappropriate disbursements from custodial funds include any disbursement which is not consistent with the terms of the agreement, is not legal to a school district, or exceeds the amount of funds that have been received from the rightful owner or on behalf of the rightful owner.

[ARC 8054B, IAB 8/26/09, effective 9/30/09; ARC 5650C, IAB 6/2/21, effective 7/7/21]

**281—98.102 to 98.110** Reserved.

**281—98.111(24,29C,257,298A) Emergency levy fund.** A school district may levy a tax for the emergency fund upon the approval of the state appeals board. Once the levy has been received, the district may request approval of the school budget review committee to transfer the funds to any other fund of the district for the purpose of meeting deficiencies in a fund arising within two years of a disaster as defined in Iowa Code subsection 29C.2(1).

**98.111(1)** *Sources of revenue in the emergency levy fund.* Sources of revenue for the emergency levy fund include a tax levy not to exceed \$0.27 per \$1000 of assessed value of taxable property, and interest on those moneys.

**98.111(2)** *Appropriate uses of emergency levy fund.* Appropriate expenditures in the emergency levy fund include only transfers to other funds for the purpose of meeting deficiencies in a fund arising within two years of a disaster and upon the approval of the school budget review committee.

**98.111(3)** *Inappropriate uses of emergency levy fund.* Inappropriate expenditures in the emergency levy fund include any expenditures other than a transfer to another fund and any transfer not approved by the school budget review committee.

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

**281—98.112(275) Equalization levy fund.** If necessary to equalize the division of liabilities and distribution of assets in a reorganization, merger, or dissolution, the board of a school district may provide for the levy of additional taxes upon the property of the former district so as to effect equalization pursuant to Iowa Code section 275.31. Once the levy has been received, the district shall transfer the funds before the end of the fiscal year to the funds for which equalization was necessary and for which the taxes were levied.

**98.112(1)** *Sources of revenue for the equalization levy fund.* Sources of revenue for the equalization levy fund include a tax levy pursuant to Iowa Code section 275.31, and interest on those moneys.

**98.112(2)** *Appropriate uses of the equalization levy fund.* Appropriate expenditures from the equalization levy fund are limited to transfers to the funds, in the same proportion, for which equalization was necessary and for which the taxes were levied.

**98.112(3)** *Inappropriate uses of the equalization levy fund.* Inappropriate uses of the equalization levy fund would include transfers to any fund for which equalization was not required or for which the equalization tax was not levied and any uses other than transfers.

[ARC 8054B, IAB 8/26/09, effective 9/30/09 (See Delay note at end of chapter)]

These rules are intended to implement Iowa Code chapters 24, 29C, 76, 143, 256, 256B, 257, 274, 275, 276, 279, 280, 282, 283A, 284, 284A, 285, 291, 294A, 296, 298, 298A, 299A, 300, 301, 423E, 423F, 565, and 670 and Iowa Code sections 11.6(1) “a”(1), 256C.4(1) “c,” 256D.4(3) and 284.13.

[Filed ARC 8054B (Notice ARC 7781B, IAB 5/20/09), IAB 8/26/09, effective 9/30/09]<sup>1</sup>

[Editorial change: IAC Supplement 9/23/09]

[Editorial change: IAC Supplement 12/30/09]

[Filed ARC 9267B (Notice ARC 9017B, IAB 8/25/10), IAB 12/15/10, effective 1/19/11]

[Filed ARC 0012C (Notice ARC 9793B, IAB 10/5/11), IAB 2/22/12, effective 3/28/12]<sup>2</sup>

[Editorial change: IAC Supplement 3/21/12]

[Filed ARC 0518C (Notice ARC 0387C, IAB 10/3/12), IAB 12/12/12, effective 1/16/13]

[Filed ARC 1967C (Notice ARC 1881C, IAB 2/18/15), IAB 4/15/15, effective 5/20/15]

[Filed ARC 2310C (Notice ARC 2184C, IAB 10/14/15), IAB 12/9/15, effective 1/13/16]

[Filed ARC 3632C (Notice ARC 3270C, IAB 8/30/17), IAB 2/14/18, effective 3/21/18]

[Filed ARC 4298C (Notice ARC 4160C, IAB 12/5/18), IAB 2/13/19, effective 3/20/19]

[Filed ARC 4529C (Notice ARC 4404C, IAB 4/24/19), IAB 7/3/19, effective 8/7/19]

[Filed ARC 4813C (Notice ARC 4687C, IAB 10/9/19), IAB 12/18/19, effective 1/22/20]

[Filed ARC 4931C (Notice ARC 4817C, IAB 12/18/19), IAB 2/12/20, effective 3/18/20]

[Filed ARC 5650C (Notice ARC 5462C, IAB 2/24/21), IAB 6/2/21, effective 7/7/21]

<sup>1</sup> September 30, 2009, effective date of 281—98.12(257,299A) and 281—98.112(275) delayed 70 days by the Administrative Rules Review Committee at its meeting held September 8, 2009. At its meeting held December 8, 2009, the Committee voted to delay the effective date of 281—98.12(257,299A) until the adjournment of the 2010 Session of the General Assembly.

<sup>2</sup> March 28, 2012, effective date of 98.12 and 98.64(2) “e,” “h” delayed 30 days by the Administrative Rules Review Committee at its meeting held March 12, 2012.



CHAPTER 6  
UNIFORM WAIVER AND VARIANCE RULES

**481—6.1(10A,17A,ExecOrd11) Applicability.** This chapter outlines a uniform process for the granting of waivers or variances from rules adopted by the department. The intent of this chapter is to allow persons to seek exceptions to the application of rules issued by the department.

**481—6.2(10A,17A,ExecOrd11) Definitions.**

*“Attached units”* means units attached to the department and includes the employment appeal board, state citizen foster care review board, racing and gaming commission, and state public defender’s office.

*“Department”* means the department of inspections and appeals authorized by Iowa Code chapter 10A, which is comprised of the administrative division, administrative hearings division, audits division, health facilities division, inspections division and investigations division. Pursuant to Iowa Code section 7E.2(5), five attached units are included in the department.

*“Director”* means the director of the department of inspections and appeals or the director’s designee.

*“Director/board”* means the director, board, commission or state public defender depending on which one has the decision-making authority pursuant to Iowa Code chapter 10A or 7E.

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

[ARC 5670C, IAB 6/2/21, effective 7/21/21]

**481—6.3(10A,17A,ExecOrd11) Interpretive rules.** This chapter shall not apply to rules that merely define the meaning of a statute or other provision of law or precedent if the department does not possess delegated authority to bind the courts to any extent with its definition.

**481—6.4(10A,17A,ExecOrd11) Compliance with statute.** The department shall not grant a petition for waiver or a variance from a rule unless a statute or other provision of law has delegated authority to the department sufficient to justify that action and the waiver or variance is consistent with the statute or other provision of law. No waiver or variance may be granted from a requirement that is imposed by statute, unless the statute itself specifically authorizes that action. Any waiver or variance must be consistent with statute.

**481—6.5(10A,17A,ExecOrd11) Criteria for waiver or variance.** At the sole discretion of the director/board, the director/board may issue an order, in response to a completed petition or on the department’s own motion, granting a waiver or variance from a rule adopted by the department, in whole or in part, as applied to the circumstances of a specified person or a specific and narrowly drawn class of persons if the director/board finds based on clear and convincing evidence that:

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

**481—6.6(10A,17A,ExecOrd11) Filing of petition.** A petition for a waiver or variance must be submitted in writing to the Department of Inspections and Appeals, Office of the Director, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319. If the petition relates to a pending contested case, the petition shall also be filed in the contested case proceeding.

**481—6.7(10A,17A,ExecOrd11) Content of petition.** A petition for waiver or variance shall include the following information where applicable and known to the requester:

1. The name, address, and telephone number of the entity or person for whom a waiver or variance is being requested and the case number of any related contested case.
2. A description and citation of the specific rule from which a waiver or variance is requested.
3. The specific waiver or variance requested, including the precise scope and operative period that the waiver or variance will extend.
4. The relevant facts that the petitioner believes would justify a waiver or variance. 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 or variance.
5. A history of any prior contacts between the department and the petitioner relating to the regulated activity, license, appeal, hearing, audit, investigation, inspection, representation or other assigned function of the department that would be affected by the proposed waiver or variance, including a description of each regulated activity, license, appeal, hearing, audit, investigation, inspection, representation or other assigned function of the department, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, license, appeal, hearing, audit, investigation, inspection, representation or other assigned function of the department within the last five years.
6. Any information known to the requester regarding the department's treatment of similar cases.
7. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver or variance.
8. The name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.
9. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver or variance.
10. Signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver or variance.

**481—6.8(10A,17A,ExecOrd11) Additional information.** Prior to issuing an order granting or denying a waiver or variance, the department 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 department may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the department or department's designee.

**481—6.9(10A,17A,ExecOrd11) Notice.** The department shall acknowledge a petition upon receipt. The department 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 department may give notice to other persons. To accomplish this notice provision, the department 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 department attesting that notice has been provided.

**481—6.10(10A,17A,ExecOrd11) 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 or variance of rule filed within a contested case and shall otherwise apply to agency proceedings for a waiver or variance only when the department so provides by rule or order or is required to do so by statute.

**481—6.11(10A,17A,ExecOrd11) Ruling.** An order granting or denying a waiver or variance shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative period of the waiver if one is issued.

**6.11(1) Director/board discretion.** The decision on whether the circumstances justify the granting of a waiver or variance shall be made at the discretion of the director upon consideration of all relevant factors, except for the below-listed programs, for which the applicable board, commission or state public defender shall make the decision, upon consideration of all relevant factors:

- a. Employment appeal board, 486—Chapter 1.
- b. State citizen foster care review board, 489—Chapter 1.
- c. Racing and gaming commission, 491—Chapter 1.
- d. State public defender's office, 493—Chapter 1.

**6.11(2) Burden of persuasion.** The petitioner has the burden of persuasion when a petition is filed for a waiver or variance from a department rule. The standard of proof is clear and convincing evidence.

**6.11(3) Special waiver or variance rules not precluded.** This chapter shall not preclude the department from granting waivers or variances in other contexts or on the basis of other standards if a statute authorizes the department to do so and the department deems it appropriate to do so.

**6.11(4) Administrative deadlines.** When the rule from which a waiver or variance is sought establishes administrative deadlines, the director/board shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all persons similarly situated.

**6.11(5) Conditions.** The director/board may condition the granting of the waiver or variance on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means and in compliance with the following provisions:

- a. Each petition for a waiver or variance shall be evaluated by the department based on the unique, individual circumstances set out in the petition;
- b. A waiver or variance, if granted, shall be drafted by the department so as to provide the narrowest exception possible to the provisions of the rule;
- c. The department may place on a waiver or variance a condition that the department finds desirable to protect the public health, safety, and welfare;
- d. A waiver or variance shall not be permanent, unless the petitioner can show that a temporary waiver or variance would be impracticable; and
- e. If a temporary waiver or variance is granted, there is no automatic right to renewal. At the sole discretion of the department, a waiver or variance may be renewed if the department finds that all of the factors set out in rule 6.5(10A,17A,ExecOrd11) remain valid.

**6.11(6) Time for ruling.** The director/board shall grant or deny a petition for a waiver or variance 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 director/board has the discretion to wait until the contested case is resolved before entering an order on the petition for waiver or variance.

**6.11(7) When deemed denied.** Failure of the director/board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the director/board.

**6.11(8) Service of order.** Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

[ARC 5670C, IAB 6/2/21, effective 7/21/21]

**481—6.12(10A,17A,ExecOrd11) Public availability.** Subject to the provisions of Iowa Code section 17A.3(1)“e,” the department shall maintain a record of all orders granting or denying waivers and variances under this chapter. All final rulings in response to requests for waivers or variances shall be indexed and available to members of the public at the director's office.

Twice each year the department must prepare a report that:

1. Identifies the rules for which a waiver or variance has been granted or denied;
2. The number of times a waiver or variance was granted or denied for each rule;
3. A citation to the statutory provisions implemented by these rules; and
4. A general summary of the reasons justifying the department's actions.

**481—6.13(10A,17A,ExecOrd11) Voiding or cancellation.** A waiver or variance is void if the material facts upon which the request is based are not true or if material facts have been withheld. The director/board may at any time cancel a waiver or variance upon appropriate notice and hearing if the director/board finds that the facts as stated in the request are not true, material facts have been withheld, the alternative means of compliance provided in the waiver or variance have failed to achieve the objectives of the statute, or the requester has failed to comply with the conditions of the order.

**481—6.14(10A,17A,ExecOrd11) Violations.** Violation of conditions in the waiver or variance approval is the equivalent of violation of the particular rule for which the waiver or variance is granted and is subject to the same remedies or penalties.

**481—6.15(10A,17A,ExecOrd11) Defense.** After the director/board issues an order granting a waiver or variance, 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.

**481—6.16(10A,17A,ExecOrd11) Appeals.** Any request for an appeal from a decision granting or denying a waiver or variance shall be in accordance with the procedures provided in Iowa Code chapter 17A and departmental rules. An appeal shall be taken within 30 days of the issuance of the ruling in response to the request unless a contrary time is provided by rule or statute.

**481—6.17(10A,17A,ExecOrd11) Sample petition for waiver or variance.**

---

BEFORE THE DEPARTMENT OF INSPECTIONS AND APPEALS

---

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

}

PETITION FOR WAIVER

---

Include the following information in the petition for waiver where applicable and known:

1. Provide the petitioner's (the person that is asking for the waiver or variance) name, address and telephone number.
2. Describe and cite the specific rule from which a waiver or variance is requested.
3. Describe the specific waiver or variance requested. Include the exact scope and time period that the waiver or variance will extend.
4. Explain the important facts that the petitioner believes justify the waiver or variance. Include in your explanation (a) why application of the rule would pose an undo hardship to the petitioner; (b) why granting the waiver or variance would not prejudice the substantial legal rights of any person; (c) state whether the provisions of a rule subject to this petition are specifically mandated by statute or another provision of law; and (d) state whether public health, safety and welfare will be affected if the requested waiver or variance is granted.
5. Provide history of prior contacts between the department and the petitioner relating to the regulated activity, license, audit, investigation, inspection or representation that would be affected by the waiver or variance. In that history, include a description of each affected regulated activity, license, appeal, hearing, audit, investigation, inspection, representation or other assigned function of the department, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, license, appeal, hearing, audit, investigation, inspection, representation or other assigned function of the department within the last five years.
6. Provide information known to the petitioner regarding the department's treatment of similar cases.
7. Provide the name, address and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver or variance.

8. Provide the name, address and telephone number of any person or entity that would be adversely affected or disadvantaged by the granting of the waiver or variance.

9. Provide signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver or variance.

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

---

Petitioner's signature

---

Date

These rules are intended to implement Iowa Code section 17A.9A and Executive Order Number 11.

[Filed 4/12/01, Notice 1/24/01—published 5/2/01, effective 6/6/01]

[Filed ARC 5670C (Notice ARC 5551C, IAB 4/7/21), IAB 6/2/21, effective 7/21/21]



CHAPTER 32  
CONSUMABLE HEMP PRODUCTS

**481—32.1(204) Definitions.** For the purpose of these rules, the following terms shall have the meanings indicated in this chapter. The definitions set out in Iowa Code section 204.2 shall be considered to be incorporated verbatim herein.

*“Accredited laboratory”* means a laboratory accredited in accordance with the International Organization for Standardization/International Electrotechnical Commission Standard (ISO/IEC) 17025 or a comparable or successor standard for the analyses performed on consumable hemp products.

*“Adulterated”* means the same as in the Federal Food, Drug, and Cosmetic Act, Section 402, except that a consumable hemp product is not deemed “adulterated” pursuant to this chapter solely because it contains a hemp product not generally recognized as safe by the Federal Food and Drug Administration.

*“Approved hemp source”* means a manufacturer of a consumable hemp product that is engaged in the wholesale or retail sale of the product and that is:

1. Located in this state and manufactures the consumable hemp product in compliance with Iowa Code chapter 204 and these rules; or
2. Located in a state that has a state hemp plan approved by the United States Department of Agriculture under 7 U.S.C. Chapter 38, Subchapter VII.

*“Cannabidiol”* or *“CBD”* means the specific chemical compound with the Chemical Abstracts Service number 13956-29-1.

*“Certificate of analysis”* or *“COA”* means an official document released by an accredited laboratory following an analysis of a consumable hemp product. The certificate of analysis shall contain the concentrations of cannabinoids, pesticides, residual solvents, metals, harmful pathogens, and toxicants, including data on levels of total delta-9 tetrahydrocannabinol (THC) content concentration and whether a sample passed or failed any limits related to these analyses.

*“Certificate of free sale”* means a government certification that products such as food, drugs, medicine, or cosmetics are approved for unrestricted sale in the jurisdiction in which they originate.

*“Consumable hemp establishment”* means an individual or entity engaged in manufacturing, processing, packing, holding, preparing, distributing, or selling a consumable hemp product in Iowa or to purchasers located in Iowa. A consumable hemp establishment does not include an individual or entity manufacturing, processing, packing, holding, preparing, distributing, or selling a consumable hemp product containing only hemp seed or hemp seed-derived food ingredients generally recognized as safe (GRAS) under the conditions of use by the United States Food and Drug Administration.

*“Consumable hemp manufacturer”* means a consumable hemp establishment engaged in manufacturing, processing, packing, holding, preparing, distributing, or selling a consumable hemp product on a wholesale basis. A consumable hemp manufacturer includes individuals and entities outside of Iowa that distribute consumable hemp products in Iowa. A consumable hemp manufacturer does not include individuals or entities exclusively engaged in the harvesting, storage, or distribution of raw hemp.

*“Consumable hemp product”* means a hemp product that includes a substance that is metabolized or is otherwise subject to a biotransformative process when introduced into the human body.

1. A consumable hemp product may be introduced into the human body by ingestion or absorption by any device including but not limited to an electronic device.
2. A consumable hemp product may exist in a solid or liquid state.
3. A hemp product is deemed to be a consumable hemp product if it is any of the following:
  - Designed by the processor, including the manufacturer, to be introduced into the human body.
  - Advertised as an item to be introduced into the human body.
  - Distributed, exported, or imported for sale or distribution to be introduced into the human body.
4. “Consumable hemp product” includes, but is not limited to, any of the following:
  - A noncombustible form of hemp that may be digested, such as food; internally absorbed, such as chew or snuff; or absorbed through the skin, such as a topical application.

- Hemp processed or otherwise manufactured, marketed, sold, or distributed as human food, a human food additive, a human dietary supplement, or a human drug.

5. “Consumable hemp product” does not include a hemp product if the intended use of the hemp product is introduction into the human body by any method of inhalation, as prohibited under Iowa Code section 204.14A.

“*Consumable hemp retailer*” means a consumable hemp establishment selling consumable hemp product to consumers on a retail basis. A consumable hemp retailer includes an establishment selling consumable hemp products online.

“*Delta-9 tetrahydrocannabinol*” or “*THC*” means the specific chemical compound with the Chemical Abstracts Service number 1972-08-3.

“*Department*” means the Iowa department of inspections and appeals.

“*Expiration date*” means the month and year as determined by the manufacturer, packer, or distributor on the basis of tests showing that the product, until that date, under the conditions of handling, storage, preparation, and use per label directions, will, when consumed, contain not less than the quantity of each ingredient as set forth on its label.

“*Food*” means the same as defined in Iowa Code section 137F.1. Food includes human dietary supplements and alcoholic beverages.

“*Harvesting*” applies to farms and farm mixed-type facilities and means activities that are traditionally performed on farms for the purpose of removing raw agricultural commodities from the place they were grown or raised and preparing them for use as food. Harvesting is limited to activities performed on raw agricultural commodities, or on processed foods created by drying/dehydrating a raw agricultural commodity without additional manufacturing/processing, on a farm. Harvesting does not include activities that transform a raw agricultural commodity into a processed food as defined in Section 201(gg) of the Federal Food, Drug, and Cosmetic Act. Examples of harvesting include cutting (or otherwise separating) the edible portion of the raw agricultural commodity from the crop plant and removing or trimming part of the raw agricultural commodity (e.g., foliage, husks, roots or stems). Examples of harvesting also include cooling, field coring, filtering, gathering, hulling, shelling, sifting, threshing, trimming of outer leaves of, and washing raw agricultural commodities grown on a farm.

“*Jurisdiction of origin*” means the federal, state, or local regulatory jurisdiction that has the authority to conduct inspections of the facility in which a consumable hemp product was most recently subject to a manufacturing/processing activity.

“*Lot number*” means a specific quantity of raw hemp or processed hemp product that is uniform and intended to meet specifications for identity, strength, purity, and composition that shall contain the manufacturer’s, processor’s, or distributor’s number and a sequence to allow for inventory, traceability, and identification of the plant batches used in the production of consumable hemp products.

“*Manufacturing/processing*” means making food from one or more ingredients, or synthesizing, preparing, treating, modifying or manipulating food, including food crops or ingredients. Examples of manufacturing/processing activities include: baking, boiling, bottling, canning, cooking, cooling, cutting, distilling, drying/dehydrating raw agricultural commodities to create a distinct commodity (such as drying/dehydrating grapes to produce raisins), evaporating, eviscerating, extracting juice, formulating, freezing, grinding, homogenizing, irradiating, labeling, milling, mixing, packaging (including modified atmosphere packaging), pasteurizing, peeling, rendering, treating to manipulate ripening, trimming, washing, or waxing. For farms and farm mixed-type facilities, manufacturing/processing does not include activities that are part of harvesting, packing, or holding.

“*Misbranded*” means a food that violates 21 U.S.C. Section 343.

“*QR code*” means a quick response machine-readable code that can be read by a camera, consisting of an array of black and white squares used for storing information or directing or leading a user to product information regarding manufacturer data and accredited laboratory certificates of analysis.

“*Raw agricultural commodity*” means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

“*Raw hemp*” means an unprocessed hemp plant, or any part of the hemp plant, in its raw or natural state. Raw hemp is a raw agricultural commodity.

“*Tetrahydrocannabinolic acid*” or “*THCA*” means the specific chemical compound with the Chemical Abstracts Service number 23978-85-0.

“*Total delta-9 tetrahydrocannabinol*” or “*total THC*” means 87.7 percent of the amount of tetrahydrocannabinolic acid plus the amount of delta-9 tetrahydrocannabinol.  
[ARC 5404C, IAB 1/27/21, effective 3/3/21]

**481—32.2(204) Registration and posting.** A consumable hemp establishment shall not engage in manufacturing, processing, packing, holding, preparing, distributing, or selling a consumable hemp product in Iowa or to purchasers located in Iowa until it has submitted a consumable hemp registration that is approved by the department.

**32.2(1) Consumable hemp manufactures/distributors.** Consumable hemp manufacturers shall register with the department at least 30 days prior to manufacturing, processing, packing, holding, preparing, distributing, or selling any consumable hemp product in Iowa or to purchasers located in Iowa. The consumable hemp manufacturer shall:

- a. Complete the online registration form prescribed by the department;
- b. Remit the registration fee set by the department in accordance with Iowa Code section 204.7; and
- c. Submit a complete list of all consumable hemp products the consumable hemp manufacturer intends to manufacture, process, pack, hold, prepare, distribute, or sell, along with documentation of the jurisdiction of origin for each consumable hemp product.

**32.2(2) Consumable hemp retailers.** Consumable hemp retailers shall register with the department at least 30 days prior to selling any consumable hemp product in Iowa or to purchasers located in Iowa. The consumable hemp retailer shall:

- a. Complete the online registration form prescribed by the department;
- b. Remit the registration fee set by the department in accordance with Iowa Code section 204.7; and
- c. Submit a complete list of all consumable hemp products the consumable hemp retailer intends to sell, along with documentation of the jurisdiction of origin for each consumable hemp product.

**32.2(3) Combined consumable hemp manufacturers and retailers.** A consumable hemp establishment engaged in activities of a consumable hemp manufacturer and a consumable hemp retailer shall submit a separate registration for each activity. A registered consumable hemp manufacturer that exclusively sells consumable hemp products it has manufactured to consumers on a retail basis is not required to register as a consumable hemp retailer.

**32.2(4) Physical location.** A consumable hemp establishment’s registration is valid for one physical location. A consumable hemp establishment that manufactures, processes, packs, holds, prepares, distributes, or sells a consumable hemp product at more than one physical location shall submit a separate registration for each physical location.

**32.2(5) Expiration and renewal.** A consumable hemp registration, unless sooner suspended or revoked, shall expire one year after the registration is approved by the department. A consumable hemp registration shall be renewed annually through the department’s online registration system, accompanied by the required fee, at least 30 days prior to expiration. Consumable hemp registrations that are expired more than 60 days will be revoked without notice.

**32.2(6) Transferability.** A consumable hemp registration is not transferable to a new owner or new physical location.

**32.2(7) Posting of registrations.** A valid registration shall be posted on the premises of the consumable hemp establishment in a location that is visible to the public. An image of the valid registration must also be posted on any website or online point of sale in a location that is visible to the public prior to payment.

**32.2(8) Returned payments.** The department will attempt to redeem a payment submitted for a consumable hemp registration that is not honored by the bank on which it is drafted. The department will notify the applicant of the need to provide sufficient payment. An additional fee of \$25 shall be assessed for each dishonored payment. If the department does not receive payment, the establishment

will be operating without a valid registration and is subject to penalties set forth in rules 481—32.7(204) and 481—32.8(204) (violations and enforcement; denial, suspension, or revocation of registration).  
[ARC 5404C, IAB 1/27/21, effective 3/3/21]

**481—32.3(204) Testing requirements and documentation.**

**32.3(1)** *Approved hemp source; certificate of analysis.* A consumable hemp product shall not be distributed or sold unless:

*a.* The consumable hemp product is from an approved hemp source and is accompanied by documentation that identifies the jurisdiction of origin. Documentation that identifies the jurisdiction of origin includes:

- (1) Certificate of free sale issued by the jurisdiction of origin;
- (2) Product label statements, provided the product label identifies the jurisdiction of origin; or
- (3) Other documentation that identifies the jurisdiction of origin and also identifies the following:
  1. Brand name;
  2. Container size in terms of net quantity of contents; and
  3. Lot number.

*b.* The consumable hemp product has a certificate of analysis prepared by an independent accredited laboratory that verifies and states:

- (1) The consumable hemp product is from a batch that has been tested by the independent accredited laboratory;
- (2) The presence and concentration of cannabinoids, including delta-9 tetrahydrocannabinol, tetrahydrocannabinolic acid, cannabidiol, and any other cannabinoids for which the product is being marketed;

(3) The consumable hemp product is from a batch that contained a total delta-9 tetrahydrocannabinol concentration that did not exceed 0.3 percent on a dry weight basis as calculated pursuant to an official postdecarboxylation analysis, as provided in Iowa Code section 204.8; and

(4) The consumable hemp product is from a batch that has been tested for pesticides, residual solvents, metals, harmful pathogens, and toxicants and does not exceed limits established in this rule.

**32.3(2)** *Toxicant limits.* If a testing sample is found to contain levels of any pesticide, residual solvent, metal, harmful pathogen, or toxicant that exceeds limits enumerated in this rule or by Iowa law, the product shall be considered adulterated and shall not enter commerce. The following lists of contaminants do not constitute authorization to use or apply any of the following during hemp cultivation or processing.

*a.* Pesticide limits.

- (1) Acetamiprid, .2 parts per million.
- (2) Aldicarb, .4 parts per million.
- (3) Azoxystrobin, .2 parts per million.
- (4) Bifenazate, .2 parts per million.
- (5) Boscalid, .4 parts per million.
- (6) Carbaryl, .5 parts per million.
- (7) Carbofuran, .2 parts per million.
- (8) Chlorantraniliprole, .2 parts per million.
- (9) Chlorpyrifos, .6 parts per million.
- (10) Cypermethrin, 18 parts per million.
- (11) Diazinon, 2.6 parts per million.
- (12) Dichlorvos, .1 parts per million.
- (13) Ethoprophos, .4 parts per million.
- (14) Etofenprox, .4 parts per million.
- (15) Fipronil, 1 part per million.
- (16) Flonicamid, 1 part per million.
- (17) Imidacloprid, .4 parts per million.
- (18) Metalaxyl, .2 parts per million.

- (19) Methiocarb, .4 parts per million.
- (20) Methomyl, .4 parts per million.
- (21) Methyl parathion, 8.5 parts per million.
- (22) Myclobutanil, .3 parts per million.
- (23) Oxamyl, 1 part per million.
- (24) Permethrin, 1.1 parts per million.
- (25) Pyridaben, .2 parts per million.
- (26) Spiroxamine, 2 parts per million.
- (27) Tebuconazole, .4 parts per million.
- (28) Thiacloprid, .2 parts per million.
- (29) Thiamethoxam, .2 parts per million.
- b.* Residual solvent limits.
  - (1) 1,2-Dimethoxyethane, 100 parts per million.
  - (2) 1,4-Dioxane, 380 parts per million.
  - (3) 1-Butanol, 5,000 parts per million.
  - (4) 1-Pentanol, 5,000 parts per million.
  - (5) 1-Propanol, 5,000 parts per million.
  - (6) 2-Butanol, 5,000 parts per million.
  - (7) 2-Butanone, 5,000 parts per million.
  - (8) 2-Ethoxyethanol, 5,000 parts per million.
  - (9) 2-methylbutane, 5,000 parts per million.
  - (10) 2-Propanol (IPA), 5,000 parts per million.
  - (11) Acetone, 5,000 parts per million.
  - (12) Acetonitrile, 410 parts per million.
  - (13) Benzene, 2 parts per million.
  - (14) Butane, 5,000 parts per million.
  - (15) Cumene, 70 parts per million.
  - (16) Cyclohexane, 3,880 parts per million.
  - (17) Dichloromethane, 600 parts per million.
  - (18) 2,2-dimethylbutane, 290 parts per million.
  - (19) 2,3-dimethylbutane, 290 parts per million.
  - (20) 1,2-dimethylbenzene, 2,170 parts per million.
  - (21) 1,3-dimethylbenzene, 2,170 parts per million.
  - (22) 1,4-dimethylbenzene, 2,170 parts per million.
  - (23) Dimethyl sulfoxide, 5,000 parts per million.
  - (24) Ethanol, 5,000 parts per million.
  - (25) Ethyl acetate, 5,000 parts per million.
  - (26) Ethylbenzene, 2,170 parts per million.
  - (27) Ethyl ether, 5,000 parts per million.
  - (28) Ethylene glycol, 620 parts per million.
  - (29) Ethylene oxide, 50 parts per million.
  - (30) Heptane, 5,000 parts per million.
  - (31) n-Hexane, 290 parts per million.
  - (32) Isopropyl acetate, 5,000 parts per million.
  - (33) Methanol, 3,000 parts per million.
  - (34) Methylpropane, 5,000 parts per million.
  - (35) 2-Methylpentane, 290 parts per million.
  - (36) 3-Methylpentane, 290 parts per million.
  - (37) N,N-dimethylacetamide, 1,090 parts per million.
  - (38) Pentane, 5,000 parts per million.
  - (39) Propane, 5,000 parts per million.
  - (40) Pyridine, 200 parts per million.

- (41) Sulfolane, 160 parts per million.
- (42) Tetrahydrofuran, 720 parts per million.
- (43) Toluene, 890 parts per million.
- (44) Xylenes, Total (ortho-, meta-, para-), 2,170 parts per million.

c. Metals limits.

- (1) Cadmium, 0.3 parts per million.
- (2) Lead, 1.0 part per million.
- (3) Arsenic, 1.5 parts per million.
- (4) Mercury, 0.5 parts per million.

d. Microbiological impurities limits.

- (1) Shiga toxin-producing *Escherichia coli* (STEC), none present or no detection.
- (2) Total aerobic microbial count,  $1 \times 10^3$  CFU/g (max acceptable count: 2,000).
- (3) Salmonella, none present or no detection.
- (4) Total combined yeast mold count,  $1 \times 10^2$  CFU/g (max acceptable count: 200).

e. Mycotoxin limits.

- (1) Total aflatoxin (B1, B2, G1, G2), 20 parts per billion.
- (2) Ochratoxin, 20 parts per billion.

**32.3(3) Examination of records.** All documentation required by this rule shall be maintained by the consumable hemp establishment and provided to the department or other regulatory authority immediately upon request.

**32.3(4) Independent accredited laboratory.** A consumable hemp establishment shall not utilize an accredited laboratory in which it has an ownership interest, unless the consumable hemp establishment holds less than a 10 percent ownership interest in the accredited laboratory if the accredited laboratory is a publicly traded company.

[ARC 5404C, IAB 1/27/21, effective 3/3/21; ARC 5671C, IAB 6/2/21, effective 7/7/21]

**481—32.4(204) Packaging and labeling requirements.**

**32.4(1) Contents.** Each consumable hemp product intended for individual retail sale shall be labeled such that a reasonable consumer would plainly identify the product as a consumable hemp product and shall contain the following information:

- a. Lot number;
- b. Expiration date;
- c. Product name;
- d. Name, telephone number, and email address of the product manufacturer;
- e. If specific cannabinoids are contained within or marketed for the product, the number of milligrams of each cannabinoid per serving and serving size;
- f. A certificate of analysis that the batch contained a total delta-9 tetrahydrocannabinol concentration that did not exceed 0.3 percent on a dry weight basis as calculated pursuant to an official test as provided in Iowa Code section 204.8.

**32.4(2) Form.** The labeling requirements of paragraphs 32.4(1) “d” and “f” may be in the form of:

- a. A uniform resource locator (URL) for the manufacturer’s Internet website that provides or links to the information required by this section; or
- b. A QR code or other bar code that may be scanned and that leads to the information required on the label.

[ARC 5404C, IAB 1/27/21, effective 3/3/21]

**481—32.5(204) Applicability of other laws and regulations.**

**32.5(1)** A consumable hemp establishment shall comply with all relevant Iowa laws and regulations applicable to the manufacturing, processing, storage, distribution, and sale of food, including but not limited to Iowa Code chapter 137F (food establishments and food processing plants), Iowa Code chapter 137D (home bakeries), and regulations promulgated under those chapters.

**32.5(2)** An individual or entity subject to Iowa Code chapter 123 shall not introduce any consumable hemp product into the alcoholic beverage product for which the individual or entity is subject to Iowa

Code chapter 123, unless the consumable hemp product is generally recognized as safe by the Federal Food and Drug Administration and is thus not deemed adulterated pursuant to the Federal Food, Drug, and Cosmetic Act, Section 402. A consumable hemp retailer may introduce any consumable hemp product into alcoholic beverage products sold to consumers on a retail basis in intrastate commerce.

**32.5(3)** An individual or entity subject to Iowa Code chapter 189A shall not introduce any consumable hemp product into the meat or poultry product for which the individual or entity is subject to Iowa Code chapter 189A, unless the consumable hemp product is generally recognized as safe by the Federal Food and Drug Administration and is thus not deemed adulterated pursuant to the Federal Food, Drug, and Cosmetic Act, Section 402. A consumable hemp retailer may introduce any consumable hemp product into meat or poultry sold to consumers on a retail basis in intrastate commerce.

**32.5(4)** An individual or entity subject to Iowa Code chapters 190 to 192 shall not introduce any consumable hemp product into the dairy product for which the individual or entity is subject to Iowa Code chapters 190 to 192, unless the consumable hemp product is generally recognized as safe by the Federal Food and Drug Administration and is thus not deemed adulterated pursuant to the Federal Food, Drug, and Cosmetic Act, Section 402. A consumable hemp retailer may introduce any consumable hemp products into dairy products sold to consumers on a retail basis in intrastate commerce.

**32.5(5)** Consumable hemp products in interstate commerce are subject to federal law. Compliance with Iowa Code chapter 204 and this chapter does not represent compliance with federal law.  
[ARC 5404C, IAB 1/27/21, effective 3/3/21]

#### **481—32.6(204) Prohibitions.**

**32.6(1)** A consumable hemp establishment shall not manufacture, process, pack, hold, prepare, distribute, or sell consumable hemp products:

- a. On the premises of a private residence, except a portion of a private residence that is distinctly separate from any living space, that is dedicated to the production or sale of food, and that meets all applicable state and local regulations;
- b. On the premises of a temporary location, including but not limited to a food stand, roadside stand, temporary booth, or any other temporary structure;
- c. Door to door;
- d. Through vending machines; or
- e. At private parties.

**32.6(2)** A consumable hemp product may be sold at a stand at a farmers market, provided:

- a. The farmers market is listed on the Iowa department of agriculture and land stewardship's farmers market directory;
- b. The individual selling the consumable hemp maintains a valid consumable hemp retailer registration at any location where consumable hemp is stored;
- c. The consumable hemp establishment registration is posted in plain sight at the farmers market stand; and
- d. All consumable hemp products sold are listed and maintained up to date with the department.

**32.6(3)** A consumable hemp product label and any associated marketing materials shall not contain any claims that the consumable hemp product can be used in the diagnosis, cure, mitigation, treatment, or prevention of disease, or is intended to affect the structure or any function of the body.

**32.6(4)** A consumable hemp retailer shall not manufacture, process, package, repackage, relabel, mix, blend, or otherwise manipulate a consumable hemp product. This subrule does not apply to a food service establishment that utilizes a consumable hemp product from an approved hemp source as a food ingredient intended for immediate consumption by the consumer, provided that the food service establishment discloses all label information required by rule 481—32.4(204) (packaging and labeling requirements) to the consumer through the menu, a menu board, placard, table tent, or other effective means.

**32.6(5)** A consumable hemp product that does not conform to this chapter shall be considered adulterated or misbranded and shall not enter commerce.

[ARC 5404C, IAB 1/27/21, effective 3/3/21]

**481—32.7(204) Violations and enforcement.**

**32.7(1)** Any consumable hemp product introduced into commerce by an individual or entity without a consumable hemp registration approved by the department in accordance with rule 481—32.2(204) (registration and posting) is subject to immediate embargo.

**32.7(2)** A consumable hemp product that is adulterated or misbranded when introduced into commerce is subject to immediate embargo.

**32.7(3)** A consumable hemp product that the department reasonably believes may be injurious to public health or that has entered commerce and is not in conformance with this chapter is subject to immediate embargo.

**32.7(4)** The embargo of a consumable hemp product shall be effective until such a time as the violation is remedied or the product is disposed of in a reasonable manner as determined by the department. If the violation cannot be remedied and disposal is required, the cost of disposal is the responsibility of the consumable hemp establishment. Disposal shall be observed by a person approved by the department. The embargo of a consumable hemp product may be appealed in accordance with rule 481—32.8(204) (denial, suspension, or revocation of registration).

**32.7(5)** A consumable hemp manufacturer shall conduct a recall of a consumable hemp product lot that has been tested and found to be adulterated. The cost of a recall or disposal of the product is the responsibility of the consumable hemp manufacturer.

[ARC 5404C, IAB 1/27/21, effective 3/3/21]

**481—32.8(204) Denial, suspension, or revocation of registration.** The department may deny, suspend, or revoke a registration in any case where the department finds that there has been repeated failure on the part of the consumable hemp establishment to comply with the provisions of this chapter, or for any of the following reasons:

**32.8(1)** Failure to register. An individual or entity that introduces a consumable hemp product into commerce without a consumable hemp registration approved by the department in accordance with rule 481—32.2(204) (registration and posting) may be denied a consumable hemp registration for a period of up to 30 days for a first violation; up to one year for a second violation; and up to five years for a third or any subsequent violation.

**32.8(2)** Nonconforming consumable hemp product. A registered consumable hemp establishment that introduces a consumable hemp product into commerce that is not in conformance with Iowa Code chapter 204 or this chapter is subject to the immediate revocation of its registration.

**32.8(3)** Qualifying criminal offense.

*a.* The conviction of any individual with an ownership interest in a consumable hemp establishment constituting a felony, serious misdemeanor, or aggravated misdemeanor and resulting from an activity constituting a criminal offense in the consumable hemp establishment may result in the denial, suspension, or revocation of the registration.

*b.* A conviction for committing a criminal offense involving a controlled substance as described in Iowa Code section 204.7 may result in the denial, suspension, or revocation of the registration.

*c.* A certified copy of the final order or judgment of conviction or plea of guilty shall be conclusive evidence of the conviction of the registration holder.

*d.* A deferred judgment, until discharged, shall be considered a conviction for purposes of this rule.

**32.8(4)** False or misleading information. Providing false or misleading information to the department under this chapter, including by submitting a false registration, may result in the denial, suspension, or revocation of the registration.

**32.8(5)** Failure to comply. Failing to comply with an order issued by the department under this chapter may result in the denial, suspension, or revocation of the registration.

**32.8(6)** Successive violations. A third violation of any provision of this chapter in a five-year period shall result in the denial, suspension, or revocation of the registration. The department shall disapprove any registration of a consumable hemp establishment for a five-year period following the date of the last violation.

**32.8(7)** Materially false information supplied. An individual or entity who materially falsifies any information contained in a consumable hemp registration shall be ineligible for registration.  
[ARC 5404C, IAB 1/27/21, effective 3/3/21]

**481—32.9(204) Inspection and access to records.** The department may enter a consumable hemp establishment at any reasonable hour to assess compliance with Iowa Code chapter 204 and these rules. The manager or person in charge of the consumable hemp establishment shall afford free access to every part of the premises, including access to records related to consumable hemp products, and shall render all aid and assistance necessary to enable the regulatory authority to make a thorough and complete assessment.  
[ARC 5404C, IAB 1/27/21, effective 3/3/21]

**481—32.10(204) Public examination of records.**

**32.10(1) Public information.** Generally, information collected by the food and consumer safety bureau and contractors is considered public information. Records are stored in computer files and are not matched with any other data system. Information is available for public review and will be provided when requested from the office of the director.

**32.10(2) Confidential information.**

*a.* The following are examples of confidential records:

- (1) Trade secrets and proprietary information including items such as formulations, processes, policies and procedures, and customer lists;
  - (2) Health information related to foodborne illness complaints and outbreaks;
  - (3) The name or any identifying information of a person who files a complaint with the department;
- and
- (4) Other state or federal agencies' records.

*b.* A party claiming that information submitted to the department contains trade secrets or proprietary information should clearly mark those portions of the submission as confidential/trade secret.

**32.10(3) Other agencies' records.** For records of other state or federal agencies, the department shall refer the requester of such information to the appropriate agency.  
[ARC 5404C, IAB 1/27/21, effective 3/3/21]

**481—32.11(204) Appeals.** All decisions of the food and consumer safety bureau may be contested by an adversely affected party. A request for a hearing must be made in writing to the Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319, within 30 days of the mailing or service of a decision. Appeals and hearings are controlled by 481—Chapter 9.  
[ARC 5404C, IAB 1/27/21, effective 3/3/21]

These rules are intended to implement 2020 Iowa Acts, House File 2581.

[Filed ARC 5404C (Notice ARC 5265C, IAB 11/4/20), IAB 1/27/21, effective 3/3/21]

[Filed ARC 5671C (Notice ARC 5552C, IAB 4/7/21), IAB 6/2/21, effective 7/7/21]



## PROFESSIONAL LICENSURE DIVISION[645]

Created within the Department of Public Health[641] by 1986 Iowa Acts, chapter 1245.  
Prior to 7/29/87, for Chs. 20 to 22 see Health Department[470] Chs. 152 to 154.

### CHAPTERS 1 to 3

Reserved

### CHAPTER 4

#### BOARD ADMINISTRATIVE PROCESSES

- 4.1(17A) Definitions
- 4.2(17A) Purpose of board
- 4.3(17A,147,272C) Organization of board and proceedings
- 4.4(17A) Official communications
- 4.5(17A) Office hours
- 4.6(21) Public meetings
- 4.7(147) Licensure by reciprocal agreement
- 4.8(147) Duplicate certificate or wallet card
- 4.9(147) Reissued certificate or wallet card
- 4.10(17A,147,272C) License denial
- 4.11(272C) Audit of continuing education
- 4.12(272C,83GA,SF2325) Automatic exemption
- 4.13(272C) Grounds for disciplinary action
- 4.14(272C) Continuing education exemption for disability or illness
- 4.15(147,272C) Order for physical, mental, or clinical competency examination or alcohol or drug screening
- 4.16(252J,272D) Noncompliance rules regarding child support and nonpayment of state debt

### CHAPTER 5

#### FEEES

- 5.1(147,152D) Athletic training license fees
- 5.2(147,158) Barbering license fees
- 5.3(147,154D) Behavioral science license fees
- 5.4(151) Chiropractic license fees
- 5.5(147,157) Cosmetology arts and sciences license fees
- 5.6(147,152A) Dietetics license fees
- 5.7(147,154A) Hearing aid specialists license fees
- 5.8(147) Massage therapy license fees
- 5.9(147,156) Mortuary science license fees
- 5.10(147,155) Nursing home administrators license fees
- 5.11(147,148B) Occupational therapy license fees
- 5.12(147,154) Optometry license fees
- 5.13(147,148A) Physical therapy license fees
- 5.14(148C) Physician assistants license fees
- 5.15(147,148F,149) Podiatry license fees
- 5.16(147,154B) Psychology license fees
- 5.17(147,152B) Respiratory care license fees
- 5.18(147,154E) Sign language interpreters and transliterators license fees
- 5.19(147,154C) Social work license fees
- 5.20(147) Speech pathology and audiology license fees

CHAPTER 6  
PETITIONS FOR RULE MAKING

- 6.1(17A) Petition for rule making  
6.2(17A) Inquiries

CHAPTER 7  
AGENCY PROCEDURE FOR RULE MAKING

- 7.1(17A) Adoption by reference

CHAPTER 8  
DECLARATORY ORDERS  
(Uniform Rules)

- 8.1(17A) Petition for declaratory order  
8.2(17A) Notice of petition  
8.3(17A) Intervention  
8.5(17A) Inquiries

CHAPTER 9  
COMPLAINTS AND INVESTIGATIONS

- 9.1(272C) Complaints  
9.2(272C) Report of malpractice claims or actions or disciplinary actions  
9.3(272C) Report of acts or omissions  
9.4(272C) Investigation of complaints or reports  
9.5(17A,272C) Issuance of investigatory subpoenas  
9.6(272C) Peer review committees  
9.7(17A) Appearance

CHAPTER 10  
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES  
(Uniform Rules)

- 10.1(17A,22) Definitions  
10.3(17A,22) Requests for access to records  
10.5(17A,22) Request for treatment of a record as a confidential record and its withholding from examination  
10.6(17A,22) Procedures by which additions, dissents, or objections may be entered into certain records  
10.9(17A,22) Disclosures without the consent of the subject  
10.10(17A,22) Routine use  
10.11(17A,22) Consensual disclosure of confidential records  
10.12(17A,22) Release to subject  
10.13(17A,22) Availability of records  
10.14(17A,22) Personally identifiable information  
10.15(22) Other groups of records routinely available for public inspection  
10.16(17A,22) Applicability

CHAPTER 11  
CONTESTED CASES

- 11.1(17A) Scope and applicability  
11.2(17A) Definitions  
11.3(17A) Time requirements  
11.4(17A) Probable cause  
11.5(17A) Legal review  
11.6(17A) Statement of charges and notice of hearing  
11.7(17A,272C) Legal representation

11.8(17A,272C)	Presiding officer in a disciplinary contested case
11.9(17A)	Presiding officer in a nondisciplinary contested case
11.10(17A)	Disqualification
11.11(17A)	Consolidation—severance
11.12(17A)	Answer
11.13(17A)	Service and filing
11.14(17A)	Discovery
11.15(17A,272C)	Issuance of subpoenas in a contested case
11.16(17A)	Motions
11.17(17A)	Prehearing conferences
11.18(17A)	Continuances
11.19(17A,272C)	Hearing procedures
11.20(17A)	Evidence
11.21(17A)	Default
11.22(17A)	Ex parte communication
11.23(17A)	Recording costs
11.24(17A)	Interlocutory appeals
11.25(17A)	Applications for rehearing
11.26(17A)	Stays of agency actions
11.27(17A)	No factual dispute contested cases
11.28(17A)	Emergency adjudicative proceedings
11.29(17A)	Appeal
11.30(272C)	Publication of decisions
11.31(272C)	Reinstatement
11.32(17A,272C)	License denial

#### CHAPTER 12 INFORMAL SETTLEMENT

12.1(17A,272C)	Informal settlement
----------------	---------------------

#### CHAPTER 13 DISCIPLINE

13.1(272C)	Method of discipline
13.2(272C)	Discretion of board
13.3(272C)	Conduct of persons attending meetings

#### CHAPTERS 14 and 15 Reserved

#### CHAPTER 16 IMPAIRED PRACTITIONER REVIEW COMMITTEE

16.1(272C)	Definitions
16.2(272C)	Purpose
16.3(272C)	Composition of the committee
16.4(272C)	Organization of the committee
16.5(272)	Eligibility
16.6(272C)	Meetings
16.7(272C)	Terms of participation
16.8(272C)	Noncompliance
16.9(272C)	Practice restrictions
16.10(272C)	Limitations
16.11(272C)	Confidentiality

CHAPTER 17  
MATERIALS FOR BOARD REVIEW

17.1(147) Materials for board review

CHAPTER 18  
WAIVERS OR VARIANCES FROM ADMINISTRATIVE RULES

18.1(17A,147,272C) Definitions  
 18.2(17A,147,272C) Scope of chapter  
 18.3(17A,147,272C) Applicability of chapter  
 18.4(17A,147,272C) Criteria for waiver or variance  
 18.5(17A,147,272C) Filing of petition  
 18.6(17A,147,272C) Content of petition  
 18.7(17A,147,272C) Additional information  
 18.8(17A,147,272C) Notice  
 18.9(17A,147,272C) Hearing procedures  
 18.10(17A,147,272C) Ruling  
 18.11(17A,147,272C) Public availability  
 18.12(17A,147,272C) Summary reports  
 18.13(17A,147,272C) Cancellation of a waiver  
 18.14(17A,147,272C) Violations  
 18.15(17A,147,272C) Defense  
 18.16(17A,147,272C) Judicial review

CHAPTER 19  
Reserved

CHAPTER 20  
MILITARY SERVICE, VETERAN RECIPROCITY, AND SPOUSES OF ACTIVE DUTY SERVICE  
MEMBERS

20.1(272C) Definitions  
 20.2(272C) Military education, training, and service credit  
 20.3(272C) Veteran and active duty military spouse reciprocity

*BARBERS*

CHAPTER 21  
LICENSURE

21.1(158) Definitions  
 21.2(158) Requirements for licensure  
 21.3(158) Examination requirements for barbers and barber instructors  
 21.4 Reserved  
 21.5(158) Licensure by endorsement  
 21.6 Reserved  
 21.7(158) Temporary permits to practice barbering  
 21.8(158) Demonstrator's permit  
 21.9(158) License renewal  
 21.10 Reserved  
 21.11(158) Requirements for a barbershop license  
 21.12(158) Barbershop license renewal  
 21.13 to 21.15 Reserved  
 21.16(17A,147,272C) License reactivation  
 21.17(17A,147,272C) Reactivation of a barbershop license  
 21.18(17A,147,272C) License reinstatement

## CHAPTER 22

## INFECTION CONTROL FOR BARBERSHOPS AND BARBER SCHOOLS

22.1(158)	Definitions
22.2(158)	Infection control rules and inspection report
22.3(147)	Display requirements for barbershops
22.4(158)	Responsibilities of barbershop owner and supervisor
22.5(158)	Building standards
22.6(158)	Barbershops in residential buildings
22.7(158)	Barbershops adjacent to other businesses
22.8(142D,158)	Smoking
22.9(158)	Personal cleanliness
22.10(158)	Universal protocols
22.11(158)	Minimum equipment and supplies
22.12(158)	Disinfection and sterilizing instruments and equipment
22.13	Reserved
22.14(158)	Porous instruments and supplies that cannot be disinfected
22.15(158)	Semisolids, dusters, and styptics
22.16(158)	Blood exposure procedures
22.17(158)	Prohibited hazardous substances and use of products
22.18(158)	Proper protection of neck
22.19(158)	Proper laundering and storage
22.20(158)	Pets
22.21(158)	Records

## CHAPTER 23

## BARBER SCHOOLS

23.1(158)	Definitions
23.2(158)	Licensing for barber schools
23.3(158)	School license renewal
23.4(272C)	Inactive school license
23.5	Reserved
23.6(158)	Physical requirements for barber schools
23.7(158)	Minimum equipment requirements
23.8(158)	Course of study requirements
23.9(158)	Instructors
23.10(158)	Students
23.11(158)	Attendance requirements
23.12(158)	Graduate of a barber school
23.13(147)	Records requirements
23.14(158)	Public notice
23.15(158)	Apprenticeship
23.16(158)	Mentoring program

## CHAPTER 24

## CONTINUING EDUCATION FOR BARBERS

24.1(158)	Definitions
24.2(158)	Continuing education requirements
24.3(158,272C)	Standards

CHAPTER 25  
DISCIPLINE FOR BARBERS, BARBER INSTRUCTORS,  
BARBERSHOPS AND BARBER SCHOOLS

- 25.1(158) Definitions  
25.2(272C) Grounds for discipline  
25.3(158,272C) Method of discipline  
25.4(272C) Discretion of board

CHAPTERS 26 to 30  
Reserved

*BEHAVIORAL SCIENTISTS*

CHAPTER 31  
LICENSURE OF MARITAL AND FAMILY THERAPISTS,  
MENTAL HEALTH COUNSELORS, BEHAVIOR ANALYSTS, AND ASSISTANT BEHAVIOR  
ANALYSTS

- 31.1(154D) Definitions  
31.2(154D) Requirements for permanent and temporary licensure as a mental health counselor or marriage and family therapist  
31.3(154D) Examination requirements for mental health counselors and marital and family therapists  
31.4(154D) Educational qualifications for marital and family therapists  
31.5(154D) Clinical experience requirements for marital and family therapists  
31.6(154D) Educational qualifications for mental health counselors  
31.7(154D) Clinical experience requirements for mental health counselors  
31.8(154D) Licensure by endorsement for mental health counselors and marital and family therapists  
31.9(147) Licensure of behavior analysts and assistant behavior analysts  
31.10(147) License renewal for mental health counselors and marriage and family therapists  
31.11(272C) Initial licensing, reactivation, and license renewal for behavior analysts and assistant behavior analysts  
31.12(147) Licensee record keeping  
31.13 to 31.15 Reserved  
31.16(17A,147,272C) License reactivation for mental health counselors and marital and family therapists  
31.17(17A,147,272C) License reinstatement  
31.18(154D) Marital and family therapy and mental health counselor services subject to regulation  
31.19(154D) Temporary licensees

CHAPTER 32  
CONTINUING EDUCATION FOR MARITAL AND  
FAMILY THERAPISTS AND MENTAL HEALTH COUNSELORS

- 32.1(272C) Definitions  
32.2(272C) Continuing education requirements  
32.3(154D,272C) Standards

CHAPTER 33  
DISCIPLINE FOR MARITAL AND FAMILY THERAPISTS,  
MENTAL HEALTH COUNSELORS, BEHAVIOR ANALYSTS, AND ASSISTANT BEHAVIOR  
ANALYSTS

- 33.1(154D) Definitions  
33.2(154D,272C) Grounds for discipline

- 33.3(147,272C) Method of discipline  
33.4(272C) Discretion of board

## CHAPTERS 34 to 40

Reserved

*CHIROPRACTIC*

## CHAPTER 41

## LICENSURE OF CHIROPRACTIC PHYSICIANS

- 41.1(151) Definitions  
41.2(151) Requirements for licensure  
41.3(151) Examination requirements  
41.4(151) Educational qualifications  
41.5(151) Temporary certificate  
41.6(151) Licensure by endorsement  
41.7 Reserved  
41.8(151) License renewal  
41.9 to 41.13 Reserved  
41.14(17A,147,272C) License reactivation  
41.15(17A,147,272C) License reinstatement

## CHAPTER 42

## COLLEGES FOR CHIROPRACTIC PHYSICIANS

- 42.1(151) Definitions  
42.2(151) Board-approved chiropractic colleges  
42.3(151) Practice by chiropractic interns and chiropractic residents  
42.4(151) Approved chiropractic preceptorship program  
42.5(151) Approved chiropractic physician preceptors  
42.6(151) Termination of preceptorship

## CHAPTER 43

## PRACTICE OF CHIROPRACTIC PHYSICIANS

- 43.1(151) Definitions  
43.2(147,272C) Principles of chiropractic ethics  
43.3(151,514F) Utilization and cost control review  
43.4(151) Chiropractic insurance consultant  
43.5(151) Acupuncture  
43.6 Reserved  
43.7(151) Adjunctive procedures  
43.8(151) Physical examination  
43.9(151) Gonad shielding  
43.10(151) Record keeping  
43.11(151) Billing procedures  
43.12(151) Chiropractic assistants

## CHAPTER 44

## CONTINUING EDUCATION FOR CHIROPRACTIC PHYSICIANS

- 44.1(151) Definitions  
44.2(272C) Continuing education requirements  
44.3(151,272C) Standards

CHAPTER 45  
DISCIPLINE FOR CHIROPRACTIC PHYSICIANS

45.1(151)	Definitions
45.2(151,272C)	Grounds for discipline
45.3(147,272C)	Method of discipline
45.4(272C)	Discretion of board

CHAPTERS 46 to 59  
Reserved

*COSMETOLOGISTS*

CHAPTER 60  
LICENSURE OF COSMETOLOGISTS, ELECTROLOGISTS, ESTHETICIANS,  
MANICURISTS, NAIL TECHNOLOGISTS, AND INSTRUCTORS  
OF COSMETOLOGY ARTS AND SCIENCES

60.1(157)	Definitions
60.2(157)	Requirements for licensure
60.3(157)	Criteria for licensure in specific practice disciplines
60.4(157)	Practice-specific training requirements
60.5(157)	Licensure restrictions relating to practice
60.6(157)	Consent form requirements
60.7(157)	Licensure by endorsement
60.8(157)	License renewal
60.9 to 60.16	Reserved
60.17(17A,147,272C)	License reactivation
60.18(17A,147,272C)	License reinstatement

CHAPTER 61  
LICENSURE OF SALONS AND SCHOOLS  
OF COSMETOLOGY ARTS AND SCIENCES

61.1(157)	Definitions
61.2(157)	Salon licensing
61.3(157)	Salon license renewal
61.4(272C)	Inactive salon license
61.5(157)	Display requirements for salons
61.6(147)	Duplicate certificate or wallet card for salons
61.7(157)	Licensure for schools of cosmetology arts and sciences
61.8(157)	School license renewal
61.9(272C)	Inactive school license
61.10(157)	Display requirements for schools
61.11	Reserved
61.12(157)	Physical requirements for schools of cosmetology arts and sciences
61.13(157)	Minimum equipment requirements
61.14(157)	Course of study requirements
61.15(157)	Instructors
61.16(157)	Student instructors
61.17(157)	Students
61.18(157)	Attendance requirements
61.19(157)	Accelerated learning
61.20(157)	Mentoring program
61.21(157)	Graduate of a school of cosmetology arts and sciences
61.22(157)	Records requirements

- 61.23(157) Classrooms used for other educational purposes  
 61.24(157) Public notice

## CHAPTER 62

Reserved

## CHAPTER 63

## INFECTION CONTROL FOR SALONS AND SCHOOLS OF COSMETOLOGY ARTS AND SCIENCES

- 63.1(157) Definitions  
 63.2(157) Infection control rules and inspection report  
 63.3(157) Responsibilities of salon owners  
 63.4(157) Responsibilities of licensees  
 63.5(157) Joint responsibility  
 63.6(157) Building standards  
 63.7(157) Salons in residential buildings  
 63.8(157) Salons adjacent to other businesses  
 63.9(157) Smoking  
 63.10(157) Personal cleanliness  
 63.11(157) Universal precautions  
 63.12(157) Blood exposure procedures  
 63.13(157) Disinfecting and sterilizing instruments and equipment  
 63.14(157) Porous instruments and supplies that cannot be disinfected  
 63.15 Reserved  
 63.16(157) Infection control methods for creams, cosmetics and applicators  
 63.17 Reserved  
 63.18(157) Prohibited hazardous substances and use of products and equipment  
 63.19(157) Proper protection of neck  
 63.20(157) Proper laundering and storage  
 63.21(157) Pets  
 63.22(157) General maintenance  
 63.23(157) Records  
 63.24(157) Salons and schools providing electrology or esthetics  
 63.25(157) Cleaning and disinfecting circulating and noncirculating tubs, bowls, and spas  
 63.26(157) Paraffin wax

## CHAPTER 64

## CONTINUING EDUCATION FOR COSMETOLOGY ARTS AND SCIENCES

- 64.1(157) Definitions  
 64.2(157) Continuing education requirements  
 64.3(157,272C) Standards

## CHAPTER 65

## DISCIPLINE FOR COSMETOLOGY ARTS AND SCIENCES LICENSEES, INSTRUCTORS, SALONS, AND SCHOOLS

- 65.1(157,272C) Definitions  
 65.2(157,272C) Grounds for discipline  
 65.3(157,272C) Method of discipline  
 65.4(272C) Discretion of board  
 65.5(157) Civil penalties against nonlicensees

## CHAPTERS 66 to 80

Reserved

*DIETITIANS*CHAPTER 81  
LICENSURE OF DIETITIANS

81.1(152A)	Definitions
81.2(152A)	Nutrition care
81.3	Reserved
81.4(152A)	Requirements for licensure
81.5(152A)	Educational qualifications
81.6(152A)	Supervised experience
81.7(152A)	Licensure by endorsement
81.8	Reserved
81.9(152A)	License renewal
81.10 to 81.14	Reserved
81.15(17A,147,272C)	License reactivation
81.16(17A,147,272C)	License reinstatement
81.17(152A,272C)	Telehealth visits

CHAPTER 82  
CONTINUING EDUCATION FOR DIETITIANS

82.1(152A)	Definitions
82.2(152A)	Continuing education requirements
82.3(152A,272C)	Standards

CHAPTER 83  
DISCIPLINE FOR DIETITIANS

83.1(152A)	Definitions
83.2(152A,272C)	Grounds for discipline
83.3(152A,272C)	Method of discipline
83.4(272C)	Discretion of board

CHAPTERS 84 to 99  
Reserved*FUNERAL DIRECTORS*CHAPTER 100  
PRACTICE OF FUNERAL DIRECTORS, FUNERAL ESTABLISHMENTS,  
AND CREMATION ESTABLISHMENTS

100.1(156)	Definitions
100.2(156)	Funeral director duties
100.3(156)	Permanent identification tag
100.4(142,156)	Removal and transfer of human remains
100.5(135,144)	Burial transit permits
100.6(156)	Preparation and embalming activities
100.7(156)	Arranging and directing funeral and memorial ceremonies
100.8(142,156)	Unclaimed human remains for scientific use
100.9(144)	Disinterments
100.10(156)	Cremation of human remains
100.11(156)	Records to be retained by a funeral establishment

CHAPTER 101  
LICENSURE OF FUNERAL DIRECTORS, FUNERAL ESTABLISHMENTS, AND  
CREMATION ESTABLISHMENTS

- 101.1(156) Definitions
- 101.2(156) Requirements for licensure
- 101.3(147,156) Internship and preceptorship
- 101.4(156) Student practicum
- 101.5(156) Funeral establishment license or cremation establishment license
- 101.6(156) Licensure by endorsement
- 101.7(156) Renewal of funeral director license
- 101.8(272C) Renewal of a funeral establishment license or a cremation establishment license
- 101.9(272C) Inactive funeral establishment license or cremation establishment license
- 101.10(17A,147,272C) Reinstatement of a funeral establishment license or a cremation establishment license
- 101.11(17A,147,272C) License reactivation
- 101.12(17A,147,272C) Reinstatement of a funeral director license

CHAPTER 102  
CONTINUING EDUCATION FOR FUNERAL DIRECTORS

- 102.1(272C) Definitions
- 102.2(272C) Continuing education requirements
- 102.3(156,272C) Standards
- 102.4 Reserved
- 102.5(83GA,SF2325) Automatic exemption

CHAPTER 103  
DISCIPLINARY PROCEEDINGS

- 103.1(156) Definitions
- 103.2(17A,147,156,272C) Disciplinary authority
- 103.3(17A,147,156,272C) Grounds for discipline against funeral directors
- 103.4(17A,147,156,272C) Grounds for discipline against funeral establishments and cremation establishments
- 103.5(17A,147,156,272C) Method of discipline
- 103.6(17A,147,156,272C) Board discretion in imposing disciplinary sanctions
- 103.7 Reserved
- 103.8(17A,147,156,272C) Informal discussion

CHAPTER 104  
ENFORCEMENT PROCEEDINGS AGAINST NONLICENSEES

- 104.1(156) Civil penalties against nonlicensees
- 104.2(156) Unlawful practices
- 104.3(156) Investigations
- 104.4(156) Subpoenas
- 104.5(156) Notice of intent to impose civil penalties
- 104.6(156) Requests for hearings
- 104.7(156) Factors to consider
- 104.8(156) Enforcement options

CHAPTERS 105 to 120  
Reserved

*HEARING AID SPECIALISTS*

## CHAPTER 121

## LICENSURE OF HEARING AID SPECIALISTS

121.1(154A)	Definitions
121.2(154A)	Temporary permits
121.3(154A)	Supervision requirements
121.4(154A)	Requirements for initial licensure
121.5(154A)	Examination requirements
121.6(154A)	Licensure by endorsement
121.7	Reserved
121.8(154A)	Display of license
121.9(154A)	License renewal
121.10 to 121.13	Reserved
121.14(17A,147,272C)	License reactivation
121.15(17A,147,272C)	License reinstatement

## CHAPTER 122

## CONTINUING EDUCATION FOR HEARING AID SPECIALISTS

122.1(154A)	Definitions
122.2(154A)	Continuing education requirements
122.3(154A,272C)	Standards

## CHAPTER 123

## PRACTICE OF HEARING AID DISPENSING

123.1(154A)	Definitions
123.2(154A)	Requirements prior to sale of a hearing aid
123.3(154A)	Requirements for sales receipt
123.4(154A)	Requirements for record keeping

## CHAPTER 124

## DISCIPLINE FOR HEARING AID SPECIALISTS

124.1(154A,272C)	Definitions
124.2(154A,272C)	Grounds for discipline
124.3(154A,272C)	Method of discipline
124.4(272C)	Discretion of board

## CHAPTERS 125 to 130

Reserved

*MASSAGE THERAPISTS*

## CHAPTER 131

## LICENSURE OF MASSAGE THERAPISTS

131.1(152C)	Definitions
131.2(152C)	Requirements for licensure
131.3(152C)	Educational qualifications
131.4(152C)	Examination requirements
131.5(152C)	Temporary licensure of a licensee from another state
131.6(152C)	Licensure by endorsement
131.7	Reserved
131.8(152C)	License renewal
131.9 to 131.13	Reserved

- 131.14(17A,147,272C) License reactivation
- 131.15(17A,147,272C) License reinstatement

## CHAPTER 132

## MESSAGE THERAPY EDUCATION CURRICULUM

- 132.1(152C) Definitions
- 132.2(152C) Application for approval of massage therapy education curriculum
- 132.3(152C) Curriculum requirements
- 132.4(152C) Student clinical practicum standards
- 132.5(152C) School certificate or diploma
- 132.6(152C) School records retention
- 132.7(152C) Massage school curriculum compliance
- 132.8(152C) Denial or withdrawal of approval

## CHAPTER 133

## CONTINUING EDUCATION FOR MESSAGE THERAPISTS

- 133.1(152C) Definitions
- 133.2(152C) Continuing education requirements
- 133.3(152C,272C) Continuing education criteria

## CHAPTER 134

## DISCIPLINE FOR MESSAGE THERAPISTS

- 134.1(152C) Definitions
- 134.2(152C,272C) Grounds for discipline
- 134.3(147,272C) Method of discipline
- 134.4(272C) Discretion of board
- 134.5(152C) Civil penalties

## CHAPTERS 135 to 140

Reserved

*NURSING HOME ADMINISTRATORS*

## CHAPTER 141

## LICENSURE OF NURSING HOME ADMINISTRATORS

- 141.1(155) Definitions
- 141.2(155) Requirements for licensure
- 141.3(147,155) Examination requirements
- 141.4(155) Educational qualifications
- 141.5(155) Practicum experience
- 141.6(155) Provisional license
- 141.7(155) Licensure by endorsement
- 141.8(147,155) Licensure by reciprocal agreement
- 141.9(147,155) License renewal
- 141.10 to 141.14 Reserved
- 141.15(17A,147,272C) License reactivation
- 141.16(17A,147,272C) License reinstatement

## CHAPTER 142

Reserved

## CHAPTER 143

## CONTINUING EDUCATION FOR NURSING HOME ADMINISTRATION

- 143.1(272C) Definitions
- 143.2(272C) Continuing education requirements

- 143.3(155,272C) Standards
- 143.4(155,272C) Audit of continuing education report
- 143.5(155,272C) Automatic exemption
- 143.6(272C) Continuing education exemption for disability or illness
- 143.7(155,272C) Grounds for disciplinary action

#### CHAPTER 144

##### DISCIPLINE FOR NURSING HOME ADMINISTRATORS

- 144.1(155) Definitions
- 144.2(155,272C) Grounds for discipline
- 144.3(155,272C) Method of discipline
- 144.4(272C) Discretion of board
- 144.5(155) Order for mental, physical, or clinical competency examination or alcohol or drug screening

#### CHAPTERS 145 to 179

Reserved

#### *OPTOMETRISTS*

#### CHAPTER 180

##### LICENSURE OF OPTOMETRISTS

- 180.1(154) Definitions
- 180.2(154) Requirements for licensure
- 180.3(154) Licensure by endorsement
- 180.4 Reserved
- 180.5(154) License renewal
- 180.6 to 180.10 Reserved
- 180.11(17A,147,272C) License reactivation
- 180.12(17A,147,272C) License reinstatement

#### CHAPTER 181

##### CONTINUING EDUCATION FOR OPTOMETRISTS

- 181.1(154) Definitions
- 181.2(154) Continuing education requirements
- 181.3(154,272C) Standards

#### CHAPTER 182

##### PRACTICE OF OPTOMETRISTS

- 182.1(154) Code of ethics
- 182.2(154,272C) Record keeping
- 182.3(154) Furnishing prescriptions
- 182.4(155A) Prescription drug orders
- 182.5(154) Use of injectables
- 182.6(154) Education and training approval
- 182.7(154) Education and training

#### CHAPTER 183

##### DISCIPLINE FOR OPTOMETRISTS

- 183.1(154) Definitions
- 183.2(154,272C) Grounds for discipline
- 183.3(147,272C) Method of discipline
- 183.4(272C) Discretion of board

## CHAPTERS 184 to 199

Reserved

*PHYSICAL AND OCCUPATIONAL THERAPISTS*

## CHAPTER 200

## LICENSURE OF PHYSICAL THERAPISTS AND PHYSICAL THERAPIST ASSISTANTS

200.1(147)	Definitions
200.2(147)	Requirements for licensure
200.3(147)	Physical therapy compact
200.4(147)	Examination requirements for physical therapists and physical therapist assistants
200.5(147)	Educational qualifications
200.6(147)	Delegation by a supervising physical therapist
200.7(147)	Licensure by endorsement
200.8	Reserved
200.9(147)	License renewal
200.10 to 200.14	Reserved
200.15(17A,147,272C)	License reactivation
200.16(17A,147,272C)	License reinstatement

## CHAPTER 201

PRACTICE OF PHYSICAL THERAPISTS  
AND PHYSICAL THERAPIST ASSISTANTS

201.1(148A,272C)	Code of ethics for physical therapists and physical therapist assistants
201.2(147)	Record keeping
201.3(147)	Telehealth visits

## CHAPTER 202

## DISCIPLINE FOR PHYSICAL THERAPISTS AND PHYSICAL THERAPIST ASSISTANTS

202.1(148A)	Definitions
202.2(272C)	Grounds for discipline
202.3(147,272C)	Method of discipline
202.4(272C)	Discretion of board

## CHAPTER 203

CONTINUING EDUCATION FOR PHYSICAL THERAPISTS  
AND PHYSICAL THERAPIST ASSISTANTS

203.1(272C)	Definitions
203.2(148A)	Continuing education requirements
203.3(148A,272C)	Standards

## CHAPTERS 204 and 205

Reserved

## CHAPTER 206

LICENSURE OF OCCUPATIONAL THERAPISTS  
AND OCCUPATIONAL THERAPY ASSISTANTS

206.1(147)	Definitions
206.2(147)	Requirements for licensure
206.3(147)	Limited permit to practice pending licensure
206.4	Reserved
206.5(147)	Practice of occupational therapy limited permit holders
206.6(147)	Examination requirements
206.7(147)	Educational qualifications

- 206.8(148B) Supervision requirements
- 206.9(147) Licensure by endorsement
- 206.10(147) License renewal
- 206.11(17A,147,272C) License reactivation
- 206.12(17A,147,272C) License reinstatement

## CHAPTER 207

CONTINUING EDUCATION FOR OCCUPATIONAL THERAPISTS  
AND OCCUPATIONAL THERAPY ASSISTANTS

- 207.1(148B) Definitions
- 207.2(272C) Continuing education requirements
- 207.3(148B,272C) Standards

## CHAPTER 208

PRACTICE OF OCCUPATIONAL THERAPISTS  
AND OCCUPATIONAL THERAPY ASSISTANTS

- 208.1(148B,272C) Code of ethics for occupational therapists and occupational therapy assistants
- 208.2(147) Record keeping
- 208.3(147) Telehealth visits

## CHAPTER 209

DISCIPLINE FOR OCCUPATIONAL THERAPISTS  
AND OCCUPATIONAL THERAPY ASSISTANTS

- 209.1(148B) Definitions
- 209.2(272C) Grounds for discipline
- 209.3(147,272C) Method of discipline
- 209.4(272C) Discretion of board

## CHAPTERS 210 to 219

Reserved

*PODIATRISTS*

## CHAPTER 220

## LICENSURE OF PODIATRISTS

- 220.1(149) Definitions
- 220.2(149) Requirements for licensure
- 220.3(149) Written examinations
- 220.4(149) Educational qualifications
- 220.5(149) Title designations
- 220.6(147,149) Temporary license
- 220.7(149) Licensure by endorsement
- 220.8 Reserved
- 220.9(149) License renewal
- 220.10 to 220.14 Reserved
- 220.15(17A,147,272C) License reactivation
- 220.16(17A,147,272C) License reinstatement

## CHAPTER 221

## LICENSURE OF ORTHOTISTS, PROSTHETISTS, AND PEDORTHISTS

- 221.1(148F) Definitions
- 221.2(148F) Transition period
- 221.3(148F) Requirements for licensure
- 221.4(148F) Written examinations

- 221.5(148F) Educational qualifications
- 221.6(148F) Licensure by endorsement
- 221.7(148F) License renewal
- 221.8(17A,147,272C) License reactivation
- 221.9(17A,147,272C) License reinstatement

## CHAPTER 222

## CONTINUING EDUCATION FOR PODIATRISTS

- 222.1(149,272C) Definitions
- 222.2(149,272C) Continuing education requirements
- 222.3(149,272C) Standards

## CHAPTER 223

## PRACTICE OF PODIATRY

- 223.1(149) Definitions
- 223.2(149) Requirements for administering conscious sedation
- 223.3(139A) Preventing HIV and HBV transmission
- 223.4(149) Unlicensed graduate of a podiatric college
- 223.5(149) Prescribing opioids

## CHAPTER 224

## DISCIPLINE FOR PODIATRISTS, ORTHOTISTS, PROSTHETISTS, AND PEDORTHISTS

- 224.1(148F,149) Definitions
- 224.2(148F,149,272C) Grounds for discipline
- 224.3(147,272C) Method of discipline
- 224.4(272C) Discretion of board
- 224.5 Reserved
- 224.6(148F,149,272C) Indiscriminately prescribing, administering or dispensing any drug for other than a lawful purpose

## CHAPTER 225

## CONTINUING EDUCATION FOR ORTHOTISTS, PROSTHETISTS, AND PEDORTHISTS

- 225.1(148F) Definitions
- 225.2(148F,272C) Continuing education requirements
- 225.3(148F,272C) Standards
- 225.4(148F,272C) Audit of continuing education report

## CHAPTERS 226 to 239

Reserved

*PSYCHOLOGISTS*

## CHAPTER 240

## LICENSURE OF PSYCHOLOGISTS

- 240.1(154B) Definitions
- 240.2(154B) Requirements for licensure
- 240.3(154B) Educational qualifications
- 240.4(154B) Examination requirements
- 240.5(154B,147) Title designations
- 240.6(154B) Supervised professional experience
- 240.7(154B) Certified health service provider in psychology
- 240.8(154B) Exemption to licensure
- 240.9(154B) Psychologists' supervision of unlicensed persons in a practice setting
- 240.10(147) Licensure by endorsement

- 240.11(147) Licensure by reciprocal agreement
- 240.12(85GA,ch1043) Requirements for provisional licensure
- 240.13(147) License renewal
- 240.14(17A,147,272C) License reactivation
- 240.15(17A,147,272C) License reinstatement

## CHAPTER 241

## CONTINUING EDUCATION FOR PSYCHOLOGISTS

- 241.1(272C) Definitions
- 241.2(272C) Continuing education requirements
- 241.3(154B,272C) Standards

## CHAPTER 242

## DISCIPLINE FOR PSYCHOLOGISTS

- 242.1(154B) Definitions
- 242.2(147,272C) Grounds for discipline
- 242.3(147,272C) Method of discipline
- 242.4(272C) Discretion of board

## CHAPTER 243

Reserved

## CHAPTER 244

## PRESCRIBING PSYCHOLOGISTS

- 244.1(148,154B) Definitions—joint rule
- 244.2(154B) Conditional prescription certificate
- 244.3(148,154B) Educational requirements for conditional prescription certificate—joint rule
- 244.4(148,154B) Supervised practice as a conditional prescribing psychologist—joint rule
- 244.5(154B) Prescription certificate
- 244.6(148,154B) Prescribing—joint rule
- 244.7(148,154B) Consultation with primary care physicians—joint rule
- 244.8(148,154B) Collaborative practice—joint rule
- 244.9(154B) Grounds for discipline
- 244.10(154B) List of psychologists
- 244.11(148,154B) Complaints—joint rule
- 244.12(148,154B) Joint waiver or variance—joint rule
- 244.13(148,154B) Amendment—joint rule

## CHAPTERS 245 to 260

Reserved

*RESPIRATORY CARE PRACTITIONERS*

## CHAPTER 261

## LICENSURE OF RESPIRATORY CARE PRACTITIONERS, POLYSOMNOGRAPHIC TECHNOLOGISTS, AND RESPIRATORY CARE AND POLYSOMNOGRAPHY PRACTITIONERS

- 261.1(148G,152B) Definitions
- 261.2(148G,152B) General requirements for licensure
- 261.3(152B) Additional requirements for respiratory care practitioner licensure
- 261.4(148G,152B) Additional requirements for polysomnographic technologist licensure
- 261.5(148G,152B) Requirements for dual licensure
- 261.6 and 261.7 Reserved
- 261.8(148G,152B) License renewal
- 261.9 to 261.13 Reserved

- 261.14(17A,147,272C) License reactivation
- 261.15(17A,147,272C) License reinstatement

## CHAPTER 262

CONTINUING EDUCATION FOR RESPIRATORY CARE PRACTITIONERS AND  
POLYSOMNOGRAPHIC TECHNOLOGISTS

- 262.1(148G,152B,272C) Definitions
- 262.2(148G,152B,272C) Continuing education requirements
- 262.3(148G,152B,272C) Standards
- 262.4 Reserved
- 262.5(148G,152B,272C) Automatic exemption
- 262.6(148G,152B,272C) Grounds for disciplinary action
- 262.7(148G,152B,272C) Continuing education exemption for disability or illness

## CHAPTER 263

DISCIPLINE FOR RESPIRATORY CARE PRACTITIONERS AND  
POLYSOMNOGRAPHIC TECHNOLOGISTS

- 263.1(148G,152B) Definitions
- 263.2(148G,152B,272C) Grounds for discipline
- 263.3(147,272C) Method of discipline
- 263.4(272C) Discretion of board

## CHAPTER 264

Reserved

## CHAPTER 265

PRACTICE OF RESPIRATORY CARE PRACTITIONERS AND  
POLYSOMNOGRAPHIC TECHNOLOGISTS

- 265.1(148G,152B,272C) Definitions
- 265.2(148G,152B,272C) Code of ethics
- 265.3(152B,272C) Intravenous administration
- 265.4(152B,272C) Setup and delivery of respiratory care equipment
- 265.5(152B,272C) Respiratory care as a practice
- 265.6(148G,272C) Practice of polysomnography
- 265.7(148G,152B,272C) Students
- 265.8(148G,272C) Location of polysomnography services

## CHAPTERS 266 to 279

Reserved

*SOCIAL WORKERS*

## CHAPTER 280

## LICENSURE OF SOCIAL WORKERS

- 280.1(154C) Definitions
- 280.2(154C) Social work services subject to regulation
- 280.3(154C) Requirements for licensure
- 280.4(154C) Written examination
- 280.5(154C) Educational qualifications
- 280.6(154C) Period of supervised professional practice for LISW
- 280.7(154C) Licensure by endorsement
- 280.8 Reserved
- 280.9(154C) License renewal
- 280.10 to 280.13 Reserved

- 280.14(17A,147,272C) License reactivation
- 280.15(17A,147,272C) License reinstatement

## CHAPTER 281

## CONTINUING EDUCATION FOR SOCIAL WORKERS

- 281.1(154C) Definitions
- 281.2(154C) Continuing education requirements
- 281.3(154C,272C) Standards

## CHAPTER 282

## PRACTICE OF SOCIAL WORKERS

- 282.1(154C) Definitions
- 282.2(154C) Rules of conduct

## CHAPTER 283

## DISCIPLINE FOR SOCIAL WORKERS

- 283.1(154B) Definitions
- 283.2(272C) Grounds for discipline
- 283.3(147,272C) Method of discipline
- 283.4(272C) Discretion of board

## CHAPTERS 284 to 299

Reserved

*SPEECH PATHOLOGISTS AND AUDIOLOGISTS*

## CHAPTER 300

## LICENSURE OF SPEECH PATHOLOGISTS AND AUDIOLOGISTS

- 300.1(147) Definitions
- 300.2(147) Speech pathology and audiology services subject to regulation
- 300.3(147) Requirements for licensure
- 300.4(147) Educational qualifications
- 300.5(147) Examination requirements
- 300.6(147) Temporary clinical license
- 300.7(147) Temporary permit
- 300.8(147) Use of assistants
- 300.9(147) Licensure by endorsement
- 300.10 Reserved
- 300.11(147) License renewal
- 300.12(17A,147,272C) Board meetings
- 300.13 to 300.16 Reserved
- 300.17(17A,147,272C) License reactivation
- 300.18(17A,147,272C) License reinstatement

## CHAPTERS 301 and 302

Reserved

## CHAPTER 303

CONTINUING EDUCATION FOR SPEECH PATHOLOGISTS  
AND AUDIOLOGISTS

- 303.1(147) Definitions
- 303.2(147) Continuing education requirements
- 303.3(147,272C) Standards

## CHAPTER 304

## DISCIPLINE FOR SPEECH PATHOLOGISTS AND AUDIOLOGISTS

- 304.1(147) Definitions
- 304.2(272C) Grounds for discipline
- 304.3(272C) Method of discipline
- 304.4(272C) Discretion of board

## CHAPTERS 305 to 325

Reserved

*PHYSICIAN ASSISTANTS*

## CHAPTER 326

## LICENSURE OF PHYSICIAN ASSISTANTS

- 326.1(148C) Definitions
- 326.2(148C) Requirements for licensure
- 326.3(148C) Temporary licensure
- 326.4(148C) Licensure by endorsement
- 326.5 Reserved
- 326.6(148C) Examination requirements
- 326.7(148C) Educational qualifications
- 326.8(148C) Supervision requirements
- 326.9(148C) License renewal
- 326.10 to 326.14 Reserved
- 326.15(148C,88GA,ch1020) Use of title
- 326.16(148C) Address change
- 326.17(148C) Student physician assistant
- 326.18(148C) Recognition of an approved program
- 326.19(17A,147,272C) License reactivation
- 326.20(17A,147,272C) License reinstatement

## CHAPTER 327

## PRACTICE OF PHYSICIAN ASSISTANTS

- 327.1(148C,88GA,ch1020) Duties
- 327.2(148C) Prohibition
- 327.3 Reserved
- 327.4(148C,88GA,ch1020) Remote medical site
- 327.5(147,88GA,ch1020) Identification as a physician assistant
- 327.6(147) Prescription requirements
- 327.7(147) Supplying—requirements for containers, labeling, and records
- 327.8(148C) Sharing information

## CHAPTER 328

## CONTINUING EDUCATION FOR PHYSICIAN ASSISTANTS

- 328.1(148C) Definitions
- 328.2(148C) Continuing education requirements
- 328.3(148C,272C) Standards

## CHAPTER 329

## DISCIPLINE FOR PHYSICIAN ASSISTANTS

- 329.1(148C) Definitions
- 329.2(148C,272C) Grounds for discipline
- 329.3(147,272C) Method of discipline
- 329.4(272C) Discretion of board

## CHAPTERS 330 to 350

Reserved

*ATHLETIC TRAINERS*

## CHAPTER 351

## LICENSURE OF ATHLETIC TRAINERS

351.1(152D)	Definitions
351.2(152D)	Requirements for licensure
351.3(152D)	Educational qualifications
351.4(152D)	Examination requirements
351.5(152D)	Documentation of physician direction
351.6(152D)	Athletic training plan for direct service
351.7(152D)	Licensure by endorsement
351.8	Reserved
351.9(147)	License renewal
351.10(272C)	Exemptions for inactive practitioners
351.11 and 351.12	Reserved
351.13(272C)	Lapsed licenses
351.14	Reserved
351.15(17A,147,272C)	License reactivation
351.16(17A,147,272C)	License reinstatement

## CHAPTER 352

## CONTINUING EDUCATION FOR ATHLETIC TRAINERS

352.1(272C)	Definitions
352.2(152D)	Continuing education requirements
352.3(152D,272C)	Standards
352.4(152D,272C)	Audit of continuing education report
352.5 and 352.6	Reserved
352.7(152D,272C)	Continuing education waiver for active practitioners
352.8(152D,272C)	Continuing education exemption for inactive practitioners
352.9	Reserved
352.10(152D,272C)	Reinstatement of inactive practitioners
352.11(272C)	Hearings

## CHAPTER 353

## DISCIPLINE FOR ATHLETIC TRAINERS

353.1(152D)	Definitions
353.2(152D,272C)	Grounds for discipline
353.3(152D,272C)	Method of discipline
353.4(272C)	Discretion of board

## CHAPTERS 354 to 360

Reserved

*SIGN LANGUAGE INTERPRETERS AND TRANSLITERATORS*

## CHAPTER 361

## LICENSURE OF SIGN LANGUAGE INTERPRETERS AND TRANSLITERATORS

361.1(154E)	Definitions
361.2(154E)	Requirements for licensure
361.3(154E)	Requirements for temporary license
361.4(154E)	Licensure by endorsement
361.5(154E)	License renewal

- 361.6 to 361.8 Reserved
- 361.9(17A,147,272C) License reactivation
- 361.10(17A,147,272C) License reinstatement

CHAPTER 362  
CONTINUING EDUCATION FOR SIGN LANGUAGE INTERPRETERS AND  
TRANSLITERATORS

- 362.1(154E,272C) Definitions
- 362.2(154E,272C) Continuing education requirements
- 362.3(154E,272C) Standards

CHAPTER 363  
DISCIPLINE FOR SIGN LANGUAGE INTERPRETERS AND TRANSLITERATORS

- 363.1(154E) Definitions
- 363.2(154E,272C) Grounds for discipline
- 363.3(147,272C) Method of discipline
- 363.4(272C) Discretion of board



CHAPTER 182  
PRACTICE OF OPTOMETRISTS

[Prior to 8/7/02, see 645—179.4(154), 179.5(154,272C), 179.7(154) and 179.8(155A)]

**645—182.1(154) Code of ethics.** The board hereby adopts by reference the Code of Ethics of the American Optometric Association as published by the American Optometric Association, 243 North Lindbergh Boulevard, St. Louis, Missouri 63141, modified June 2007.

[ARC 9641B, IAB 7/27/11, effective 8/31/11]

**645—182.2(154,272C) Record keeping.** Optometrists shall maintain patient records in a manner consistent with the protection of the welfare of the patient. Records shall be permanent, timely, accurate, legible, and easily understandable.

**182.2(1)** Optometrists shall maintain optometry records for each patient. The records shall contain all of the following:

*a. Personal data.*

- (1) Name, date of birth, address and, if a minor, name of parent or guardian; and
- (2) Name and telephone number of person to contact in case of emergency.

*b. Optometry and medical history.* Optometry records shall include information from the patient or the patient's parent or guardian regarding the patient's optometric and medical history. The information shall include sufficient data to support the recommended treatment plan.

*c. Patient's reason for visit.* When a patient presents with a chief complaint, optometric records shall include the patient's stated visual health care reasons for visiting the optometrist.

*d. Clinical examination progress notes.* Optometric records shall include chronological dates and descriptions of the following:

- (1) Clinical examination findings, tests conducted, and a summary of all pertinent diagnoses;
- (2) Plan of intended treatment and treatment sequence;
- (3) Services rendered and any treatment complications;
- (4) All ancillary testing, if applicable;
- (5) Vision tests completed and visual acuity;
- (6) Name, quantity, and strength of all drugs dispensed, administered, or prescribed; and
- (7) Name of optometrist who performs any treatment or service or who may have contact with a patient regarding the patient's optometric health.

*e. Informed consent.* Optometric records shall include documentation of informed consent for procedure(s) and treatment that have potential serious complications and known risks.

**182.2(2)** Retention of records. An optometrist shall maintain a patient's record(s) for a minimum of five years after the date of last examination, prescription, or treatment. Records for minors shall be maintained for, at minimum, one year after the patient reaches the age of majority (18) or five years after the date of last examination, prescription, or treatment, whichever is longer.

Proper safeguards shall be maintained to ensure the safety of records from destructive elements.

**182.2(3)** Electronic record keeping. The requirements of this rule apply to electronic records as well as to records kept by any other means. When electronic records are kept, an optometrist shall keep either a duplicate hard-copy record or a back-up unalterable electronic record.

**182.2(4)** Correction of records. Notations shall be legible, written in ink, and contain no erasures or white-outs. If incorrect information is placed in the record, it must be crossed out with a single nondeleting line and be initialed by an optometric health care worker.

**182.2(5)** Confidentiality and transfer of records. Optometrists shall preserve the confidentiality of patient records in a manner consistent with the protection of the welfare of the patient. Upon request of the patient or the patient's new optometrist, the optometrist shall furnish such optometry records or copies of the records as will be beneficial for the future treatment of that patient. The optometrist may include a summary of the record(s) with the record(s) or copy of the record(s). The optometrist may charge a nominal fee for duplication of records, but may not refuse to transfer records for nonpayment of any fees. The optometrist may ask for a written request for the record(s).

**182.2(6)** Retirement or discontinuance of practice. A licensee, upon retirement, or upon discontinuation of the practice of optometry, or upon leaving a practice or moving from a community, shall notify all active patients in writing, or by publication once a week for three consecutive weeks in a newspaper of general circulation in the community, that the licensee intends to discontinue the practice of optometry in the community, and shall encourage patients to seek the services of another licensee. The licensee shall make reasonable arrangements with active patients for the transfer of patient records, or copies of those records, to the succeeding licensee. "Active patient" means a person whom the licensee has examined, treated, cared for, or otherwise consulted with during the two-year period prior to retirement, discontinuation of the practice of optometry, or leaving a practice or moving from a community.

**182.2(7)** Nothing stated in these rules shall prohibit a licensee from conveying or transferring the licensee's patient records to another licensed optometrist who is assuming a practice, provided that written notice is furnished to all patients.

**645—182.3(154) Furnishing prescriptions.** Before a licensed optometrist provides a spectacle or contact lens prescription to a patient, the eye examination record shall include best-corrected visual acuity with ophthalmic lenses or contact lenses in the lens powers determined by refraction. Each contact lens or ophthalmic spectacle lens/eyeglass prescription by a licensed optometrist must meet the requirements as listed below:

**182.3(1)** A contact lens prescription shall contain the following information:

- a. Date of issuance;
- b. Name and address of patient for whom the contact lens or lenses are prescribed;
- c. Name, address, and signature of the practitioner;
- d. All parameters required to duplicate properly the original contact lens;
- e. A specific date of expiration, not to exceed 18 months, the quantity of lenses allowed and the number of refills allowed; and
- f. At the option of the prescribing practitioner, the prescription may contain fitting and material guidelines and specific instructions for use by the patient.

**182.3(2)** Release of contact lens prescription.

a. After the contact lenses have been adequately adapted and the patient released from initial follow-up care by the prescribing practitioner, the prescribing practitioner shall, upon request of the patient, provide a copy of the contact lens prescription, at no cost, for the duplication of the original contact lens.

b. A practitioner choosing to issue an oral prescription shall furnish the same information required for the written prescription except for the written signature and address of the practitioner. An oral prescription may be released by an O.D. to any dispensing person who is a licensed professional with the O.D., M.D., D.O., or R.Ph. degree or a person under direct supervision of those licensed under Iowa Code chapter 148, 154 or 155A.

c. The issuing of an oral prescription must be followed by a written copy to be kept by the dispenser of the contact lenses until the date of expiration.

**182.3(3)** An ophthalmic spectacle lens prescription shall contain the following information:

- a. Date of issuance;
- b. Name and address of the patient for whom the ophthalmic lens or lenses are prescribed;
- c. Name, address, and signature of the practitioner issuing the prescription;
- d. All parameters necessary to duplicate properly the ophthalmic lens prescription; and
- e. A specific date of expiration not to exceed two years.
- f. A dispenser of ophthalmic materials, in spectacle or eyeglass form, must keep a valid copy of the prescription on file for two years.

**182.3(4)** Release of ophthalmic lens prescription.

a. The ophthalmic lens prescription shall be furnished upon request at no additional charge to the patient.

b. The prescription, at the option of the prescriber, may contain adapting and material guidelines and may also contain specific instructions for use by the patient.

c. Spectacle lens prescriptions must be in written format, according to Iowa Code section 147.109(1).

[ARC 9641B, IAB 7/27/11, effective 8/31/11; ARC 3428C, IAB 10/25/17, effective 11/29/17]

**645—182.4(155A) Prescription drug orders.** Each prescription drug order furnished by an optometrist in this state shall meet the following requirements:

**182.4(1)** Written prescription drug orders shall contain:

- a. The date of issuance;
- b. The name and address of the patient for whom the drug is dispensed;
- c. The name, strength, and quantity of the drug, medicine, or device prescribed;
- d. The directions for use of the drug, medicine, or device prescribed;
- e. The name, address, and written signature of the practitioner issuing the prescription; and
- f. The federal drug enforcement administration number, if required under Iowa Code chapter 124.

**182.4(2)** The practitioner issuing oral prescription drug orders shall furnish the same information required for a written prescription, except for the written signature and address of the practitioner.

**182.4(3)** Prior to prescribing any controlled substance, an optometrist shall review the patient's information contained in the prescription monitoring program database, unless the patient is receiving inpatient hospice care or long-term residential facility care.

**182.4(4)** Beginning January 1, 2020, every prescription issued for a prescription drug shall be transmitted electronically unless exempted pursuant to Iowa Code sections 124.308 or 155A.27. Beginning January 1, 2020, a licensee who fails to comply with the electronic prescription mandate may be subject to a nondisciplinary administrative penalty of \$250 per violation, up to a maximum of \$5,000 per calendar year.

[ARC 9641B, IAB 7/27/11, effective 8/31/11; ARC 0899C, IAB 8/7/13, effective 9/11/13; ARC 4951C, IAB 2/26/20, effective 4/1/20; ARC 5160C, IAB 8/26/20, effective 9/30/20]

**645—182.5(154) Use of injectables.** A licensed optometrist shall not administer any injection prior to receiving approval from the board. Upon approval from the board, a licensed optometrist may administer only the following injections:

**182.5(1)** Subconjunctival injections for the medical treatment of the eye.

**182.5(2)** Intralesional injections for the treatment of chalazia.

**182.5(3)** Botulinum toxin to the muscles of facial expression innervated by the facial nerve, including for cosmetic purposes.

**182.5(4)** Injections to counteract an anaphylactic reaction.

[ARC 5672C, IAB 6/2/21, effective 7/7/21]

**645—182.6(154) Education and training approval.**

**182.6(1)** The board shall not approve the use of injections other than to counteract an anaphylactic reaction unless the licensed optometrist demonstrates to the board sufficient educational or clinical training from a college or university accredited by a regional or professional accreditation organization which is recognized or approved by the Council for Higher Education Accreditation or by the United States Department of Education, or clinical training equivalent to clinical training offered by such an institution.

**182.6(2)** A licensed optometrist who completes the requirements of rule 645—182.7(154) is deemed approved by the board for use of injectables as outlined in this chapter.

[ARC 5672C, IAB 6/2/21, effective 7/7/21]

**645—182.7(154) Education and training.** In order to use injections, a licensed optometrist shall meet the following requirements for board approval:

**182.7(1)** Be fully licensed and in good standing within the state of Iowa as a licensed optometrist.

**182.7(2)** Have completed a total of 24 hours of approved educational training pertaining to injections.

- a. At least 4 hours of the 24 hours must be clinical training.
- b. At least 5 hours of the 24 hours must pertain to the administration and side effects of injection treatment for botulinum toxin and chalazia.

**182.7(3)** Any practitioner exercising injection privileges must be able to produce proof of completion of requirements at the request of the board.

[ARC 5672C, IAB 6/2/21, effective 7/7/21]

These rules are intended to implement Iowa Code chapters 154 and 155A.

[Filed 7/18/02, Notice 5/15/02—published 8/7/02, effective 9/11/02]

[Filed ARC 9641B (Notice ARC 9519B, IAB 5/18/11), IAB 7/27/11, effective 8/31/11]

[Filed ARC 0899C (Notice ARC 0680C, IAB 4/3/13), IAB 8/7/13, effective 9/11/13]

[Filed ARC 3428C (Notice ARC 3223C, IAB 8/2/17), IAB 10/25/17, effective 11/29/17]

[Filed ARC 4951C (Notice ARC 4668C, IAB 9/25/19), IAB 2/26/20, effective 4/1/20]

[Filed ARC 5160C (Notice ARC 5003C, IAB 3/25/20), IAB 8/26/20, effective 9/30/20]

[Filed ARC 5672C (Notice ARC 5383C, IAB 1/13/21), IAB 6/2/21, effective 7/7/21]

CHAPTER 40  
DETERMINATION OF NET INCOME  
[Prior to 12/17/86, Revenue Department[730]]

**701—40.1(422) Net income defined.** Net income for state individual income tax purposes shall mean federal adjusted gross income as properly computed under the Internal Revenue Code and shall include the adjustments in 701—40.2(422) to 701—40.9(422). The remaining provisions of this rule and 701—40.12(422) to 701—40.79(422) shall also be applicable in determining net income.

This rule is intended to implement Iowa Code section 422.7.

[ARC 8605B, IAB 3/10/10, effective 4/14/10; ARC 9103B, IAB 9/22/10, effective 10/27/10; ARC 9820B, IAB 11/2/11, effective 12/7/11]

**701—40.2(422) Interest and dividends from federal securities.** For individual income tax purposes, the state is prohibited by federal law from taxing dividends from corporations owned or sponsored by the federal government, or interest derived from obligations of the United States and its possessions, agencies, and instrumentalities. Therefore, if the federal adjusted gross income of an individual, taxable by Iowa, includes dividends or interest of this type, an adjustment must be made by deducting the amount of the dividend or interest. If the inclusion of an amount of income or the amount of a deduction is based upon federal adjusted gross income and federal adjusted gross income includes dividends from corporations owned or sponsored by the federal government, or interest derived from obligations of the United States and its possessions, agencies, and instrumentalities, a recomputation of the amount of income or deduction must be made excluding dividends or interest of this type from the calculations.

A federal statute exempts stocks and obligations of the United States Government, as well as the interest on the obligations, from state income taxation (see 31 USCS Section 3124(a)).

“Obligations of the United States” are those obligations issued “to secure credit to carry on the necessary functions of government.” *Smith v. Davis* (1944) 323 U.S. 111, 119, 89 L.Ed. 107, 113, 65 S.Ct. 157, 161. The exemption is aimed at protecting the “borrowing” and “supremacy” clauses of the United States Constitution. *Society for Savings v. Bowers* (1955) 349 U.S. 143, 144, 99 L.Ed.2d 950, 955, 75 S.Ct. 607, 608; *Hibernia v. City and County of San Francisco* (1906) 200 U.S. 310, 313, 50 L.Ed. 495, 496, 26 S.Ct. 265, 266.

Tax-exempt credit instruments possess the following characteristics:

1. They are written documents,
2. They bear interest,
3. They are binding promises by the United States to pay specified sums at specified dates, and
4. They have Congressional authorization which also pledges the faith and credit of the United States in support of the promise to pay. *Smith v. Davis*, supra.

A governmental obligation that is secondary, indirect, or contingent, such as a guaranty of a nongovernmental obligor’s primary obligation to pay the principal amount of and interest on a note, is not an obligation of the type exempted under 31 USCS Section 3124(1). *Rockford Life Ins. Co. v. Department of Revenue*, 107 S.Ct. 2312 (1987).

The following list contains widely held United States Government obligations, but is not intended to be all-inclusive.

This noninclusive listing indicates the position of the department with respect to the income tax status of the listed securities. It is based on current federal law and the interpretation thereof by the department. Federal law or the department’s interpretation is subject to change. Federal law precludes all states from imposing an income tax on the interest income from direct obligations of the United States Government. Also, preemptive federal law may preclude state taxation of interest income from the securities of federal government-sponsored enterprises and agencies and from the obligations of U.S. territories. Any profit or gain on the sale or exchange of these securities is taxable.

**40.2(1)** Federal obligations and obligations of federal instrumentalities the interest on which is exempt from Iowa income tax.

a. *United States Government obligations:* United States Treasury—Principal and interest from bills, bonds, and notes issued by the United States Treasury exempt under 31 U.S.C. Section 3124[a].

1. Series E, F, G, H, and I bonds
2. United States Treasury bills
3. U.S. Government certificates
4. U.S. Government bonds
5. U.S. Government notes
6. Original issue discount (OID) on a United States Treasury obligation
- b. Territorial obligations:*
  1. Guam—Principal and interest from bonds issued by the Government of Guam (48 USCS Section 1423[a]).
  2. Puerto Rico—Principal and interest from bonds issued by the Government of Puerto Rico (48 USCS Section 745).
  3. Virgin Islands—Principal and interest from bonds issued by the Government of the Virgin Islands (48 USCS Section 1403).
  4. Northern Mariana Islands—Principal and interest from bonds issued by the Government of the Northern Mariana Islands (48 USCS Section 1681(c)).
- c. Federal agency obligations:*
  1. Commodity Credit Corporation—Principal and interest from bonds, notes, debentures, and other similar obligations issued by the Commodity Credit Corporation (15 USCS Section 713a-5).
  2. Banks for Cooperatives—Principal and interest from notes, debentures, and other obligations issued by Banks for Cooperatives (12 USCS Section 2134).
  3. Farm Credit Banks—Principal and interest from systemwide bonds, notes, debentures, and other obligations issued jointly and severally by Banks of the Federal Farm Credit System (12 USCS Section 2023).
  4. Federal Intermediate Credit Banks—Principal and interest from bonds, notes, debentures, and other obligations issued by Federal Intermediate Credit Banks (12 USCS Section 2079).
  5. Federal Land Banks—Principal and interest from bonds, notes, debentures, and other obligations issued by Federal Land Banks (12 USCS Section 2055).
  6. Federal Land Bank Association—Principal and interest from bonds, notes, debentures, and other obligations issued by the Federal Land Bank Association (12 USCS Section 2098).
  7. Financial Assistance Corporation—Principal and interest from notes, bonds, debentures, and other obligations issued by the Financial Assistance Corporation (12 USCS Section 2278b-10[b]).
  8. Production Credit Association—Principal and interest from notes, debentures, and other obligations issued by the Production Credit Association (12 USCS Section 2077).
  9. Federal Deposit Insurance Corporation (FDIC)—Principal and interest from notes, bonds, debentures, and other such obligations issued by the Federal Deposit Insurance Corporation (12 USCS Section 1825).
  10. Federal Financing Bank—Interest from obligations issued by the Federal Financing Bank. Considered to be United States Government obligations (12 USCS Section 2288, 31 USCS Section 3124[a]).
  11. Federal Home Loan Bank—Principal and interest from notes, bonds, debentures, and other such obligations issued by any Federal Home Loan Bank and consolidated Federal Home Loan Bank bonds and debentures (12 USCS Section 1433).
  12. Federal Savings and Loan Insurance Corporation (FSLIC)—Principal and interest from notes, bonds, debentures, and other such obligations issued by the Federal Savings and Loan Insurance Corporation (12 USCS Section 1725[e]).
  13. Federal Financing Corporation—Principal and interest from notes, bonds, debentures, and other such obligations issued by the Federal Financing Corporation (12 USCS Section 2288(b)).
  14. Financing Corporation (FICO)—Principal and interest from any obligation of the Financing Corporation (12 USCS Sections 1441[e][7] and 1433).
  15. General Services Administration (GSA)—Principal and interest from General Services Administration participation certificates. Considered to be United States Government obligations (31 USCS Section 3124[a]).

16. Housing and Urban Development (HUD).
  - Principal and interest from War Housing Insurance debentures (12 USCS Section 1739[d]).
  - Principal and interest from Rental Housing Insurance debentures (12 USCS Section 1747g[g]).
  - Principal and interest from Armed Services Mortgage Insurance debentures (12 USCS Section 1748b[f]).
  - Principal and interest from National Defense Housing Insurance debentures (12 USCS Section 1750c[d]).
  - Principal and interest from Mutual Mortgage Insurance Fund debentures (12 USCS Section 1710[d]).
17. National Credit Union Administration Central Liquidity Facility—Income from notes, bonds, debentures, and other obligations issued on behalf of the National Credit Union Administration Central Liquidity Facility (12 USCS Section 1795k[b]).
18. Resolution Funding Corporation—Principal and interest from obligations issued by the Resolution Funding Corporation (12 USCS Sections 1441[f][7] and 1433).
19. Student Loan Marketing Association (Sallie Mae)—Principal and interest from obligations issued by the Student Loan Marketing Association. Considered to be United States Government obligations (20 USCS Section 1087-2[1], 31 USCS Section 3124[a]).
20. Tennessee Valley Authority—Principal and interest from bonds issued by the Tennessee Valley Authority (16 USCS Section 831n-4[d]).
21. United States Postal Service—Principal and interest from obligations issued by the United States Postal Service (39 USCS Section 2005[d][4]).
22. Treasury Investment Growth Receipts.
23. Certificates on Government Receipts.

**40.2(2) Taxable securities.** There are a number of securities issued under the authority of an Act of Congress which are subject to the Iowa income tax. These securities may be guaranteed by the United States Treasury or supported by the issuing agency's right to borrow from the Treasury. Some may be backed by the pledge of full faith and credit of the United States Government. However, it has been determined that these securities are not direct obligations of the United States Government to pay a specified sum at a specified date, nor are the principal and interest from these securities specifically exempted from taxation by the respective authorizing Acts. Therefore, income from such securities is subject to the Iowa income tax. Examples of securities which fall into this category are those issued by the following agencies and institutions:

- a. *Federal agency obligations:*
  1. Federal or State Savings and Loan Associations
  2. Export-Import Bank of the United States
  3. Building and Loan Associations
  4. Interest on federal income tax refunds
  5. Postal Savings Account
  6. Farmers Home Administration
  7. Small Business Administration
  8. Federal or State Credit Unions
  9. Mortgage Participation Certificates
  10. Federal National Mortgage Association
  11. Federal Home Loan Mortgage Corporation (Freddie Mac)
  12. Federal Housing Administration
  13. Federal National Mortgage Association (Fannie Mae)
  14. Government National Mortgage Association (Ginnie Mae)
  15. Merchant Marine (Maritime Administration)
  16. Federal Agricultural Mortgage Corporation (Farmer Mac)
- b. *Obligations of international institutions:*
  1. Asian Development Bank
  2. Inter-American Development Bank

3. International Bank for Reconstruction and Development (World Bank)

c. *Other obligations:*

Washington D.C. Metro Area Transit Authority

Interest from repurchase agreements involving federal securities is subject to Iowa income tax. *Nebraska Department of Revenue v. John Loewenstein*, 513 US 123 (1994). *Everett v. State Dept. of Revenue and Finance*, 470 N.W.2d 13 (Iowa 1991).

For tax years beginning on or after January 1, 1987, interest from Mortgage Backed Certificate Guaranteed by Government National Mortgage Association (“Ginnie Maes”) is subject to Iowa income tax. See *Rockford Life Insurance Company v. Illinois Department of Revenue*, 96 L.Ed.2d 152.

For the treatment of interest or dividends from regulated investment companies (mutual funds) that invest in obligations of the type discussed in this rule, see rule 701—40.52(422).

This rule is intended to implement Iowa Code section 422.7.

[ARC 7761B, IAB 5/6/09, effective 6/10/09; ARC 1101C, IAB 10/16/13, effective 11/20/13]

**701—40.3(422) Interest and dividends from foreign securities and securities of state and other political subdivisions.** Interest and dividends from foreign securities and from securities of state and other political subdivisions are to be included in Iowa net income. Certain types of interest and dividends, because of specific exemption, are not includable in income for federal tax purposes. To the extent such income has been excluded for federal income tax purposes, unless the item of income is specifically exempted from state taxation by the laws or constitution of Iowa or of the United States, it must be added to Iowa taxable income.

The following is a noninclusive listing of bonds issued by the state of Iowa and its political subdivisions, interest on which is exempt from both federal and state income taxes.

1. Board of regents: Bonds issued under Iowa Code sections 262.41, 262.51, 262.60, 262A.8, and 263A.6.
2. Urban renewal: Bonds issued under Iowa Code section 403.9(2).
3. Municipal housing law - low-income housing: Bonds issued under Iowa Code section 403A.12.
4. Subdistricts of soil conservation districts, revenue bonds: Bonds issued under Iowa Code section 161A.22.
5. Aviation authorities, revenue bonds: Bonds issued under Iowa Code section 330A.16.
6. Rural water districts: Bonds and notes issued under Iowa Code section 357A.15.
7. County health center: Bonds issued under Iowa Code section 331.441(2) “c”(7).
8. Iowa finance authority, water pollution control works and drinking water facilities financing: Bonds issued under Iowa Code section 16.131(5).
9. Iowa finance authority, beginning farmer loan program: Bonds issued under Iowa Code section 16.64.
10. Iowa finance authority, Iowa comprehensive petroleum underground storage tank fund: Bonds issued under Iowa Code section 455G.6(14).
11. Iowa finance authority, 911 program notes and bonds: Bonds issued under Iowa Code section 34A.20(6).
12. Quad Cities interstate metropolitan authority bonds: Bonds issued under Iowa Code section 28A.24.
13. Prison infrastructure revenue bonds: Bonds issued under Iowa Code sections 12.80(3) and 16.177(8).
14. Community college residence halls and dormitories bonds: Bonds issued under Iowa Code section 260C.61.
15. Community college bond program bonds: Bonds issued under Iowa Code section 260C.71(6).
16. Interstate bridges bonds: Bonds issued under Iowa Code section 313A.36.
17. Iowa higher education loan authority: Obligations issued by the authority pursuant to Iowa Code section 261A.27.
18. Vision Iowa program: Bonds issued pursuant to Iowa Code section 12.71(8).
19. School infrastructure program bonds: Bonds issued under Iowa Code section 12.81(8).

20. Iowa utilities board and Iowa consumer advocate building project bonds: Bonds issued under Iowa Code section 12.91(9).

21. Iowa jobs program revenue bonds: Bonds issued under Iowa Code section 12.87(8).

Interest from repurchase agreements involving obligations of the type discussed in this rule is subject to Iowa income tax. *Nebraska Department of Revenue v. John Loewenstein*, 513 US 123 (1994). *Everett v. State Dept. of Revenue and Finance*, 470 N.W.2d 13 (Iowa 1991).

For the treatment of interest or dividends from regulated investment companies (mutual funds) that invest in obligations of the type discussed in this rule, see rule 701—40.52(422).

Gains and losses from the sale or other disposition of bonds issued by the state of Iowa or its political subdivisions, as distinguished from interest income, shall be taxable for state income tax purposes.

This rule is intended to implement Iowa Code section 422.7.

[ARC 8605B, IAB 3/10/10, effective 4/14/10; ARC 1101C, IAB 10/16/13, effective 11/20/13; ARC 1665C, IAB 10/15/14, effective 11/19/14; ARC 4309C, IAB 2/13/19, effective 3/20/19; ARC 5673C, IAB 6/2/21, effective 7/7/21]

**701—40.4(422) Certain pensions, annuities and retirement allowances.** Rescinded IAB 11/24/04, effective 12/29/04.

**701—40.5(422) Military pay.**

**40.5(1)** Rescinded IAB 6/3/98, effective 7/8/98.

**40.5(2)** For income received for services performed prior to January 1, 1969, and for services performed for tax periods beginning on or after January 1, 1977, but before January 1, 2011. An Iowa resident who is on active duty in the armed forces of the United States, as defined in Title 10, United States Code, Section 101, shall include all income received for such service performed prior to January 1, 1969, and for services performed during tax periods beginning on or after January 1, 1977, but before January 1, 2011. For tax years beginning on or after January 1, 2011, see rule 701—40.76(422). However, the taxability of this active duty military income shall be terminated for any income received for services performed effective the day after either of the two following conditions:

*a.* When universal compulsory military service is reinstated by the United States Congress. “Compulsory military service” is defined to be the actual act of drafting individuals into the military service and not just the registration of individuals under the Military Selective Service Act (50 App. U.S.C. 453); or

*b.* When a state of war is declared to exist by the United States Congress.

Federal active duty does not include a member of the national guard when called for training by order of the governor through order of the adjutant general. These members are in the service of the state and not on active duty of the United States. Federal active duty also does not include members of the various military reserve programs. A taxpayer must be on active federal duty to qualify for exemption. National guard and reservists who undergo voluntary training are not on active duty in a federal status. National guard and reservist pay does not qualify for the military exemption and such pay is taxable by the state of Iowa.

Compensation received from the United States Government by nonresident members of the armed forces who are temporarily present in the state of Iowa pursuant to military orders is exempt from Iowa income tax.

This rule is intended to implement Iowa Code section 422.5.

[ARC 9822B, IAB 11/2/11, effective 12/7/11]

**701—40.6(422) Interest and dividend income.** This rule applies to interest and dividends from foreign securities and securities of state and other political subdivisions. Interest and dividends from foreign securities and from securities of state and other political subdivisions are to be included in Iowa taxable income. Certain types of interest and dividends, because of specific exemption, are not included in income for federal tax purposes. To the extent such income has been excluded for federal income tax purposes, unless the term of income is specifically exempted from state taxation by the laws or constitutions of Iowa or of the United States, it must be added to Iowa taxable income.

This rule is intended to implement Iowa Code section 422.7.

**701—40.7(422) Current year capital gains and losses.** In determining short-term or long-term capital gain or loss the provisions of the Internal Revenue Code are to be followed.

This rule is intended to implement Iowa Code section 422.7.

**701—40.8(422) Gains and losses on property acquired before January 1, 1934.** When property was acquired prior to January 1, 1934, the basis as of January 1, 1934, for determining capital or other gains or losses is the higher of cost, adjusted for depreciation allowed or allowable to January 1, 1934, or fair market value as of that date.

If, as a result of this provision, a basis is to be used for purposes of Iowa individual income tax which is different from the basis used for purposes of federal income tax, appropriate adjustment must be made and detailed schedules supplied in the computation of Iowa taxable income.

This rule is intended to implement Iowa Code section 422.7.

**701—40.9(422) Work opportunity tax credit and alcohol and cellulosic biofuel fuels credit.** Where an individual claims the work opportunity tax credit under Section 51 of the Internal Revenue Code or the alcohol and cellulosic biofuel fuels credit under Section 40 of the Internal Revenue Code, the amount of credit allowable must be used to increase federal taxable income. The amount of credit allowable used to increase federal adjusted gross income is deductible in determining Iowa net income. The work opportunity tax credit applies to eligible individuals who begin work before January 1, 2012. The adjustment for the alcohol and cellulosic biofuel fuels credit is applicable for tax years beginning on or after January 1, 1980.

This rule is intended to implement 2011 Iowa Code Supplement section 422.7 as amended by 2012 Iowa Acts, Senate File 2328.

[ARC 0337C, IAB 9/19/12, effective 10/24/12]

**701—40.10(422) Exclusion of interest or dividends.** Rescinded IAB 11/24/04, effective 12/29/04.

**701—40.11(422) Two-earner married couple deduction.** Rescinded IAB 11/24/04, effective 12/29/04.

**701—40.12(422) Income from partnerships or limited liability companies.** Residents engaged in a partnership or limited liability company, even if located or doing business outside the state of Iowa, are taxable upon their distributive share of net income of such partnership or limited liability company, whether distributed or not, and are required to include such distributive share in their return. A nonresident individual who is a member of a partnership or limited liability company doing business in Iowa is taxable on that portion of net income which is applicable to the Iowa business activity whether distributed or not. See 701—Chapter 45.

This rule is intended to implement Iowa Code sections 422.7, 422.8, and 422.15.

**701—40.13(422) Subchapter “S” income.** Where a corporation elects, under Sections 1371-1379 of the Internal Revenue Code, to distribute the corporation’s income to the shareholders, the corporation’s income, in its entirety, is subject to individual reporting whether or not actually distributed. Both resident and nonresident shareholders shall report their share of the corporation’s net taxable income on their respective Iowa returns. *Isaacson v. Iowa State Tax Commission*, 183 N.W.2d 693, Iowa Supreme Court, February 9, 1971. Residents shall report their distributable share in total while nonresidents shall report only their portion of their distributable share which was earned in Iowa. For tax years beginning on or after January 1, 1996, residents should refer to 701—Chapter 50 to determine if they qualify to compute Iowa taxable income by allocation and apportionment. See 701—Chapter 54 for allocation and apportionment of corporate income.

This rule is intended to implement Iowa Code sections 422.7, 422.8, 422.15, and 422.36.

**701—40.14(422) Contract sales.** Interest derived as income from a land contract is intangible personal property and is assignable to the recipient’s domicile. Gains received from the sale or assignment of land

contracts are considered to be gains from real property in this state and are assignable to this state. As to nonresidents, see 701—40.16(422).

This rule is intended to implement Iowa Code sections 422.7 and 422.8.

**701—40.15(422) Reporting of incomes by married taxpayers who file a joint federal return but elect to file separately for Iowa income tax purposes.** Married taxpayers who have separate incomes and have filed jointly for federal income tax purposes can elect to file separate Iowa returns or to file separately on the combined Iowa return form. Where married persons file separately, both must use the optional standard deduction if either elects to use it, or both must claim itemized deductions if either elects to claim itemized deductions. The provisions of Treasury Regulation § 1.63-1 are equally applicable regarding the election to use the standard deduction or itemized deductions for Iowa income tax purposes. The spouses' election to file separately for Iowa income tax purposes is subject to the condition that incomes received by the taxpayers and the deductions for business expenses are allocated between the spouses as the incomes and deductions would have been allocated if the taxpayers had filed separate federal returns. Any Iowa additions to net income and any deductions to net income which pertain to taxpayers filing separately for Iowa income tax purposes must also be allocated accurately between the spouses. Thus, if married taxpayers file a joint federal return and elect to file separate Iowa returns or separately on the combined Iowa return, the taxpayers are required to compute their separate Iowa net incomes as if they had determined their federal adjusted gross incomes on separate federal returns with the Iowa adjustments to net income.

However, the fact that the taxpayers file separately for Iowa income tax purposes does not mean that the spouses will be subject to limitations that would apply if the taxpayers had filed separate federal returns. Instead, tax provisions that are applicable for taxpayers filing joint federal returns are also applicable to the taxpayers when they file separate Iowa returns unless the tax provisions are superseded by specific provisions in Iowa income tax law.

For example, married taxpayers that file separate federal returns cannot take the child and dependent care credit (in most instances) and cannot take the earned income credit. Taxpayers that file a joint federal return and elect to file separately for Iowa income tax purposes can take the child and dependent care credit and the earned income credit on their Iowa returns assuming they meet the qualifications for claiming these credits on the joint federal return.

The following paragraphs and examples are provided to clarify some issues and provide some guidance for taxpayers who filed a joint federal income tax return and elect to file separate Iowa returns or separately on the combined Iowa return form.

1. Election to expense certain depreciable business assets. When married taxpayers who have filed a joint federal return elect to file separate Iowa returns or separately on the combined Iowa return form, the taxpayers may claim the same deduction for the expensing of depreciable business assets as they were allowed on their joint federal return of up to \$100,000 (for the tax year beginning on or after January 1, 2003, and which is adjusted annually for inflation for subsequent tax years) as authorized under Section 179 of the Internal Revenue Code. In a situation where one spouse is a wage earner and the second spouse has a small business, the second spouse may claim the same deduction for expensing depreciable assets of up to \$100,000 (for the tax year beginning on or after January 1, 2003) that was allowable on the taxpayers' joint federal return. The fact that a spouse elects to file a separate Iowa return or separately on the combined return form after filing a joint federal return does not mean the spouse is limited to the same deduction for expensing of depreciable business assets of up to \$50,000 (for the tax year beginning on or after January 1, 2003) that would have applied if the spouse had filed a separate federal return.

In situations where a married couple has ownership of a business, the deduction for the expensing of depreciable assets which is allowable on the spouses' joint federal return should be allocated between the spouses in the same ratio as incomes and losses from the business are reported by the spouses. Subrule 40.15(4) sets out criteria for allocation of incomes and losses of businesses in which married couples have an ownership interest.

2. Capital losses. Except for the Iowa capital gains deduction for limited amounts of net capital gains from certain types of assets described in rule 701—40.38(422), the federal income tax provision

for reporting capital gains and losses and for the carryover of capital losses in excess of certain amounts are applicable for Iowa individual income tax purposes. When married taxpayers file a joint federal income tax return and elect to file separate Iowa returns or separately on the combined return form, the spouses must allocate capital gains and losses between them on the basis of the ownership of the assets that were sold or exchanged. That is, the spouses must allocate the capital gains and losses between them on the separate Iowa returns as the capital gains and losses would have been allocated if the taxpayers had filed separate federal returns instead of a joint federal return. However, each spouse is not subject to the \$1,500 capital loss limitation on the separate Iowa return which is applicable to a married taxpayer that files a separate federal return. Instead, the spouses are collectively subject to the same \$3,000 capital loss limitation for married taxpayers filing joint federal returns which is authorized under Section 1211(b) of the Internal Revenue Code. In circumstances where both spouses have net capital losses, each of the spouses can claim a capital loss of up to \$1,500 on the separate Iowa return. In a situation where one spouse has a net capital loss of less than \$1,500 and the other spouse has a capital loss greater than \$1,500, the first spouse can claim the entire capital loss, while the second spouse can claim the portion of the net capital loss on the joint federal return that was not claimed by the first spouse. In no case can the net capital losses claimed on separate Iowa returns by married taxpayers exceed the \$3,000 maximum capital loss that is allowed on the joint federal return. In a circumstance where one spouse has a net capital loss and the other spouse has a net capital gain, the amounts of capital gains and losses claimed by the spouses on their separate Iowa returns must conform with the net capital gain amount or net capital loss amount claimed on the joint federal return for the taxpayers. The following examples illustrate how capital gains and losses are to be allocated between spouses filing separate Iowa returns or separately on the combined Iowa return form for married taxpayers who filed joint federal returns.

EXAMPLE 1. A married couple filed a joint federal return which showed a net capital loss of \$3,000. All of the capital loss was attributable to the husband, as the wife had no capital gains or losses. Therefore, when the taxpayers filed separate Iowa returns, the husband's return showed a \$3,000 capital loss and the wife's return showed no capital gains or losses.

EXAMPLE 2. A married couple filed a joint federal return showing a net capital loss of \$3,000, which was the maximum loss they could claim, although they had aggregate capital losses of \$8,000. The husband had a net capital loss of \$6,000 and the wife had a net capital loss of \$2,000. When the taxpayers filed their separate Iowa returns each spouse claimed a net capital loss of \$1,500, since each spouse had a capital loss of up to \$1,500. The husband had a net capital loss carryover of \$4,500 and the wife had a net capital loss carryover of \$500.

EXAMPLE 3. A married couple filed a joint federal return showing a net capital loss of \$2,500. The husband had a net capital gain of \$7,500 and the wife had a net capital loss of \$10,000. The wife claimed a net capital loss of \$10,000 on her separate Iowa return, while the husband reported a net capital gain of \$7,500 on his separate Iowa return.

EXAMPLE 4. A married couple filed a joint federal return showing a net capital loss of \$3,000. The wife had a net capital loss of \$800 and the husband had a net capital loss of \$2,500. The wife claimed a \$800 net capital loss on her separate Iowa return. The husband claimed a net capital loss on his separate Iowa return of \$2,200 which was the portion of the net capital loss claimed on the joint federal return that was not claimed by the wife. The husband had a net capital loss carryover of \$300.

3. Unemployment compensation benefits. When a husband and wife have filed a joint federal return and elect to file separate Iowa returns or separately on the Iowa combined return form, the spouses are to report the same amount of unemployment compensation benefits on their Iowa returns as was reported for federal income tax purposes as provided in Section 85 of the Internal Revenue Code. When unemployment compensation benefits are received in the tax year the benefits are to be reported by the spouse or spouses who received the benefits as a result of employment of the spouse or spouses. Nonresidents of Iowa, including nonresidents covered by the reciprocal agreement with Illinois, are to report unemployment compensation benefits on the Iowa income tax return as Iowa source income to the extent the benefits pertain to the individual's employment in Iowa. In a situation where the unemployment compensation benefits are the result of employment in Iowa and in one or more other states, the unemployment compensation benefits should be allocated to Iowa on the basis of the

individual's Iowa salaries and wages for the employer to the total salaries and wages for the employer. However, to the extent that unemployment compensation benefits pertain to a person's employment in Iowa for a railroad and the benefits are paid by the railroad retirement board, the benefits are totally exempt from Iowa income tax pursuant to 45 U.S.C. Section 352(e).

**40.15(1)** *Income from property in which only one spouse has an ownership interest but which is not used in business.* If ownership of property not used in a business is in the name of only one spouse and each files a separate state return, income derived from such property may not be divided between husband and wife but must be reported by only that spouse possessing the ownership interest.

**40.15(2)** *Income from property in which both husband and wife have an ownership interest but which is not used in a business.* A husband and wife who file a joint federal return and elect to file separate Iowa returns must each report the share of income from jointly or commonly owned real estate, stocks, bonds, bank accounts, and other property not used in a business in the same manner as if their federal adjusted gross incomes had been determined separately. The rules for determining the manner of reporting this income depend upon the nature of the ownership interest and, in general, may be summarized as follows:

*a.* Joint tenants. A husband and wife owning property as joint tenants with the right of survivorship, a common example of which is a joint savings account, should each report on separate returns one-half of the income from the savings account held by them in joint tenancy.

*b.* Tenants in common. Income from property held by husband and wife as tenants in common is reportable by them in proportion to their legally enforceable ownership interests in the property.

**40.15(3)** *Salary and wages derived from personal or professional services performed in the course of employment.* A husband and wife who file a joint federal return and elect to file separate Iowa returns must report on each spouse's state return the salary and wages which are attributable to services performed pursuant to each individual's employment. The income must be reported on Iowa separate returns in the same manner as if their federal adjusted gross incomes had been determined separately. The manner of reporting wages and salaries by spouses is dependent upon the nature of the employment relationship and is subject to the following rules:

*a.* Interspousal employment—salary or wages paid by one spouse to the other. Wages or compensation paid for services or labor performed by one spouse with respect to property or business owned by the other spouse may be reported on a separate return if the amount of the payment is reasonable for the services or labor actually performed. It is presumed that the compensation or wages paid by one spouse to the other is not reasonable nor allowable for purposes of reporting the income separately unless a bona fide employer-employee relationship exists. For example, unless actual services are rendered, payments are actually made, working hours and standards are set and adhered to, unemployment compensation and workers' compensation requirements are met, the payments may not be separately reported by the salaried spouse.

*b.* Wages and salaries received by a husband or wife pursuant to an employment agreement with an employer other than a spouse. Wages or compensation paid for services or labor performed by a husband or wife pursuant to an employment agreement with some other employer is presumed income of only that spouse that is employed and must be reported separately only by that spouse.

**40.15(4)** *Income from a business in which both husband and wife have an ownership interest.* Income derived from a business the ownership of which is in both spouses' names, as evidenced by record title or by the existence of a bona fide partnership agreement or by other recognized method of establishing legal ownership, may be allocated between spouses and reported on separate individual state income tax returns provided that the interest of each spouse is allocated according to the capital interest of each, the management and control exercised by each, and the services performed by each with respect to such business. Compliance with the conditions contained in paragraphs "a" or "b" of this subrule and consideration of paragraphs "c," "d," and "e" of this subrule must be made in allocating income from a business in which both husband and wife have an ownership interest.

*a.* Allocation of partnership income. Allocation of partnership income between spouses is presumed valid only if partnership information returns, as required for income tax purposes, have currently been filed with respect to the federal self-employment tax law. An oral understanding does not constitute a bona fide partnership implied merely from a common ownership of property.

*b.* Allocation of income derived from a business other than a partnership in which both husband and wife claim an ownership interest. In the case of a business owned by a husband and wife who filed a joint federal income tax return in which one of them claimed all of the income therefrom for federal self-employment tax purposes, it will be presumed for purposes of administering the state income tax law, unless expressly shown to the contrary by the taxpayer, that the spouse who claimed that income for federal self-employment tax purposes did, thereby, with the consent of the other spouse, claim all right to such income and that therefore such income must be included in the state income tax return of the spouse who claimed it for federal self-employment tax purposes if the husband and wife file separate state income tax returns.

*c.* Capital contribution. In determining the weight to be attributed to the capital contribution of each spouse to a business, consideration may be given only to that invested capital which is legally traceable to each individual spouse. Capital existing under the right, dominion, and control of one spouse which is invested in the business is presumed to be a capital contribution of that spouse. Sham transactions which do not affect real changes of ownership in capital between spouses in that such transactions do not legally disturb the right, dominion, and control of the assignor or the donor over the capital must be disregarded in determining capital contribution of the recipient spouse.

*d.* Management and control. Participation in the control and management of a business must be distinguished from the regular performance of nonmanagerial services. Contribution of management and control with respect to the business must be of a substantial nature in order to accord it weight in making an allocation of income. Substantial participation in management does not necessarily involve continuous or even frequent presence at the place of business, but it does involve genuine consultation with respect to at least major business decisions, and it presupposes substantial acquaintance with an interest in the operations, problems, and policies of the business, along with sufficient maturity and background of education or experience to indicate an ability to grasp business problems that are appreciably commensurate with the demands of the enterprise concerned. Vague or general statements as to family discussions at home or elsewhere will not be accepted as a sufficient showing of actual consultation.

*e.* Services performed. The amount of services performed by each spouse is a factor to be considered in determining proper allocation of income from a business in which each spouse has an ownership interest. In order to accord weight to services performed by an individual spouse, the services must be of a beneficial nature in that they make a direct contribution to the business. For example, for a business operation, whether it is a retail sales enterprise, farming operation or otherwise, in which both husband and wife have an ownership interest, the services contributed by the spouses must be directly connected with the business operation. Services for the family such as planting and maintaining family gardens, domestic housework, cooking family meals, and routine errands and shopping, are not considered to be services performed or rendered as an incident of or a contribution to the particular business; such activities by a spouse must be disregarded in determining the allocable income attributable to that spouse.

This rule is intended to implement Iowa Code section 422.7.  
[ARC 8356B, IAB 12/2/09, effective 1/6/10]

**701—40.16(422) Income of nonresidents.** Except as otherwise provided in this rule all income of nonresidents derived from sources within Iowa is subject to Iowa income tax.

Net income received by a nonresident taxpayer from a business, trade, profession, or occupation in Iowa must be reported.

Income from the sale of property, located in Iowa, including property used in connection with the trade, profession, business or occupation of the nonresident, is taxable to Iowa even though the sale is consummated outside of Iowa, and provided that the property was sold before subsequent use outside of Iowa. Any income from the property prior to its sale is also Iowa taxable income.

Income received from a trust or an estate, where the income is from Iowa sources, is taxable, regardless of the situs of the estate or trust. Dividends received in lieu of, or in partial or full payment of, an amount of wages or salary due for services performed in Iowa by a nonresident shall be

considered taxable Iowa income. Annuities, interest on bank deposits and interest-bearing obligations, and dividends are not allocated to Iowa except to the extent to which they are derived from a business, trade, profession, or occupation carried on within the state of Iowa by the nonresident.

Interest received from the sale of property, on an installment contract even though the gain from the sale of the property is subject to Iowa taxation, is not allocable to Iowa if the property is not part of the nonresident's trade, profession, business or occupation. As to residents, see 701—40.14(422).

**40.16(1)** *Nonresidents exempt from paying tax.* See 701—subrules 39.5(10) and 39.5(11) for the net income exemption amounts for nonresidents.

These provisions for reducing tax in 701—subrule 39.5(10), paragraph “c,” and 701—subrule 39.5(11), paragraph “b,” do not apply to the Iowa minimum tax which must be paid irrespective of the amount of Iowa income that an individual has.

**40.16(2)** *Compensation for personal services of nonresidents.* The Iowa income of a nonresident must include compensation for personal services rendered within the state of Iowa. The salary or other compensation of an employee or corporate officer who performs services related to businesses located in Iowa, or has an office in Iowa, are not subject to Iowa tax, if the services are performed while the taxpayer is outside of Iowa. However, the salary earned while the nonresident employee or officer is located within the state of Iowa would be subject to Iowa taxation. The Iowa taxable income of the nonresident shall include that portion of the total compensation received from the employer for personal services for the tax year which the total number of working days that the individual was employed within the state of Iowa bears to the total number of working days within and without the state of Iowa.

Compensation paid by an Iowa employer for services performed wholly outside of Iowa by a nonresident is not taxable income to the state of Iowa. However, all services performed within Iowa, either part-time or full-time, would be taxable to the nonresident and must be reported to this state.

Compensation received from the United States Government by a nonresident member of the armed forces is explained in 701—40.5(422).

Income from commissions earned by a nonresident traveling salesperson, agent or other employee for services performed or sales made and whose compensation depends directly on the volume of business transacted by the nonresident will include that proportion of the compensation received which the volume of business transacted by the employee within the state of Iowa bears to the total volume of business transacted by the employee within and without the state. Allowable deductions will be apportioned on the same basis. However, where separate accounting records are maintained by a nonresident or the employer of the business transacted in Iowa, then the amount of Iowa compensation can be reported based upon separate accounting.

Nonresident actors, singers, performers, entertainers, wrestlers, boxers (and similar performers), must include as Iowa income the gross amount received for performances within this state.

Nonresident attorneys, physicians, engineers, architects (and other similar professions), even though not regularly employed in this state, must include as Iowa income the entire amount of fees or compensation received for services performed in this state.

If nonresidents are employed in this state at intervals throughout the year, as would be the case if employed in operating trains, planes, motor buses, or trucks and similar modes of transportation, between this state and other states and foreign countries, and who are paid on a daily, weekly or monthly basis, the gross income from sources within this state is that portion of the total compensation for personal services which the total number of working days employed within the state bears to the total number of working days both within and without the state. If paid on a mileage basis, the gross income from sources within this state is that portion of the total compensation for services which the number of miles traveled in Iowa bears to the total number of miles traveled both within and without the state. If paid on some other basis, the total compensation for personal services must be apportioned between this state and other states and foreign countries in such a manner as to allocate to Iowa that portion of the total compensation which is reasonably attributable to personal services performed in this state. Any alternative method of allocation is subject to review and change by the director. However, pursuant to federal law, nonresidents who earn compensation in Iowa and one or more other states for a railway company, an airline company, a

merchant marine company, or a motor carrier are only subject to the income tax laws of their state of residence, and the compensation would not be considered gross income from sources within Iowa.

**40.16(3)** *Income from business sources within and without the state.* When income is derived from any business, trade, profession, or occupation carried on partly within and partly without the state only such income as is fairly and equitably attributable to that portion of the business, trade, profession, or occupation carried on in this state, or to services rendered within the state shall be included in the gross income of a nonresident taxpayer. In any event, the entire amount of such income both within and without the state is to be shown on the nonresident's return.

**40.16(4)** *Apportionment of business income from business carried on both within and without the state.*

*a.* If a nonresident, or a partnership or trust with a nonresident member, transacts business both within and without the state, the net income must be so apportioned as to allocate to Iowa a portion of the income on a fair and equitable basis, in accordance with approved methods of accounting.

*b.* The amount of net income attributable to the manufacture or sale of tangible personal property shall be that portion which the gross sales made within the state bears to the total gross sales. The gross sales of tangible personal property are in the state if the property is delivered or shipped to a purchaser within this state, regardless of the F.O.B. point or other conditions of the sale.

*c.* Income derived from business other than the manufacture or sale of tangible personal property shall be attributed to Iowa in that portion which the Iowa gross receipts bear to the total gross receipts. Gross receipts are attributable to this state in the portion which the recipient of the service receives benefit of the service in this state.

*d.* If the taxpayer believes that the gross sales or gross receipts methods subjects the taxpayer to taxation on a greater portion of net income than is reasonably attributable to the business within this state the taxpayer may request the use of separate accounting or another alternative method which the taxpayer believes to be proper under the circumstances. In any event, the entire income received by the taxpayer and the basis for a special method of allocation shall be disclosed in the taxpayer's return.

*e.* On or after January 1, 2016, see 701—Chapter 242 for allocation and apportionment of net income to Iowa by an out-of-state business or out-of-state employee who enters Iowa to perform disaster and emergency-related work during a disaster response period as those terms are defined in Iowa Code section 29C.24.

**40.16(5)** *Income from intangible personal property.* Business income of nonresidents from rentals or royalties for the use of, or the privilege of using in this state, patents, copyrights, secret processes and formulas, goodwill, trademarks, franchises, and other like property is income from sources within the state.

Income of nonresidents from intangible personal property such as shares of stock in corporations, bonds, notes, bank deposits and other indebtedness is not taxable as income from sources within this state except where such income is derived from a business, trade, profession, or occupation carried on within this state by the nonresident. If a nonresident buys or sells stocks, bonds, or other such property, so regularly, systematically and continuously as to constitute doing business in this state, the profit or gain derived from such activity is taxable as income from a business carried on within Iowa.

Following are examples to illustrate when intangible income may or may not be subject to the allocation provisions of Iowa Code section 422.8 and rules 701—40.15(422) and 701—42.5(422):

EXAMPLE A - An Illinois resident is a laborer at a factory in Davenport. A \$50 payroll deduction is made each week from the laborer's paycheck to the company's credit union. The Illinois resident will earn \$600 in interest income from the Iowa credit union account in 1983. The interest income would not be included in the net income allocated to Iowa since the interest income is not derived from the taxpayer's business or utilized for business purposes.

EXAMPLE B - A Nebraska resident is a self-employed plumber, who has a plumbing business in Council Bluffs. The plumber has an interest-bearing checking account in an Iowa bank which the plumber uses to pay bills for the plumbing business. The plumber will earn \$200 in interest income from the checking account in 1982. The plumber will have a net income of \$25,000 from the plumbing

business which will be reported on the plumber's 1982 Iowa return. The interest income earned by this nonresident would be taxable to Iowa since it is derived from the business and is utilized in the business.

**EXAMPLE C** - An Illinois resident has a farm in Illinois. The Illinois resident has an account in an Iowa savings and loan association and invests earnings from the Illinois farm in the Iowa savings and loan account. In 1982, the Illinois farmer will earn \$1,000 in interest income from the account in the Iowa savings and loan. The interest income is not included in the net income allocable to Iowa since the interest income is not derived from the taxpayer's trade or business.

**EXAMPLE D** - An Illinois resident has Iowa farms. The Illinois resident invests the profits from the farms in a savings account in an Iowa bank. Several times a year, the taxpayer transfers part of the funds from the savings account to the taxpayer's checking account to purchase machinery to be used in the farming operations. The interest income would not be included in income allocated to Iowa since the interest income is not derived from the taxpayer's trade or business nor is the savings account utilized as a business account.

**EXAMPLE E** - An Illinois resident is a physician, whose practice is in Iowa. The physician has a business checking account in an Iowa bank that is used to pay the bills relating to the physician's practice. In the same bank, the physician has a personal savings account where all the physician's receipts for a given month are deposited. On the first working day of the month, funds are transferred from the savings account to the checking account to pay the bills that have accrued during the month. The interest income from the savings account would be included in net income allocated to Iowa since it is derived from and utilized in the business.

**EXAMPLE F** - A nonresident has a farm in Iowa which is the nonresident's principal business, although this person is an Illinois resident. The nonresident has an interest-bearing checking account in an Iowa bank. This checking account is used to pay personal expenditures as well as to pay expenses incurred in operation of the farm. In 1982, the taxpayer will earn \$550 in interest from the checking account. The interest would be included in net income allocated to Iowa since the interest is derived from the business, generated from a business account, and utilized in the business.

Income of a nonresident beneficiary from an estate or trust, distributed or distributable to the beneficiary out of income from intangible personal property of the estate or trust, is not income from sources in this state and is not taxable to the nonresident beneficiary unless the property is so used by the estate or trust as to create a business, trade, profession, or occupation in this state.

Whether or not the executor or administrator of an estate or the trustee of a trust is a resident of this state is immaterial, insofar as the taxation of income of beneficiaries from the estate or trust are concerned.

**EXAMPLE G** - A nonresident is a partner in a family investment partnership in which the other partners are members of the same family. The other partners are residents of Iowa. The partnership invests in mutual funds, interest-bearing securities and stocks which produce interest, dividend and capital gain income for the partnership. The partners who are Iowa residents make occasional decisions in Iowa on what investments should be made by the partnership. The distributive share of interest, dividend and capital gain income reported by the nonresident would not be included in net income allocated to Iowa since it was not derived from a business carried on within the state.

**40.16(6)** *Distributive shares of nonresident partners.* When a partnership derives income from sources within this state as determined in 40.16(3) to 40.16(5), the nonresident members of the partnership are taxable only upon that portion of their distributive share of the partnership income which is derived from sources within this state.

**40.16(7)** *Interest and dividends from government securities.* Interest and dividends from federal securities subject to the federal income tax under the Internal Revenue Code are not to be included in determining the Iowa net income of a nonresident, but any interest and dividends from securities and from securities of state and other political subdivisions exempt for federal income tax under the Internal Revenue Code are to be included in the Iowa net income of a nonresident to the extent that same are derived from a business, trade, profession, or occupation carried on within the state of Iowa by the nonresident.

**40.16(8)** *Gains or losses from sales or exchanges of real property and tangible personal property by a nonresident of Iowa.* If a nonresident realizes any gains or losses from sales or exchanges of real property or tangible personal property within the state of Iowa, such gains or losses are subject to the Iowa income tax and shall be reported to this state by the nonresident. Gains or losses attributable to Iowa will be determined as follows:

1. Gains or losses from sales or exchanges of real property located in this state are allocable to this state.

2. Capital gains and losses from sales or exchanges of tangible personal property are allocable to this state if the property had a situs in this state at the time of the sale.

In determining whether a short-term or long-term capital gain or a capital loss is involved in a sale or exchange, and determining the amount of a gain from the sale of real or tangible property in Iowa, the provisions of the Internal Revenue Code are to be followed.

**40.16(9)** *Capital gains or losses from sales or exchanges of ownership interests in Iowa business entities by nonresidents of Iowa.* Nonresidents of Iowa who sell or exchange ownership interests in various Iowa business entities will be subject to Iowa income tax on capital gains and capital losses from those transactions for different entities as described in the following paragraphs:

*a. Capital gains from sales or exchanges of stock in C corporations and S corporations.* When a nonresident of Iowa sells or exchanges stock in a C corporation or an S corporation, that shareholder is selling or exchanging the stock, which is intangible personal property. The capital gain received by a nonresident of Iowa from the sale or exchange of capital stock of a C corporation or an S corporation is taxable to the state of the personal domicile or residence of the owner of the capital stock unless the stock attains an independent business situs apart from the personal domicile of the individual who sold the capital stock. The stock may acquire an independent business situs in Iowa if the stock had been used as an integral part of some business activity occurring in Iowa in the year in which the sale or exchange of the stock had taken place. Whether the stock has attained an independent business status is determined on a factual basis.

For example, a situation in which capital stock owned by a nonresident of Iowa was used as collateral to secure a loan to remodel a retail store in Iowa, regardless of the ownership of the store, would meet the test for the stock being used as an integral part of some business activity in Iowa.

Assuming that the gain from the sale or exchange of stock is attributable to Iowa, the next step is to determine how much of the gain is attributable to Iowa. This is computed on the basis of the Iowa allocation and apportionment rules applicable to the separate business the stock has become an integral part of for the year in which the sale or exchange occurred. For example, if the business was subject to Iowa income tax on 40 percent of its income in the year of the sale or exchange, then 40 percent of the capital gain would be attributable or taxable by Iowa.

However, the fact that the gain from the sale or exchange of stock is taxable or partially taxable to Iowa does not mean that the dividends received by the nonresident in the year of sale are taxable to Iowa. Dividends from stock used in an Iowa specific business activity would not be taxable to Iowa except under special circumstances. An illustration of these special circumstances would be when the dividends are from capital stock from a business where the purchase and sale of stock constitute a regular business in Iowa. In this situation the dividends would be taxable to Iowa. See subrule 40.16(5).

*b. Capital gains from sales or exchanges of interests in partnerships.* When a nonresident of Iowa sells or exchanges the individual's interest in a partnership, the nonresident is actually selling an intangible since the partnership can continue without the nonresident partner and the assets used by the partnership are legally owned by the partnership and an individual retains only an equitable interest in the assets of the partnership by virtue of the partner's ownership interest in the partnership. However, because of the unique attributes of partnerships, the owner's interest in a partnership is considered to be localized or "sourced" at the situs of the partnership's activities as a matter of law. *Arizona Tractor Co. v. Arizona State Tax Com'n.*, 566 P.2d 1348, 1350 (Ariz. App. 1997); Iowa Code chapter 486 (unique attributes of a partnership defined). Therefore, if a partnership conducts all of its business in Iowa, 100 percent of the gain on the sale or exchange of a partnership interest would be attributable to Iowa. On the other hand, if the partnership conducts 100 percent of its business outside of Iowa, none of the gain

would be attributable to Iowa for purposes of the Iowa income tax. In the situation where a partnership conducts business both in and out of Iowa, the capital gain from the sale or exchange of an interest in the partnership would be allocated or apportioned in and out of Iowa based upon the partnership's activities in and out of Iowa in the year of the sale or exchange.

Note that if a partnership is a publicly traded partnership and is taxed as a corporation for federal income tax purposes, any capital gains realized on the sale or exchange of a nonresident partner's interest in the partnership will receive the same tax treatment as the capital gain from the sale or exchange of an interest in a C corporation or an S corporation as specified in paragraph "a" of this subrule.

*c. Capital gains from sales or exchanges of sole proprietorships.* When a nonresident sells or exchanges the individual's interest in a sole proprietorship, the nonresident is actually selling or exchanging tangible and intangible personal property used in this business because the sole proprietor is the legal and equitable owner of all such assets. Therefore, the general source or situs rules governing the gain from the sale or exchange of tangible property and intangible property by a nonresident individual control. Thus, if the sole proprietorship is located in Iowa, the gain from the sale or exchange of the proprietorship by a nonresident would be taxable to Iowa.

*d. Capital gains from sales or exchanges of interests in limited liability companies.* Limited liability companies are hybrid business entities containing elements of both a partnership and a corporation. If a limited liability company properly elected to file or would have been required to file a federal partnership tax return, a capital gain from the sale or exchange of an ownership interest in the limited liability company by a nonresident member of the company would be taxable to Iowa to the same extent as if the individual were selling a similar interest in a partnership as described in paragraph "b" of this subrule. However, if the limited liability company properly elected or would have been required to file a federal corporation tax return, a nonresident member who sells or exchanges an ownership interest in the limited liability company would be treated the same as if the nonresident were selling a similar interest in a C corporation or an S corporation as described in paragraph "a" of this subrule.

*e. Taxation of corporate liquidations.* As a matter of Iowa law, the proceeds from corporate liquidating distributions are not considered to be the proceeds from the sale or exchange of corporate stock. Rather, such proceeds represent the transfer back to the shareholder of that shareholder's pro-rata share of the actual assets of the corporation in which each shareholder held only an equitable ownership interest prior to the dissolution. *Lynch v. State Board of Assessment and Review*, 228 Iowa 1000, 1003-1004, 291 N.W. 161 (1940). The amount of such gain is calculated by subtracting the distribution realized from the shareholder's basis in the stock. *Id.* Thus, any gain realized by the shareholder upon such distribution is considered a capital gain from a sale or exchange of the assets by the shareholder for purposes of sourcing the shareholder's liquidating distribution gain. Consequently, the gain, whether it is from a distribution of cash or other property, is controlled by the general source or situs rules in subrule 40.16(8) governing the taxation of the sale or exchange of tangible personal property by a nonresident and subrule 40.16(10) governing the sale or exchange of intangible personal property by a nonresident.

*f. Capital losses realized by a nonresident of Iowa from the sale or exchange of an ownership interest in an Iowa business entity.* In a situation where a nonresident of Iowa sells the ownership interest in an Iowa business entity and has a capital loss from the transaction, the nonresident can claim the loss on the Iowa income tax return under the same circumstances that a capital gain would have been reported as described in paragraphs "a" through "e" of this subrule. The federal income tax provisions for netting Iowa source capital gains and losses are applicable as well as the federal provisions for limiting the net capital loss in the tax year to \$3,000, with the carryover of the portion of net capital losses that exceed \$3,000.

**40.16(10) Capital gains and losses from sales or exchanges of intangible personal property other than ownership interests in business entities.** Capital gains and losses realized by a nonresident of Iowa from the sale or exchange of intangible personal property (other than interests in business entities) are taxable to Iowa if the intangible property was an integral part of some business activity occurring regularly in Iowa prior to the sale or exchange. In the case of an intangible asset which was an integral part of a business activity of a business entity occurring regularly within and without Iowa, a capital

gain or loss from the sale or exchange of the intangible asset by a nonresident of Iowa would be reported to Iowa in the ratio of the Iowa business activity to the total business activity for the year of the sale.

This rule is intended to implement Iowa Code sections 422.5, 422.7, and 422.8.

[ARC 7761B, IAB 5/6/09, effective 6/10/09; ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 9103B, IAB 9/22/10, effective 10/27/10; ARC 3085C, IAB 5/24/17, effective 6/28/17]

**701—40.17(422) Income of part-year residents.** A taxpayer who was a resident of Iowa for only a portion of the taxable year is subject to the following rules of taxation:

1. For that portion of the taxable year for which the taxpayer was a nonresident, the taxpayer shall allocate to Iowa only the income derived from sources within Iowa.

2. For that portion of the taxable year for which the taxpayer was an Iowa resident, the taxpayer shall allocate to Iowa all income earned or received whether from sources within or without Iowa.

A taxpayer moving into Iowa may adjust the Iowa-source gross income on Schedule IA 126 by the amount of the moving expense to the extent allowed by Section 217 of the Internal Revenue Code. Any reimbursement of moving expense shall be included in Iowa-source gross income. A taxpayer moving from Iowa to another state or country may not adjust the Iowa-source gross income by the amount of moving expense, nor should any reimbursement of moving expense be allocated to Iowa.

This rule is intended to implement Iowa Code sections 422.5, 422.7, and 422.8.

**701—40.18(422) Net operating loss carrybacks and carryovers.** Net operating losses shall be allowed or allowable for Iowa individual income tax purposes and will be computed using a method similar to the method used to compute losses allowed or allowable for federal income tax purposes. In determining the applicable amount of Iowa loss carrybacks and carryovers, the adjustments to net income set forth in Iowa Code section 422.7 and the deductions from net income set forth in Iowa Code section 422.9 must be considered.

**40.18(1) Treatment of federal income taxes.**

a. Refund of federal income taxes due to net operating loss carrybacks or carryovers shall be reflected in the following manner:

(1) Accrual basis taxpayers shall accrue refunds of federal income taxes to the year in which the net operating loss occurs.

(2) Cash basis taxpayers shall reflect refunds of federal income taxes in the return for the year in which the refunds are received.

(3) Refunds reported in the year in which the net operating loss occurs which contain both business and nonbusiness components shall be analyzed and separated accordingly. The amount of refund attributable to business income shall be that amount of federal taxes paid on business income which are being refunded.

b. Federal income taxes paid in the year of the loss which contain both business and nonbusiness components shall be analyzed and separated accordingly. Federal income taxes paid in the year of the loss shall be reflected as a deduction to business income to the extent that the federal income tax was the result of the taxpayer's trade or business. Federal income taxes paid which are not attributable to a taxpayer's trade or business shall also be allowed as a deduction but will be limited to the amount of gross income which is not derived from a trade or business.

**40.18(2) Nonresidents doing business within and without Iowa.** If a nonresident does business both within and without Iowa, the nonresident shall make adjustments reflecting the apportionment of the operating loss on the basis of business done within and without the state of Iowa, according to rule 701—40.16(422). The apportioned income or loss shall be added or deducted, as the case may be, to any amount of other income attributable to Iowa for that year.

**40.18(3) Loss carryback and carryforward.** The net operating loss attributable to Iowa as determined in rule 701—40.18(422) shall be subject to the federal 2-year carryback and 20-year carryover provisions if the net operating loss was for a tax year beginning after August 5, 1997, or subject to the federal 3-year carryback and the 15-year carryforward provisions if the net operating loss was for a tax year beginning prior to August 6, 1997. However, in the case of a casualty or theft loss for an individual taxpayer or for a net operating loss in a presidentially declared disaster area incurred

by a taxpayer engaged in a small business or in the trade or business of farming, the net operating loss is to be carried back 3 taxable years and forward 20 taxable years if the loss is for a tax year beginning after August 5, 1997. The net operating loss or casualty or theft loss shall be carried back or over to the applicable year as a reduction or part of a reduction of the taxable income attributable to Iowa for that year. However, a net operating loss shall not be carried back to a year in which the taxpayer was not doing business in Iowa. If the election under Section 172(b)(3) of the Internal Revenue Code is made, the Iowa net operating loss shall be carried forward 20 taxable years if the net operating loss is for a tax year beginning after August 5, 1997, or the net operating loss shall be carried forward 15 taxable years if the loss is for a tax year beginning before August 6, 1997. A copy of the federal election made under Section 172(b)(3) of the Internal Revenue Code must be attached to the Iowa individual return filed with the department.

**40.18(4) *Loss not applicable.*** No part of a net loss for a year for which an individual was not subject to the imposition of Iowa individual income tax shall be included in the Iowa net operating loss deduction applicable to any year prior to or subsequent to the year of the loss.

**40.18(5) *Special adjustments applicable to net operating losses.*** Section 172(d) of the Internal Revenue Code provides for certain modifications when computing a net operating loss. These modifications refer to, but are not limited to, such things as considerations of other net operating loss deductions, treatment of capital gains and losses, and the limitation of nonbusiness deductions. Where applicable, the modifications set forth in Section 172 of the Internal Revenue Code shall be considered when computing the net operating loss carryover or carryback for Iowa income tax purposes.

**40.18(6) *Distinguishing business or nonbusiness items.*** In computing a net operating loss, nonbusiness deductions may be claimed only to the extent of nonbusiness income. Therefore, it is necessary to distinguish between business and nonbusiness income and expenses. For Iowa net operating loss purposes, an item will retain the same business or nonbusiness identity which would be applicable for federal income tax purposes.

**40.18(7) *Examples.*** The computation of a net operating loss deduction for Iowa income tax purposes is illustrated in the following examples:

a. Individual A had the following items of income for the taxable year:

Gross income from retail sales business		\$125,000
Interest income from federal securities		2,000
Salary from part-time job		12,500
Individual A's federal return showed the following deductions:		
Business deductions (retail sales)		\$150,000
Itemized (nonbusiness) deductions:		
Interest	\$400	
Real estate tax	600	
Iowa income tax	800	\$ 1,800

Individual A paid \$3,000 federal income tax during the year which consisted of \$2,500 federal withholding (business) and a \$500 payment (nonbusiness) which was for the balance of the prior year's federal tax liability.

The federal computations are as follows:

	<u>Per Return</u>	<u>Computed NOL</u>
Income:		
Retail Sales	\$125,000	\$125,000
Interest income-federal securities	2,000	2,000
Salary	<u>12,500</u>	<u>12,500</u>
Subtotal	\$139,500	\$139,500
Deductions:		
Business	\$150,000	\$150,000
Itemized deductions	<u>1,800</u>	<u>1,800</u>
(Loss) per federal	<u>(\$ 12,300)</u>	
Computed net operating loss		<u>(\$ 12,300)</u>

Since the nonbusiness deductions do not exceed the nonbusiness income, the loss per the federal return and the computed net operating loss are the same.

The Iowa computations are as follows:

	<u>Per Return</u>	<u>Computed NOL</u>
Income:		
Retail sales	\$125,000	\$125,000
Salary	<u>12,500</u>	<u>12,500</u>
Subtotal	\$137,500	\$137,500
Deductions:		
Business	\$150,000	\$150,000
Federal tax deductions	3,000	2,500
Itemized deductions	<u>1,000</u>	<u>-</u>
(Loss) per return	<u>(\$ 16,500)</u>	
Computed Iowa NOL		<u>(\$ 15,000)</u>

NOTE: Itemized (nonbusiness deductions) are eliminated due to the lack of nonbusiness income. The only nonbusiness income, interest from federal securities, is not taxable for Iowa income tax purposes under Iowa Code section 422.7. The only federal tax deduction allowable is that related to business activity.

*b.* Individual B had the following items of income for the taxable year:

Gross income from restaurant business	\$300,000
Wages	12,000
Business long-term capital gain @100%	1,000
Municipal bond interest (nonbusiness)	1,000
Federal tax refund of prior year taxes	500
Iowa tax refund of prior year taxes	100

Individual B's federal return showed the following deductions:

Business deductions from restaurant	\$333,000
Itemized deductions:	

Interest (nonbusiness)	\$590	
Real estate tax (nonbusiness)	780	
Iowa income tax*	520	
Alimony (nonbusiness)	600	
Union dues (business)	100	2,590
		<hr/>

\*Iowa estimated payments totaled \$220 of which \$70 related to nonbusiness income and \$150 related to business capital gains and business profits. \$300 in Iowa tax was withheld from his wages.

Individual B paid \$2,000 in federal income taxes during the tax year. \$1,500 of this amount was withholding on wages and \$500 was a federal estimated payment based on capital gains and projected business profits.

In the previous year 75 percent of B's income was from business sources and 25 percent was from nonbusiness sources.

The federal computations are as follows:

	<u>Per Return</u>	<u>Computed NOL</u>
Income:		
Retail sales	\$300,000	\$300,000
Wages	12,000	12,000
Capital gains	500(a)	1,000(a)
Iowa refund	100	100
Subtotal	<hr/> \$312,600	<hr/> \$313,100
Deductions:		
Business	\$333,000	\$333,000
Itemized deductions	2,590	575(b)
(Loss) per federal	<hr/> (\$ 22,990)	
Computed net operating loss		<hr/> (\$ 20,475)

(a) Capital gains are reduced by 50 percent in computing adjusted gross income, but must be reported in full in computing a net operating loss.

(b) Itemized deductions are limited to business deductions consisting of \$100 for union dues, \$450 for Iowa tax on business income, and nonbusiness deductions to the extent of nonbusiness income which amounts to \$25. The only nonbusiness income is 25 percent of the \$100 Iowa refund.

The Iowa computations are as follows:

	<u>Per Return</u>	<u>Computed NOL</u>
Income:		
Retail sales	\$300,000	\$300,000
Wages	12,000	12,000
Capital gains	500	1,000
Municipal bond interest	1,000	1,000
Federal refund	500	500
Subtotal	<hr/> \$314,000	<hr/> \$314,500

Deductions:		
Business	\$333,000	\$333,000
Federal tax	2,000	2,000
Itemized deductions	<u>2,070(c)</u>	<u>1,225(d)</u>
(Loss) per return	<u>(\$ 23,070)</u>	
Computed Iowa NOL		<u>(\$ 21,725)</u>

(c) Iowa income tax is not an itemized deduction for Iowa income tax purposes.

(d) Itemized deductions are limited to business deductions of \$100 for union dues and nonbusiness deductions to the extent of nonbusiness income of \$1,125. Nonbusiness income includes \$1,000 of municipal bond interest and 25 percent (\$125) of the federal tax refund.

**40.18(8)** *Net operating losses for nonresidents and part-year residents for tax years beginning on or after January 1, 1982.* For tax years beginning on or after January 1, 1982, nonresidents and part-year residents may carryback/carryforward only those net operating losses from Iowa sources. Nonresidents and part-year residents may not carryback/carryforward net operating losses which are from all sources.

Before the Iowa net operating loss of a nonresident or part-year resident is available for carryback/carryforward to another tax year, the loss must be decreased or increased by a number of possible adjustments depending on which adjustments are applicable to the taxpayer for the year of the loss. Iowa Net Operating Loss (NOL) Worksheet (41-123) may be used to make the adjustments to the net operating loss and compute the net operating loss deduction available for carryback/carryforward.

If the net operating loss was increased by an adjustment for an individual retirement account or H.R.10 retirement plan, the net operating loss should be decreased by the amount of the adjustment. The net operating loss should also be decreased by the amount of any capital loss or by the capital gain deduction to the extent the capital loss or capital gain deduction was from the sale or exchange of an asset from an Iowa source.

In a situation where the nonresident or part-year resident taxpayer received a federal income tax refund in the year of the NOL, the refund should reduce the loss in the ratio of the Iowa source income to the all source income for the tax year in which the refund was generated.

The net operating loss should be increased by any federal income tax paid in the loss year for a prior year in the ratio of the Iowa income for the prior year to the all source income for the prior year. Federal income tax withheld from wages or other compensation received in the loss year may be used to increase the Iowa net operating loss to the extent the tax is withheld from wages or other compensation earned in Iowa.

Federal estimate tax payments would be allocated to Iowa and increase the net operating loss on the basis of the Iowa income not subject to withholding to total income not subject to withholding. In any case where this method of allocation of federal estimate payments to Iowa is not considered to be equitable, the taxpayer may allocate the payments using another method as long as this method is disclosed on the taxpayer's Iowa individual income tax return for the year of the loss. However, the burden of proof is on the taxpayer to show that an alternate method of allocation is equitable.

Nonbusiness deductions included in the itemized deductions paid during the year of the net operating loss may be used to increase the NOL to the extent of nonbusiness income which is reported to Iowa in computation of the net operating loss. In most instances of net operating losses for nonresidents, no itemized deductions will be allowed in computing the net operating loss deduction. This is because most nonresidents will have no nonbusiness income reported to Iowa. Business deductions included in the federal itemized deductions may be used to increase the net operating loss deduction to the extent the deductions pertain to a business, trade, occupation or profession conducted in Iowa.

EXAMPLE A. A nonresident taxpayer had the following all source income and Iowa source income for 1982:

Category	All Source Income	Iowa Source Income
Wages	\$20,000	\$20,000
Interest	5,000	0
Rental income	5,000	5,000
Business loss	(50,000)	(10,000)
Iowa net income (loss)	<u>(\$20,000)</u>	<u>\$15,000</u>

The nonresident taxpayer did not have an Iowa net operating loss available for carryback/carryforward for Iowa income tax purposes because the taxpayer’s Iowa source income was not negative. The taxpayer’s all source loss of (\$20,000) does not qualify for carryback/carryforward on the Iowa return. However, since the taxpayer’s all source income is negative, the taxpayer will not have an Iowa income tax liability for the year of the all source loss.

EXAMPLE B. A nonresident taxpayer received a federal refund of \$1,000 in 1983. The refund was from the taxpayer’s 1981 federal return where the taxpayer’s Iowa income was 20% of the total income. \$2,000 of federal income tax was withheld from the taxpayer’s Iowa wages in 1982. The taxpayer had \$10,000 in itemized deductions in 1982. However, the taxpayer had no Iowa nonbusiness income in 1982. In addition, no Iowa business deductions were included in the itemized deductions available on the federal return. The individual had the following all source income and Iowa source income in 1982:

Category	All Source Income	Iowa Source Income
Wages	\$60,000	\$10,000
Interest	3,000	0
Rental income	5,000	5,000
Farm income loss	(30,000)	(30,000)
Capital gain	2,000	2,000
Total incomes	<u>\$40,000</u>	<u>(\$13,000)</u>

The taxpayer’s Iowa source loss of (\$13,000) was decreased by \$200 of the federal refund since 20% of the refund was considered to be from Iowa income. The loss was decreased by \$3,000 which was the capital gain deduction of the Iowa source asset sold in 1982. The loss was increased by the federal income tax withheld of \$2,000 from Iowa wages. Because there is no Iowa source nonbusiness income nor Iowa source business deductions, the taxpayer’s itemized deductions will not affect the net operating loss deduction.

Shown below is a recap of the net operating loss deduction for the nonresident taxpayer.

Iowa source net loss . . . . .	(\$13,000)
Iowa portion of federal refund . . . . .	200
Federal tax withheld on Iowa wages . . . . .	(2,000)
Capital gain deduction . . . . .	<u>3,000</u>
Total	<u>(\$11,800)</u>

The taxpayer’s net operating loss deduction available for carryback/carryforward to another tax year is (\$11,800).

After all adjustments are made to the Iowa net operating loss to compute the net operating loss deduction available for carryback/carryforward, the NOL deduction is applied to the carryback/carryforward tax year as described in paragraph “a” and paragraph “b” below:

a. *Application of net operating losses to tax years beginning prior to January 1, 1982.* In cases where a net operating loss deduction for a nonresident or part-year resident for a tax year beginning on

or after January 1, 1982, is applied to a tax year beginning prior to January 1, 1982, the net operating loss deduction is applied to the taxable income for the carryback/carryforward year unless the NOL deduction is greater than the taxable income. If the NOL deduction is greater than the taxable income, the taxable income is increased by any Iowa source capital loss or any Iowa source capital gain deduction before the NOL deduction is applied against the taxable income.

EXAMPLE 1. A nonresident taxpayer has an Iowa net operating loss deduction of (\$15,000) from the taxpayer's 1982 Iowa return. The taxpayer is carrying the NOL deduction back to 1979 where taxpayer's Iowa taxable income was \$14,000. The taxpayer had a net capital loss of \$3,000 in 1979. Because the taxpayer's 1979 taxable income of \$14,000 was \$1,000 less than the NOL deduction, the taxable income was increased by \$1,000 of the net capital loss so there would be no carryover of the NOL to 1980. However, since the NOL deduction erased all the taxable income for 1979, the taxpayer would be granted a refund of all the Iowa income tax paid for the carryback year of 1979, plus applicable interest.

*b. Application of net operating losses to tax years beginning on or after January 1, 1982.* In situations where a net operating loss of a nonresident or part-year resident for a tax year beginning on or after January 1, 1982, is carried back/carried forward for application to a tax year beginning on or after January 1, 1982, the net operating loss deduction is applied to the Iowa source income of the taxpayer for the carryback/carryforward year. The Iowa source income is the income on line 25 of Section B of Schedule IA-126 for the 1982 and 1983 Iowa returns and line 26 of Section B of Schedule IA-126 for the 1984 Iowa return and the incomes on similar corresponding lines of Section B of Schedule IA-126 for tax years after 1984. In situations where the net operating loss deductions are larger than the Iowa source incomes, the Iowa source incomes are increased by any Iowa source capital gains or capital losses that are applicable, not to exceed the NOL deduction.

The Iowa source net income after reduction by the NOL deduction is divided by the all source income for the taxpayer. The resulting percentage is the adjusted Iowa income percentage. This percentage is subtracted from 100 percent to arrive at the revised nonresident/part-year resident credit for the taxpayer. The taxpayer's overpayment as a result of the net operating loss is the amount by which the revised nonresident/part-year credit exceeds the nonresident/part-year credit prior to application of the net operating loss deduction.

EXAMPLE 1. A nonresident taxpayer had a net operating loss deduction of \$11,800 for the 1996 tax year. When the 1996 Iowa return was filed, the taxpayer elected to carry the loss forward to the 1997 tax year. The taxpayer's all source net income and Iowa source net income for 1997 were as shown below. The net operating loss carryforward from 1996 is deducted only from the Iowa source income for 1997:

Category	All Source Income	Iowa Source Income
Wages	\$ 60,000	\$ 20,000
Interest	3,000	0
Rental income	10,000	3,000
Farm income	25,000	25,000
Capital gain	2,000	2,000
Net operating loss carryforward	—	(11,800)
Iowa net income	\$100,000	\$ 38,200

The Iowa source income of \$38,200 after reduction by the NOL carryforward is divided by the all source income of \$100,000 which results in an Iowa income percentage of 38.2. This percentage is subtracted from 100 percent to arrive at the nonresident/part-year resident credit percentage of 61.8. When the tax after credit amount of \$7,364 is multiplied by the nonresident/part-year credit percentage of 61.8, this results in a credit of \$4,551. This credit is \$869 greater than the nonresident/part-year credit of \$3,682 would have been for 1997 without application of the net operating loss deduction which was carried forward from 1996.

**40.18(9) Net operating loss carryback for a taxpayer engaged in the business of farming.** Notwithstanding the net operating loss carryback periods described in subrule 40.18(3), a taxpayer who is engaged in the trade or business of farming as defined in Section 263A(e)(4) of the Internal Revenue Code and has a loss from farming as defined in Section 172(b)(1)(F) of the Internal Revenue Code for a tax year beginning on or after January 1, 1998, this loss from farming is a net operating loss which the taxpayer may carry back five taxable years prior to the year of the loss. Therefore, if a taxpayer has a net operating loss from the trade or business of farming for the 1998 tax year, the net operating loss from farming can be carried back to the taxpayer's 1993 Iowa return and can be applied to the income shown on that return. The farming loss is the lesser of (1) the amount that would be the net operating loss for the tax year if only income and deductions from the farming business were taken into account, or (2) the amount of the taxpayer's net operating loss for the tax year. Thus, if a taxpayer has a \$10,000 loss from a grain farming business and the taxpayer had wages in the tax year of \$7,000, the taxpayer's loss for the year is only \$3,000. Therefore, the taxpayer has a net operating loss from farming of \$3,000 that may be carried back five years.

However, if a taxpayer has a net operating loss from the trade or business of farming for a taxable year beginning in 1998 or for a taxable year after 1998 and makes a valid election for federal income tax purposes to carry back the net operating loss two years, or three years if the loss was in a presidentially declared disaster area or related to a casualty or theft loss, the net operating loss must be carried back two years or three years for Iowa income tax purposes. A copy of the federal election made under Section 172(i)(3) for the two-year or three-year carryback in lieu of the five-year carryback may be attached to the Iowa return or the amended Iowa return to show why the carryback was two years or three years instead of five years.

This rule is intended to implement Iowa Code sections 422.5 and 422.7 and Iowa Code Supplement section 422.9(3).

**701—40.19(422) Casualty losses.** Casualty losses may be treated in the same manner as net operating losses and may be carried back three years and forward seven years in the event said casualty losses exceed income in the loss year.

This rule is intended to implement Iowa Code section 422.7.

**701—40.20(422) Adjustments to prior years.** When Iowa requests for refunds are filed, they shall be allowed only if filed within three years after the tax payment upon which a refund or credit became due, or one year after the tax payment was made, whichever time is the later. Even though a refund may be barred by the statute of limitations, a loss shall be carried back and applied against income on a previous year to determine the correct amount of loss carryforward.

This rule is intended to implement Iowa Code section 422.73.

**701—40.21(422) Additional deduction for wages paid or accrued for work done in Iowa by certain individuals.** For tax years beginning on or after January 1, 1984, but before January 1, 1989, a taxpayer who operates a business which is considered to be a small business as defined in subrule 40.21(2) is allowed an additional deduction for 50 percent of the first 12 months of wages paid or accrued during the tax years for work done in Iowa by employees first hired on or after January 1, 1984, or after July 1, 1984, where the taxpayer first qualifies as a small business under the expanded definition of a small business effective July 1, 1984, and meets one of the following criteria.

A handicapped individual domiciled in this state at the time of hiring.

An individual domiciled in this state at the time of hiring who meets any of the following conditions:

1. Has been convicted of a felony in this or any other state or the District of Columbia.
2. Is on parole pursuant to Iowa Code chapter 906.
3. Is on probation pursuant to Iowa Code chapter 907 for an offense other than a simple misdemeanor.
4. Is in a work release program pursuant to Iowa Code chapter 247A.

An individual, whether or not domiciled in this state at the time of the hiring, who is on parole or probation and to whom the interstate probation and parole compact under Iowa Code section 913.40 applies.

For tax years beginning on or after January 1, 1989, the additional deduction for wages paid or accrued for work done in Iowa by certain individuals is 65 percent of the wages paid for the first 12 months of employment of the individuals, not to exceed \$20,000 per individual. Individuals must meet the same criteria to qualify their employers for this deduction for tax years beginning on or after January 1, 1989, as for tax years beginning before January 1, 1989.

For tax years ending after July 1, 1990, a taxpayer who operates a business which does not qualify as a small business specified in subrule 40.21(2) may claim an additional deduction for wages paid or accrued for work done in Iowa by certain convicted felons provided the felons are described in the four numbered paragraphs above and the following unnumbered paragraph and provided the felons are first hired on or after July 1, 1990. The additional deduction is 65 percent not to exceed \$20,000 for the first 12 months of wages paid for work done in Iowa.

The qualifications mentioned in subrules 40.21(1), 40.21(4), 40.21(5) and 40.21(6) and in subrule 40.21(3), paragraphs “f” and “g,” apply to the additional deduction for work done in Iowa by a convicted felon in situations where the taxpayer is not a small business as well as in situations where the taxpayer is a small business.

The additional deduction applies to any individual hired on or after July 1, 2001, whether or not domiciled in Iowa at the time of hiring, who is on parole or probation and to whom either the interstate probation and parole compact under Iowa Code section 907A.1 or the compact for adult offenders under Iowa Code chapter 907B applies. The amount of additional deduction for hiring this individual is equal to 65 percent of the wages paid, but the additional deduction is not to exceed \$20,000 for the first 12 months of wages paid for work done in Iowa.

**40.21(1)** The additional deduction shall not be allowed for wages paid to an individual who was hired to replace an individual whose employment was terminated within the 12-month period preceding the date of first employment. However, if the individual being replaced left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct in connection with the individual’s employment as determined by the department of workforce development, the additional deduction shall be allowed.

The determination of whether an individual left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct is a factual determination which must be made on a case-by-case basis.

**40.21(2)** The term “small business” means a business entity organized for profit including but not limited to an individual proprietorship, partnership, joint venture, association or cooperative. It includes the operation of a farm, but not the practice of a profession. The following conditions apply to a business entity which is a small business for purposes of the additional deduction for wages:

*a.* The small business shall not have had more than 20 full-time equivalent employee positions during each of the 26 consecutive weeks within the 52-week period immediately preceding the date on which an individual for whom an additional deduction for wages is taken was hired. Full-time equivalent position means any of the following:

1. An employment position requiring an average work week of 40 or more hours;
2. An employment position for which compensation is paid on a salaried full-time basis without regard to hours worked; or

3. An aggregation of any number of part-time positions which equal one full-time position. For purposes of this subrule each part-time position shall be categorized with regard to the average number of hours worked each week as a one-quarter, half, three-quarter, or full-time position, as set forth in the following table:

<u>Average Number of Weekly Hours</u>	<u>Category</u>
More than 0 but less than 15	¼
15 or more but less than 25	½
25 or more but less than 35	¾
35 or more	1 (full-time)

*b.* The small business shall not have more than \$1 million in annual gross revenues, or after July 1, 1984, \$3 million in annual gross revenues or as the average of the three preceding tax years. “Annual gross revenues” means total sales, before deducting returns and allowances but after deducting corrections and trade discounts, sales taxes and excise taxes based on sales, as determined in accordance with generally accepted accounting principles.

*c.* The small business shall not be an affiliate or subsidiary of a business which is dominant in its field of operation. “Dominant in its field of operation” means having more than 20 full-time equivalent employees and more than \$1 million of annual gross revenues, or after July 1, 1984, \$3 million of annual gross revenues or as the average of the three preceding tax years. “Affiliate or subsidiary of a business dominant in its field of operations” means a business which is at least 20 percent owned by a business dominant in its field of operation, or by partners, officers, directors, majority stockholders, or their equivalent, of a business dominant in that field of operation.

*d.* “Operation of a farm” means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing or the production of livestock. Operation of a farm shall not include the production of timber, forest products, nursery products, or sod and operation of a farm shall not include a contract where a processor or distributor of farm products or supplies provides spraying, harvesting or other farm services.

*e.* “The practice of a profession” means a vocation requiring specialized knowledge and preparation including but not limited to the following: medicine and surgery, podiatry, osteopathy, osteopathic medicine and surgery, psychology, psychiatry, chiropractic, nursing, dentistry, dental hygiene, optometry, speech pathology, audiology, pharmacy, physical therapy, occupational therapy, mortuary science, law, architecture, engineering and surveying, and accounting.

#### **40.21(3) Definitions.**

*a.* The term “*handicapped person*” means any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment.

The term handicapped does not include any person who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the person from performing the duties of employment or whose employment, by reason of current use of alcohol or drugs, would constitute a direct threat to the property or the safety of others.

*b.* The term “*physical or mental impairment*” means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin and endocrine; or any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

*c.* The term “*major life activities*” means functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

*d.* The term “*has a record of such impairment*” means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

*e.* The term “*is regarded as having such an impairment*” means:

1. Has a physical or mental impairment that does not substantially limit major life activities but that is perceived as constituting such a limitation;

2. Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

3. Has none of the impairments defined as physical or mental impairments, but is perceived as having such an impairment.

*f.* The term “*successfully completing a probationary period*” includes those instances where the employee quits without good cause attributable to the employer during the probationary period or was discharged for misconduct during the probationary period.

*g.* The term “*probationary period*” means the period of probation for newly hired employees, if the employer has a written probationary policy. If the employer has no written probationary policy for newly hired employees, the probationary period shall be considered to be six months from the date of hire.

**40.21(4)** If a newly hired employee has been certified as either a vocational rehabilitation referral or an economically disadvantaged ex-convict for purposes of qualification for the work opportunity tax credit under Section 51 of the Internal Revenue Code, that employee shall be considered to have met the qualifications for the additional wage deduction.

A vocational rehabilitation referral is any individual certified by a state employment agency as having a physical or mental disability which, for the individual constitutes or results in a substantial handicap to employment. In addition, the individual must have been referred to the employer after completion or while receiving rehabilitation services pursuant to either a state or federal approved vocational rehabilitation program.

For all other newly hired employees, the employer has the burden of proof to show that the employees meet the qualifications for the additional wage deduction.

**40.21(5)** The taxpayer shall include a schedule with the filing of its tax return showing the name, address, social security number, date of hiring and wages paid of each employee for which the taxpayer claims the additional deduction for wages.

**40.21(6)** If the employee for which an additional deduction for wages was allowed fails to successfully complete a probationary period and the taxpayer has already filed an Iowa individual income tax return taking the additional deduction for wages, the taxpayer shall file an amended return adding back the additional deduction for wages. The amended return shall state the name and social security number of the employee who failed to successfully complete a probationary period.

This rule is intended to implement 2011 Iowa Code Supplement section 422.7 as amended by 2012 Iowa Acts, Senate File 2247.

[ARC 7761B, IAB 5/6/09, effective 6/10/09; ARC 0337C, IAB 9/19/12, effective 10/24/12]

#### **701—40.22(422) Disability income exclusion.**

**40.22(1)** Effective for tax years beginning on or after January 1, 1984, a taxpayer who is permanently and totally disabled and has not attained age 65 by the end of the tax year or reached mandatory retirement age can exclude a maximum of \$100 per week of payments received in lieu of wages. In order for the payments to qualify for the exclusion, the payments must be made under a plan providing payment of such amounts to an employee for a period during which the employee is absent from work on account of permanent and total disability.

**40.22(2)** In the case of a married couple where both spouses meet the qualifications for the disability exclusion, each spouse may exclude \$5,200 of income received on account of disability.

**40.22(3)** There is a reduction in the exclusion, dollar for dollar, to the extent that a taxpayer’s federal adjusted gross income (determined without this exclusion and without the deduction for the two-earner married couple) exceeds \$15,000. In the case of a married couple, both spouses’ incomes must be considered for purposes of determining if the disability income exclusion is to be reduced for income that exceeds \$15,000. The taxpayers’ disability income exclusion is eliminated when the taxpayers’ federal adjusted gross income is equal to or exceeds \$20,200. The deduction of the taxpayers’ disability income exclusion because the taxpayers’ federal adjusted gross income is greater than \$15,000 is illustrated in the following example:

A married couple is filing their 1984 Iowa return. The husband retired during the year and received \$8,000 in disability income during the 40-week period in 1984 that he was retired. The husband's other income in 1984 was \$2,500 and the wife's income was \$7,500.

Of the \$8,000 in disability payments received by the husband in the 40-week period he was retired in 1984, only \$4,000 is eligible for the exclusion. This is because the maximum amount that can be excluded on a weekly basis as a result of the disability exclusion is \$100.

However, the \$4,000 that qualifies for the exclusion must be reduced to the extent that the taxpayer's federal adjusted gross income exceeds \$15,000. In this example, the taxpayer's federal adjusted gross income is \$18,000, which exceeds \$15,000 by \$3,000. Therefore, the amount eligible for exclusion of \$4,000 must be reduced by \$3,000. This gives the taxpayers an exclusion of \$1,000.

**40.22(4)** For purposes of the disability income exclusion, "permanent and total disability" means the individual is unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment which (a) can be expected to last for a continuous period of 12 months or more or (b) can be expected to result in death. A certificate from a qualified physician must be attached to the individual's tax return attesting to the taxpayer's permanent and total disability as of the date the individual claims to have retired on disability. The certificate must include the name and address of the physician and contain an acknowledgment that the certificate will be used by the taxpayer to claim the exclusion. In an instance where an individual has been certified as permanently and totally disabled by the Veterans Administration, Form 6004 may be attached to the return instead of the physician's certificate. Form 6004 must be signed by a physician on the VA disability rating board.

**40.22(5)** Mandatory retirement age is the age at which the taxpayer would have been required to retire under the employer's retirement program.

**40.22(6)** The disability income exclusion is not applicable to federal income tax for tax years beginning after 1983. There are many revenue rulings, court cases and other provisions which were relevant to the disability income exclusion for the tax periods when the exclusion was available on federal returns. These provisions, court cases and revenue rulings concerning the disability income exclusion are equally applicable to the disability income exclusion on Iowa returns for tax years beginning on or after January 1, 1984.

This rule is intended to implement Iowa Code section 422.7.

**701—40.23(422) Social security benefits.** For tax years beginning on or after January 1, 1984, but before January 1, 2014, social security benefits received are taxable on the Iowa return. Although Tier 1 railroad retirement benefits were taxed similarly as social security benefits for federal income tax purposes beginning on or after January 1, 1984, these benefits are not subject to Iowa income tax. 45 U.S.C. Section 231m prohibits taxation of railroad retirement benefits by the states.

The following subrules specify how social security benefits are taxed for Iowa individual income tax purposes for tax years beginning on or after January 1, 1984, but prior to January 1, 1994; for tax years beginning on or after January 1, 1994, but prior to January 1, 2007; and for tax years beginning on or after January 1, 2007, but prior to January 1, 2014:

**40.23(1)** *Taxation of social security benefits for tax years beginning on or after January 1, 1984, but prior to January 1, 1994.* For tax years beginning on or after January 1, 1984, but prior to January 1, 1994, social security benefits are taxable on the Iowa return to the same extent as the benefits are taxable for federal income tax purposes. When both spouses of a married couple receive social security benefits and file a joint federal income tax return but separate returns or separately on the combined return form, the taxable portion of the benefits must be allocated between the spouses. The following formula should be used to compute the amount of social security benefits to be reported by each spouse on the Iowa return:

$$\text{Taxable Social Security Benefits on the Federal Return} \times \frac{\text{Total Social Security Benefit Received by Husband (or Wife)}}{\text{Total Social Security Benefits Received by Both Spouses}}$$

The example shown below illustrates how taxable social security benefits are allocated between spouses:

A married couple filed a joint federal income tax return for 1984. They filed separately on the combined return form for Iowa income tax purposes. During the tax year the husband received \$6,000 in social security benefits and the wife received \$3,000 in social security benefits. \$2,000 of the social security benefits was taxable on the federal return.

The \$2,000 in taxable social security benefits is allocated to the spouses on the following basis:

$$\begin{array}{r} \text{Husband} \\ \hline \$2,000 \times \frac{\$6,000}{\$9,000} = \$1,333.40 \end{array} \qquad \begin{array}{r} \text{Wife} \\ \hline \$2,000 \times \frac{\$3,000}{\$9,000} = \$666.60 \end{array}$$

In situations where taxpayers have received both social security benefits and Tier 1 railroad retirement benefits and are taxable on a portion of those benefits, the formula which follows should be used to determine the social security benefits to be included in net income:

$$\begin{array}{r} \text{Taxable Social Security Benefits} \\ \text{and Railroad Retirement} \\ \text{Benefits on Federal Return} \end{array} \times \frac{\begin{array}{r} \text{Total Social Security Benefit} \\ \text{Received} \end{array}}{\begin{array}{r} \text{Total Social Security Benefits and} \\ \text{Railroad Retirement Benefits} \\ \text{Received} \end{array}}$$

**40.23(2)** *Taxation of social security benefits for tax years beginning on or after January 1, 1994, but prior to January 1, 2007.* For tax years beginning on or after January 1, 1994, but prior to January 1, 2007, although up to 85 percent of social security benefits received may be taxable for federal income tax purposes, no more than 50 percent of social security benefits will be taxable for state individual income tax purposes. Thus, in the case of Iowa income tax returns for 1994 through 2006, social security benefits will be taxed as the benefits were taxed from 1984 through 1993 as described in subrule 40.23(1).

The amount of social security benefits that is subject to tax is the lesser of one-half of the annual benefits received in the tax year or one-half of the taxpayer's provisional income over a specified base amount. The provisional income is the taxpayer's modified adjusted gross income plus one-half of the social security benefits and one-half of the railroad retirement benefits received. Although railroad benefits are not taxable, one-half of the railroad retirement benefits received may be used to determine the amount of social security benefits that is taxable for state income tax purposes. Modified adjusted gross income is the taxpayer's federal adjusted gross income, plus interest that is tax-exempt on the federal return, plus any of the following incomes:

1. Savings bond proceeds used to pay expenses of higher education excluded from income under Section 135 of the Internal Revenue Code.
2. Foreign source income excluded from income under Section 911 of the Internal Revenue Code.
3. Income from Guam, American Samoa, and the Northern Mariana Islands excluded under section 931 of the Internal Revenue Code.
4. Income from Puerto Rico excluded under Section 933 of the Internal Revenue Code.

A taxpayer's base amount is: (a) \$32,000 if married and a joint federal return was filed, (b) \$0 if married and separate federal returns were filed by the spouses and (c) \$25,000 for individuals who filed federal returns and used a filing status other than noted in (a) and (b).

The IA 1040 booklet and instructions for 1994 through 2006 will include a worksheet to compute the amount of social security benefits that is taxable for Iowa income tax purposes. An example of the social security worksheet follows. Similar worksheets will be used for computing the amount of social security benefits that is taxable for years 1995 through 2006. An example of the social security worksheet follows:

1. Enter amount(s) from box 5 of all of Form(s) SSA-1099. If a joint return was filed, enter totals from box 5 of Form(s) SSA-1099 for both spouses. Do not include railroad retirement benefits from RRB-1099 here. See line 3. 1. \_\_\_\_\_
2. Divide line 1 amount above by 2. 2. \_\_\_\_\_
- \*3. Add amounts of the following incomes from Form 1040: wages, taxable interest income, dividend income, taxable state and local income tax refunds, alimony, business income or loss, capital gain or loss, capital gain distributions, other gains, taxable IRA distributions, taxable pensions and annuities, incomes from Schedule E, farm income or loss, unemployment compensation, other income and 1/2 of railroad retirement benefits from RRB 1099. 3. \_\_\_\_\_
4. Enter amount from Form 1040, line 8b for interest that is federally tax-exempt. 4. \_\_\_\_\_
5. Add lines 2, 3 and 4. 5. \_\_\_\_\_
6. Enter total adjustment to income from Form 1040. 6. \_\_\_\_\_
7. Subtract line 6 from line 5. 7. \_\_\_\_\_
8. Enter on line 8 one of the following amounts based on the filing status used on Form 1040: Single, Head of Household, or Qualifying Widow(er), enter \$25,000. Married filing jointly, enter \$32,000. Married filing separately, enter \$0 (\$25,000 if you did not live with spouse any time in 1994). 8. \_\_\_\_\_
9. Subtract line 8 from line 7. If zero or less enter 0. If line 9 is zero, none of the social security benefits are taxable. If line 9 is more than zero, go to line 10. 9. \_\_\_\_\_
10. Divide line 9 amount above by 2. 10. \_\_\_\_\_
11. Taxable social security benefits enter smaller of line 2 or line 10 here and on line 14 IA 1040. 11. \_\_\_\_\_

\*If applicable, include on line 3 the following incomes excluded from federal adjusted gross income: foreign earned income, income excluded by residents of Puerto Rico, American Samoa, and Guam and proceeds from savings bonds used for higher education.

Married taxpayers who filed a joint federal return and are filing separate Iowa returns or separately on the combined return form can allocate taxable social security benefits between them with the following formula.

$$\text{Taxable Social Security Benefits From Worksheet} \times \frac{\text{Total Social Security Benefit Received by Husband (or Wife)}}{\text{Total Social Security Benefits Received by Both Spouses}}$$

**40.23(3)** *Taxation of social security benefits for tax years beginning on or after January 1, 2007, but prior to January 1, 2014.* For tax years beginning on or after January 1, 2007, but prior to January 1, 2014, the amount of social security benefits subject to Iowa income tax will be computed as described in subrule 40.23(2), but will be further reduced by the following percentages:

Calendar years 2007 and 2008	32%
Calendar year 2009	43%
Calendar year 2010	55%
Calendar year 2011	67%
Calendar year 2012	77%
Calendar year 2013	89%

The Iowa individual income tax booklet and instructions for 2007 through 2013 will include a worksheet to compute the amount of social security benefits that is taxable for Iowa income tax purposes. An example of the social security worksheet follows:

1. Enter amount(s) from box 5 of Form(s) SSA-1099. If a joint return was filed, enter totals from box 5 of Form(s) SSA-1099 for both spouses. Do not include railroad retirement benefits from RRB-1099 here. See line 3. 1. \_\_\_\_\_
2. Divide line 1 amount above by 2. 2. \_\_\_\_\_
- \*3. Add amounts of the following incomes from Form 1040: wages, taxable interest income, dividend income, taxable state and local income tax refunds, alimony, business income or loss, capital gain or loss, capital gain distributions, other gains, taxable IRA distributions, taxable pensions and annuities, incomes from Schedule E, farm income or loss, unemployment compensation, other income and 1/2 of railroad retirement benefits from RRB 1099. 3. \_\_\_\_\_
4. Enter amount from Form 1040, line 8b for interest that is federally tax-exempt. 4. \_\_\_\_\_
5. Add lines 2, 3 and 4. 5. \_\_\_\_\_
6. Enter total adjustment to income from Form 1040. 6. \_\_\_\_\_
7. Subtract line 6 from line 5. 7. \_\_\_\_\_
8. Enter on line 8 one of the following amounts based on the filing status used on Form 1040: Single, Head of Household, or Qualifying Widow(er), enter \$25,000. Married filing jointly, enter \$32,000. Married filing separately, enter \$0 (\$25,000 if you did not live with spouse anytime during the year). 8. \_\_\_\_\_
9. Subtract line 8 from line 7. If zero or less enter 0. If line 9 is zero, none of the social security benefits are taxable. If line 9 is more than zero, go to line 10. 9. \_\_\_\_\_
10. Divide line 9 amount above by 2. 10. \_\_\_\_\_
11. Taxable social security benefits before phase-out exclusion. Enter smaller of line 2 or line 10. 11. \_\_\_\_\_
12. Multiply line 11 by applicable exclusion percentage. 12. \_\_\_\_\_
13. Taxable social security benefits. Subtract line 12 from line 11. 13. \_\_\_\_\_

\*If applicable, include on line 3 the following incomes excluded from federal adjusted gross income: foreign earned income, income excluded by residents of Puerto Rico, American Samoa, and Guam and proceeds from savings bonds used for higher education and employer-provided adoption benefits.

Married taxpayers who filed a joint federal return and are filing separate Iowa returns or separately on the combined return form can allocate taxable social security benefits between them with the following formula.

$$\text{Taxable Social Security Benefits From Worksheet} \times \frac{\text{Total Social Security Benefit Received by Spouse 1 (or Spouse 2)}}{\text{Total Social Security Benefits Received by Both Spouses}}$$

The amount on line 12 of this worksheet is the phase-out exclusion of social security benefits which must be included in net income in determining whether an Iowa return must be filed in accordance with rules 701—39.1(422) and 701—39.5(422), and this amount must also be included in net income in calculating the special tax computation in accordance with rule 701—39.15(422).

**40.23(4)** *Taxation of social security benefits for tax years beginning on or after January 1, 2014.* For tax years beginning on or after January 1, 2014, no social security benefits are taxable on the Iowa return. However, the 100 percent phase-out exclusion of social security benefits must still be included in net income in determining whether an Iowa return must be filed in accordance with rules 701—39.1(422) and

701—39.5(422), and the 100 percent phase-out exclusion of social security benefits must also be included in net income in calculating the special tax computation in accordance with rule 701—39.15(422).

This rule is intended to implement Iowa Code section 422.7 as amended by 2006 Iowa Acts, Senate File 2408.

**701—40.24(99E) Lottery prizes.** Prizes awarded under the Iowa Lottery Act are Iowa earned income. Therefore, individuals who win lottery prizes are subject to Iowa income tax in the aggregate amount of prizes received in the tax year, even if the individuals were not residents of Iowa at the time they received the prizes.

This rule is intended to implement Iowa Code section 99E.19.

**701—40.25(422) Certain unemployment benefits received in 1979.** Rescinded IAB 11/24/04, effective 12/29/04.

**701—40.26(422) Contributions to the judicial retirement system.** Rescinded IAB 11/24/04, effective 12/29/04.

**701—40.27(422) Incomes from distressed sales of qualifying taxpayers.** For tax years beginning on or after January 1, 1986, taxpayers with gains from sales, exchanges, or transfers of property must exclude those gains from net income, if the gains are considered to be distressed sale transactions.

**40.27(1) Qualifications that must be met for transactions to be considered distressed sales.** There are a number of qualifications that must be met before a transaction can be considered to be a distressed sale. The transaction must involve forfeiture of an installment real estate contract, the transfer of real or personal property securing a debt to a creditor in cancellation of that debt, or from the sale or exchange of property as a result of actual notice of foreclosure. The following three additional qualifications need to have been met.

*a.* The forfeiture, transfer, or sale or exchange was done for the purpose of establishing a positive cash flow.

*b.* Immediately before the forfeiture, transfer, or sale or exchange, the taxpayer's debt-to-asset ratio exceeded 90 percent as computed under generally accepted accounting principles.

*c.* The taxpayer's net worth at the end of the tax year was less than \$75,000.

In determining the taxpayer's debt-to-asset ratio immediately before the forfeiture, transfer, or sale or exchange and at the end of the tax year, the taxpayer must include any asset transferred within 120 days prior to the transaction or within 120 days prior to the end of the tax year without adequate and full consideration in money or money's worth.

Proof of forfeiture of the installment real estate contract, proof of transfer of property to a creditor in cancellation of a debt, or a copy of the notice of foreclosure constitutes documentation of the distressed sale and must be made a part of the return. Balance sheets showing the taxpayer's debt-to-asset ratio immediately before the distressed sale transaction and the taxpayer's net worth at the end of the tax year must also be included with the income tax return. The balance sheets supporting the debt-to-asset ratio and the net worth must list the taxpayer's personal assets and liabilities as well as the assets and liabilities of the taxpayer's farm or other business.

For purposes of this provision, in the case of married taxpayers, except in the instance when the husband and wife live apart at all times during the tax year, the assets and liabilities of both spouses must be considered in determining the taxpayers' net worth or the taxpayers' debt-to-asset ratio.

**40.27(2) Losses from distressed sale transactions of qualifying taxpayers.** Losses from distressed sale transactions meeting the qualifications described above were disallowed prior to the time that the provision for disallowing these losses was repealed in the 1990 session of the General Assembly. Taxpayers whose Iowa income tax liabilities were increased because of disallowance of losses from distressed sales transactions may file refund claims with the department to get refunds of the taxes paid due to disallowance of the losses. Refund claims will be honored by the department to the extent that

the taxpayers provide verification of the distressed sale losses and the claims are filed within the statute of limitations for refund given in Iowa Code subsection 422.73(2).

This rule is intended to implement Iowa Code section 422.7.

**701—40.28(422) Losses from passive farming activities.** Rescinded IAB 2/18/04, effective 3/24/04.

**701—40.29(422) Intangible drilling costs.** For tax years beginning on or after January 1, 1986, but before January 1, 1987, intangible drilling and development costs which pertain to any well for the production of oil, gas, or geothermal energy, and which are incurred after the commencement of the installation of the production casing for the well, are not allowed as an expense in the tax year when the costs were paid or incurred and must be added to net income. Instead of expensing the intangible drilling and development costs which are incurred after the commencement of the installation of the production casing for a well, the expenses must be amortized over a 26-month period, beginning in the month in which the costs are paid or incurred if the costs were incurred for a well which is located in the United States, the District of Columbia, and those continental shelf areas which are adjacent to United States territorial waters and over which the United States has exclusive rights with respect to the exploration and exploitation of natural resources as provided in Section 638 of the Internal Revenue Code.

In the case of intangible drilling and development costs which are incurred for oil or gas wells outside the United States, those costs must be recovered over a ten-year straight-line amortization period beginning in the year the costs are paid or incurred. However, in lieu of amortization of the costs, the taxpayer may elect to add these costs to the basis of the property for cost depletion purposes.

For tax years beginning on or after January 1, 1987, the intangible drilling costs, which are an addition to income subject to amortization, are the intangible drilling costs described in Section 57(a)(2) of the Internal Revenue Code. These intangible drilling costs are an item of tax preference for federal minimum tax purposes for tax years beginning after December 31, 1986.

This rule is intended to implement Iowa Code section 422.7.

**701—40.30(422) Percentage depletion.** For tax years beginning on or after January 1, 1987, the percentage depletion that is an addition to net income is the depletion described in Section 57(a)(1) of the Internal Revenue Code only to the extent the depletion applies to an oil, gas, or geothermal well. This depletion is an item of tax preference for federal minimum tax purposes for tax years beginning after December 31, 1986.

This rule is intended to implement Iowa Code section 422.7.

[ARC 7761B, IAB 5/6/09, effective 6/10/09]

**701—40.31(422) Away-from-home expenses of state legislators.** For tax years beginning on or after January 1, 1987, state legislators whose personal residences in their legislative districts are more than 50 miles from the state capitol may claim the same deductions for away-from-home expenses as are allowed on their federal income tax returns under Section 162(h)(1)(B) of the Internal Revenue Code. These individuals may claim deductions for meals and lodging per “legislative day” in the amount of per diem allowance for federal employees in effect for the tax year. The portion of this per diem allowance which is equal to the daily expense allowance authorized for state legislators in Iowa Code section 2.10 may be claimed as an adjustment to income. The balance of the per diem allowance for federal employees must be allocated between lodging expenses and meal expenses and is deductible as a miscellaneous itemized deduction. However, only 50 percent of the amount attributable to meal expenses may be deducted for tax years beginning on or after January 1, 1994.

State legislators whose personal residences in their legislative districts are 50 miles or less from the state capitol may claim a deduction for meals and lodging of \$50 per “legislative day.” However, in lieu of either of the deduction methods previously described in this rule, any state legislator may elect to itemize adjustments to income for amounts incurred for meals and lodging for the “legislative days” of the state legislator.

This rule is intended to implement Iowa Code section 422.7.

[ARC 7761B, IAB 5/6/09, effective 6/10/09]

**701—40.32(422) Interest and dividends from regulated investment companies which are exempt from federal income tax.** For tax years beginning on or after January 1, 1987, interest and dividends from regulated investment companies which are exempt from federal income tax under the Internal Revenue Code are subject to Iowa income tax. See rule 701—40.52(422) for a discussion of the Iowa income tax exemption of some interest and dividends from regulated investment companies that invest in certain obligations of the state of Iowa and its political subdivisions the interest from which is exempt from Iowa income tax. To the extent that a loss on the sale or exchange of stock in a regulated investment company was disallowed on an individual's federal income tax return pursuant to Section 852(b)(4)(B) of the Internal Revenue Code because the taxpayer held the stock six months or less and because the regulated investment company had invested in federal tax-exempt securities, the loss is allowed for purposes of computation of net income.

This rule is intended to implement Iowa Code section 422.7.

**701—40.33(422) Partial exclusion of pensions and annuities for retired and disabled public employees.** Rescinded IAB 11/24/04, effective 12/29/04.

**701—40.34(422) Exemption of restitution payments for persons of Japanese ancestry.** For tax years beginning on or after January 1, 1988, restitution payments authorized by P.L. 100-383 to individuals of Japanese ancestry who were interned during World War II are exempt from Iowa income tax to the extent the payments are included in federal adjusted gross income. P.L. 100-383 provides for a payment of \$20,000 for each qualifying individual who was alive on August 10, 1988. In cases where the qualifying individuals have died prior to the time that the restitution payments were received, the restitution payments received by the survivors of the interned individuals are also exempt from Iowa income tax.

This rule is intended to implement Iowa Code section 422.7.

**701—40.35(422) Exemption of Agent Orange settlement proceeds received by disabled veterans or beneficiaries of disabled veterans.** For tax years beginning on or after January 1, 1989, proceeds from settlement of a lawsuit against the manufacturer or distributor of a Vietnam herbicide received by a disabled veteran or the beneficiary of a disabled veteran for damages from exposure to the herbicide are exempt from Iowa income tax to the extent the proceeds are included in federal adjusted gross income. For purposes of this rule, Vietnam herbicide means a herbicide, defoliant, or other causative agent containing a dioxin, including, but not limited to, Agent Orange used in the Vietnam conflict beginning December 22, 1961, and ending May 7, 1975.

This rule is intended to implement Iowa Code section 422.7.

**701—40.36(422) Exemption of interest earned on bonds issued to finance beginning farmer loan program.** Interest earned on or after July 1, 1989, from bonds or notes issued by the agricultural development authority to finance the beginning farmer loan program is exempt from the state income tax.

This rule is intended to implement Iowa Code sections 175.17 and 422.7.

**701—40.37(422) Exemption of interest from bonds issued by the Iowa comprehensive petroleum underground storage tank fund board.** Interest received from bonds issued by the Iowa comprehensive petroleum underground storage tank fund board is exempt from state individual income tax. This is effective for interest received from these bonds on or after May 5, 1989, but before July 1, 2009.

This rule is intended to implement Iowa Code section 455G.6.

**701—40.38(422) Capital gain deduction or exclusion for certain types of net capital gains.** For tax years beginning on or after January 1, 1998, net capital gains from the sale of the assets of a business described in subrules 40.38(2) to 40.38(8) are excluded in the computation of net income for qualified individual taxpayers. This includes net capital gains from the sales of real property, sales of assets of a

business entity, sales of certain livestock of a business, sales of timber, liquidation of assets of certain corporations, and certain stock sales which are treated as acquisition of assets of a corporation. “Net capital gains” means capital gains net of capital losses because Iowa’s starting point for computing net income is federal adjusted gross income. A business includes any activity engaged in by a person or caused to be engaged in by a person with the object of gain, benefit, or advantage, either direct or indirect. Subrule 40.38(1) describes the criteria for material participation which are required for the exclusion of certain capital gains related to the sale of real property and the sale of assets of business entities. Subrule 40.38(9) describes situations in which the capital gain deduction otherwise allowed is not allowed for purposes of computation of a net operating loss or for computation of the taxable income for a tax year to which a net operating loss is carried.

**40.38(1)** *Material participation in a business if the taxpayer has been involved in the operation of the business on a regular, continuous, and substantial basis for ten or more years at the time assets of the business are sold or exchanged.* If the taxpayer has regular, continuous and substantial involvement in the operations of a business which meets the criteria for material participation in an activity under Section 469(h) of the Internal Revenue Code and the federal tax regulations for material participation in 26 CFR §1.469-5 and §1.469-5T, for the ten years prior to the date of the sale or exchange of the assets of a business, the taxpayer shall be considered to have satisfied the material participation requirement for this subrule. In determining whether a particular taxpayer has material participation in a business, participation of the taxpayer’s spouse in a business must also be taken into account. The spouse’s participation in the business must be taken into account even if the spouse does not file a joint state return with the taxpayer or if the spouse has no ownership interest in the business. The activities of other family members, employees, or consultants are not attributed to the taxpayer to determine material participation.

*a.* Work done in connection with an activity shall not be treated as participation in the activity if such work is not of a type that is customarily done by an owner and one of the principal purposes for the performance of such work is to avoid the disallowance of any loss or credit from such activity.

*b.* Work done in an activity by an individual in the individual’s capacity as an investor is not considered to be material participation in the business or activity unless the investor is directly involved in the day-to-day management or operations of the activity or business. Investor-type activities include the study and review of financial statements or reports on operations of the activity, preparing or compiling summaries or analyses of finances or operations of the activity for the individual’s own use, and monitoring the finances or operations of the activity in a nonmanagerial capacity.

*c.* A taxpayer is most likely to have material participation in a business if that business is the taxpayer’s principal business. However, for purposes of this subrule, it is possible for a taxpayer to have had material participation in more than one business in a tax year.

*d.* A highly relevant factor in material participation in a business is how regularly the taxpayer is present at the place where the principal operations of a business are conducted. In addition, a taxpayer is likely to have material participation in a business if the taxpayer performs all functions of the business. The fact that the taxpayer utilizes employees or contracts for services to perform daily functions in a business will not prevent the taxpayer from qualifying as materially participating in the business, but the services will not be attributed to the taxpayer.

*e.* Generally, an individual will be considered as materially participating in a tax year if the taxpayer satisfies or meets any of the following tests:

(1) The individual participates in the business for more than 500 hours in the taxable year.

EXAMPLE. Joe and Sam Smith are brothers who formed a computer software business in 2001 in Altoona, Iowa. In 2011, Joe spent approximately 550 hours selling software for the business and Sam spent about 600 hours developing new software programs for the business. Both Joe and Sam would be considered to have materially participated in the computer software business in 2011.

(2) The individual’s participation in the business constitutes substantially all of the participation of all individuals in the business for the tax year.

EXAMPLE. Roger McKee is a teacher in a small town in southwest Iowa. He owns a truck with a snowplow blade. He contracts with some of his neighbors to plow driveways. He maintains and drives

the truck. In the winter of 2011, there was little snow so Mr. McKee spent only 20 hours in 2011 clearing driveways. Roger McKee is deemed to have materially participated in the snowplowing business in 2011.

(3) The individual participates in the business for more than 100 hours in the tax year, and no other individual spends more time in the business activity than the taxpayer.

(4) The individual participates in two or more businesses, excluding rental businesses, in the tax year and participates for more than 500 hours in all of the businesses and more than 100 hours in each of the businesses, and the participation is not material participation within the meaning of one of the tests in subparagraphs 40.38(1)“e”(1) to (3) and (5) to (7). Thus, the taxpayer is regarded as materially participating in each of the businesses.

EXAMPLE. Frank Evans is a full-time CPA. He owns a restaurant and a record store. In 2011, Mr. Evans spent 400 hours working at the restaurant and 150 hours at the record store and other individuals spent more time in the business activity than he did. Mr. Evans is treated as a material participant in each of the businesses in 2011.

(5) An individual who has materially participated (determined with regard to subparagraphs 40.38(1)“e”(1) to (4)) in a business for five of the past ten years will be deemed a material participant in the current year.

EXAMPLE. Joe Bernard is the co-owner of a plumbing business. He retired in 2008 after 35 years in the business. Since Joe’s retirement, he has retained his interest in the business. Joe is considered to be materially participating in the business for the years through 2013 or for the five years after the year of retirement. Thus, if the plumbing business is sold before the end of 2013, the sale will qualify for the Iowa capital gain deduction on Joe’s 2013 Iowa return because he was considered to be a material participant in the business according to the federal rules for material participation.

(6) An individual who has materially participated in a personal service activity for at least three years will be treated as a material participant for life. A personal service activity involves the performance of personal services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, consulting or any other trade or business in which capital is not a material income-producing factor.

EXAMPLE. Gerald Williams is a retired attorney, but he retains an interest in the law firm he was involved in for over 40 years. Because the law firm is a personal service activity, Mr. Williams is considered to be a material participant in the law firm even after his retirement from the firm.

(7) An individual who participates in the business activity for more than 100 hours may be treated as materially participating in the activity if, based on all the facts and circumstances, the individual participates on a regular, continuous, and substantial basis. Management activities of a taxpayer are not considered for purposes of determining if there was material participation if either of the following applies: any person other than the taxpayer is compensated for management services, or any person provides more hours of management services than the taxpayer.

*f.* The following paragraphs provide clarification regarding material participation:

(1) A retired or disabled farmer is treated as materially participating in a farming activity for the current year if the farmer materially participated in the activity for five of the last eight years before the farmer’s retirement or disability. That is, the farmer must have been subject to self-employment tax in five of the eight years before retirement or disability and had to have been either actively farming so the income was reported on Schedule F or materially participating in a crop-share activity for five of the last eight years prior to retirement or disability. The farmer must be receiving old-age benefits under Title II of the Social Security Act to be considered a retired farmer.

EXAMPLE. Fred Smith was 80 years old in 2011 when he sold 200 acres of farmland he had owned since 1951. Mr. Smith retired in 2001 when he began receiving old-age benefits under Title II of the Social Security Act. In the last eight years before retirement, Mr. Smith was paying self-employment tax on his farm income which was reported on Schedule F for each of those eight years. In the years before he sold the farmland, Mr. Smith was leasing the farmland on a cash-rent basis, whereby Mr. Smith would not be considered to be materially participating in the farming activity. Because Mr. Smith had material participation in the farmland in the eight years before retirement, Mr. Smith was considered to

have met the material participation requirement, so the capital gain qualified for the Iowa capital gain deduction.

(2) A surviving spouse of a farmer is treated as materially participating in the farming activity for the current tax year if the farmer met the material participation requirements at the time of death and the spouse actively participates in the farming business activity. That is, the spouse participates in the making of management decisions relating to the farming activity or arranges for others to provide services (such as repairs, plowing, and planting). However, if the surviving spouse was retired at the time of the farmer's death and the deceased spouse materially participated in the farming activity for five of the last eight years prior to the deceased spouse's retirement, then the surviving spouse is deemed to be materially participating, even if the surviving spouse did not actively participate in the farming activity. See IRS Technical Service Memorandum 200911009, March 13, 2009.

(3) Limited partners of a limited partnership. The limited partners will not be treated as materially participating in any activity of a limited partnership except in a situation where the limited partner would be treated as materially participating under the material participation tests in subparagraphs 40.38(1) "e"(1), (5) and (6) above as if the taxpayer were not a limited partner for the tax year.

(4) Cash farm lease. A farmer who rents farmland on a cash basis will not generally be considered to be materially participating in the farming activity. The burden is on the landlord to show there was material participation in the cash-rent farm activity.

(5) Farm landlord involved in crop-share arrangement. A farm landlord is subject to self-employment tax on net income from a crop-share arrangement with a tenant. The landlord is considered to be materially participating with the tenant in the crop-share activity if the landlord meets one of the four following tests:

TEST 1. The landlord does any three of the following: (1) Pays or is obligated to pay for at least half the direct costs of producing the crop; (2) Furnishes at least half the tools, equipment, and livestock used in producing the crop; (3) Consults with the tenant; and (4) Inspects the production activities periodically.

TEST 2. The landlord regularly and frequently makes, or takes part in making, management decisions substantially contributing to or affecting the success of the enterprise.

TEST 3. The landlord worked 100 hours or more spread over a period of five weeks or more in activities connected with crop production.

TEST 4. The landlord has done tasks or performed duties which, considered in their total effect, show that the landlord was materially and significantly involved in the production of the farm commodities.

(6) Conservation reserve payments (CRP). Farmers entering into long-term contracts providing for less intensive use of highly erodible or other specified cropland can receive compensation for conversion of such land in the form of an "annualized rental payment." Although the CRP payments are referred to as "rental payments," the payments are considered to be receipts from farm operations and not rental payments from real estate.

If an individual is receiving CRP payments and is not considered to be retired from farming, the CRP payments are subject to self-employment tax. If individuals actively manage farmland placed in the CRP program by directly participating in seeding, mowing, and planting the farmland or by overseeing these activities and the individual is paying self-employment tax, the owner will be considered to have had material participation in the farming activity.

(7) Rental activities or businesses. For purposes of subrules 40.38(1) and 40.38(2), the general rule is that a taxpayer may have material participation in the rental activity unless covered by a specific exception in this subrule (for example, the exceptions for farm rental activities in subparagraphs 40.38(1) "f"(4), (5) and (6)). Rental activity or rental business is as the term is used in Section 469(c) of the Internal Revenue Code. Rental activity or rental business does not typically involve day-to-day involvement since gross income from this activity represents amounts paid mainly for the use of the property. Examples of qualifying involvement in operations of the property that are considered material participation activities if performed on a regular, continuous and substantial basis include advertising, interviewing potential tenants, preparing leases, collecting rent, handling security deposits, receiving questions and complaints from tenants, and performing routine maintenance.

EXAMPLE. Ryan Stanley is an attorney who has owned two duplex units since 1998 and has received rental income from these duplexes since 1998. Mr. Stanley is responsible for the maintenance of the duplexes and may hire other individuals to perform repairs and other upkeep on the duplexes. However, no person spends more time in operating, managing and maintaining the duplexes than Mr. Stanley, and Mr. Stanley spends more than 100 hours per year in operating, managing and maintaining the duplexes. The duplexes are sold in 2011, resulting in a capital gain. Mr. Stanley can claim the capital gain deduction on the 2011 Iowa return since he met the material participation requirements for this rental activity.

(8) Like-kind exchanges and involuntary conversions. Material participation can be tacked on in cases of replacement property acquired under a like-kind exchange under Section 1031 of the Internal Revenue Code or an involuntary conversion under Section 1033 of the Internal Revenue Code.

EXAMPLE. Dustin James owned Farm A, and he materially participated in the operation of Farm A for 10 years. Mr. James executed a like-kind exchange for Farm B, and he materially participated in the operation of this farm for 4 years until he retired. Mr. James sold Farm B 2 years after he retired. Although he only materially participated in the operation of Farm B for 4 of the last 8 years before he retired, the operation of Farm A can be tacked on for purposes of the material participation test. Mr. James meets the material participation test since he participated in farming activity for the last 14 years before he retired.

(9) Record-keeping requirements. Taxpayers are required to provide proof of services performed and the hours attributable to those services. Detailed records should be maintained by the taxpayer, on as close to a daily basis as possible at or near the time of the performance of the activity, to verify that the material participation test has been met. However, material participation can be established by any other reasonable means, such as approximating the number of hours based on appointment books, calendars, or narrative summaries. Records prepared long after the activity, in preparation of an audit or proceeding, are insufficient to establish participation in an activity.

**40.38(2) Net capital gains from the sale of real property used in a business.** Net capital gains from the sale of real property used in a business are excluded from net income on the Iowa return of the owner of a business to the extent that the owner had held the real property in the business for ten or more years and had materially participated in the business for at least ten years. For purposes of this provision, material participation is defined in Section 469(h) of the Internal Revenue Code and described in detail in subrule 40.38(1). It is not required that the property be located in Iowa for the owner to qualify for the deduction.

*a.* Meaning of the term “held” for purposes of this rule. For capital gains reported for tax years ending prior to January 1, 2006, the term “held” is defined as “owned.” *James and Linda Bell*, Decision of the Administrative Law Judge, Docket No. 01DORF013, January 15, 2002, and *David V. and Julie K. Gorsche v. Iowa State Board of Tax Review*, Case No. CVCV 8379, Polk County District Court, May 5, 2011. Therefore, the property held by the taxpayer must have been owned by the taxpayer for ten or more years to meet the time held requirement for the capital gain deduction for tax years ending prior to January 1, 2006. For capital gains reported for tax years ending on or after January 1, 2006, the term “held” is determined using the holding period provisions set forth in Section 1223 of the Internal Revenue Code and the federal regulations adopted pursuant to Section 1223. Therefore, as long as the holding period used to compute the capital gain is ten years or more, the time held requirement for the capital gain deduction will be met for tax years ending on or after January 1, 2006.

*b.* Sale to a lineal descendant. For purposes of taxation of capital gains from the sale of real property of a business by a taxpayer, there is no waiver of the ten-year material participation requirement when the property is sold to a lineal descendant of the taxpayer as there is for capital gains from sales of businesses described in subrule 40.38(3).

*c.* In situations in which real property was sold by a partnership, subchapter S corporation, limited liability company, estate, or trust and the capital gain from the sale of the real property flows through to the owners of the business entity for federal income tax purposes, the owners may exclude the capital gain from their net incomes if the real property was held for ten or more years and the owners had materially participated in the business for ten years prior to the date of sale of the real property, irrespective of whether the type of business entity changed during the ten-year period prior to the date of sale. That is,

if the owner of the business had held and materially participated in the business in the entire ten-year period before the sale, the fact that the business changed from one type of entity to another during the period does not disqualify the owner from excluding capital gains from the sale of real estate owned by the business during that whole ten-year period.

*d.* Installments received in the tax year from installment sales of businesses are eligible for the exclusion of capital gains from net income if all relevant criteria were met at the time of the installment sale. *Herbert Clausen and Sylvia Clausen v. Iowa Department of Revenue and Finance*, Law No. 32313, Crawford County District Court, May 24, 1995. For example, if a taxpayer received an installment payment in 2011 from the sale of a business that occurred in 2007, the installment received in 2011 would qualify for the exclusion if the taxpayer had held the business for ten or more years and had materially participated in the business for a minimum of ten years at the time of the sale in 2007.

*e.* Capital gains from the sale of real property by a C corporation do not qualify for the capital gain deduction except under the specific circumstances of a liquidation described in subrule 40.38(7).

*f.* Capital gains from the sale of real property held for ten or more years for speculation but not used in a business do not qualify for the capital gain deduction.

*g.* The following noninclusive examples illustrate how this subrule applies:

EXAMPLE 1. ABC Company, an S corporation, owned 1,000 acres of land. John Doe is the sole shareholder of ABC Company and had materially participated in ABC Company and held ABC Company for more than ten years at the time that 500 acres of the land were sold for a capital gain of \$100,000 in 2011. The capital gain recognized in 2011 by ABC Company and which passed to John Doe as the shareholder of ABC Company is exempt from Iowa income tax because Mr. Doe met the material participation and time held requirements.

EXAMPLE 2. John Smith and Sam Smith both owned 50 percent of the stock in Smith and Company, which was an S corporation that held 1,000 acres of farmland. Sam Smith had managed all the farming operations for the corporation from the time the corporation was formed in 1990. John Smith was an attorney who lived and practiced law in Denver, Colorado. John Smith was the father of Sam Smith. In 2011, Smith and Company sold 200 acres of the farmland for a \$50,000 gain. \$25,000 of the capital gain passed through to John Smith and \$25,000 of the capital gain passed through to Sam Smith. The farmland was sold to Jerry Smith, who was another son of John Smith. Both John Smith and Sam Smith had owned the corporation for at least ten years at the time the land was sold, but only Sam Smith had materially participated in the corporation for the last ten years. Sam Smith could exclude the \$25,000 capital gain from the land sale because he had met the time held and material participation requirements. John Smith could not exclude the \$25,000 capital gain since, although he had met the time held requirement, he did not meet the material participation requirement. Although the land sold by the corporation was sold to John Smith's son, a lineal descendant of John Smith, the capital gain John Smith realized from the land sale does not qualify for exemption for state income tax purposes. There is no waiver of the ten-year material participation requirement for a taxpayer's sale of real estate from a business to a lineal descendant of the taxpayer as is described for the sale of business assets in subrule 40.38(3).

EXAMPLE 3. Jerry Jones had owned and had materially participated in a farming business for 15 years and raised row crops in the business. There were 500 acres of land in the farming business; 300 acres had been held for 15 years, and 200 acres had been held for 5 years. If Mr. Jones sold the 200 acres of land that had been held only 5 years, any capital gain from the sale of this land would not be excludable since the land was part of the farming business but had been held for less than 10 years. If the 300 acres of land that had been held for 15 years had been sold, the capital gain from that sale would qualify for exclusion.

EXAMPLE 4. John Pike owned a farming business for more than ten years. In this business, Mr. Pike farmed a neighbor's land on a crop-share basis throughout the period. Mr. Pike bought 80 acres of land in 2004 and farmed that land until the land was sold in 2011 for a capital gain of \$20,000. The capital gain was taxable on Mr. Pike's Iowa return since the farmland had been held for less than ten years although the business had been operated by Mr. Pike for more than ten years.

EXAMPLE 5. Joe and John Perry were brothers in a partnership for six years which owned 80 acres of land. The brothers dissolved the partnership in 2005, formed an S corporation, and included the land

in the assets of the S corporation. The land was sold in 2011 to Brian Perry, who was the grandson of John Perry. The Perry brothers realized from the land sale a capital gain of \$15,000, which was divided equally between the brothers. Joe Perry was able to exclude the capital gain he had received from the sale as he had held the land and had materially participated in the business for at least ten years at the time the land was sold. John Perry was unable to exclude the capital gain because, although he had owned the land for ten years, he had not materially participated in the business for ten years when the land was sold. The fact that the land was sold to a lineal descendant of John Perry is not relevant because the sale involved only real property held in a business and not the sale of all, or substantially all, of the tangible personal property and intangible property of the business.

EXAMPLE 6. Todd Myers had a farming business which he had owned and in which he had materially participated for 20 years. There were two tracts of farmland in the farming business. In 2011, he sold one tract of farmland in the farming business that he had held for more than 10 years for a \$50,000 capital gain. The farmland was sold to a person who was not a lineal descendant. During the same year, Mr. Myers had \$30,000 in long-term capital losses from sales of stock. In this situation, on Mr. Myers' 2011 Iowa return, the capital gains would not be applied against the capital losses. Because the capital losses are unrelated to the farming business, Mr. Myers does not have to reduce the Iowa capital gain deduction by the capital losses from the sales of stock.

EXAMPLE 7. Jim Casey had owned farmland in Greene County, Iowa, since 1987, and had materially participated in the farming business. In 1998, Mr. Casey entered into a like-kind exchange under Section 1031 of the Internal Revenue Code for farmland located in Carroll County, Iowa. Mr. Casey continued to materially participate in the farming business in Carroll County. The farmland in Carroll County was sold in 2005, resulting in a capital gain. For federal tax purposes, the holding period for the capital gain starts in 1987 under Section 1223 of the Internal Revenue Code. Because Mr. Casey held the farmland in Carroll County for less than ten years, based on Iowa law at the time of the sale, the capital gain from the sale does not qualify for the Iowa capital gain deduction. The deduction is not allowed even though the holding period for federal tax purposes is longer than ten years because the capital gain was reported for a tax year ending prior to January 1, 2006. If the farmland was sold in 2006, the gain would qualify for the capital gain deduction since the capital gain would have been reported for a tax year ending on or after January 1, 2006.

EXAMPLE 8. Jane and Ralph Murphy, a married couple, owned farmland in Iowa since 1975. Ralph died in 1994 and, under his will, Jane acquired a life interest in the farm. The farmland was managed by their son Joseph after Ralph's death. Jane died in 1998, and Joseph continued to materially participate and manage the farm operation. Joseph sold the farmland in 2006 and reported a capital gain. For federal tax purposes under Section 1223 of the Internal Revenue Code, the holding period for the capital gain starts in 1994, when Ralph died. Because the holding period for the capital gain was ten years or more under Section 1223 of the Internal Revenue Code, Joseph is entitled to the capital gain deduction under Iowa law since he materially participated for ten or more years and the capital gain was reported for a tax year ending on or after January 1, 2006.

**40.38(3)** *Net capital gains from the sale of assets of a business by an individual who had held the business for ten or more years and had materially participated in the business for ten or more years.* Net capital gains from the sale of the assets of a business are excluded from an individual's net income to the extent that the individual had held the business for ten or more years and had materially participated in the business for ten or more years. In addition to the time held and material participation qualifications for the capital gain deduction, the owner of the business must have sold substantially all of the tangible personal property or the service of the business in order for the capital gains to be excluded from taxation.

a. For purposes of this subrule, the phrase "substantially all of the tangible personal property or the service of the business" means that the sale of the assets of a business during the tax year must represent at least 90 percent of the fair market value of all of the tangible personal property and service of the business on the date of sale of the business assets. Thus, if the fair market value of a business's tangible personal property and service was \$400,000, the business must sell tangible personal property and service of the business that had a fair market value of 90 percent of the total value of those assets to achieve the 90 percent or more standard. However, this does not mean that the amount raised from the

sale of the assets must be \$360,000 in order for the 90 percent standard to be met, only that the assets involved in the sale of the business must represent 90 percent of the total value of the business assets.

b. If the 90 percent of assets test is met, capital gains from other assets of the business can also be excluded. Some of these assets include, but are not limited to, stock of another corporation, bonds, including municipal bonds, and interests in other businesses. If the 90 percent test has been met, all of the individual assets of the business do not have to have been held for ten or more years on the date of sale for the capital gains from the sale of these assets to be excluded in computing the taxpayer's net income. This statement is made with the assumption that the taxpayer has owned the business and materially participated in the business for ten or more years prior to the sale of the assets of the business.

c. In most instances, the sale of merchandise or inventory of a business will not result in capital gains for the seller of a business, so the proceeds from the sale of these items would not be excluded from taxation.

d. For the purposes of this subrule, the term "service of the business" means intangible assets used in the business or for the production of business income which, if sold for a gain, would result in a capital gain for federal income tax purposes. Intangible assets that are used in the business or for the production of income include, but are not limited to, the following items: (1) goodwill, (2) going concern value, (3) information base, (4) patent, copyright, formula, design, or similar item, (5) client lists, and (6) any franchise, trademark, or trade name. The type of business that owns the intangible asset is immaterial, whether the business is a manufacturing business, a retail business, or a service business, such as a law firm or an accounting firm.

e. When the business held by the taxpayer for a minimum of ten years is sold to an individual or individuals who are all lineal descendants of the taxpayer, the taxpayer is not required to have materially participated in the business for ten years prior to the sale of the business in order for the capital gain to be excluded in the computation of net income. The term "lineal descendant" means children of the taxpayer, including legally adopted children and biological children, stepchildren, grandchildren, great-grandchildren, and any other lineal descendants of the taxpayer.

f. In situations in which substantially all of the tangible personal property or the service of the business was sold by a partnership, subchapter S corporation, limited liability company, estate, or trust and the capital gains from the sale of the assets flow through to the owners of the business entity for federal income tax purposes, the owners can exclude the capital gains from their net incomes if the owners had held the business for ten or more years and had materially participated in the business for ten years prior to the date of sale of the tangible personal property or service, irrespective of whether the type of business entity changed during the ten-year period prior to the sale. The criteria for material participation in a business may be found in subrule 40.38(1).

g. Installments received in the tax year from installment sales of businesses are eligible for the exclusion if all relevant criteria were met at the time of the installment sale. *Herbert Clausen and Sylvia Clausen v. Iowa Department of Revenue and Finance*, Law No. 32313, Crawford County District Court, May 24, 1995. For example, if a taxpayer received an installment payment in 2011 from the sale of a business that occurred in 2007, the installment received in 2011 would qualify for the exclusion if, at the time of the sale in 2007, the taxpayer had held the business for ten or more years and had materially participated in the business for a minimum of ten years.

h. Sale of capital stock of a corporation to a lineal descendant or to another individual does not constitute the sale of a business for purposes of the capital gain deduction, whether the corporation is a C corporation or an S corporation.

i. Capital gains from the sale of an ownership interest in a partnership, limited liability company or other entity are not eligible for the capital gain deduction. *Ranniger v. Iowa Department of Revenue and Finance*, Iowa Supreme Court, No. 11, 06-0761, March 21, 2008.

j. The sale of one activity of a business or one distinct part of a business may not constitute the sale of a business for purposes of this rule unless the activity or distinct part is a separate business entity such as a partnership or sole proprietorship which is owned by the business or unless the activity or distinct part of a business represents the sale of at least 90 percent of the fair market value of the tangible personal property or service of the business.

In order to determine whether the sale of the business assets constitutes the sale of a business for purposes of excluding capital gains recognized from the sale, refer to 701—subrule 54.2(1) relating to a unitary business. If activities or locations comprise a unitary business, then 90 percent or more of that unitary business must be sold to meet the requirement for capital gains from the sale to be excluded from taxation. If the activity or location constitutes a separate, distinct, nonunitary business, then 90 percent of the assets of that location or activity must be sold to qualify for the exclusion of the capital gain. The burden of proof is on the taxpayer to show that a sale of assets of a business meets the 90 percent standard.

*k.* The following noninclusive examples illustrate how this subrule applies:

EXAMPLE 1. Joe Rich is the sole owner of Eagle Company, which is an S corporation. In 2011, Mr. Rich sold all the stock of Eagle Company to his son, Mark Rich, and recognized a \$100,000 gain on the sale of the stock. This capital gain would be taxable on Joe Rich's 2011 Iowa return since the sale of stock of a corporation did not constitute the sale of the tangible personal property and service of a business.

EXAMPLE 2. Randall Insurance Agency, a sole proprietorship, is owned solely by Peter Randall. In 2011, Peter Randall received capital gains from the sale of all tangible assets of the insurance agency. In addition, Mr. Randall had capital gains from the sale of client lists and goodwill to the new owners of the business. Since Mr. Randall had held the insurance agency for more than ten years and had materially participated in the insurance agency for more than ten years at the time of the sale of the tangible property and intangible property of the business, Mr. Randall can exclude the capital gains from the sale of the tangible assets and the intangible assets in computing net income on his 2011 Iowa return.

EXAMPLE 3. Joe Brown owned and materially participated in a sole proprietorship for more than ten years. During the 2011 tax year, Mr. Brown sold two delivery trucks and had capital gains from the sale of the trucks. At the time of sale, the trucks were valued at \$30,000, which was about 10 percent of the fair market value of the tangible personal property of the business. Mr. Brown could not exclude the capital gains from the sale of the trucks on his 2011 Iowa return as the sale of those assets did not involve the sale of substantially all of the tangible personal property and service of Mr. Brown's business.

EXAMPLE 4. Rich Bennet owned a restaurant and a gift shop that were in the same building and were part of a sole proprietorship owned only by Mr. Bennet, who had held and materially participated in both business activities for over ten years. Mr. Bennet sold the gift shop in 2011 for \$100,000 and had a capital gain of \$40,000 from the sale. The total fair market value of all tangible personal property and intangible assets in the proprietorship at the time the gift shop was sold was \$250,000. Mr. Bennet could not exclude the capital gain on his 2011 Iowa return because he had not sold at least 90 percent of the tangible and intangible assets of the business.

EXAMPLE 5. Joe and Ray Johnson were partners in a farm partnership that they had owned for 12 years in 2011 when the assets of the partnership were sold to Ray's son Charles. Joe Johnson had materially participated in the partnership for the whole time that the business was in operation, so he could exclude the capital gain he had received from the sale of the partnership assets. Although Ray Johnson had not materially participated in the farm business, he could exclude the capital gain he received from the sale of the assets of the partnership because the sale of the partnership assets was to his son, a lineal descendant.

EXAMPLE 6. Kevin and Ron Barker owned a partnership which owned a chain of six gas stations in an Iowa city. In 2011, the Barkers sold 100 percent of the property of two of the gas stations and received a capital gain of \$30,000 from the sale. Separate business records were kept for each of the gas stations. Since the partnership was considered to be a unitary business and the Barkers sold less than 90 percent of the fair market value of the business, the Barkers could not exclude the capital gain from the sale of the gas stations from the incomes reported on their 2011 Iowa returns. However, any gain from the sale of the real property may qualify for exclusion, assuming the ten-year time held and material participation qualifications are met.

EXAMPLE 7. Rudy Stern owned a cafe in one Iowa city and a fast-food restaurant in another Iowa city. Mr. Stern had held both businesses and had materially participated in the operation of both businesses for ten years. Each business was operated with a separate manager and kept separate business records.

In 2011, Mr. Stern sold all the tangible and intangible assets associated with the cafe and received a capital gain from the sale of the cafe. Mr. Stern can exclude the capital gain from his net income for 2011 because the cafe and fast-food restaurant were considered to be separate and distinct nonunitary businesses.

EXAMPLE 8. Doug Jackson is a shareholder in an S corporation, Jackson Products Corporation. Mr. Jackson has a 75 percent ownership interest in the S corporation, and he has materially participated in the operations of the S corporation since its incorporation in 1980. In 2008, Mr. Jackson transferred 10 percent of his ownership interest in the S corporation to Doug Jackson Irrevocable Trust. The income from the irrevocable trust was reported on Mr. Jackson's individual income tax return. In 2011, the assets of Jackson Products Corporation were sold, resulting in a capital gain. Mr. Jackson can claim the capital gain deduction on both his 65 percent ownership held in his name and the 10 percent irrevocable trust ownership since the capital gain from the irrevocable trust flows through to Mr. Jackson's income tax return, and Mr. Jackson retained a 75 percent interest in the S corporation for more than ten years.

**40.38(4)** *Net capital gains from sales of cattle or horses used for certain purposes which were held for 24 months by taxpayers who received more than one-half of their gross incomes from farming or ranching operations.* Net capital gains from the sales of cattle or horses held for 24 months or more for draft, breeding, dairy, or sporting purposes qualify for the capital gain deduction if more than 50 percent of the taxpayer's gross income in the tax year is from farming or ranching operations. Proper records should be kept showing purchase and birth dates of cattle and horses. The absence of records may make it impossible for the owner to show that the owner held a particular animal for the necessary holding period. Whether cattle or horses are held for draft, breeding, dairy, or sporting purposes depends on all the facts and circumstances of each case.

*a.* Whether cattle or horses sold by the taxpayer after the taxpayer has held them 24 months or more were held for draft, breeding, dairy, or sporting purposes may be determined from federal court cases on such sales and the standards and examples included in 26 CFR §1.1231-2.

*b.* In situations where the qualifying cattle or horses are sold by the taxpayer to a lineal descendant of the taxpayer, the taxpayer does not need to have had more than 50 percent of gross income in the tax year from farming or ranching activities in order for the capital gain to be excluded.

*c.* Capital gains from sales of qualifying cattle or horses by an S corporation, partnership, or limited liability company, where the capital gains flow through to the individual owners for federal income tax purposes, are eligible for the exclusion only in situations in which the individual owners have more than 50 percent of their gross incomes in the tax year from farming or ranching activities, or where the sale of the qualifying cattle or horses was to lineal descendants of the owners reporting the capital gains from the sales of the qualifying cattle or horses.

*d.* Capital gains from sales of qualifying cattle or horses by a C corporation are not eligible for the capital gain deduction.

*e.* A taxpayer's gross income from farming or ranching includes amounts the individual has received in the tax year from cultivating the soil or raising or harvesting any agricultural commodities. Gross income from farming or ranching includes the income from the operation of a stock, dairy, poultry, fish, bee, fruit, or truck farm, plantation, ranch, nursery, range, orchard, or oyster bed, as well as income in the form of crop shares received from the use of the taxpayer's land. Gross income from farming or ranching also includes total gains from sales of draft, breeding, dairy, or sporting livestock. In the case of individual income tax returns for the 2011 tax year, gross income from farming or ranching includes the total of the amounts from line 9 or line 50 of Schedule F and line 7 of Form 4835, Farm Rental Income and Expenses, plus the share of partnership income from farming, the share of distributable net taxable income from farming of an estate or trust, and total gains from the sale of livestock held for draft, breeding, dairy, or sporting purposes, as shown on Form 4797, Sale of Business Property. In the case of an individual's returns for tax years beginning after 2011, equivalent lines from returns and supplementary forms would be used to determine a taxpayer's gross income from farming or ranching for those years.

To make the calculation as to whether more than half of the taxpayer's gross income in the tax year is from farming or ranching operations, the gross income from farming or ranching as determined in the

previous paragraph is divided by the taxpayer's total gross income. If the resulting percentage is greater than 50 percent, the taxpayer's capital gains from sales of cattle and horses will be considered for the capital gain deduction.

In instances where married taxpayers file a joint return, the gross income from farming or ranching of both spouses will be considered for the purpose of determining whether the taxpayers received more than half of their gross income from farming or ranching. However, in situations where married taxpayers file separate Iowa returns or separately on the combined return form, each spouse must separately determine whether that spouse has more than 50 percent of gross income from farming or ranching operations.

EXAMPLE. Bob Deen had a cattle operation that owned black angus cattle in the operation for breeding purposes. In 2011, Mr. Deen sold 40 head of cattle that had been held for breeding purposes for two years. Mr. Deen's total gross income from farming was \$125,000, but he had a \$10,000 loss from his farming operation. Mr. Deen also had wages of \$25,000 from a job at a local farming cooperative. Because Mr. Deen had more than 50 percent of his gross income in 2011 from farming operations, he could exclude the capital gain from the sale of the breeding cattle. Although Mr. Deen had a loss from his farming activities, he still had more than 50 percent of his gross income in the tax year from those activities.

**40.38(5)** *Net capital gains from sale of breeding livestock, other than cattle or horses, held for 12 or more months by taxpayers who received more than one-half of their gross incomes from farming or ranching operations.* Net capital gains from the sale of breeding livestock, other than cattle or horses, held for 12 or more months from the date of acquisition qualify for the capital gain deduction, if more than one-half of the taxpayer's gross income is from farming or ranching. For the purposes of this subrule, "livestock" has a broad meaning and includes hogs, mules, donkeys, sheep, goats, fur-bearing mammals, and other mammals. Livestock does not include poultry, chickens, turkeys, pigeons, geese, other birds, fish, frogs, or reptiles. If livestock other than cattle or horses is considered to have been held for breeding purposes under the criteria established in 26 CFR §1.1231-2, the livestock will also be deemed to have been breeding livestock for purposes of this subrule. In addition, for the purposes of this subrule livestock does not include cattle and horses held for 24 or more months for draft, breeding, dairy, or sporting purposes which were described in subrule 40.38(4).

*a.* The procedure in subrule 40.38(4) for determining whether more than one-half of a taxpayer's gross income is from farming or ranching operations is also applicable for this subrule.

*b.* In an instance in which a taxpayer sells breeding livestock other than cattle or horses which have been held for 12 or more months, and the sale of the livestock is to a lineal descendant of the taxpayer, the taxpayer is not required to have more than one-half of the gross income in the tax year from farming or ranching operations to be eligible for the capital gain deduction.

*c.* Capital gains from sales of qualifying livestock other than cattle or horses by an S corporation, partnership, or limited liability company, where the capital gains flow through to the owners of the respective business entity for federal income tax purposes, qualify for the capital gain deduction to the extent the owners receiving the capital gains meet the qualifications for the deduction on the basis of having more than one-half of the gross income in the tax year from farming or ranching operations.

*d.* Capital gains from the sale of qualifying livestock other than cattle or horses by a C corporation are not eligible for the capital gain deduction.

**40.38(6)** *Net capital gains from sales of timber held by the taxpayer for more than one year.* Capital gains from qualifying sales of timber held by the taxpayer for more than one year are eligible for the capital gain deduction. In all of the following examples of circumstances where gains from sales of timber qualify for capital gain treatment, it is assumed that the timber sold was held by the owner for more than one year at the time the timber was sold. The owner of the timber can be the owner of the land on which the timber was cut or the holder of a contract to cut the timber. In the case where a taxpayer sells standing timber the taxpayer held for investment, any gain from the sale is a capital gain. Timber includes standing trees usable for lumber, pulpwood, veneer, poles, pilings, cross ties, and other wood products. Timber eligible for the capital gain deduction does not apply to sales of pulpwood cut by a contractor from the tops and limbs of felled trees. Under the general rule, the cutting of timber results in no gain or loss, and it is not until the sale or exchange that gain or loss is realized. But if a taxpayer

owned or had a contractual right to cut timber, the taxpayer may make an election to treat the cutting of timber as a sale or exchange in the year the timber is cut. Gain or loss on the cutting of the timber is determined by subtracting the adjusted basis for depletion of the timber from the fair market value of the timber on the first day of the tax year in which the timber is cut. For example, the gain on this type of transaction is computed as follows:

Fair market value of timber on January 1, 2011	\$400,000
Adjusted basis for depletion	– \$100,000
Capital gain on cutting of timber	\$300,000

The fair market value shown above of \$400,000 is the basis of the timber. A later sale of the cut timber including treetops and stumps would result in ordinary income for the taxpayer and not a capital gain.

*a.* Evergreen trees, such as those used as Christmas trees, that are more than six years old at the time they are severed from their roots and sold for ornamental purposes, are included in the definition of timber for purposes of this subrule. The term “evergreen trees” is used in its commonly accepted sense and includes pine, spruce, fir, hemlock, cedar, and other coniferous trees. Where customers of the taxpayer cut down the Christmas tree of their choice on the taxpayer’s farm, there is no sale until the tree is cut. However, evergreen trees sold in a live state do not qualify for capital gain treatment.

*b.* Capital gains or losses also are received from sales of timber by a taxpayer who has a contract which gives the taxpayer an economic interest in the timber. The date of disposal of the timber shall be the day the timber is cut, unless payment for the timber is received before the timber is cut. Under this circumstance, the taxpayer may treat the date of the payment as the date of disposal of the timber. Additional information about gains and losses from the sale of timber is included under 26 CFR §1.631-1 and §1.631-2.

*c.* Capital gains from the sale of qualifying timber by an S corporation, partnership, or limited liability company, which flow to the owners of the respective business entity for federal individual income tax purposes, are eligible for the capital gain deduction.

*d.* Capital gains from the sale of timber by a C corporation do not qualify for the capital gain deduction.

**40.38(7)** *Capital gains from the liquidation of assets of corporations which are recognized as sales of assets for federal income tax purposes.* Capital gains realized from liquidations of corporations which are recognized as sales of assets for federal income tax purposes under Section 331 of the Internal Revenue Code may be eligible for the capital gain deduction. To the extent the capital gains are reported by the shareholders of the corporations for federal income tax purposes and the shareholders are individuals, the shareholders are eligible for the capital gain deduction if the shareholders meet the qualifications for time of ownership and time of material participation in the corporation being liquidated. The burden of proof is on the shareholders to show they meet these time of ownership and material participation requirements.

**40.38(8)** *Capital gains from certain stock sales which are treated as acquisitions of assets of the corporation for federal income tax purposes.* Capital gains received by individuals from a sale of stock of a target corporation which is treated as an acquisition of the assets of the corporation under Section 338 of the Internal Revenue Code may be excluded if the individuals receiving the capital gains had held an interest in the target corporation and had materially participated in the corporation for ten years prior to the date of the sale of the corporation. The burden of proof is on the taxpayer to show eligibility to exclude the capital gains from these transactions in the computation of net income for Iowa individual income tax purposes.

**40.38(9)** *Treatment of capital gain deduction for tax years with net operating losses and for tax years to which net operating losses are carried.* The following paragraphs describe the tax treatment of the capital gain deduction in a tax year with a net operating loss and the tax treatment of a capital gain deduction in a tax year to which a net operating loss was carried:

a. The capital gain deduction otherwise allowable on a return is not allowed for purposes of computing a net operating loss from the return which can be carried to another tax year and applied against the income for the other tax year.

EXAMPLE. Joe Jones filed a 2011 return showing a net loss of \$12,000. On this return, Mr. Jones claimed a capital gain deduction of \$3,000 from sale of breeding livestock, other than cattle or horses, held for 12 months or more which was considered in computing the loss of \$12,000. However, the \$3,000 capital gain deduction is not allowed in the computation of the net operating loss deduction for 2011 for purposes of carrying the net operating loss deduction to another tax year. Thus, the net operating loss deduction for 2011 is \$9,000.

b. In the case of net operating losses which are carried back to a tax year where the taxpayer has claimed the capital gain deduction, the capital gain deduction is not allowed for purposes of computing the income to which the net operating loss deduction is applied.

EXAMPLE. John Brown had a net operating loss of \$20,000 on the Iowa return he filed for 2011. Mr. Brown elected to carry back the net operating loss to his 2009 Iowa return. The 2009 return showed a taxable income of \$27,000 which included a capital gain deduction of \$3,000. For purposes of computing the income in the carryback year to which the net operating loss would be applied, the income was increased by \$3,000 to disallow the capital gain deduction properly allowed in computing taxable income for the carryback year. Therefore, the net operating loss deduction from 2011 was applied to an income of \$30,000 for the carryback year.

**40.38(10) Sale of employer securities to an Iowa employee stock ownership plan.** For tax years beginning on or after January 1, 2012, 50 percent of the net capital gain from the sale or exchange of employer securities of an Iowa corporation to a qualified Iowa employee stock ownership plan (ESOP) may be eligible for the Iowa capital gain deduction. To be eligible for the capital gain deduction, the qualified Iowa ESOP must own at least 30 percent of all outstanding employer securities issued by the Iowa corporation after completion of the transaction.

a. Definitions. The following definitions apply to this subrule:

“*Employer securities*” means the same as defined in Section 409(l) of the Internal Revenue Code. “*Employer securities*” includes common stock issued by the employer and preferred stock if the provisions of Section 409(l)(3) of the Internal Revenue Code are met.

“*Iowa corporation*” means a corporation whose commercial domicile, as defined in Iowa Code section 422.32, is in Iowa. A limited liability company is not considered an Iowa corporation.

“*Qualified Iowa ESOP*” means an employee stock ownership plan, as defined in Section 4975(e)(7) of the Internal Revenue Code, and trust that are established by an Iowa corporation for the benefit of the employees of the corporation.

b. The material participation requirements set forth in subrule 40.38(1) do not apply for the sale of employer securities to an Iowa ESOP. In addition, the holding period requirements set forth in paragraph 40.38(2)“a” do not apply for the sale of employer securities to an Iowa ESOP.

This rule is intended to implement Iowa Code section 422.7 as amended by 2012 Iowa Acts, House File 2465, division XII.

[ARC 7761B, IAB 5/6/09, effective 6/10/09; ARC 0073C, IAB 4/4/12, effective 5/9/12; ARC 0398C, IAB 10/17/12, effective 11/21/12; ARC 1303C, IAB 2/5/14, effective 3/12/14]

**701—40.39(422) Exemption of interest from bonds or notes issued to fund the 911 emergency telephone system.** Interest received on or after May 4, 1990, from bonds or notes issued by the Iowa finance authority to fund the 911 emergency telephone system is exempt from the state income tax.

This rule is intended to implement Iowa Code sections 422.7 and 477B.20.

[ARC 4309C, IAB 2/13/19, effective 3/20/19]

**701—40.40(422) Exemption of active-duty military pay of national guard personnel and armed forces reserve personnel received for services related to operation desert shield.** For tax years ending on or after August 2, 1990, military pay received by persons in the national guard and persons in the armed forces military reserve is exempt from state income tax to the extent the military pay is not otherwise excluded from taxation and the military pay is for active-duty military service on or after

August 2, 1990, pursuant to military orders related to Operation Desert Shield. The exemption applies to individuals called to active duty in Iowa to replace other persons who were in military units who were called to serve on active duty outside Iowa provided the military orders specify that the active duty assignment in Iowa pertains to Operation Desert Shield.

Persons filing original returns or amended returns on Form IA 1040X for tax years where the exempt income was received should print the notation, "Operation Desert Shield" at the top of the original return form or amended return form. A copy of the military orders showing the person was called to active duty and was called in support of Operation Desert Shield should be attached to the original return form or amended return form to support the exemption of the active duty military pay.

This rule is intended to implement Iowa Code section 422.7.

**701—40.41(422) Disallowance of private club expenses.** Rescinded IAB 11/24/04, effective 12/29/04.

**701—40.42(422) Depreciation of speculative shell buildings.**

**40.42(1)** For tax years beginning on or after January 1, 1992, speculative shell buildings constructed or reconstructed after that date may be depreciated as 15-year property under the accelerated cost recovery system of the Internal Revenue Code. If the taxpayer has deducted depreciation on the speculative shell building on the taxpayer's federal income tax return, that amount of depreciation must be added to the federal adjusted gross income in order to deduct depreciation computed under this rule.

**40.42(2)** On sale or other disposition of the speculative building, the taxpayer must report on the taxpayer's Iowa individual income tax return the same gain or loss as is reported on the taxpayer's federal individual income tax return. If, while owned by the taxpayer, the building is converted from a speculative shell building to another use, the taxpayer must deduct the same amount of depreciation on the taxpayer's Iowa tax return as is deducted on the taxpayer's federal tax return.

**40.42(3)** For the purposes of this rule, the term "speculative shell building" means a building as defined in Iowa Code section 427.1(27) "c."

This rule is intended to implement Iowa Code section 422.7.

**701—40.43(422) Retroactive exemption for payments received for providing unskilled in-home health care services to a relative.** Retroactive to January 1, 1988, for tax years beginning on or after that date, supplemental assistance payments authorized under Iowa Code section 249.3(2) "a"(2) which are received by an individual providing unskilled in-home health care services to a member of the caregiver's family are exempt from state income tax to the extent that the individual caregiver is not a licensed health care professional designated in Iowa Code section 147.13, subsections 1 to 10.

For purposes of this exemption, a member of the caregiver's family includes a spouse, parent, stepparent, child, stepchild, brother, stepbrother, sister, stepsister, lineal ancestor such as grandparent and great-grandparent, and lineal descendant such as grandchild and great-grandchild, and those previously described relatives who are related by marriage or adoption. Those licensed health care professionals who are not eligible for this exemption include medical doctors, doctors of osteopathy, physician assistants, psychologists, podiatrists, chiropractors, physical therapists, occupational therapists, nurses, dentists, dental hygienists, optometrists, speech pathologists, audiologists, and other similar licensed health care professionals.

This rule is intended to implement Iowa Code section 422.7.

[ARC 7761B, IAB 5/6/09, effective 6/10/09; ARC 8589B, IAB 3/10/10, effective 4/14/10]

**701—40.44(422,541A) Individual development accounts.** Individual development accounts are authorized for low-income taxpayers for tax years beginning on or after January 1, 1994. Additions to the accounts are described in the following subrule:

**40.44(1) Exemption of additions to individual development accounts.** The following additions to individual development accounts are exempt from the state income tax of the owners of the accounts to the extent the additions were subject to federal income tax:

*a.* The amount of contributions made in the tax year to an account by persons and entities other than the owner of the account.

b. The amount of any savings refund or state match payments made in the tax year to an account as authorized for contributions made to the accounts by the owner of the account.

c. Earnings on the account in the tax year or interest earned on the account.

**40.44(2)** *Additions to net income for withdrawals from individual development accounts.* Rescinded IAB 9/11/96, effective 10/16/96.

This rule is intended to implement Iowa Code sections 422.7, 541A.2 and 541A.3 as amended by 2008 Iowa Acts, Senate File 2430.

**701—40.45(422) Exemption for distributions from pensions, annuities, individual retirement accounts, or deferred compensation plans received by nonresidents of Iowa.** For tax years beginning on or after January 1, 1994, a distribution from a pension plan, annuity, individual retirement account, or deferred compensation plan which is received by a nonresident of Iowa is exempt from Iowa income tax to the extent the distribution is directly related to the documented retirement of the pensioner, annuitant, owner of individual retirement account, or participant in a deferred compensation arrangement. For tax years beginning on or after January 1, 1996, distributions of nonqualified retirement benefits which are paid by a partnership to its retired partners and which are received by a nonresident of Iowa are exempt from Iowa income tax to the extent the distribution is directly related to the documented retirement of the partner. In a situation where the pensioner, annuitant, owner of the individual retirement account, or participant of a deferred compensation arrangement dies before the date of documented retirement, any distribution from the pension, annuity, individual retirement account, or deferred compensation arrangement will not be taxable to the beneficiary receiving the distributions if the beneficiary is a nonresident of Iowa. If the pensioner, annuitant, owner of the individual retirement account, or participant of a deferred compensation arrangement dies after the date of documented retirement, any distributions from the pension, annuity, individual retirement account, or deferred compensation arrangement will not be taxable to a beneficiary receiving distributions if the beneficiary is a nonresident of Iowa.

For purposes of this rule, the distributions from the pensions, annuities and deferred compensation arrangements were from pensions, annuities, and deferred compensation earned entirely or at least partially from employment or self-employment in Iowa. For purposes of this rule, distributions from individual retirement arrangements were from individual retirement arrangements that were funded by contributions from the arrangements that were deductible or partially deductible on the Iowa income tax return of the owner of the individual retirement accounts.

The following subrules include definitions and examples which clarify when distributions from pensions, annuities, individual retirement accounts, and deferred compensation arrangements are exempt from Iowa income tax, when the distributions are received by nonresidents of Iowa:

**40.45(1) Definitions.**

a. The word “beneficiary” means an individual who receives a distribution from a pension or annuity plan, individual retirement arrangement, or deferred compensation plan as a result of either the death or divorce of the pensioner, annuitant, participant of a deferred compensation arrangement, or owner of an individual retirement account.

b. The term “individual’s documented retirement” means any evidence that the individual can provide to the department of revenue which would establish that the individual or the individual’s beneficiary is receiving distributions from the pension, annuity, individual retirement account, or the deferred compensation arrangement due to the retirement of the individual.

Examples of documents that would establish an individual’s retirement may include: copies of birth certificates or driver’s licenses to establish an individual’s age; copies of excerpts from an employer’s personnel manual or letter from employer to establish retirement or early retirement policies; a copy of a statement from a physician to establish an individual’s disability which could have contributed to a person’s retirement.

c. The term “nonresident” applies only to individuals and includes all individuals other than those individuals domiciled in Iowa and those individuals who maintain a permanent place of abode in Iowa. See 701—subrule 38.17(2) for the definition of domicile.

**40.45(2) Examples:**

a. John Jones had worked for the same Iowa employer for 32 years when he retired at age 62 and moved to Arkansas in March of 1994. Mr. Jones started receiving distributions from the pension plan from his former employer starting in May 1994. Because Mr. Jones was able to establish that he was receiving the distributions from the pension plan due to his retirement from his employment, Mr. Jones was not subject to Iowa income tax on the distributions from the pension plan. Note that Mr. Jones had sold his Iowa residence in March and established his domicile in Arkansas at the time of his move to Arkansas.

b. Wanda Smith was the daughter of John Smith who died in February 1994 after 25 years of employment with a company in Urbandale, Iowa. Wanda Smith was the sole beneficiary of John and started receiving distributions from John’s pension in April 1994. Wanda Smith was a bona fide resident of Oakland, California, when she received distributions from her father’s pension. Wanda was not subject to Iowa income tax on the distributions since she was a nonresident of Iowa at the time the distributions were received.

c. Martha Graham was 55 years old when she quit her job with a firm in Des Moines to take a similar position with a firm in Dallas, Texas. Ms. Graham had worked for the Des Moines business for 22 years before she resigned from the job in May 1994. Starting in July 1994, Ms. Graham received monthly distributions from the pension from her former Iowa employer. Although Ms. Graham was a nonresident of Iowa, she was subject to Iowa income tax on the pension distribution since the taxpayer didn’t have a documented retirement.

d. William Moore was 58 years old when he quit his job with a bank in Mason City in February 1994 after 30 years of employment with the bank. By the time Mr. Moore started receiving pension payments from his employment with the bank, he had moved permanently to New Mexico. Shortly after he arrived in New Mexico, Mr. Moore secured part-time employment. The pension payments were not taxable to Iowa as Mr. Moore was retired notwithstanding his part-time employment in New Mexico.

e. Joe Brown had worked for an Iowa employer for 25 years when he retired in June 1992 at the age of 65. Mr. Brown started receiving monthly pension payments in July 1992. Mr. Brown resided in Iowa until August 1994, when he moved permanently to Nevada to be near his daughter. Mr. Brown was not taxable to Iowa on the pension payments he received after his move to Nevada. Mr. Brown’s retirement occurred in June 1992 when he resigned from full-time employment.

This rule is intended to implement Iowa Code section 422.8.

**701—40.46(422) Taxation of compensation of nonresident members of professional athletic teams.** Effective for tax years beginning on or after January 1, 1995, the Iowa source income of a nonresident individual who is a member of a professional athletic team includes the portion of the individual’s total compensation for services provided for the athletic team that is in the ratio that the number of duty days spent in Iowa rendering services for the team during the tax year bears to the total number of duty days spent both within and without Iowa in the tax year. Thus, if a nonresident member of a professional athletic team has \$50,000 in total compensation from the team in 1995 and the athlete has 20 Iowa duty days and 180 total duty days for the team in 1995, \$5,556 of the compensation would be taxable to Iowa ( $\$50,000 \times 20/180 = \$5,556$ ).

The following subrules include definitions, examples, and other information which clarify Iowa’s taxation of nonresident members of professional athletic teams:

**40.46(1) Definitions.**

a. The term “professional athletic team” includes, but is not limited to, any professional baseball, basketball, football, soccer, or hockey team.

b. The term “member of a professional athletic team” includes those employees who are active players, players on the disabled list, and any other persons required to travel and who travel with and

perform services on behalf of a professional athletic team on a regular basis. This includes, but is not limited to, coaches, managers, and trainers.

c. The term “total compensation for services rendered as a member of a professional athletic team” means the total compensation received during the taxable year for services rendered. “Total compensation” includes, but is not limited to, salaries, wages, bonuses (as described in subparagraph (1) of this paragraph), and any other type of compensation paid during the taxable year to a member of a professional athletic team for services performed in that year. Such compensation does not include strike benefits, severance pay, termination pay, contract or option year buy-out payments, expansion or relocation payments, and any other payments not related to services rendered for the team.

For purposes of this paragraph, “bonuses” included in “total compensation for services rendered as a member of a professional athletic team” subject to the allocation described in this rule are:

(1) Bonuses earned as a result of play (i.e., performance bonuses) during the season, including bonuses paid for championship, playoff, or “bowl” games played by a team, or for the member’s selection to all-star, league, or other honorary positions; and

(2) Bonuses paid for signing a contract, unless all of the following conditions are met:

1. The payment of the signing bonus is not conditional upon the signee playing any games for the team, or performing any subsequent services for the team, or even making the team;

2. The signing bonus is payable separately from the salary and any other compensation; and

3. The signing bonus is nonrefundable.

d. Except as provided in subparagraphs (4) and (5) of this paragraph, the term “duty days” means all days during the taxable year from the beginning of the professional athletic team’s official preseason training period through the last game in which the team competes or is scheduled to compete. Duty days are included in the allocation described in this rule for the tax year in which they occur, including where a team’s official preseason training period through the last game in which the team competes, or is scheduled to compete, occurs during more than one tax year.

(1) Duty days also includes days on which a member of a professional athletic team renders a service for a team on a date which does not fall within the previously mentioned period (e.g., participation in instructional leagues, the “Pro Bowl” or promotional “caravans”). Rendering a service includes conducting training and rehabilitation activities, but only if conducted at the facilities of the team.

(2) Included within duty days are game days, practice days, days spent at team meetings, promotional caravans and preseason training camps, and days served with the team through all postseason games in which the team competes or is scheduled to compete.

(3) Duty days for any person who joins a team during the period from the beginning of the professional athletic team’s official preseason training period through the last game in which the team competes, or is scheduled to compete, begins on the day the person joins the team. Conversely, duty days for any person who leaves a team during such period ends on the day the person leaves the team. When a person switches teams during a taxable year, separate duty day calculations are to be made for the period the person was with each team.

(4) Days for which a member of a professional athletic team is not compensated and is not rendering services for the team in any manner, including days when the member of a professional athletic team has been suspended without pay and prohibited from performing any services for the team, are not to be treated as duty days.

(5) Days for which a member of a professional athletic team is on the disabled list and does not conduct rehabilitation activities at facilities of the team and is not otherwise rendering services for the team in Iowa, are not to be considered duty days spent in Iowa. However, all days on the disability list are considered to be included in total duty days spent both within and outside the state of Iowa.

(6) Total duty days for members of a professional athletic team that are not professional athletes are the number of days in the year that the members are employed by the professional athletic team. Thus, in the case of a coach of a professional athletic team who was coach for the entire year of 1995, the coach’s total duty days for 1995 would be 365.

(7) Travel days in Iowa by a team member that do not involve a game, practice, team meeting, all-star game, or other personal service for the team are not considered to be duty days in Iowa. However, to the extent these days fall within the period from the team's preseason training period through the team's final game, these Iowa travel days will be considered in the total duty days spent within and outside Iowa, for team members who are professional athletes.

(8) Duty days in Iowa do not include days a team member performs personal services for the professional athletic team in Iowa on those days that the team member is a bona fide resident of a state with which Iowa has a reciprocal tax agreement. See rule 701—38.13(422).

**40.46(2)** *Filing composite Iowa returns for nonresident members of professional athletic teams.* Professional athletic teams may file composite Iowa returns on behalf of team members who are nonresidents of Iowa and who have compensation that is taxable to Iowa from duty days in Iowa for the athletic team. However, the athletic team may include on the composite return only those team members who are nonresidents of Iowa and who have no Iowa source incomes other than the incomes from duty days in Iowa for the team. The athletic team may exclude from the composite return any team member who is a nonresident of Iowa and whose income from duty days in Iowa is less than \$1,000. See rule 701—48.1(422) about filing Iowa composite returns.

**40.46(3)** *Examples of taxation of nonresident members of professional athletic teams.*

a. Player A, a member of a professional athletic team, is a nonresident of Iowa. Player A's contract for the team requires A to report to such team's training camp and to participate in all exhibition, regular season, and playoff games. Player A has a contract which covers seasons that occur during year 1/year 2 and year 2/year 3. Player A's contract provides that A is to receive \$500,000 for the year 1/year 2 season and \$600,000 for the year 2/year 3 season. Assuming player A receives \$550,000 from the contract during taxable year 2 (\$250,000 for one-half the year 1/year 2 season and \$300,000 for one-half the year 2/year 3 season), the portion of compensation received by player A for taxable year 2, attributable to Iowa, is determined by multiplying the compensation player A receives during the taxable year (\$550,000) by a fraction, the numerator of which is the total number of duty days player A spends rendering services for the team in Iowa during taxable year 2 (attributable to both the year 1/year 2 season and the year 2/year 3 season) and the denominator of which is the total number of player A's duty days spent both within and outside Iowa for the entire taxable year.

b. Player B, a member of a professional athletic team, is a nonresident of Iowa. During the season, B is injured and is unable to render services for B's team. While B is undergoing medical treatment at a clinic, which is not a facility of the team, but is located in Iowa, B's team travels to Iowa for a game. The number of days B's team spends in Iowa for practice, games, meetings, for example, while B is present at the clinic, are not to be considered duty days spent in Iowa for player B for that taxable year for purposes of this rule, but these days are considered to be included within total duty days spent both within and outside Iowa.

c. Player C, a member of a professional athletic team, is a nonresident of Iowa. During the season, C is injured and is unable to render services for C's team. C performs rehabilitation exercises at the facilities of C's team in Iowa as well as at personal facilities in Iowa. The days C performs rehabilitation exercise in the facilities of C's team are considered duty days spent in Iowa for player C for that taxable year for purposes of this rule. However, days player C spends at personal facilities in Iowa are not to be considered duty days spent in Iowa for player C for that taxable year for purposes of this rule, but the days are considered to be included within total duty days spent both within and outside Iowa.

d. Player D, a member of a professional athletic team, is a nonresident of Iowa. During the season, D travels to Iowa to participate in the annual all-star game as a representative of D's team. The number of days D spends in Iowa for practice, the game, meetings, for example, are considered to be duty days spent in Iowa for player D for that taxable year for purposes of this rule, as well as included within total duty days spent both within and outside Iowa.

e. Assume the same facts as given in paragraph "d," except that player D is not participating in the all-star game and is not rendering services for D's team in any manner. Player D is instead traveling to and attending this game solely as a spectator. The number of days player D spends in Iowa for the

game is not to be considered to be duty days spent in Iowa for purposes of this rule. However, the days are considered to be included within total duty days spent both within and outside Iowa.

**40.46(4)** *Use of an alternative method to compute taxable portion of a nonresident's compensation as a member of a professional athletic team.* If a nonresident member of a professional athletic team believes that the method provided in this rule for allocation of the member's compensation to Iowa is not equitable, the nonresident member may propose the use of an alternative method for the allocation of the compensation to Iowa. The request for an alternative method for allocation must be filed no later than 60 days before the due date of the return, considering that the due date may be extended for up to 6 months after the original due date if at least 90 percent of the tax liability was paid by the original due date (April 30 for taxpayers filing on a calendar-year basis).

The request for an alternative method should be filed with the Taxpayer Services and Policy Division, P.O. Box 10457, Des Moines, Iowa 50306. The request must set forth the alternative method for allocation to Iowa of the compensation of the nonresident professional team member. In addition, the request must specify, in detail, why the method for allocation of the compensation set forth in this rule is not equitable, as well as why the alternative method for allocation of the compensation is more equitable than the method provided in this rule. The burden of proof is on the nonresident professional team member to show that the alternative method is more equitable than the method provided in the rule.

If the department determines that the alternative method is more reasonable for allocation of the taxable portion of the team member's compensation than the method provided in this rule, the team member can use the alternative method on the current return and on subsequent returns.

If the department rejects the team member's use of the alternative method, the team member may file a protest within 60 days of the date of the department's letter of rejection. The nonresident team member's protest of the department's rejection of the alternate formula must be made in accordance with rule 701—7.8(17A) and must state, in detail, why the method provided in this rule is not equitable, as well as why the alternative method for allocation of the compensation is more equitable than the method set forth in this rule.

This rule is intended to implement Iowa Code sections 422.3, 422.7, and 422.8.  
[ARC 7761B, IAB 5/6/09, effective 6/10/09; ARC 0251C, IAB 8/8/12, effective 9/12/12]

**701—40.47(422) Partial exclusion of pensions and other retirement benefits for disabled individuals, individuals who are 55 years of age or older, surviving spouses, and survivors.** For tax years beginning on or after January 1, 1995, an individual who is disabled, is 55 years of age or older, is a surviving spouse, or is a survivor with an insurable interest in an individual who would have qualified for the exclusion is eligible for a partial exclusion of retirement benefits received in the tax year. For tax years beginning on or after January 1, 2001, the partial exclusion of retirement benefits received in the tax year is increased up to a maximum of \$6,000 for a person other than a husband or wife who files a separate state return and up to a maximum of \$12,000 for a husband and wife who file a joint Iowa return. For tax years beginning on or after January 1, 1998, the partial exclusion of retirement benefits received in the tax year was increased up to a maximum of \$5,000 for a person, other than a husband or wife who files a separate state income tax return, and up to a maximum of \$10,000 for a husband and wife who file a joint state income tax return. A husband and wife filing separate state income tax returns or separately on a combined state return are allowed a combined exclusion of retirement benefits of up to a maximum of \$10,000 for tax years beginning in 1998, 1999 and 2000 and a combined exclusion of up to a maximum of \$12,000 for tax years beginning on or after January 1, 2001. The \$10,000 or \$12,000 exclusion shall be allocated to the husband and wife in the proportion that each spouse's respective pension and retirement benefits received bear to the total combined pension and retirement benefits received by both spouses. See rule 701—40.80(422) for the exclusion of military retirement pay for tax years beginning on or after January 1, 2014.

EXAMPLE 1. A married couple elected to file separately on the combined return form. Both spouses were 55 years of age or older. The wife received \$95,000 in retirement benefits and the husband received \$5,000 in retirement benefits. Since the wife received 95 percent of the retirement benefits, she would be entitled to 95 percent of the \$10,000 retirement income exclusion or a retirement income exclusion

of \$9,500. The husband would be entitled to 5 percent of the \$10,000 retirement income exclusion or an exclusion of \$500.

EXAMPLE 2. A married couple elected to file separately on the combined return form. Both spouses were 55 years of age or older. The husband had \$15,000 in retirement benefits from a pension. The wife received no retirement benefits. In this situation, the husband can use the entire \$10,000 retirement income exclusion to exclude \$10,000 of his pension benefits since the spouse did not use any of the \$10,000 retirement income exclusion for the tax year.

EXAMPLE 3. A married couple elected to file separately on the combined return form. One spouse was 52 years of age and received a pension income of \$20,000. The other spouse was 55 years of age and received no pension income. Since the spouse receiving the pension income was not 55 years of age, no exclusion is allowed on the Iowa return.

EXAMPLE 4. A married couple elected to file separately on the combined return form. One spouse was 52 years of age and received a pension income of \$10,000. The other spouse was 55 years of age and received a pension income of \$8,000. Since only one spouse receiving the pension income was 55 years of age, an exclusion of \$8,000 is allowed on the Iowa return. The exclusion of \$8,000 is allowed since a married couple is allowed a combined exclusion of up to \$12,000.

For tax years beginning on or after January 1, 1995, but prior to January 1, 1998, the retirement income exclusion was up to \$3,000 for single individuals, up to \$3,000 for each married person filing a separate Iowa return, up to \$3,000 for each married person filing separately on the combined return form, and up to \$6,000 for married taxpayers filing joint Iowa returns. For example, a married couple elected to file separately on the combined return form and both spouses were 55 years of age or older. One spouse had \$2,000 in pension income that could be excluded, since the pension income was \$3,000 or less. The other spouse had \$6,000 in pension income and could exclude \$3,000 of that income due to the retirement income exclusion. This second spouse could not exclude an additional \$1,000 of the up to \$3,000 retirement income exclusion that was not used by the other spouse.

“*Insurable interest*” is a term used in life insurance which also applies to this rule and is defined to be “such an interest in the life of the person insured, arising from the relations of the party obtaining the insurance, either as credit of or surety for the assured, or from the ties of blood or marriage to him, as would justify a reasonable expectation of advantage or benefit from the continuance of his life.” *Warnock v. Davis*, 104 U.S. 775, 779, 26 L.Ed. 924; *Connecticut Mut. Life Ins. Co. v. Luchs*, 2 S.Ct. 949, 952, 108 U.S. 498, 27 L.Ed. 800; Appeal of Corson, 6 A. 213, 215, 113 Pa. 438, 57 Am. Rep. 479; *Adams’ Adm’r v. Reed*, Ky., 36 S.W. 568, 570; *Trinity College v. Travelers’ Co.*, 18 S.E. 175, 176, 113 N.C. 244, 22 L.R.A. 291; *Opitz v. Karel*, 95 N.W. 948, 951, 118 Wis. 527, 62 L.R.A. 982. It is not necessary that the expectation of advantage or profit should always be capable of pecuniary estimation, for a parent has an insurable interest in the life of his child, and a child in the life of his parent, a husband in the life of his wife, and a wife in the life of her husband. The natural affection in cases of this kind is considered as more powerful, as operating the more efficaciously, to protect the life of the insured than any other consideration, but in all cases there must be a reasonable ground, founded on relations to each other, either pecuniary or of blood or affinity, to expect some benefit or advantage from the continuance of the life of the assured. *Warnock v. Davis*, 104 U.S. 775, 26 L.Ed. 924; Appeal of Corson, 6 A. 213, 215, 113 Pa. 438, 57 Am. Rep. 479; *Connecticut Mut. Life Ins. Co. v. Luchs*, 2 S.Ct. 949, 952, 108 U.S. 498, 27 L.Ed. 800.

For purposes of this rule, the term “insurable interest” will be considered to apply to a beneficiary receiving retirement benefits due to the death of a pensioner or annuitant under the same circumstances as if the beneficiary were receiving life insurance benefits as a result of the death of the pensioner or annuitant.

For purposes of this rule, the term “survivor” is a person other than the surviving spouse of an annuitant or pensioner who is receiving the annuity or pension benefits because the person was a beneficiary of the pensioner or annuitant at the time of death of the pensioner or annuitant. In addition, in order for this person to qualify for the partial exclusion of pensions or retirement benefits, this survivor must have had an insurable interest in the pensioner or annuitant at the time of death of the annuitant or pensioner.

A survivor other than the surviving spouse will be considered to have an insurable interest in the pensioner or annuitant if the survivor is a son, daughter, mother, or father of the annuitant or pensioner. The relationship of these individuals to the pensioner or annuitant is considered to be so close that no separate pecuniary or monetary interest between the pensioner or annuitant and any of these relatives must be established.

A survivor may include relatives of the pensioner or annuitant other than those relatives that were mentioned above. However, before any of these relatives can be considered to be a survivor for purposes of this rule, the relative must have had some pecuniary interest in the continuation of the life of the pensioner or annuitant. That is, the relative must establish a relationship with the pensioner or annuitant that shows there was a reasonable expectation of an advantage or benefit which the person would have received with the continuance of the life of the pensioner or annuitant.

The fact that a niece of the pensioner or annuitant was named beneficiary of an uncle's pension where the uncle had no closer relatives does not in itself establish that the niece had an insurable interest in the pension benefits, if the niece was not receiving monetary benefits or the niece did not have some special relationship to the uncle at the time of the uncle's death.

If a grandson was receiving college tuition regularly from his grandfather and received the grandfather's pension as a beneficiary of the grandfather after the grandfather's death, the grandson would be deemed to have an insurable interest in the benefits and would be eligible for the partial retirement benefit exclusion.

A person who is not related to the pensioner or annuitant, such as a partner in a business or a creditor, may have an insurable interest in the pensioner or annuitant. However, the burden of proof is on a nonrelated person to show that the person had an insurable interest in the pensioner or the annuitant at the time of death of the pensioner or annuitant.

There are numerous court cases which deal with whether a person had established an insurable interest in the life of an individual that was insured. These cases may be used as a guideline to determine whether or not a person receiving a pension or annuity due to the death of an annuitant or pensioner had an insurable interest in the annuitant or pensioner at the time of death of the pensioner or annuitant. Thus, if a person would have met criteria for an insurable interest for purposes of an interest in a person's life insurance policy, the person would also be considered to be qualified for an insurable interest in a pensioner or annuitant.

Retirement benefits subject to the retirement income exclusion include, but are not limited to: benefits from defined benefit or defined contribution pension and annuity plans, benefits from annuities, incomes from individual retirement accounts, benefits from pension or annuity plans contributed by an employer or maintained or contributed by a self-employed person and benefits and earnings from deferred compensation plans. However, the exclusion does not apply to social security benefits. A surviving spouse who is not disabled or is not 55 years of age or older can only exclude retirement benefits received as a result of the death of the other spouse and on the basis that the deceased spouse would have been eligible for the exclusion in the tax year. In order for a survivor other than the surviving spouse to qualify for the partial exclusion of retirement benefits, the survivor must have received the retirement benefits as a result of the death of a pensioner or annuitant who would have qualified for the exclusion in the tax year on the basis of age or disability. In addition, the survivor other than the surviving spouse would have had to have an insurable interest in the pensioner or annuitant at the time of the death of the pensioner or annuitant.

For purposes of this rule, a disabled individual is a person who is receiving benefits as a result of retirement from employment or self-employment due to disability. In addition, a person is considered to be a disabled individual if the individual is determined to be disabled in accordance with criteria established by the Social Security Administration or other federal or state governmental agency.

Note that the pension or other retirement benefits that are excluded from taxation for certain individuals are to be considered as a part of net income for purposes of determining whether or not a particular individual's income is low enough to exempt that taxpayer from tax. In addition, the pension or other retirement benefits that are excluded from taxation for certain individuals are to be considered

as a part of net income for the alternative tax computation, which is available to all taxpayers except those taxpayers filing as single individuals.

Finally, the pension or other retirement benefits are to be considered as a part of net income for individuals using the single filing status whose tax liabilities are limited so the liabilities cannot reduce the person's net income plus exempt benefits below \$9,000, or below \$18,000 for taxpayers 65 years of age or older for the 2007 and 2008 tax years, or below \$24,000 for taxpayers 65 years of age or older for the 2009 and subsequent tax years.

This rule is intended to implement Iowa Code sections 422.5 and 422.7.  
[ARC 8605B, IAB 3/10/10, effective 4/14/10; ARC 1665C, IAB 10/15/14, effective 11/19/14]

**701—40.48(422) Health insurance premiums deduction.** For tax years beginning on or after January 1, 1996, the amounts paid by a taxpayer for health insurance for the taxpayer, the taxpayer's spouse, and the taxpayer's dependents are deductible in computing net income on the Iowa return to the extent the amounts paid were not otherwise deductible in computing adjusted gross income. However, amounts paid by a taxpayer for health insurance on a pretax basis whereby the portion of the wages of the taxpayer used to pay health insurance premiums is not included in the taxpayer's gross wages for income tax or social security tax purposes are not deductible on the Iowa return.

In situations where married taxpayers pay health insurance premiums from a joint checking or other joint account and the taxpayers are filing separate state returns or separately on the combined return form, the taxpayers must allocate the deduction between the spouses on the basis of the net income of each spouse to the combined net income unless one spouse can show that only that spouse's income was deposited to the joint account.

In circumstances where a taxpayer is self-employed and takes a deduction on the 1996 federal return for 30 percent of the premiums paid for health insurance on the federal return, the taxpayer would be allowed a deduction on the Iowa return for the portion of the health insurance premiums that was not deducted on the taxpayer's federal return, including any health insurance premiums deducted as an itemized medical deduction under Section 213 of the Internal Revenue Code.

For purposes of the state deduction for health insurance premiums, the same premiums for the same health insurance or medical insurance coverage qualify for this deduction as would qualify for the federal medical expense deduction. Thus, premiums paid for contact lens insurance qualify for the health insurance deduction. Also eligible for the deduction for tax years beginning in the 1996 calendar year are premiums paid by a taxpayer before the age of 65 for medical care insurance effective after the age of 65, if the premiums are payable (on a level payment basis) for a period of ten years or more or until the year the taxpayer attains the age of 65 (but in no case for a period of less than five years). For tax years beginning on or after January 1, 1997, premiums for long-term health insurance for nursing home coverage are eligible for this deduction to the extent the premiums for long-term health care services are eligible for the federal itemized deduction for medical and dental expenses, irrespective of the limitations set forth in Section 213(d)(10) of the Internal Revenue Code. For example, a 55-year-old taxpayer who paid \$1,050 in premiums for long-term health insurance for nursing home coverage for the 2004 tax year would be allowed a deduction for Iowa purposes for the entire \$1,050, even though the limitation for the federal itemized deduction for medical expenses in Section 213(d)(10) of the Internal Revenue Code for these premiums for this taxpayer is \$980.

Amounts paid under an insurance contract for other than medical care (such as payment for loss of limb or life or sight) are not deductible, unless the medical charge is stated separately in the contract or provided in a separate statement.

This rule is intended to implement Iowa Code section 422.7 as amended by 1997 Iowa Acts, Senate File 129.

**701—40.49(422) Employer social security credit for tips.** Employers in the food and beverage industry are allowed a credit under Section 45B of the Internal Revenue Code for a portion of the social security taxes paid or incurred after 1993 on employee tips. The credit is equal to the employer's FICA obligation attributable to tips received which exceed tips treated as wages for purposes of satisfying

minimum wage standards of the Fair Labor Standards Act. The credit is allowed only for tips received by an employee in the course of employment from customers on the premises of a business for which the tipping of employees serving food or beverages is customary. To the extent that an employer takes the credit for a portion of the social security taxes paid or incurred, the employer's deduction for the social security tax is reduced accordingly. For Iowa income tax purposes, the full deduction for the social security tax paid or incurred is allowed for tax years beginning on or after January 1, 1994.

This rule is intended to implement Iowa Code Supplement section 422.7.

**701—40.50(422) Computing state taxable amounts of pension benefits from state pension plans.** For tax years beginning on or after January 1, 1995, a retired member of a state pension plan, or a beneficiary of a member, who receives benefits from the plan where there was a greater contribution to the plan for the member for state income tax purposes than for federal income tax purposes can report less taxable income from the benefits on the Iowa individual income tax return than was reported on the federal return for the same tax year. This rule applies only to a member of a state pension plan, or the beneficiary of a member, who received benefits from the plan sometime after January 1, 1995, and only in circumstances where the member received wages from public employment in 1995, 1996, 1997, or 1998, or possibly in 1999 for certain teachers covered by the state pension plan authorized in Iowa Code chapter 294 so the member had greater contributions to the state pension plan for state income tax purposes than for federal income tax purposes. Starting with wages paid on or after January 1, 1999, to employees covered by a state pension plan other than teachers covered by the state pension plan authorized in Iowa Code chapter 294, contributions made to the pension plan will be made on a pretax basis for state income tax purposes as well as for federal income tax purposes. However, in the case of teachers covered by the state pension plan authorized in Iowa Code chapter 294, contributions to the pension plan on behalf of these teachers on a pretax basis for state income tax purposes may start after January 1, 1999.

For example, in the case of a state employee who was covered by IPERS and had wages from covered public employment of \$41,000 or more in 1995, that person would have made posttax contributions to IPERS of \$1,517 for state income tax purposes for 1995 and zero posttax contributions to IPERS for federal income tax purposes for 1995. The \$1,517 in contributions to IPERS for federal income tax purposes was made on a pretax basis and was considered to have been made by the employee's employer or the state of Iowa and not the employee. At the time this employee receives retirement benefits from IPERS, the retired employee will be subject to federal income tax on the portion of the benefits that is attributable to the \$1,517 IPERS contribution made in 1995. However, this employee will not be subject to state income tax on the portion of the IPERS benefits received which is attributable to the \$1,517 contribution to IPERS for 1995.

This rule does not apply to members or beneficiaries of members who elect to take a lump sum distribution of benefits from a state pension plan in lieu of receiving monthly payments of benefits from the plan.

The following subrules further clarify how the portion of certain state pension benefits that is taxable for state individual income tax purposes for tax years beginning on or after January 1, 1995, is determined.

**40.50(1) Definitions related to state taxation of benefits from state pension plan.** The following definitions clarify those terms and phrases that have a bearing on the state's taxation of certain individuals who receive retirement benefits from state pension plans:

*a.* For purposes of this rule, the terms "state pension," "state pensions," and "state pension plans" mean only those pensions and those pension plans authorized in Iowa Code chapter 97A for public safety peace officers, chapter 97B for Iowa public employees (IPERS), chapter 294 for certain teachers, and chapter 411 for police officers and firefighters. There are other pension plans available for some public employees in the state which may be described as "state pensions" or "state pension plans" in other contexts or situations, but these pension plans are not covered by this rule. An example of a pension plan that is not a "state pension plan" for purposes of this rule is the judicial retirement system for state judges authorized in Iowa Code section 602.9101.

b. For purposes of this rule, “member” is an individual who was employed in public service covered by a state pension plan and is either receiving or was receiving benefits from the pension plan.

c. For purposes of this rule, “beneficiary” is a person who has received or is receiving benefits from a state pension plan due to the death of an individual or member who earned benefits in a state pension plan.

d. For purposes of this rule, the term “IPERS” means the Iowa public employees retirement system.

e. For purposes of this rule, the term “pretax,” when the term is applied to a contribution made to a state pension plan during a year from a public employee’s compensation, means a contribution to a state pension plan that is not taxed on the employee’s income tax return for the tax year in which the contribution is made. The contribution is considered to have been made by the state or the employee’s employer and not by the employee so this contribution is not part of the employee’s basis in the pension that is not taxed when the pension is received.

f. For purposes of this rule, the term “posttax,” when the term is applied to a contribution made to a state pension plan during a year from a public employee’s compensation, means the contribution is included in the employee’s taxable income for the tax year of the contribution and the contribution is considered to have been made by the employee. That is, the contribution is part of the employee’s basis in the pension which is not taxed at the time the pension is received.

**40.50(2)** *Computation of the taxable amount of the state pension for federal income tax purposes.* An individual who receives benefits in the tax year from one of the state pension plans is not subject to federal income tax on the benefits to the extent of the pensioner’s or member’s recovery of posttax contribution to the pension plan. The individual receiving benefits in the year from a state pension plan should get a Form 1099-R showing the total benefits received in the tax year from the pension plan. The individual can determine the federal taxable amount of the benefits by using the general rule or the simplified general rule which is described in federal publication 17 or federal publication 575. Note that members who first receive pension benefits after November 18, 1996, must compute the federal taxable amount of their pension benefits by using the simplified general rule shown in the federal tax publications. Note also that individuals receiving benefits in the tax year from IPERS who started receiving benefits in 1993 or in later years will receive information with the 1099-R form which shows the amount of gross benefits received in the tax year that is taxable for federal income tax purposes.

**40.50(3)** *Computing the taxable amount of state pension benefits for state individual income tax purposes.* An individual receiving state pension benefits in the tax year must have a number of facts about the state pension in order to be able to compute the taxable amount of the pension for Iowa income tax purposes. The individual must know the gross pension benefits received in the tax year, the taxable amount of the pension for federal income tax purposes, the employee’s contribution to the pension for federal income tax purposes, and the employee’s contribution to the pension for state income tax purposes. In situations where the employee’s contribution for state income tax purposes is equal to the contribution for federal income tax purposes, the same amount of the pension will be taxable on the state income tax return as is taxable on the federal return.

In cases when all of an individual’s employment covered by a state pension plan occurred on or after January 1, 1995, so that all the contributions to the pension plan (other than posttax service purchases) for the employee were made on a pretax basis for federal income tax purposes, all of the benefits received from the pension would be taxed on the federal income tax return. In this situation, the state taxable amount of the pension would be computed using the general rule or the simplified general rule shown in federal publication 17 or federal publication 575. The employee’s state contribution or state basis would be entered on line 2 of the worksheet in the federal publication that is usually used to compute the taxable amount of the pension for the federal income tax return.

To compute the state taxable amount of the state pension in situations where the employee had a contribution to the pension for federal tax purposes, the federal taxable amount for the year is first subtracted from the gross pension benefit received in the year which leaves the amount of the pension received in the year which was not taxable on the federal return. Next, the member’s posttax contribution or basis in the pension for federal tax purposes is divided by the member’s posttax contribution or basis

in the pension for state income tax purposes which provides the ratio of the member's federal basis or contribution to the member's state contribution or basis. Next, the amount of the state pension received in the year that is not taxed on the federal return is divided by the ratio or percentage that was determined in the previous step, which provides the exempt amount of the pension for state tax purposes. Finally, the state exempt amount determined in the previous step is subtracted from the gross amount received in the year, which leaves the taxable amount for state income tax purposes. Note that individuals who retired in 1993 and in years after 1993 and are receiving benefits from IPERS will receive information from IPERS which will advise them of the taxable amount of the pension for state income tax purposes. The examples in subrule 40.50(4) are provided to illustrate how the state taxable amounts of state pension benefits received in the tax year are computed in different factual situations.

**40.50(4) Examples.**

*a.* A state employee retired in April 1996 and started receiving IPERS benefits in April 1996. The retired state employee received \$1,794.45 in gross benefits from IPERS in 1996. The federal taxable amount of the benefits was \$1,690.36. The employee's federal posttax contribution or basis in the pension was \$4,907 and the state posttax contribution or basis was \$7,194. The nontaxable amount of the IPERS benefits for federal income tax was \$104.09 which was calculated by subtracting the federal taxable amount of \$1,690.36 from the gross amount of the benefits of \$1,794.45. The ratio of the employee's posttax contribution to the pension for federal income tax purposes was 68.21 percent of the employee's contribution to the pension for state income tax purposes. This was determined by dividing \$4,907 by \$7,194. The nontaxable amount of the IPERS benefit for federal income tax purposes of \$104.09 was then divided by 68.21 percent, which is the ratio determined in the previous step, and which results in a total of \$152.60. This was the nontaxable amount of the pension for state income tax purposes. When \$152.60 is subtracted from the gross benefits of \$1,794.45 paid in the year, the remaining amount is \$1,641.85 which is the taxable amount of the pension that should be reported on the individual's Iowa individual income tax return for the 1996 tax year.

*b.* A state employee retired in July 1995. The retired employee received \$1,881.88 in IPERS benefits in 1996 and \$1,790.60 of the benefits was taxable on the individual's federal return for 1996. The person's federal posttax contribution to the IPERS pension was \$3,130 and the posttax contribution for state income tax purposes was \$3,821. The amount of benefits not taxable for federal income tax purposes was \$91.28 which was computed by subtracting the amount of pension benefits of \$1,790.60 that was taxable on the federal income tax return from the gross benefits of \$1,881.88 received in 1996. The retiree's federal posttax contribution of \$3,130 to IPERS was divided by the retiree's posttax contribution of \$3,821 to IPERS for state income tax purposes which resulted in a ratio of 81.91 percent. The amount of IPERS benefits of \$91.28 exempt for federal income tax purposes is divided by the 81.91 percent computed in the previous step which results in an amount of \$111.44 which is the amount of IPERS benefits received in 1996 which is not taxable on the Iowa return. \$111.44 is subtracted from the gross benefits of \$1,881.88 received in 1996 which leaves the state taxable amount for 1996 of \$1,770.44.

This rule is intended to implement Iowa Code section 422.7 as amended by 1998 Iowa Acts, House File 2513.

**701—40.51(422) Exemption of active-duty military pay of national guard personnel and armed forces military reserve personnel for overseas services pursuant to military orders for peacekeeping in the Bosnia-Herzegovina area.** For active duty military pay received on or after November 21, 1995, by national guard personnel and by armed forces military reserve personnel, the pay is exempt from state income tax to the extent the military pay was earned overseas for services performed pursuant to military orders related to peacekeeping in the Bosnia-Herzegovina area. In order for the active duty pay to qualify for exemption from tax, the military service had to have been performed outside the United States, but not necessarily in the Bosnia-Herzegovina area.

This rule is intended to implement Iowa Code section 422.7 as amended by 1997 Iowa Acts, House File 355.

**701—40.52(422) Mutual funds.** Iowa does not tax dividend or interest income from regulated investment companies to the extent that such income is derived from interest on United States Government obligations or obligations of this state and its political subdivisions. The exemption is also applicable to income from regulated investment companies which is derived from interest on government-sponsored enterprises and agencies where federal law specifically precludes state taxation of such interest. Income derived from interest on securities which are merely guaranteed by the federal government or from repurchase agreements collateralized by the United States Government obligations is not excluded and is subject to Iowa income tax. There is no distinction between Iowa's tax treatment of interest received by a direct investor as compared with a mutual fund shareholder. The interest retains its same character when it "flows-through" the mutual fund and is subject to taxation accordingly.

Taxpayers may subtract from federal adjusted gross income, income received from any of the obligations listed in subrule 40.2(1) and rule 701—40.3(422) above, even if the obligations are owned indirectly through owning shares in a mutual fund:

1. If the fund invests exclusively in these state tax-exempt obligations, the entire amount of the distribution (income) from the fund may be subtracted.

2. If the fund invests in both exempt and nonexempt obligations, the amount represented by the percentage of the distribution that the mutual fund identifies as exempt may be subtracted.

3. If the mutual fund does not identify an exempt amount or percentage, taxpayers may figure the amount to be subtracted by multiplying the distribution by the following fraction: as the numerator, the amount invested by the fund in state-exempt United States obligations; as the denominator, the fund's total investment. Use the year-end amounts to figure the fraction if the percentage ratio has remained constant throughout the year. If the percentage ratio has not remained constant, take the average of the ratios from the fund's quarterly financial reports.

Therefore, if the federal adjusted gross income of an individual, taxable by Iowa, includes dividends or interest of this type, an adjustment must be made deducting the amount of the dividend or interest.

This rule is intended to implement Iowa Code section 422.7.

**701—40.53(422) Deduction for contributions by taxpayers to the Iowa educational savings plan trust and addition to income for refunds of contributions previously deducted.** The Iowa educational savings plan trust was created so that individuals and certain other qualified participants can contribute funds on behalf of beneficiaries in accounts administered by the treasurer of state to cover qualified education expenses of the beneficiaries. The Iowa educational savings plan trust includes the college savings Iowa plan and the Iowa advisor 529 plan. The following subrules provide details on how individuals' net incomes are affected by contributions to beneficiaries' accounts, interest and any other earnings earned on beneficiaries' accounts, and refunds of contributions which were previously deducted. Definitions and other information about establishing college savings Iowa accounts may be found in rules promulgated by the treasurer of state. See 781—Chapter 16.

**40.53(1)** *Deduction from net income for contributions made to the Iowa educational savings plan trust on behalf of beneficiaries.*

- a. An individual referred to as a "participant" can claim a deduction on the Iowa individual income tax return for contributions made by that individual to the Iowa educational savings plan trust on behalf of a beneficiary.

- b. For tax years beginning on or after January 1, 2015, if a participant makes a contribution to the Iowa educational savings plan trust on or after January 1, but on or before the deadline for filing an Iowa individual income tax return, excluding extensions, the participant may elect to have the deduction for the contribution apply to that participant's Iowa individual income taxes for the calendar year immediately preceding the year in which the contribution was made. Once a participant has elected to apply a contribution to the calendar year immediately preceding the year in which the contribution was made, the contribution is deemed to have been made on December 31 of that previous calendar year. Once the election has been made, the deduction for that contribution may only be applied in computing the taxpayer's Iowa net income for the calendar year immediately preceding the year in which the contribution was made. Contributions made on or after January 1, but before the deadline

for filing Iowa individual income taxes, that the participant elects to have applied to the immediately preceding calendar year shall count toward the maximum contribution that may be deducted for that previous year. See paragraph 40.53(1)“c” below.

EXAMPLE: An individual makes a contribution to her Iowa educational savings plan account on April 5, 2018. The deadline for filing a 2017 Iowa income tax return is April 30, 2018. The individual elects to have the contribution apply to her 2017 individual income taxes instead of her 2018 Iowa individual income taxes. The department of revenue will consider the individual’s contribution to have been made on December 31, 2017. The individual may now claim a deduction for the contribution, up to the annual maximum deduction, on her 2017 Iowa income taxes. However, because the individual elected to have her contribution apply to her 2017 Iowa income taxes, she cannot claim the deduction for the April 5, 2018, contribution on her 2018 Iowa income tax return.

c. The deduction on the 1998 Iowa return cannot exceed \$2,000 per beneficiary for contributions made in 1998 or the adjusted maximum annual amount for contributions made after 1998. Note that the maximum annual amount that can be deducted per beneficiary may be adjusted or increased to an amount greater than \$2,000 for inflation on an annual basis. Rollover contributions from other states’ educational savings plans will qualify for the deduction, subject to the maximum amount allowable. Starting with tax years beginning in the 2000 calendar year, a participant may contribute an amount on behalf of a beneficiary that is greater than \$2,000, but may claim a deduction on the Iowa individual return of the lesser of the amount contributed or \$2,000 as adjusted by inflation. For example, if a taxpayer made a \$5,000 contribution on behalf of a beneficiary to the Iowa educational savings plan trust in 2000, the taxpayer may claim a deduction on the IA 1040 return for 2000 in the amount of \$2,054, as this amount is \$2,000 as adjusted for inflation in effect for 2000.

EXAMPLE: An individual has ten grandchildren from the age of six months to 12 years. In October 1998, the person became a participant in the Iowa educational savings plan trust by making \$2,000 contributions to the trust on behalf of each of the ten grandchildren. When the participant filed the 1998 Iowa individual income tax return, the participant could claim a deduction on the return for the \$20,000 contributed to the Iowa educational savings plan trust on behalf of the individual’s ten grandchildren.

**40.53(2)** *Exclusion of interest and earnings on beneficiary accounts in the Iowa educational savings plan trust.* To the extent that interest or other earnings accrue on a beneficiary’s account in the Iowa educational savings plan trust, the interest or other earnings are excluded for purposes of computing net income on the Iowa individual income tax return of the participant or the return of the beneficiary.

**40.53(3)** *Including on the Iowa individual return amounts refunded to the participant from the Iowa educational savings plan trust that had previously been deducted.* The refund or withdrawal of funds is to be included in net income on a participant’s Iowa individual income tax return to the extent that contributions to the account had been deducted on prior Iowa individual income tax returns of the participant if the participant cancels a beneficiary’s account in the Iowa educational savings plan trust and receives a refund of the funds in the account made on behalf of the beneficiary or if the participant makes a withdrawal from the Iowa educational savings plan trust for purposes other than the following:

a. *Qualifying higher education withdrawals.* The payment of qualified higher education expenses as defined in Section 529(e)(3) of the Internal Revenue Code. The term “qualified higher education expenses” does not include tuition expenses related to attendance at an elementary or secondary school.

b. *Qualifying elementary and secondary tuition withdrawals.* For withdrawals made on or after January 1, 2018, the payment of tuition expenses in connection with and required for enrollment or attendance at an elementary or secondary school in Iowa which is accredited under Iowa Code section 256.11, and which adheres to the provisions of the federal Civil Rights Act of 1964 and Iowa Code chapter 216. These qualified tuition expenses shall not exceed \$10,000 per beneficiary per year. This limitation is based on the beneficiary, not the participant.

Participants are responsible for tracking the amount of qualified tuition expense payments a beneficiary may receive from other participants. If a beneficiary’s distributions exceed this annual limitation, the most recent payments are presumed to be the nonqualifying payments. By agreement amongst themselves, account holders are permitted to choose an alternative method for determining which payments are nonqualifying. An alternative method is presumed valid if, after the additions

to income required by this paragraph, the beneficiary's total qualifying tax-free withdrawals for elementary or secondary school tuition expenses do not exceed the \$10,000 limitation. However, upon request, the account holders are responsible for providing the department with adequate documentation to substantiate the method used.

*c. Change in beneficiaries.* A change in beneficiaries under, or transfer to another account within, the Iowa educational savings plan trust.

*d. ABLE rollovers.* A transfer to the Iowa ABLE savings plan trust, provided such change or transfer is permitted under Iowa Code section 12D.6(5).

EXAMPLE: Because a beneficiary of a certain participant died in the year 2000, this participant in the Iowa educational savings plan trust canceled the participant agreement for the beneficiary with the trust and received a refund of \$4,200 of funds in the beneficiary's account. Because \$4,000 of the refund represented contributions that the participant had deducted on prior Iowa individual income tax returns, the participant was to report on the Iowa return for the tax year 2000, \$4,000 in contributions that had been deducted on the participant's Iowa returns for 1998 and 1999.

EXAMPLE: Beneficiary A is an elementary school student who attends an accredited elementary school located in Iowa. Participant B and participant C have each opened an Iowa educational savings plan trust account with A as the designated beneficiary. In January 2019, participant B withdraws \$6,000 from B's account to pay A's spring semester tuition. In August 2019, participant C withdraws \$6,000 from C's account to pay for A's fall semester tuition. Although neither B nor C has made a withdrawal in excess of \$10,000, that limitation is based on the beneficiary, A, who has received a total of \$12,000 in distributions in 2019. Because A's total distributions have exceeded the annual limitation on distributions related to elementary or secondary school tuition, the participants must include the \$2,000 excess in their net income. Because C's withdrawal was made after B's, the entire excess is presumed attributable to C, and therefore C must include the entire \$2,000 excess in C's Iowa net income for 2019, unless B and C can show that they agreed to an alternative method of allocating the excess amount.

This rule is intended to implement Iowa Code section 422.7.

[ARC 7761B, IAB 5/6/09, effective 6/10/09; ARC 3664C, IAB 2/28/18, effective 4/4/18; ARC 4516C, IAB 6/19/19, effective 7/24/19]

**701—40.54(422) Roth individual retirement accounts.** Roth individual retirement accounts were authorized in the Taxpayer Relief Act of 1997 and are applicable for tax years beginning after December 31, 1997. Generally, no deduction is allowed on either the federal income tax return or the Iowa individual income tax return for a contribution to a Roth IRA. The following subrules include information about tax treatment of certain transactions for Roth IRAs.

**40.54(1) Taxation of income derived from rolling over or converting existing IRAs to Roth IRAs.** At the time existing IRAs are rolled over to or converted to Roth IRAs in the 1998 calendar year or in a subsequent year, any income realized from the rollover or conversion of the existing IRA is taxable. However, in the case of conversion of existing IRAs to Roth IRAs in 1998, the taxpayer can make an election to have all the income realized from the conversion subject to tax in 1998 rather than have the conversion income spread out over four years. If the conversion income is spread out over four years, one-fourth of the conversion income is included on the 1998 Iowa and federal returns of the taxpayer and one-fourth of the income is included on the taxpayer's Iowa and federal returns for each of the following three tax years. Note that if an existing IRA for an individual is converted to a Roth IRA for the individual in a calendar year after 1998, all the income realized from the conversion is to be reported on the federal return and the Iowa return for that tax year for the individual. That is, when conversion of existing IRAs to Roth IRAs occurs after 1998, there is no provision for having the conversion income taxed over four years.

For example, an Iowa resident converted three existing IRAs to one Roth IRA in 1998, realized \$20,000 in income from the conversion, and did not elect to have all the conversion income taxed on the 1998 Iowa and federal returns. Because the taxpayer did not make the election so all the conversion income was taxed in 1998, \$5,000 in conversion income was to be reported on the taxpayer's federal and Iowa returns for 1998 and similar incomes were to be reported on the federal and Iowa returns for 1999, 2000, and 2001. Note that to the extent the recipient of the Roth IRA conversion income is

eligible, the conversion income is subject to the pension/retirement income exclusion described in rule 701—40.47(422).

**40.54(2) Roth IRA conversion income for part-year residents.** To the extent that an Iowa resident has Roth IRA conversion income on the individual's federal income tax return, the same income will be included on the resident's Iowa income tax return. However, when an individual with Roth IRA conversion income in the tax year is a part-year resident of Iowa, the individual may allocate the conversion income on the Iowa return in the ratio of the taxpayer's months in Iowa during the tax year to 12 months. In a situation where an individual spends more than half of a month in Iowa, that month is to be reported to Iowa for purposes of the allocation.

For example, an individual moved to Des Moines from Omaha on June 12, 1998, and had \$20,000 in Roth IRA conversion income in 1998. Because the individual spent 7 months in Iowa in 1998, 7/12, or 60 percent, of the \$20,000 in conversion income is allocated to Iowa. Thus, \$12,000 of the conversion income should be reported on the taxpayer's Iowa return for 1998.

This rule is intended to implement Iowa Code section 422.7 as amended by 1998 Iowa Acts, Senate File 2357.

**701—40.55(422) Exemption of income payments for victims of the Holocaust and heirs of victims.** For tax years beginning on or after January 1, 2000, income payments received by individuals because they were victims of the Holocaust or income payments received by individuals who are heirs of victims of the Holocaust are excluded in the computation of net incomes, to the extent the payments were included in the individuals' federal adjusted gross incomes. Victims of the Holocaust were victims of persecution in the World War II era for racial, ethnic or religious reasons by Nazi Germany or other Axis regime.

Holocaust victims may receive income payments for slave labor performed in the World War II era. Income payments may also be received by Holocaust victims as reparation for assets stolen from, hidden from, or otherwise lost in the World War II era, including proceeds from insurance policies of the victims. The World War II era includes the time of the war and the time immediately before and immediately after the war. However, income from assets acquired with the income payments or from the sale of those assets shall not be excluded from the computation of net income. The exemption of income payments shall only apply to the first recipient of the income payments who was either a victim of persecution by Nazi Germany or any other Axis regime or a person who is an heir of the victim of persecution.

This rule is intended to implement Iowa Code sections 217.39 and 422.7.

**701—40.56(422) Taxation of income from the sale of obligations of the state of Iowa and its political subdivisions.** For tax years beginning on or after January 1, 2001, income from the sale of obligations of the state of Iowa and its political subdivisions shall be added to Iowa net income to the extent not already included. Gains or losses from the sale or other disposition of bonds issued by the state of Iowa or its political subdivisions shall be included in Iowa net income unless the law authorizing these obligations specifically exempts the income from the sale or other disposition of the bonds from the Iowa individual income tax.

This rule is intended to implement Iowa Code section 422.7 as amended by 2001 Iowa Acts, chapter 116.

**701—40.57(422) Installment sales by taxpayers using the accrual method of accounting.** For tax years beginning on or after January 1, 2000, and prior to January 1, 2002, taxpayers who use the accrual method of accounting and who have sales or exchanges of property that they reported on the installment method for federal income tax purposes must report the total amount of the gain or loss from the transaction in the tax year of the sale or exchange pursuant to Section 453 of the Internal Revenue Code as amended up to and including January 1, 2000.

EXAMPLE 1. Taxpayer Jones uses the accrual method of accounting for reporting income. In 2001, Mr. Jones sold farmland he had held for eight years for \$200,000 which resulted in a capital gain of

\$50,000. For federal income tax purposes, Mr. Jones elected to report the transaction on the installment basis, where he reported \$12,500 of the gain on his 2001 federal return and will report capital gains of \$12,500 on each of his federal returns for the 2002, 2003 and 2004 tax years.

However, for Iowa income tax purposes, Mr. Jones must report on his 2001 Iowa return the entire capital gain of \$50,000 from the land sale. Although Taxpayer Jones must report a capital gain of \$12,500 on each of his federal income tax returns for 2002, 2003 and 2004, from the installment sale of the farmland in 2001, he will not have to include the installments of \$12,500 on his Iowa income tax returns for those three tax years because Mr. Jones had reported the entire capital gain of \$50,000 from the 2001 transaction on his 2001 Iowa income tax return.

EXAMPLE 2. Taxpayer Smith uses the accrual method of accounting for reporting income. In 2002, Mr. Smith sold farmland he had held for eight years for \$500,000 which resulted in a capital gain of \$100,000. For federal income tax purposes, Mr. Smith elected to report the transaction on the installment basis, where he reported \$20,000 of the gain on his 2002 federal return and will report the remaining capital gains on federal returns for the four subsequent tax years. Because this installment sale occurred in 2002, Mr. Smith shall report \$20,000 of the capital gain on his Iowa income tax return for 2002 and will report the balance of the capital gains from the installment sale on Iowa returns for the next four tax years, the same as reported on his federal returns for those years.

This rule is intended to implement Iowa Code section 422.7 as amended by 2002 Iowa Acts, House File 2116.

**701—40.58(422) Exclusion of distributions from retirement plans by national guard members and members of military reserve forces of the United States.** For tax years beginning on or after January 1, 2002, members of the Iowa national guard or members of military reserve forces of the United States who are ordered to national guard duty or federal active duty are not subject to Iowa income tax on the amount of distributions received during the tax year from qualified retirement plans of the members to the extent the distributions were taxable for federal income tax purposes. In addition, the members are not subject to state penalties on the distributions even though the members may have been subject to federal penalties on the distributions for early withdrawal of benefits. Because the distributions described above are not taxable for Iowa income tax purposes, a national guard member or armed forces reserve member who receives a distribution from a qualified retirement plan may request that the payer of the distribution not withhold Iowa income tax from the distribution.

This rule is intended to implement 2011 Iowa Code Supplement section 422.7 as amended by 2012 Iowa Acts, Senate File 2097.

[ARC 0337C, IAB 9/19/12, effective 10/24/12]

**701—40.59(422) Exemption of payments received by a beneficiary from an annuity purchased under an employee's retirement plan when the installment has been included as part of a decedent employee's estate.** Rescinded ARC 1137C, IAB 10/30/13, effective 12/4/13.

**701—40.60(422) Additional first-year depreciation allowance.**

**40.60(1) Assets acquired after September 10, 2001, but before May 6, 2003.** For tax periods ending after September 10, 2001, but beginning before May 6, 2003, the additional first-year depreciation allowance ("bonus depreciation") of 30 percent authorized in Section 168(k) of the Internal Revenue Code, as enacted by Public Law No. 107-147, Section 101, does not apply for Iowa individual income tax. Taxpayers who claim the bonus depreciation on their federal income tax return must add the total amount of depreciation claimed on assets acquired after September 10, 2001, but before May 6, 2003, and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k).

If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss

reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets.

The adjustment for both depreciation and the gain or loss on the sale of qualifying assets acquired after September 10, 2001, but before May 6, 2003, can be calculated on Form IA 4562A.

See 701—subrule 53.22(1) for examples illustrating how this subrule is applied.

**40.60(2) *Assets acquired after May 5, 2003, but before January 1, 2005.*** For tax periods beginning after May 5, 2003, but beginning before January 1, 2005, the bonus depreciation of 50 percent authorized in Section 168(k) of the Internal Revenue Code, as amended by Public Law No. 108-27, Section 201, may be taken for Iowa individual income tax. If the taxpayer elects to take the 50 percent bonus depreciation, the depreciation deduction allowed on the Iowa individual income tax return is the same as the depreciation deduction allowed on the federal income tax return for assets acquired after May 5, 2003, but before January 1, 2005.

*a.* If the taxpayer elects to take the 50 percent bonus depreciation and had filed an Iowa return prior to February 24, 2005, which reflected the disallowance of 50 percent bonus depreciation, the taxpayer may choose between two options to reflect this change. Taxpayer may either file an amended return for the applicable tax year to reflect the 50 percent bonus depreciation provision, or taxpayer may reflect the change for 50 percent bonus depreciation on the next Iowa return filed subsequent to February 23, 2005. Taxpayer must choose only one of these two options. Regardless of the option chosen, taxpayer must complete and attach a revised Form IA 4562A to either the amended return or the return filed subsequent to February 23, 2005.

EXAMPLE 1: Taxpayer filed a 2003 Iowa individual income tax return on April 15, 2004, which reflected an adjustment of \$50,000 for the difference between federal depreciation and Iowa depreciation relating to the disallowance of 50 percent bonus depreciation. Taxpayer now elects to take the 50 percent bonus depreciation for Iowa tax purposes. Taxpayer may either amend the 2003 Iowa return to reflect a \$50,000 reduction in Iowa taxable income, or taxpayer may take the additional deduction of \$50,000 on taxpayer's 2004 Iowa return that is filed after February 23, 2005.

EXAMPLE 2: Assume the same facts as given in Example 1, and taxpayer filed a 2004 Iowa return prior to February 24, 2005. Taxpayer did not take an additional \$50,000 deduction on the 2004 Iowa return. Taxpayer may either amend the 2003 Iowa return to reflect a \$50,000 reduction in Iowa taxable income, or taxpayer may take the additional deduction of \$50,000 on taxpayer's 2005 Iowa return.

*b.* If the taxpayer elects not to take the 50 percent bonus depreciation, taxpayer must add the total amount of depreciation claimed on assets acquired after May 5, 2003, but before January 1, 2005, and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k). If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets. The adjustment for both depreciation and the gain or loss on the sale of qualifying assets acquired after May 5, 2003, but before January 1, 2005, can be calculated on Form IA 4562A.

**40.60(3) *Assets acquired after December 31, 2007, but before January 1, 2010.*** For tax periods beginning after December 31, 2007, but beginning before January 1, 2010, the bonus depreciation of 50 percent authorized in Section 168(k) of the Internal Revenue Code, as amended by Public Law No. 110-185, Section 103, and Public Law 111-5, Section 1201, does not apply for Iowa individual income tax. Taxpayers who claim the bonus depreciation on their federal income tax return must add the total amount of depreciation claimed on assets acquired after December 31, 2007, but before January 1, 2010, and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k).

If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss

reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets.

The adjustment for both depreciation and the gain or loss on the sale of qualifying assets acquired after December 31, 2007, but before January 1, 2010, can be calculated on Form IA 4562A.

See rule 701—53.22(422) for examples illustrating how this rule is applied.

**40.60(4) *Qualified disaster assistance property.*** For property placed in service after December 31, 2007, with respect to federal declared disasters occurring before January 1, 2010, the bonus depreciation of 50 percent authorized in Section 168(n) of the Internal Revenue Code for qualified disaster assistance property, as amended by Public Law 110-343, Section 710, does not apply for Iowa individual income tax. Taxpayers who claim the bonus depreciation on their federal income tax return must add the total amount of depreciation claimed on qualified disaster assistance property and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(n).

If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of this property for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of such property.

The adjustment for both depreciation and the gain or loss on the sale of qualifying disaster assistance property can be calculated on Form IA 4562A.

**40.60(5) *Assets acquired after December 31, 2009, but before January 1, 2014.*** For tax periods beginning after December 31, 2009, but beginning before January 1, 2014, the bonus depreciation authorized in Section 168(k) of the Internal Revenue Code, as amended by Public Law No. 111-240, Section 2022, Public Law No. 111-312, Section 401, and Public Law No. 112-240, Section 331, does not apply for Iowa individual income tax. Taxpayers who claim the bonus depreciation on their federal income tax return must add the total amount of depreciation claimed on assets acquired after December 31, 2009, but before January 1, 2014, and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k).

If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets.

The adjustment for both depreciation and the gain or loss on the sale of qualifying assets acquired after December 31, 2009, but before January 1, 2014, can be calculated on Form IA 4562A.

See 701—subrule 53.22(3) for examples illustrating how this subrule is applied.

This rule is intended to implement Iowa Code section 422.7 as amended by 2013 Iowa Acts, Senate File 106.

[ARC 8589B, IAB 3/10/10, effective 4/14/10; ARC 9820B, IAB 11/2/11, effective 12/7/11; ARC 1101C, IAB 10/16/13, effective 11/20/13]

**701—40.61(422) Exclusion of active duty pay of national guard members and armed forces military reserve members for service under orders for Operation Iraqi Freedom, Operation Noble Eagle, Operation Enduring Freedom or Operation New Dawn.** For tax years beginning on or after January 1, 2003, active duty pay received by national guard members and armed forces reserve members is excluded to the extent the income is included in federal adjusted gross income and to the extent the active duty pay is for service under military orders for Operation Iraqi Freedom, Operation Noble Eagle or Operation Enduring Freedom. For tax years beginning on or after January 1, 2010, active duty pay received by national guard members and armed forces reserve members is excluded to the extent the income is included in federal adjusted gross income and to the extent the active duty pay is for service under military orders for Operation New Dawn. National guard members and military reserve members receiving active duty pay on or after January 1, 2003, but before January 1, 2011, for service not covered

by military orders for one of the operations specified above are subject to Iowa income tax on the active duty pay to the extent the active duty pay is included in federal adjusted gross income. For active duty pay received on or after January 1, 2011, see rule 701—40.76(422). An example of a situation where the active duty pay may not be included in federal adjusted gross income is when the active duty pay was received for service in an area designated as a combat zone or in an area designated as a hazardous duty area so the income may be excluded from federal adjusted gross income. That is, if an individual's active duty military pay is not subject to federal income tax, the active duty military pay will not be taxable on the individual's Iowa income tax return.

National guard members and military reserve members who are receiving active duty pay for service on or after January 1, 2003, that is exempt from Iowa income tax, may complete an IA W-4 Employee Withholding Allowance Certificate and claim exemption from Iowa income tax for active duty pay received during the time they are serving on active duty pursuant to military orders for Operation Iraqi Freedom, Operation Noble Eagle, Operation Enduring Freedom or Operation New Dawn.

This rule is intended to implement Iowa Code section 422.7 as amended by 2011 Iowa Acts, House File 652.

[ARC 9822B, IAB 11/2/11, effective 12/7/11]

**701—40.62(422) Deduction for overnight expenses not reimbursed for travel away from home of more than 100 miles for performance of service as a member of the national guard or armed forces military reserve.** A taxpayer may subtract, in computing net income, the costs not reimbursed that were incurred for overnight transportation, meals and lodging expenses for travel away from the taxpayer's home more than 100 miles, to the extent the travel expenses were incurred for the performance of services on or after January 1, 2003, by the taxpayer as a national guard member or an armed forces military reserve member. The deduction for Iowa tax purposes is the same that is allowed for federal income tax purposes.

This rule is intended to implement Iowa Code section 422.7 as amended by 2005 Iowa Acts, House File 186.

**701—40.63(422) Exclusion of income from military student loan repayments.** Individuals serving on active duty in the national guard, armed forces military reserve or the armed forces of the United States may subtract, to the extent included in federal adjusted gross income, income from military student loan repayments made on or after January 1, 2003.

This rule is intended to implement Iowa Code section 422.7 as amended by 2003 Iowa Acts, House File 674.

**701—40.64(422) Exclusion of death gratuity payable to an eligible survivor of a member of the armed forces, including a member of a reserve component of the armed forces who has died while on active duty.** An eligible survivor of a member of the armed forces, including a member of a reserve component of the armed forces, who has died while on active duty may subtract, to the extent included in federal adjusted gross income, a gratuity death payment made to the eligible survivor of a member of the armed forces who died while on active duty after September 10, 2001. This exclusion applies to a gratuity death payment made to the eligible survivor of any person in the armed forces or a reserve component of the armed forces who died while on active duty after September 10, 2001.

The purpose of the death gratuity is to provide a cash payment to assist a survivor of a deceased member of the armed forces to meet financial needs during the period immediately following a service member's death and before other survivor benefits, if any, become available.

This rule is intended to implement Iowa Code section 422.7 as amended by 2003 Iowa Acts, House File 674.

**701—40.65(422) Section 179 expensing.**

**40.65(1) In general.** Iowa taxpayers who elect to expense certain depreciable business assets in the year the assets were placed in service under Section 179 of the Internal Revenue Code must also expense those same assets for Iowa income tax purposes in that year. However, for certain years, the Iowa

limitations on this deduction are different from the federal limitations for the same year. This means that for some tax years, adjustments are required to determine the correct Iowa section 179 expensing deduction, as described in this rule.

**40.65(2) Claiming the deduction.**

*a. Timing and requirement to follow federal election.* A taxpayer who takes a federal section 179 deduction must also take the deduction for the same asset in the same year for Iowa purposes, except as expressly provided by Iowa law or this rule. A taxpayer who takes a federal section 179 deduction is not permitted to opt out of taking the same deduction for Iowa purposes. A taxpayer who does not take a federal section 179 deduction on a specific qualifying asset is not permitted to take a section 179 deduction for Iowa purposes on that asset.

*b. Qualifying for the deduction.* Whether a specific business asset qualifies for a section 179 deduction is determined by the Internal Revenue Code (Title 26, U.S. Code) and applicable federal regulations for both federal and Iowa purposes.

*c. Amount of the Iowa deduction.* Generally, the Iowa deduction must equal the amount of the federal deduction taken for the same asset in the same year, subject to special Iowa limitations. The following chart provides a comparison of the Iowa and federal section 179 dollar limitations and reduction limitations. See rule 701—53.23(422) for the section 179 rules applicable to corporations (both C and S corporations) and other entities subject to the corporate income tax, and see rule 701—59.24(422) for the section 179 rules applicable to financial institutions subject to the franchise tax.

Section 179 Deduction Allowances Under Federal and Iowa Law				
	Federal		Iowa	
Tax Year	Dollar Limitation	Reduction Limitation	Dollar Limitation	Reduction Limitation
2003	\$ 100,000	\$ 400,000	\$ 100,000	\$ 400,000
2004	102,000	410,000	102,000	410,000
2005	105,000	420,000	105,000	420,000
2006	108,000	430,000	108,000	430,000
2007	125,000	500,000	125,000	500,000
2008	250,000	800,000	250,000	800,000
2009	250,000	800,000	133,000	530,000
2010	500,000	2,000,000	500,000	2,000,000
2011	500,000	2,000,000	500,000	2,000,000
2012	500,000	2,000,000	500,000	2,000,000
2013	500,000	2,000,000	500,000	2,000,000
2014	500,000	2,000,000	500,000	2,000,000
2015	500,000	2,000,000	500,000	2,000,000
2016	500,000	2,010,000	25,000	200,000
2017	510,000	2,030,000	25,000	200,000
2018	1,000,000	2,500,000	70,000	280,000
2019	1,020,000	2,550,000	100,000	400,000
2020 and later	Iowa limitations are the same as federal			

*d. Reduction.* Both the federal and the Iowa deductions for section 179 assets are reduced (phased out dollar for dollar) for taxpayers whose total section 179 assets placed in service during a given year cost more than the amount specified (reduction limitation) for that year. Like the deduction limitation, the Iowa and federal reduction limitations are different for certain years. See paragraph 40.65(2) “c” for applicable limitations.

EXAMPLE: Taxpayer purchases \$400,000 worth of qualifying section 179 assets and places all of them in service in 2018. Taxpayer claims a section 179 deduction of \$400,000 for the full cost of the assets on the 2018 federal return. The Iowa section 179 deduction for 2018 is phased out dollar for

dollar by the amount of section 179 assets placed in service in excess of \$280,000. This means that, for 2018, the Iowa deduction is fully phased out if the taxpayer placed in service section 179 assets that cost, in total, more than \$350,000. Since the cost of the qualifying assets in this example exceeds the Iowa section 179 phase-out limit, the taxpayer cannot claim any section 179 deduction on the Iowa return. However, the taxpayer may depreciate the entire cost of the assets for Iowa purposes.

*e. Amounts in excess of the Iowa limits.*

(1) Recovering the excess. Due to the differences between the Iowa and federal limitations for certain years, taxpayers may have a federal section 179 deduction that exceeds the amount allowed for Iowa purposes. This excess amount is handled in different ways depending on the source of the deduction.

1. Assets placed in service by the taxpayer or entity reporting the deduction. The cost of any section 179 assets placed in service by the taxpayer in excess of the Iowa limitation for a given year may be recovered through regular depreciation under Section 168 of the Internal Revenue Code, without regard to bonus depreciation under Section 168(k). The Iowa section 179 and depreciation deductions and any basis adjustments resulting from the difference in timing of the recovery between Iowa and federal law are calculated and tracked on forms made available on the department's website.

EXAMPLE: Taxpayer purchases a \$100,000 piece of equipment and places it in service in 2018. Taxpayer claims a section 179 deduction of \$100,000 for the full cost of the equipment on the 2018 federal return. Taxpayer is also required to claim a section 179 deduction of \$70,000 on the 2018 Iowa return (the full amount of the federal deduction up to the Iowa limit). The taxpayer can depreciate the remaining \$30,000 cost of the equipment for Iowa purposes.

2. Special election for assets placed in service by a pass-through entity when the section 179 deduction is claimed by the owner of that pass-through. See subrule 40.65(3) for information on a special election available to certain owners of pass-through entities related to any section 179 deductions passed through from a partnership or other entity that, in the aggregate, exceed the Iowa limitations.

(2) Application of limitation to pass-throughs. In the case of pass-through entities, section 179 limitations apply at both the entity level and the owner level. Pass-through entities that are required to file an Iowa return and that actually place section 179 assets in service should follow 40.65(2) "e"(1)"1" to account for any assets for which the total federal section 179 deductions for a given year exceeded the Iowa limitation. Owners of pass-throughs receiving section 179 deductions from one or more pass-throughs that, in the aggregate, exceed the Iowa limitations should follow 40.65(2) "e"(1)"2."

EXAMPLE: Partner A (an individual and an Iowa resident) owns 50 percent interests in each of three partnerships: C, D, and E. Partnership C does business exclusively in Iowa, places \$200,000 worth of section 179 assets in service during tax year 2019 and claims a federal section 179 deduction for the full cost of the assets. Because C is required to file an Iowa partnership return, C is subject to the Iowa section 179 limitations for 2019 and must adjust its Iowa section 179 deduction as provided in 40.65(2) "e"(1)"1." C passes 50 percent of its section 179 deduction (\$100,000 for federal purposes, \$50,000 for Iowa purposes) through to A. A also receives \$50,000 each in section 179 deductions from D and E, for a total of \$150,000 in section 179 deductions (for Iowa purposes) in 2019. A is subject to the \$100,000 Iowa section 179 deduction limitation for 2019, but because A received total section 179 deductions from one or more pass-throughs in excess of the 2019 Iowa limitation, A is eligible for the special election referenced in 40.65(2) "e"(1)"2."

*f. Income limitation.* The Iowa section 179 deduction for any given year is limited to the taxpayer's income from active conduct in a trade or business in the same manner that the section 179 deduction is limited for federal purposes. If an allowable Iowa section 179 deduction exceeds the taxpayer's business income for a given year, any excess may be carried forward as described in paragraph 40.65(2) "g."

*g. Carryforward.* This paragraph applies only to amounts that do not exceed the Iowa section 179 deduction limitations for a given year but do exceed the taxpayer's business income for that year. As with the federal deduction, allowable Iowa section 179 deductions claimed in a given year that exceed a taxpayer's business income may be carried forward and claimed in future years. This carryforward, if any, is calculated using only amounts up to the Iowa limit. Any federal section 179 deduction the

taxpayer claimed in excess of the Iowa limit is not an Iowa section 179 deduction and therefore is not eligible for the carryforward described in this paragraph. Such amounts must instead be recovered as described in paragraph 40.65(2)“e,” or in subrule 40.65(3) for taxpayers receiving the deduction from one or more pass-through entities and making the special election as described in that subrule.

EXAMPLE: Taxpayer purchases a \$100,000 piece of equipment and places it in service in 2019. Taxpayer claims a section 179 deduction of \$100,000 for the full cost of the equipment on the 2019 federal return. Taxpayer is also required to claim a section 179 deduction of \$100,000 on the 2019 Iowa return (because the federal deduction is equal to the Iowa limit for the year, the Iowa and federal deductions are the same). However, the taxpayer has only \$50,000 in business income for 2019, so the allowable deduction for that year is limited to \$50,000. The remaining \$50,000 may be carried forward and applied as a section 179 deduction (subject to all limitations) in 2020, and in any future years until the amount is fully deducted.

*h. Differences in basis.* Iowa adjustments for differences between the Iowa and federal section 179 deduction limitations may cause the taxpayer to have a different basis in the same asset for Iowa and federal purposes. Taxpayers are required to use forms made available on the department’s website to calculate and track these differences.

**40.65(3) Section 179 deduction received from a pass-through entity.** In some cases, an individual or entity that receives income from one or more pass-through entities may receive a section 179 deduction in excess of the Iowa deduction limitation listed in paragraph 40.65(2)“c” for a given year. The individual or entity may be eligible for a special election with regard to that excess section 179 deduction, as described in this subrule.

*a. Tax years beginning before January 1, 2018.* For tax years beginning before January 1, 2018, the amount of any section 179 deduction received in excess of the Iowa deduction limitation for that year is not eligible for the special election.

*b. Special election available for tax years 2018 and 2019.* For tax years beginning on or after January 1, 2018, but before January 1, 2020, an individual or entity that receives a section 179 deduction from one or more pass-through entities in excess of the Iowa deduction limitation for that tax year may elect to deduct the excess in future years, as described in this subrule. See rule 701—53.23(422) for rules applicable to corporations (both C and S corporations) and other entities subject to the corporate income tax, and see rule 701—59.24(422) for rules applicable to financial institutions subject to the franchise tax.

(1) This special election applies only to section 179 deductions passed through to the individual or entity by one or more other entities.

(2) If the total Iowa section 179 deduction passed through to the individual or entity exceeds the federal section 179 deduction limitation for that year, the individual or entity may only use the amount up to the federal limitation when calculating the deduction under this election. Any amount in excess of the federal limitation shall not be deducted for Iowa purposes.

*c. Section 179 assets of an individual or entity.* An individual or entity that makes the special election may not claim an Iowa section 179 deduction for any assets the individual or entity placed in service during the same year but must instead depreciate such assets using the modified accelerated cost recovery system (MACRS) without regard to bonus depreciation under Section 168(k) of the Internal Revenue Code. To the extent the individual or entity claimed a federal section 179 deduction on those assets, the Iowa depreciation deductions and any basis adjustments resulting from the difference in timing of the recovery between Iowa law and federal law are calculated and tracked on forms made available on the department’s website.

EXAMPLE: A is a sole proprietor who places in service \$20,000 worth of section 179 assets in tax year 2018 and claims the deduction for the full amount for federal purposes. A is also a partner in Partnership B, an out-of-state partnership with no Iowa filing obligation. Partnership B also places section 179 assets in service, properly claims a federal section 179 deduction, and passes a total of \$100,000 of that deduction through to A. For federal purposes, A has a total of \$120,000 in section 179 deductions. Because A has section 179 deductions from a pass-through that exceed the Iowa limitation for the year, A is eligible for the special election. A makes the special election and claims the maximum Iowa section

179 deduction of \$70,000 on the amount passed through from Partnership B. Under the special election, A will be allowed to deduct the remaining \$30,000 passed through from Partnership B over the next five years, as described in paragraph 40.65(3)“e.” However, because A made the special election, A will be required to depreciate the entire \$20,000 cost of the assets A placed in service as a sole proprietor.

*d. Calculating the special election.* An eligible individual or entity electing to take advantage of the special election must first add together all section 179 deductions which the individual or entity received from all relevant pass-through entities. The individual or entity must claim an aggregate Iowa section 179 deduction equal to the Iowa limit for the tax year. This amount must be subtracted from the total. Whatever remains is the amount the individual or entity will be permitted to deduct (special election deduction) in future years.

*e. Special election deduction.*

(1) Calculation. The remaining amount from paragraph 40.65(3)“d” must be divided into five equal shares.

(2) Claiming the special election deduction. The individual or entity may deduct one of the five shares in each of the next five years. The dollar limitations and reduction limitations on section 179 deductions do not apply to special deduction amounts allowed over the five-year period under this paragraph.

(3) Excess special deduction. The special election deduction for a given year is limited to the taxpayer’s business income for that year. Any excess may be carried forward to future years. Any amounts carried forward under this subparagraph shall be added to, and treated in the same manner as, regular Iowa section 179 deduction carryforwards as described in paragraph 40.65(2)“g.”

EXAMPLE: A is an Iowa resident who is a partner in a partnership that does not do business in Iowa. In 2019, the partnership passes through a \$600,000 federal section 179 deduction and does not recalculate the deduction for Iowa purposes, because the partnership has no obligation to file an Iowa return. A claims an Iowa section 179 deduction of \$100,000 (the 2019 Iowa limitation) and elects the five-year carryforward for the rest, meaning A will be allowed to take a \$100,000 Iowa deduction in each of the next five years.

In 2020, A is eligible for the \$100,000 deduction carried forward under the election, but A only has \$50,000 in business income. The deduction is limited to business income, so A can only use \$50,000 of the deduction in this year. However, A will be permitted to treat the excess \$50,000 as a section 179 carryforward and use it to offset business income in future years until the deduction is used up.

*f. Basis.* The individual’s or entity’s basis in the pass-through entity assets is adjusted by the full amount of the section 179 deduction passed through in the year that the section 179 deduction is received and is therefore the same for both Iowa and federal purposes.

*g. Later tax years.* For tax years beginning on or after January 1, 2020, Iowa fully conforms to the federal section 179 deduction and special Iowa treatment for excess section 179 deductions received from pass-throughs is not available.

This rule is intended to implement Iowa Code section 422.7 as amended by 2019 Iowa Acts, Senate File 220.

[ARC 9103B, IAB 9/22/10, effective 10/27/10; ARC 9820B, IAB 11/2/11, effective 12/7/11; ARC 1101C, IAB 10/16/13, effective 11/20/13; ARC 4142C, IAB 11/21/18, effective 12/26/18; ARC 4517C, IAB 6/19/19, effective 7/24/19]

**701—40.66(422) Deduction for certain unreimbursed expenses relating to a human organ transplant.** For tax years beginning on or after January 1, 2005, a taxpayer, while living, may subtract up to \$10,000 in unreimbursed expenses that were incurred relating to the taxpayer’s donation of all or part of a liver, pancreas, kidney, intestine, lung or bone marrow to another human being for immediate human organ transplantation. The taxpayer can claim this deduction only once, and the deduction can be claimed in the year in which the transplant occurred. The unreimbursed expenses must not be compensated by insurance to qualify for the deduction.

The unreimbursed expenses which are eligible for the deduction include travel expenses, lodging expenses and lost wages. If the deduction is claimed for travel expenses and lodging expenses, these expenses cannot also be claimed as an itemized deduction for medical expenses under Section 213(d)

of the Internal Revenue Code for Iowa tax purposes. The deduction for lost wages does not include any sick pay or vacation pay reimbursed by an employer.

This rule is intended to implement Iowa Code section 422.7 as amended by 2005 Iowa Acts, House File 801.

**701—40.67(422) Deduction for alternative motor vehicles.** For tax years beginning on or after January 1, 2006, but beginning before January 1, 2015, a taxpayer may subtract \$2,000 for the cost of a clean fuel motor vehicle if the taxpayer was eligible to claim for federal tax purposes the alternative motor vehicle credit under Section 30B of the Internal Revenue Code for this motor vehicle.

The vehicles eligible for this deduction include new qualified fuel cell motor vehicles, new advanced lean burn technology motor vehicles, new qualified hybrid motor vehicles, qualified plug-in electric drive motor vehicles and new qualified alternative fuel vehicles. The advanced lean burn technology, qualified hybrid and qualified alternative fuel vehicles must be placed in service before January 1, 2011, to qualify for the deduction. The qualified plug-in electric drive motor vehicles must be placed in service before January 1, 2012, to qualify for the deduction. The qualified fuel cell motor vehicles must be placed in service before January 1, 2015, to qualify for the deduction. A taxpayer must claim a credit on the taxpayer's federal income tax return on federal Form 8910 to claim the deduction on the Iowa return.

This rule is intended to implement Iowa Code section 422.7.  
[ARC 9820B, IAB 11/2/11, effective 12/7/11]

**701—40.68(422) Injured veterans grant program.**

**40.68(1)** For tax years beginning on or after January 1, 2006, a taxpayer who receives a grant under the injured veterans grant program provided in 2006 Iowa Acts, Senate File 2312, section 1, may subtract, to the extent included in federal adjusted gross income, the amount of the grant received. The injured veterans grant program is administered by the Iowa department of veterans affairs, and grants of up to \$10,000 are provided to veterans who are residents of Iowa and are injured in the line of duty in a combat zone or in a zone where the veteran was receiving hazardous duty pay after September 11, 2001.

**40.68(2)** For tax years beginning on or after January 1, 2006, a taxpayer may subtract, to the extent not otherwise deducted in computing adjusted gross income, the amounts contributed to the department of veterans affairs for the purpose of providing grants under the injured veterans grant program established in 2006 Iowa Acts, Senate File 2312, section 1. If a deduction is claimed for these amounts contributed to the injured veterans grant program, this deduction cannot also be claimed as an itemized deduction for charitable contributions under Section 170 of the Internal Revenue Code for Iowa tax purposes.

This rule is intended to implement Iowa Code section 422.7 as amended by 2006 Iowa Acts, Senate File 2312.

**701—40.69(422) Exclusion of ordinary or capital gain income realized as a result of involuntary conversion of property due to eminent domain.** For tax years beginning on or after January 1, 2006, a taxpayer may exclude the amount of ordinary or capital gain income realized as a result of the involuntary conversion of property due to eminent domain for Iowa individual income tax. Eminent domain refers to the authority of government agencies or instrumentalities of government to requisition or condemn private property for any public improvement, public purpose or public use. The exclusion for Iowa individual income tax can only be claimed in the year in which the ordinary or capital gain income was reported on the federal income tax return.

In order for an involuntary conversion to qualify for this exclusion, the sale must occur due to the requisition or condemnation, or its threat or imminence, if it takes place in the presence of, or under the threat or imminence of, legal coercion relating to a requisition or condemnation. There are numerous federal revenue rulings, court cases and other provisions relating to the definitions of the terms "threat" and "imminence," and these are equally applicable to the exclusion of ordinary or capital gains realized for tax years beginning on or after January 1, 2006.

**40.69(1) Reporting requirements.** In order to claim an exclusion of ordinary or capital gain income realized as a result of involuntary conversion of property due to eminent domain, the taxpayer must attach a statement to the Iowa individual income tax return in the year in which the exclusion is claimed. The statement should state the date and details of the involuntary conversion, including the amount of the gain being excluded and the reasons why the gain meets the qualifications of an involuntary conversion relating to eminent domain. In addition, if the gain results from the sale of replacement property as outlined in subrule 40.69(2), information must be provided in the statement on that portion of the gain that qualified for the involuntary conversion.

**40.69(2) Claiming the exclusion when gain is not recognized for federal tax purposes.** For federal tax purposes, an ordinary or capital gain is not recognized when the converted property is replaced with property that is similar to, or related in use to, the converted property. In those cases, the basis of the old property is simply transferred to the new property, and no gain is recognized. In addition, when property is involuntarily converted into money or other unlike property, any gain is not recognized when replacement property is purchased within a specified period for federal tax purposes.

For Iowa individual income tax purposes, no exclusion will be allowed for ordinary or capital gain income when there is no gain recognized for federal tax purposes. The exclusion will only be allowed in the year in which ordinary or capital gain income is realized due to the disposition of the replacement property for federal tax purposes, and the exclusion is limited to the amount of the ordinary or capital gain income relating to the involuntary conversion. The basis of the property for Iowa individual income tax purposes will remain the same as the basis for federal tax purposes and will not be altered because of the exclusion allowed for Iowa individual income tax.

EXAMPLE: In 2007, taxpayer sold some farmland as a result of an involuntary conversion relating to eminent domain and realized a gain of \$50,000. However, the taxpayer purchased similar farmland immediately after the sale, and no gain was recognized for federal tax purposes. Therefore, no exclusion is allowed on the 2007 Iowa individual income tax return. In 2009, taxpayer sold the replacement farmland that was not subject to an involuntary conversion and realized a total gain of \$70,000, which was reported on the 2009 federal income tax return. The taxpayer can claim a deduction of \$50,000 on the 2009 Iowa individual income tax return relating to the gain that resulted from the involuntary conversion.

This rule is intended to implement Iowa Code section 422.7.

**701—40.70(422) Exclusion of income from sale, rental or furnishing of tangible personal property or services directly related to production of film, television or video projects.**

**40.70(1) Projects registered on or after January 1, 2007, but before July 1, 2009.** For tax years beginning on or after January 1, 2007, a taxpayer who is a resident of Iowa may exclude, to the extent included in federal adjusted gross income, income received from the sale, rental or furnishing of tangible personal property or services directly related to the production of film, television, or video projects that are registered with the film office of the Iowa department of economic development.

Income which can be excluded on the Iowa return must meet the criteria of a qualified expenditure for purposes of the film qualified expenditure tax credit as set forth in rule 701—42.37(15,422). See rule 701—38.17(422) for the determination of Iowa residency.

However, if a taxpayer claims this income tax exclusion, the same taxpayer cannot also claim the film qualified expenditure tax credit as described in rule 701—42.37(15,422). In addition, any taxpayer who claims this income tax exclusion cannot have an equity interest in a business which received a film qualified expenditure tax credit. Finally, any taxpayer who claims this income tax exclusion cannot participate in the management of the business which received the film qualified expenditure tax credit.

EXAMPLE: A production company which registers with the film office for a project is a limited liability company with three members, all of whom are Iowa residents. If any of the three members receives income that is a qualified expenditure for purposes of the film qualified expenditure tax credit, such member(s) cannot exclude this income on the Iowa income tax return because the member(s) has an equity interest in the business which received the credit.

**40.70(2)** *Projects registered on or after July 1, 2009.* For tax years beginning on or after July 1, 2009, a taxpayer who is a resident of Iowa may exclude no more than 25 percent of the income received from the sale, rental or furnishing of tangible personal property or services directly related to the production of film, television, or video projects that are registered with the film office of the Iowa department of economic development in the year in which the qualified expenditure occurred. A reduction of 25 percent of the income is allowed to be excluded for the three subsequent tax years.

EXAMPLE: An Iowa taxpayer received \$10,000 in income in the 2010 tax year related to qualified film expenditures for a project registered on February 1, 2010. The \$10,000 was reported as income on taxpayer's 2010 federal tax return. Taxpayer may exclude \$2,500 of income on the Iowa individual income tax return for each of the tax years 2010-2013.

**40.70(3)** *Repeal of exclusion.* The exclusion of income from the sale, rental or furnishing of tangible personal property or services directly related to production of film, television or video projects is repealed for tax years beginning on or after January 1, 2012. However, the exclusion is still available if the contract or agreement related to a film project was entered into on or before May 25, 2012. Assuming the same facts as those in the example in subrule 40.70(2), the taxpayer can continue to exclude \$2,500 of income on the Iowa individual income tax return for the 2012 and 2013 tax years since the contract or agreement was entered into on or before May 25, 2012.

This rule is intended to implement 2012 Iowa Acts, House File 2337, sections 38 to 40, and Iowa Code section 422.7 as amended by 2012 Iowa Acts, House File 2337, section 33.

[ARC 8589B, IAB 3/10/10, effective 4/14/10; ARC 8702B, IAB 4/21/10, effective 5/26/10; ARC 0398C, IAB 10/17/12, effective 11/21/12]

**701—40.71(422) Exclusion for certain victim compensation payments.** Effective for tax years beginning on or after January 1, 2007, a taxpayer may exclude from Iowa individual income tax any income received from certain victim compensation payments to the extent this income was reported on the federal income tax return. The amounts which may be excluded from income include the following:

1. Victim compensation awards paid under the victim compensation program administered by the department of justice in accordance with Iowa Code section 915.81, and received by the taxpayer during the tax year.

2. Victim restitution payments received by a taxpayer during the tax year in accordance with Iowa Code chapter 910 or 915.

3. Damages awarded by a court, and received by a taxpayer, in a civil action filed by a victim against an offender during the tax year.

This rule is intended to implement Iowa Code section 422.7 as amended by 2007 Iowa Acts, Senate File 70.

**701—40.72(422) Exclusion of Vietnam Conflict veterans bonus.**

**40.72(1)** For tax years beginning on or after January 1, 2007, but before January 1, 2013, a taxpayer who received a bonus under the Vietnam Conflict veterans bonus program may subtract, to the extent included in federal adjusted gross income, the amount of the bonus received. The Vietnam Conflict veterans bonus is administered by the Iowa department of veterans affairs, and bonuses of up to \$500 are awarded to residents of Iowa who served on active duty in the armed forces of the United States between July 1, 1973, and May 31, 1975.

**40.72(2)** For tax years beginning on or after January 1, 2008, but before January 1, 2013, a taxpayer who received a bonus under the Vietnam Conflict veterans bonus program may subtract, to the extent included in federal adjusted gross income, the amount of the bonus received. The Vietnam Conflict veterans bonus is administered by the Iowa department of veterans affairs. Bonuses of up to \$500 are awarded to veterans who were inducted into active duty service from the state of Iowa, who served on active duty in the United States armed forces between July 1, 1958, and May 31, 1975, and who have not received a bonus for that service from Iowa or another state.

This rule is intended to implement 2011 Iowa Code Supplement section 422.7 as amended by 2012 Iowa Acts, Senate File 2038.

[ARC 0337C, IAB 9/19/12, effective 10/24/12]

**701—40.73(422) Exclusion for health care benefits of nonqualified tax dependents.** Effective for tax years beginning on or after January 1, 2009, but beginning before January 1, 2011, a taxpayer may exclude from Iowa individual income tax the income reported from including nonqualified tax dependents on the taxpayer's health care plan, to the extent this income was reported on the federal income tax return.

**40.73(1) Term of coverage.** Iowa Code section 509A.13B provides that group insurance, group insurance for public employees, and individual health insurance policies or contracts permit continuation of existing coverage for an unmarried child of an insured or enrollee, if the insured or enrollee so elects. If the election is made, it will be in effect through the policy anniversary date on or after the date the child marries, ceases to be a resident of Iowa, or attains the age of 25, whichever occurs first, so long as the unmarried child maintains full-time status as a student in an accredited institution of postsecondary education. These children can be included on the health care coverage even though they are not claimed as a dependent on the federal and Iowa income tax returns.

**40.73(2) Federal treatment.** Section 105(b) of the Internal Revenue Code provides that the income reported from including dependents on the taxpayer's health care coverage is exempt from federal income tax. However, income is reported for federal income tax purposes on the value of the health care coverage of children who are not claimed as dependents on the taxpayer's federal and Iowa income tax returns for tax years beginning on or after January 1, 2009, but beginning before January 1, 2011. The amount of income included on the federal income tax return is allowed to be excluded on the Iowa return. For tax years beginning on or after January 1, 2011, income is no longer reported on the federal income tax return on the value of health care coverage of children who are not claimed as dependents and who have not attained age 27 as of the end of the tax year; therefore, no adjustment is required on the Iowa return.

This rule is intended to implement Iowa Code section 422.7 as amended by 2011 Iowa Acts, Senate File 512.

[ARC 8605B, IAB 3/10/10, effective 4/14/10; ARC 9820B, IAB 11/2/11, effective 12/7/11]

**701—40.74(422) Exclusion for AmeriCorps Segal Education Award.** Effective for tax years beginning on or after January 1, 2010, a taxpayer may exclude from Iowa individual income tax any amount of AmeriCorps Segal Education Award to the extent the education award was reported as income on the federal income tax return. The AmeriCorps Segal Education Award is available to individuals who complete a year of service in the AmeriCorps program. The education award can be used to pay education costs at institutions of higher learning, for educational training, or to repay qualified student loans.

This rule is intended to implement Iowa Code section 422.7 as amended by 2009 Iowa Acts, Senate File 482.

[ARC 8605B, IAB 3/10/10, effective 4/14/10]

**701—40.75(422) Exclusion of certain amounts received from Iowa veterans trust fund.** For tax years beginning on or after January 1, 2010, a taxpayer may subtract, to the extent included in federal adjusted gross income, the amounts received from the Iowa veterans trust fund related to travel expenses directly related to follow-up medical care for wounded veterans and their spouses and amounts received related to unemployment assistance during a period of unemployment due to prolonged physical or mental illness or disability resulting from military service.

This rule is intended to implement Iowa Code section 422.7 as amended by 2010 Iowa Acts, House File 2532.

[ARC 9103B, IAB 9/22/10, effective 10/27/10]

**701—40.76(422) Exemption of active duty pay for armed forces, armed forces military reserve, or the national guard.** For tax years beginning on or after January 1, 2011, all pay received from the federal government for military service performed while on active duty status in the armed forces, armed forces military reserve, or the national guard is excluded to the extent the pay was included in federal adjusted gross income.

**40.76(1)** Definition of active duty personnel. Active duty personnel who qualify for the exclusion include the following:

- a. Active duty members of the regular armed forces, which include the Army, Navy, Marines, Air Force and Coast Guard of the United States.
- b. Members of a reserve component of the Army, Navy, Marines, Air Force and Coast Guard who are on an active duty status as defined in Title 10 of the United States Code.
- c. Members of the national guard who are in an active duty status as defined in Title 10 of the United States Code.

**40.76(2)** Military personnel who do not qualify for the exclusion include the following:

- a. Members of a reserve component of the Army, Navy, Marines, Air Force and Coast Guard who are not in an active duty status as defined in Title 10 of the United States Code.
- b. Full-time members of the national guard who perform duties in accordance with Title 32 of the United States Code.
- c. Other members of the national guard who are not in an active duty status as defined in Title 10 of the United States Code.
- d. Other members of the national guard who do not receive pay from the federal government.

**40.76(3)** Income from nonmilitary activities. Any wages earned from nonmilitary wages for personal services conducted in Iowa by both residents and nonresidents of Iowa will still be subject to Iowa individual income tax. In addition, both residents and nonresidents of Iowa who earn income from businesses, trades, professions or occupations operated in Iowa that are unrelated to military activity will be subject to Iowa individual income tax on that income.

**40.76(4)** Exemption from Iowa withholding. Active duty personnel meeting the requirements of subrule 40.76(1) who are receiving pay from the federal government on or after January 1, 2011, that is exempt from Iowa individual income tax may complete an IA W-4 Employee Withholding Allowance Certificate and claim exemption from Iowa income tax for active duty pay received from the federal government.

This rule is intended to implement Iowa Code section 422.7 as amended by 2011 Iowa Acts, House File 652.

[ARC 9822B, IAB 11/2/11, effective 12/7/11]

**701—40.77(422) Exclusion of biodiesel production refund.** A taxpayer may exclude, to the extent included in federal adjusted gross income, the amount of the biodiesel production refund described in rule 701—12.18(423).

This rule is intended to implement Iowa Code section 422.7 as amended by 2011 Iowa Acts, Senate File 531.

[ARC 9821B, IAB 11/2/11, effective 12/7/11]

**701—40.78(422) Allowance of certain deductions for 2008 tax year.**

**40.78(1)** For the tax year beginning on or after January 1, 2008, but before January 1, 2009, the following deductions provided in the federal Emergency Economic Stabilization Act of 2008, Public Law No. 110-343, will be allowed on the Iowa individual income tax return:

- a. The deduction for certain expenses of elementary and secondary school teachers allowed under Section 62(a)(2)(D) of the Internal Revenue Code.
- b. The deduction for qualified tuition and related expenses allowed under Section 222 of the Internal Revenue Code.
- c. The deduction for disaster-related casualty losses allowed under Section 165(h) of the Internal Revenue Code.

**40.78(2)** Taxpayers who did not claim these deductions on the Iowa return for 2008 as originally filed, or taxpayers who claimed these deductions on the Iowa return as filed and subsequently filed an amended return disallowing these deductions, must file an amended return for the 2008 tax year to claim these deductions. The amended return must be filed within the statute of limitations provided in 701—subrules 43.3(8) and 43.3(15). If the amended return is filed within the statute of limitations,

the taxpayer is only entitled to a refund of the excess tax paid. The taxpayer will not be entitled to any interest on the excess tax paid.

This rule is intended to implement Iowa Code sections 422.7 and 422.9 as amended by 2011 Iowa Acts, Senate File 533.

[ARC 9820B, IAB 11/2/11, effective 12/7/11]

**701—40.79(422) Special filing provisions related to 2010 tax changes.**

**40.79(1)** For the tax year beginning on or after January 1, 2010, but before January 1, 2011, the following adjustments will be allowed on the Iowa individual income tax return:

*a.* The deduction for certain expenses of elementary and secondary school teachers allowed under Section 62(a)(2)(D) of the Internal Revenue Code.

*b.* The deduction for qualified tuition and related expenses allowed under Section 222 of the Internal Revenue Code.

*c.* The increased expensing allowance authorized under Section 179(b) of the Internal Revenue Code.

**40.79(2)** Taxpayers who did not claim these adjustments on the Iowa return for 2010 as originally filed have two options to reflect these adjustments. Taxpayer may either file an amended return for the 2010 tax year to reflect these adjustments or taxpayer may reflect these adjustments on the tax return for the 2011 tax year. If the taxpayer elects to reflect these adjustments on the 2011 tax return, the following provisions are suspended related to the claiming of the following adjustments for 2011:

*a.* The limitation based on income provisions and regulations of Section 179(b)(3) of the Internal Revenue Code with regard to the Section 179(b) adjustment.

*b.* The applicable dollar limit provision of Section 222(b)(2)(B) of the Internal Revenue Code with regard to the qualified tuition and related expenses adjustment.

**40.79(3)** Examples. The following noninclusive examples illustrate how this rule applies:

**EXAMPLE 1:** Taxpayer claimed a \$150,000 Section 179 expense on the federal return for 2010. Taxpayer only claimed a \$134,000 Section 179 expense on the Iowa return as originally filed for 2010. Taxpayer elects not to file an amended return for 2010, but to make the adjustment on the 2011 Iowa return. Taxpayer reported a loss from the taxpayer's trade or business on the 2011 federal return, so no Section 179 expense can be claimed on the federal return for 2011 in accordance with Section 179(b)(3) of the Internal Revenue Code. Taxpayer can claim the \$16,000 (\$150,000 less \$134,000) difference as a deduction on the Iowa return for 2011 since the income provision of Section 179(b)(3) is suspended for Iowa tax purposes.

**EXAMPLE 2:** Taxpayers are a married couple who claimed a \$4,000 tuition and related expenses deduction on their federal return for 2010. Taxpayers did not claim this deduction on their Iowa return as originally filed for 2010. Taxpayers elected not to file an amended return for 2010, but to make the adjustment on the 2011 Iowa return. Taxpayers reported federal adjusted gross income in excess of \$160,000 on their 2011 federal return, so no deduction for tuition and related expenses can be claimed on the 2011 federal return in accordance with Section 222(b)(2)(B) of the Internal Revenue Code. Taxpayers can claim the \$4,000 deduction on the Iowa return for 2011 since the dollar limit provision of Section 222(b)(2)(B) is suspended for Iowa tax purposes.

**EXAMPLE 3:** Taxpayer is an elementary school teacher who claimed a \$250 deduction for out-of-pocket expenses for school supplies on the federal return for 2010. Taxpayer did not claim this deduction on the Iowa return as originally filed for 2010. Taxpayer elected not to file an amended return for 2010, but to make the adjustment on the 2011 Iowa return. Taxpayer also claimed a \$200 deduction for out-of-pocket expenses for school supplies on the federal return for 2011. Taxpayer can claim a \$450 (\$250 plus \$200) deduction on the Iowa return for 2011.

This rule is intended to implement 2011 Iowa Acts, Senate File 533, section 143.

[ARC 9820B, IAB 11/2/11, effective 12/7/11]

**701—40.80(422) Exemption for military retirement pay.** For tax years beginning on or after January 1, 2014, retirement pay received by taxpayers from the federal government for military service performed in the armed forces, armed forces reserves, or national guard is exempt from state income tax. In addition,

amounts received by a surviving spouse, former spouse, or other beneficiary of a taxpayer who served in the armed forces, armed forces reserves, or national guard under the Survivor Benefit Plan are also exempt from state income tax for tax years beginning on or after January 1, 2014. The retirement pay is only deductible to the extent it is included in the taxpayer's federal adjusted gross income.

**40.80(1) Coordination with pension exclusion.** The exclusion of retirement pay is in addition to the partial exclusion, provided in rule 701—40.47(422), of pensions and other retirement benefits for disabled individuals, individuals who are 55 years of age or older, surviving spouses and survivors. In addition, taxpayers who receive retirement pay under federal law that combines retirement pay for both uniformed service and the federal civil service retirement system or federal employees' retirement system must prorate the retirement pay based on years of service.

EXAMPLE 1: A married individual who is 60 years of age receives \$20,000 of federal retirement pay from military service and \$30,000 in retirement pay from the Iowa public employees' retirement system during the 2014 tax year. The taxpayer can exclude \$20,000 of military retirement pay and \$12,000 as a pension exclusion under rule 701—40.47(422), for a total exclusion of \$32,000 on the taxpayer's Iowa individual income tax return for the 2014 tax year.

EXAMPLE 2: A single taxpayer who is 65 years of age receives \$60,000 as a federal pension during the 2014 tax year. The taxpayer has 20 years of military service and 27 years of civilian employment with the federal government. The military retirement pay portion is \$25,532 (20 years divided by 47 years multiplied by \$60,000). The taxpayer can exclude \$25,532 of military retirement pay and \$6,000 as a pension exclusion under rule 701—40.47(422), for a total exclusion of \$31,532 on the taxpayer's Iowa individual income tax return for the 2014 tax year.

**40.80(2) Coordination with filing threshold and alternate tax.** The military retirement pay is excluded from the calculation of income used to determine whether an Iowa income tax return is required to be filed pursuant to 701—subrules 39.1(1) and 39.5(10) through 39.5(13). In addition, the military retirement pay is excluded from the calculation of the special tax computation for all low-income taxpayers except single taxpayers pursuant to rule 701—39.9(422) and is excluded from the calculation of the special tax computation for taxpayers who are 65 years of age or older under rule 701—39.15(422).

**40.80(3) Iowa withholding.** The amount of military retirement pay is excluded from the calculation of payments used to determine whether Iowa tax should be withheld from pension and annuity payments as determined pursuant to 701—subrule 46.3(4).

This rule is intended to implement Iowa Code sections 422.5 and 422.7 as amended by 2014 Iowa Acts, Senate File 303.

[ARC 1665C, IAB 10/15/14, effective 11/19/14]

**701—40.81(422) Iowa ABLE savings plan trust.** The Iowa ABLE savings plan trust was created so that individuals can contribute funds on behalf of designated beneficiaries into accounts administered by the treasurer of state. The funds contributed to the trust may be used to cover future disability-related expenses of the designated beneficiary. The funds contributed to the trust are intended to supplement, but not supplant, other benefits provided to the designated beneficiary by various federal, state, and private sources. The Iowa ABLE savings plan program is administered by the treasurer of state under the terms of Iowa Code chapter 12I. The following subrules provide details about how an individual's net income is affected by contributions to a beneficiary's account, by interest and any other earnings on a beneficiary's account, and by distributions of contributions which were previously deducted.

**40.81(1) Definitions.**

*"Account owner"* means an individual who enters into a participation agreement under Iowa Code chapter 12I for the payment of qualified disability expenses on behalf of a designated beneficiary.

*"Designated beneficiary"* means an individual who is a resident of this state or a resident of a contracting state and who meets the definition of "eligible individual" found in Section 529A of the Internal Revenue Code.

*"Iowa ABLE savings plan trust"* means a qualified ABLE program administered by the Iowa treasurer of state under the terms of Iowa Code chapter 12I.

“*Other qualified ABLE program*” refers to any qualified ABLE program administered by another state with which the Iowa treasurer of state has entered into an agreement under the terms of Iowa Code section 12I.10 (see subrule 40.81(2) below).

“*Qualified ABLE program*” means the same as defined in Section 529A of the Internal Revenue Code.

“*Qualified disability expenses*” means the same as defined in Section 529A of the Internal Revenue Code.

**40.81(2) Contracting with other states.** Iowa Code section 12I.10 allows the treasurer of state to choose to defer implementation of Iowa’s own qualified ABLE program and instead enter into an agreement with another state that already has a qualified ABLE program, to provide Iowa residents access to that state’s qualified ABLE program, provided that the other state’s program meets the qualifications set out in Iowa Code section 12I.10(1).

**40.81(3) Subtraction from net income for contributions made to the Iowa ABLE savings plan trust or other qualified ABLE program.** For tax years beginning on or after January 1, 2016, individuals can subtract from their Iowa net income the amount contributed to the Iowa ABLE savings plan trust or other qualified ABLE program on behalf of a designated beneficiary during the tax year, subject to the maximum contribution level for that year. This subtraction is not allowed for any contribution that is a transfer from an Iowa educational savings plan trust account and that was previously deducted as a contribution to the Iowa educational savings plan trust.

**40.81(4) Exclusion of interest and earnings on beneficiary accounts in the Iowa ABLE savings plan trust or other qualified ABLE program.** For tax years beginning on or after January 1, 2016, to the extent that interest or other earnings accrue on an account in the Iowa ABLE savings plan trust or other qualified ABLE program (if the account owner is an Iowa resident), the interest or other earnings are excluded for purposes of computing net income on the designated beneficiary’s Iowa individual income tax return.

**40.81(5) Addition to net income of amounts distributed to the participant from the Iowa ABLE savings plan trust or other qualified ABLE program that had previously been deducted.**

*a.* For tax years beginning on or after January 1, 2016, if a taxpayer, as an account owner, cancels the account owner’s account in the Iowa ABLE savings plan trust or other qualified ABLE program and receives a distribution of the funds in the account, the amount of the distribution shall be included in net income on the account owner’s Iowa individual income tax return to the extent that contributions to the account had been deducted on prior state individual income tax returns of the account owner or any other person as a contribution to the Iowa ABLE savings plan trust or other qualified ABLE program or as a contribution to an Iowa educational savings plan trust account.

*b.* For tax years beginning on or after January 1, 2016, if a taxpayer makes a withdrawal of funds previously deducted by the taxpayer or any other person from the Iowa ABLE savings plan trust or other qualified ABLE program for purposes other than the payment of qualified disability expenses, the amount of the withdrawal shall be included in net income on the taxpayer’s Iowa individual income tax return to the extent that contributions to the account had been deducted on prior Iowa individual income tax returns of the taxpayer or any other person as contributions to a qualified ABLE program or an Iowa educational savings plan trust account.

**40.81(6) Maximum contribution level.** The amount of the deduction available for an individual taxpayer each year for contributions on behalf of any one designated beneficiary to the Iowa ABLE savings plan trust or other qualified ABLE program may not exceed the maximum contribution level for that year. The maximum contribution level is set by the treasurer of state. The maximum contribution level is indexed yearly for inflation pursuant to Iowa Code section 12D.3(1).

This rule is intended to implement Iowa Code section 422.7.  
[ARC 2691C, IAB 8/31/16, effective 10/5/16; ARC 4516C, IAB 6/19/19, effective 7/24/19]

#### **701—40.82(422,541B) First-time homebuyer savings accounts.**

**40.82(1) Definitions.** Definitions that apply to the first-time homebuyer savings account program may be found in Iowa Code section 541B.2.

**40.82(2) Establishing an account.**

*a. Account holders.*

(1) A first-time homebuyer savings account holder must be an individual or married couple.  
(2) Any individual may establish a first-time homebuyer savings account by opening an account that meets the requirements provided in this rule.

(3) A married couple who files a joint Iowa income tax return may establish a joint first-time homebuyer savings account by opening a joint savings account that meets the requirements provided in this rule. Married couples who file separately or separately on a combined return for Iowa income tax purposes may not establish a joint first-time homebuyer savings account.

(4) There is no limit on the number of first-time homebuyer savings accounts that any account holder may open. However, account holders are subject to other restrictions under the Iowa Code and these rules, including but not limited to the annual contribution limits and aggregate lifetime limits in paragraph 40.82(4) "c."

(5) No account holder may open or hold more than one account for the same designated beneficiary.

(6) The account holder may change the designated beneficiary of the account at any time.

*b. Beneficiaries.*

(1) In order to be a designated beneficiary of a first-time homebuyer savings account, an individual must:

1. Be a resident of Iowa, as defined in Iowa Code section 422.4,

2. Not own, either individually or jointly, any single-family or multifamily residence, and

3. Not have owned or purchased, individually or jointly, any single-family or multifamily residence at any time in the three years immediately prior to both:

- The date on which the individual is designated the beneficiary of a first-time homebuyer savings account, and

- The date of the qualified home purchase for which the eligible home costs are paid or reimbursed from the first-time homebuyer savings account.

(2) The designated beneficiary may also be the account holder.

(3) Each account shall have only one designated beneficiary.

(4) The account holder must designate a beneficiary, on forms provided by the department, by April 30 of the year immediately following the tax year in which the account holder opened the account.

*c. Account requirements.* To qualify as a first-time homebuyer savings account, the account must be:

(1) An interest-bearing savings account meeting the qualifications for a "savings deposit" under 12 CFR 204.2(d),

(2) At a state or federally chartered bank, savings and loan association, credit union, or trust company in Iowa, and

(3) Used exclusively as a first-time homebuyer savings account, in compliance with the requirements of this rule.

**40.82(3) Maintaining the account.**

*a. Contributing to the account.*

(1) Any person may make cash contributions to a first-time homebuyer savings account. Cash contributions may be made by people other than the account holder or the beneficiary. However, only the account holder may claim a deduction for contributing to a first-time homebuyer savings account, as described in subrule 40.82(4).

(2) There is no limit on the amount of contributions that may be made to or retained in a first-time homebuyer savings account. However, there are restrictions on the amounts that can be deducted for Iowa income tax purposes, as described in subrule 40.82(4).

*b. Documenting transactions.*

(1) Annual reports. For each tax year beginning with the tax year in which the first-time homebuyer savings account is established, the account holder must submit a report to the department showing all account activity during the tax year. The report shall be included with the taxpayer's Iowa individual income tax return and must show the account number of, all deposits into, and withdrawals from, the

first-time homebuyer savings account, along with any other information required by the forms provided by the department.

(2) *Withdrawal reports.* All withdrawals must be reported, on forms provided by the department, within 90 days of the date of the withdrawal or, for withdrawals made less than 90 days before an account holder files an income tax return with the department, no later than the date the return is filed. Account holders must report both withdrawals for eligible home costs and any nonqualifying withdrawals. Any withdrawal that appears on the annual report but that is not properly reported at the time it is made shall be deemed to be a nonqualifying withdrawal that must be added back on the account holder's Iowa income tax return for the tax year in which the withdrawal was made.

(3) *Account fees.* Fees and charges for the maintenance of the account that are deducted from the account by the financial institution in which the first-time homebuyer savings account is held shall not be considered withdrawals for the purposes of the reporting requirements described in paragraph 40.82(3) "b."

*c. Nonqualifying withdrawals.* Funds may be withdrawn from a first-time homebuyer savings account at any time. However, once any nonqualifying withdrawal, as defined in subparagraph 40.82(5) "a"(2), is made, the account holder may no longer claim the Iowa income tax benefits related to the first-time homebuyer savings account described in subrule 40.82(4). Furthermore, any nonqualifying withdrawal shall also result in an addition to income and penalty as described in subrule 40.82(5).

*d. Ten-year limitation.* An account shall not remain designated a first-time homebuyer savings account for more than ten years, beginning with the year in which the account was first opened. Any funds remaining in the account on January 1 of the tenth calendar year following the year in which the account holder first opened the account shall be deemed immediately withdrawn and may be subject to Iowa income taxes and penalties as described in subrule 40.82(5). The account holder has no obligation to close the account, but as of January 1 of the tenth calendar year after the year in which the account was opened, the account will no longer be a first-time homebuyer savings account entitled to the Iowa income tax benefits described in this rule. A change in the designated beneficiary of the account does not extend the ten-year period in which the account holder may maintain a first-time homebuyer savings account; the period still runs from the year the account was first opened.

*e. Exclusively first-time homebuyer account.* For an account to qualify as a first-time homebuyer savings account, the account holder shall use the account exclusively as a first-time homebuyer savings account consistent with these rules.

#### **40.82(4) Deductions.**

*a. Deduction for contributions.* Any funds contributed to the first-time homebuyer savings account by the account holder during the tax year may be deducted from the account holder's net income on the account holder's Iowa individual income tax return for that year, subject to the limitations described in paragraph 40.82(4) "c." Although anyone may contribute funds to the first-time homebuyer savings account, only the account holder may claim the deduction, and the deduction may be claimed only for amounts the account holder personally contributed.

*b. Deduction for interest.* To the extent that any interest earned on the funds in a first-time homebuyer savings account is included in the account holder's Iowa income for a tax year, the amount of that interest may be deducted from the account holder's net income on the account holder's Iowa individual income tax return for that tax year, subject to the lifetime limitation described in subparagraph 40.82(4) "c"(2).

#### *c. Limitations.*

(1) *Annual limitation.* The deduction described in paragraph 40.82(4) "a" is subject to the limitations described in paragraphs "1" and "2" below. These limitations apply to the total contributions that the account holder makes to all first-time homebuyer savings accounts owned by the account holder:

1. *Joint first-time homebuyer savings account holders.* For married couples who are joint first-time homebuyer savings account holders, the deduction is limited to \$4,000 per year, adjusted annually for inflation.

2. For all other taxpayers who are first-time homebuyer savings account holders, the deduction is limited to \$2,000 per year, adjusted annually for inflation.

(2) Lifetime limitation. Account holders are subject to an aggregate lifetime limit on the deductions described in paragraphs 40.82(4) "a" and "b." No account holder may take total deductions under this program in excess of the lifetime limitation in place for the tax year in which the account holder first opens a first-time homebuyer savings account. The applicable lifetime limit imposed upon taxpayers opening an account in a given year is calculated annually by multiplying the annual limit in effect for that year by 10.

(3) Annual publication of limitations. Each year, the department shall publish the annual contribution limit as indexed for inflation and the lifetime limit applicable to account holders who open accounts during that year.

**40.82(5) Additions to income.**

*a. Nonqualifying withdrawals.*

(1) Addition to income. If there is any nonqualifying withdrawal, as defined in subparagraph 40.82(5) "a"(2), during the tax year, the account holder must add to the account holder's Iowa net income for that year the full amount of the nonqualifying withdrawal, to the extent such income was previously deducted under paragraph 40.82(4) "a." Any nonqualifying withdrawal also makes the account holder ineligible to claim any further deductions described in subrule 40.82(4) in any future tax year.

(2) Nonqualifying withdrawal defined.

1. Any withdrawal from a first-time homebuyer savings account for any purpose other than the payment or reimbursement of the designated beneficiary's eligible home costs in connection with a qualified home purchase is a nonqualifying withdrawal. A nonqualifying withdrawal includes but is not limited to a withdrawal caused by the death of the account holder and withdrawal made pursuant to garnishment, levy, bankruptcy order, or any other order. If a nonqualifying withdrawal occurs, the account holder cannot cure the nonqualifying withdrawal by returning funds to the account.

2. A withdrawal shall be presumed to be a nonqualifying withdrawal unless:

- Ownership of the qualifying home which the funds from the account are used to purchase passes to the designated beneficiary within 60 days of the date the funds are withdrawn, and
- The designated beneficiary actually occupies the home as the designated beneficiary's primary residence within 90 days of the date the funds are withdrawn.

3. Notwithstanding subparagraph 40.82(5) "a"(2), any amount transferred between different first-time homebuyer savings accounts of the same account holder by a person other than the account holder shall not be considered a nonqualifying withdrawal.

*b. Unused funds.* Any amount remaining in a first-time homebuyer savings account on January 1 of the tenth calendar year after the calendar year in which the account holder first opened any first-time homebuyer savings account shall be considered immediately withdrawn. This remaining amount shall be subject to the add-back described in paragraph 40.82(5) "a."

*c. Penalties.* For any amount considered a withdrawal required to be added to net income pursuant to this subrule, the account holder shall be assessed a penalty equal to 10 percent of the amount of the withdrawal. The penalty shall not apply to withdrawals made by reason of the death of the account holder or to withdrawals made pursuant to a garnishment, levy, or other order, including but not limited to an order in bankruptcy following a filing for protection under the federal Bankruptcy Code, 11 U.S.C. §101 et seq.

*d. Examples.*

EXAMPLE 1: Taxpayer eligible for the deduction; no addition to income or penalty from nonqualifying withdrawal. A is an individual. In 2018, A creates a new interest-bearing savings account with a financial institution. In 2018, A submits a form to the department designating the account as a first-time homebuyer savings account and designating Z, an Iowa resident who has never owned a home, as the beneficiary of the account. In tax year 2018, A contributes \$1,000 to the first-time homebuyer savings account. A contributes \$1,000 per year to the first-time homebuyer savings account during tax years 2019, 2020, and 2021. Every year, A timely submits the required annual reports and all accompanying information. In 2021, after A contributed \$1,000 to the first-time homebuyer savings

account, Z made a qualified home purchase. A withdrew the entire balance of the first-time homebuyer savings account and applied the amount to eligible home costs. Within 90 days of withdrawing the funds, A submitted the required withdrawal report and the necessary supporting documentation to the department.

Result: A is allowed to deduct from net income the amount of the contributions generated from the first-time homebuyer account, since the yearly contributions are below the annual limits. A is allowed to deduct \$1,000 each year from A's 2018, 2019, 2020, and 2021 net income. Additionally, A is allowed to deduct income from interest generated from the account each year. A does not have any addition to net income or any penalties associated with the withdrawal or usage of the funds.

EXAMPLE 2: Nonqualifying withdrawal of entire account due to voluntary withdrawal by A. Assume the same facts as Example 1. However, rather than making a qualified withdrawal, in 2021, A withdraws the entire balance of the first-time homebuyer savings account and pays for Z's college tuition.

Result: The withdrawal is a nonqualified withdrawal. Any withdrawal that is not for eligible home costs is a nonqualified withdrawal. A's nonqualified withdrawal has three results. First, the amount of the nonqualified withdrawal is added back to the account holder's net income for the tax year in which the nonqualified withdrawal occurred. In this example, A's 2021 net income would increase by the amount of the contributions that A previously deducted. (See Iowa Code section 422.7(41) "c"(1).) Second, A will be assessed a penalty equal to 10 percent of the total contributions that A previously deducted. (See Iowa Code section 422.7(41) "d.") Third, A will no longer be able to claim the first-time homebuyer deduction in any future tax years. (See Iowa Code section 422.7(41) "b"(2)(b).) A is barred from claiming the first-time homebuyer deduction in the future, even if A attempts to open a first-time homebuyer account for a different beneficiary in a different tax year.

EXAMPLE 3: Nonqualifying withdrawal of entire account by legal process. Assume the same facts as Example 1. However, rather than a qualifying withdrawal occurring, in 2021, a creditor levies the entire balance of the first-time homebuyer account in order to satisfy A's debt to the creditor.

Result: The levy is a nonqualified withdrawal. Any withdrawal, including a withdrawal that is caused by a legal process not initiated by A, that is not for a qualified home purchase is a nonqualified withdrawal. Example 3 has the same result as Example 2, except in Example 3, A does not incur a 10 percent penalty because the withdrawal was due to a levy. (See Iowa Code section 422.7(41) "d.")

EXAMPLE 4: Nonqualifying withdrawal of a partial balance of a first-time homebuyer savings account. A is an individual. In 2018, A creates a new interest-bearing savings account with a financial institution. In 2018, A submits a form with the department designating the account as a first-time homebuyer savings account and designating Z, an Iowa resident who has never owned a home, as the beneficiary of the account. In tax year 2018, A contributes \$1,000 to the first-time homebuyer savings account. A contributes \$1,000 per year to the first-time homebuyer savings account during tax years 2019, 2020, and 2021. Every year, A timely submits the required annual reports and all accompanying information. After making the \$1,000 deposit for 2021, A has a total of \$4,100 in the first-time homebuyer savings account. In 2022, A withdraws \$1,000 from the account in order to pay for personal expenses.

Result: The \$1,000 withdrawal is a nonqualifying withdrawal. A must file a withdrawal report with the department within 90 days of the withdrawal. A withdrawal report is required for both qualifying and nonqualifying withdrawals. The \$1,000 withdrawal will result in the addition of \$1,000 to A's 2022 net income. A will also be assessed a \$100 penalty. The balance of the first-time homebuyer account is \$3,100. Subject to the ten-year limitation and the other requirements of the deduction, A may use the remaining \$3,100 for Z's eligible home costs prior to January 1, 2028. If A does so, A will not have the \$3,000 added back to A's net income or face any penalties associated with the \$3,000 eligible home costs. Regardless of what occurs with the remaining \$3,100, A will be prohibited from claiming the first-time homebuyer deduction for any period after the date of the nonqualified withdrawal. This is true even if A attempts to repay the \$1,000 withdrawal or if A attempts to open any other first-time homebuyer accounts.

EXAMPLE 5: No withdrawals made within ten years of opening the account. A is an individual. In March of 2018, A creates a new interest-bearing savings account with a financial institution. A completes

all of the necessary paperwork and designates Z as the beneficiary of the account. In 2018, and in each subsequent year, A contributes \$1,000 to the first-time homebuyer savings account. On December 31, 2027, A has made a total of \$10,000 dollars in contributions to the account, has taken a deduction for each contribution, and has made no withdrawals from the account. On January 1, 2028, Z still has not purchased a qualifying home.

Result: As of January 1, 2028, the account is no longer a first-time homebuyer savings account, and the entire account balance is deemed to have been withdrawn in a nonqualifying withdrawal. A is required to report the entire \$10,000 previously deducted for contributions to the account as income in tax year 2028 and pay a \$1,000 penalty for the nonqualifying withdrawal. A can no longer open a new first-time homebuyer savings account or take any deductions for contributions made to another account under the program.

EXAMPLE 6: Divorce between taxpayers with a joint account. A and B are a married couple who file a joint Iowa income tax return. In 2018, A and B open a joint savings account and take the necessary steps to designate it as a joint first-time homebuyer savings account. In 2018, A and B contribute \$2,000 to the account and deduct the full amount on their joint Iowa income tax return for 2018. They contribute the same amount, file joint returns, and deduct the full amount in tax years 2019, 2020, and 2021. In 2022, A and B divorce. The divorce decree divides the funds in the account evenly between A and B.

Result: In this situation, when the funds from the account are distributed between A and B, the entire withdrawal is deemed to be a nonqualifying withdrawal, and A and B are jointly and severally liable for the payment of the tax and penalty due on the entire amount that they previously deducted for contributions to the first-time homebuyer savings account.

Alternative result: A and B can avoid this result by taking some steps before the divorce decree is entered. Prior to the divorce decree, A and B can each open a new first-time homebuyer savings account individually. As long as the divorce decree orders that funds from the original joint first-time homebuyer savings account be transferred to A's and B's new individual accounts, the funds may be transferred without triggering a nonqualifying withdrawal, A and B will not be subject to taxes or penalties on their previous contributions to the account, and each will still be eligible to take deductions for contributions to their new accounts, subject to the applicable limitations. In this scenario, the transfer must occur as a direct result of a court order; if A or B transfers funds themselves, the transfer is deemed to be a nonqualifying withdrawal.

Even if the funds in A and B's original joint account are successfully transferred without triggering a nonqualifying withdrawal as described above, both A and B will still be jointly and severally liable for any tax or penalty due on any nonqualifying withdrawal that either makes later, up to the amount they deducted on their joint returns prior to the divorce.

EXAMPLE 7: Death of the account holder. A is an individual. In 2018, A creates a new interest-bearing savings account with a financial institution. In 2018, A submits a form to the department designating the account as a first-time homebuyer savings account and designating Z, an Iowa resident who has never owned a home, as the beneficiary of the account. In tax year 2018, A contributes \$1,000 to the first-time homebuyer savings account. A makes \$1,000 contributions per year to the first-time homebuyer savings account during tax years 2019, 2020, and 2021. Every year, A timely submits the required annual reports and all accompanying information. In 2022, A dies without having withdrawn any funds from the account either for a qualifying home purchase for Z or for any other reason.

Result: All of the funds in the account are deemed immediately withdrawn at the time of A's death. Because this is a nonqualifying withdrawal, the \$4,000 in contributions which A previously deducted must be included as income on A's final return. However, because the reason for the deemed withdrawal was A's death, the 10 percent penalty is not included on A's final return.

This rule is intended to implement Iowa Code section 422.7 and chapter 541B.  
[ARC 3770C, IAB 4/25/18, effective 5/30/18]

**701—40.83(422) Like-kind exchanges of personal property completed after December 31, 2017, but before tax periods beginning on or after January 1, 2020.**

**40.83(1)** *In general.* Public Law 115-97, Section 13303, repealed the deferral of gain or loss from exchanges of like-kind personal property for federal purposes under Section 1031 of the Internal Revenue Code. This federal repeal applies to exchanges completed after December 31, 2017, unless the taxpayer began the exchange by transferring personal property or receiving replacement personal property on or before that date. Iowa did not conform to this federal repeal for Iowa individual income tax purposes for tax periods beginning before January 1, 2019. For tax years beginning on or after January 1, 2019, but before January 1, 2020, Iowa generally conforms to the federal treatment of gain or loss from exchanges of like-kind personal property, but eligible taxpayers may elect the treatment that applied under prior federal law for Iowa purposes. For tax years beginning on or after January 1, 2020, Iowa fully conforms to the federal treatment for these exchanges, and no special election is available. This rule governs exchanges of like-kind personal property completed after December 31, 2017, but before tax periods beginning on or after January 1, 2020. This rule does not apply to exchanges completed during any tax year beginning on or after January 1, 2020.

**40.83(2)** *Qualification.* Section 1031 of the Internal Revenue Code in effect on December 21, 2017, and any applicable federal regulations govern whether transactions involving the disposition and acquisition of personal property qualify for Iowa individual income tax purposes as a like-kind exchange of personal property subject to the deferral of gain or loss, and also govern the date and tax period during which an exchange is considered completed. The treatment of such transactions as a like-kind exchange for Iowa individual income tax purposes is either mandatory or permissive depending on the date the like-kind exchange is completed.

*a. Like-kind exchanges completed after December 31, 2017, but before tax periods beginning on or after January 1, 2019.* Transactions involving the disposition and acquisition of personal property that qualify under this subrule as a like-kind exchange completed after December 31, 2017, but before tax periods beginning on or after January 1, 2019, are required to be treated as a like-kind exchange for Iowa individual income tax purposes.

*b. Like-kind exchanges completed during tax periods beginning on or after January 1, 2019, but before January 1, 2020.* For tax periods beginning on or after January 1, 2019, Iowa is conformed to the federal repeal of deferral of gain or loss from exchanges of like-kind personal property, so the federal and Iowa treatment of such transactions under Section 1031 of the Internal Revenue Code will generally be the same. However, transactions involving the disposition and acquisition of personal property that qualify under this subrule as a like-kind exchange completed during tax periods beginning on or after January 1, 2019, but before January 1, 2020, may at the election of the taxpayer be treated as a like-kind exchange for Iowa individual income tax purposes. The election is made by completing the necessary worksheets and forms and making the required adjustments on the Iowa return as described in subrule 40.83(3). No special attachment or statement is required. The election only applies to the transactions involved in the like-kind exchange, and the taxpayer may elect or not elect to treat other qualifying transactions as a like-kind exchange for Iowa purposes.

**40.83(3)** *Calculation and Iowa adjustments.* A taxpayer required to or electing to treat qualifying transactions as a like-kind exchange for Iowa tax purposes must make certain Iowa calculations and adjustments on forms and worksheets made available on the department's website. The IA 8824 Worksheet described in this subrule need not be included with the Iowa return but must be kept with the taxpayer's records. The taxpayer is responsible for providing documentation at the department's request to substantiate a like-kind exchange under this rule.

*a. Like-kind exchange calculation.* The taxpayer must complete Parts I and II of the IA 8824 Worksheet to compute the Iowa recognized gain, if any, the Iowa deferred gain or loss, and the Iowa basis of the like-kind personal property received in the like-kind exchange.

EXAMPLE 1: X, a sole proprietor engaged in commercial farming and filing on a calendar-year basis, trades a tractor with a fair market value (FMV) of \$25,000 along with \$75,000 in cash to Y for a new tractor with an FMV of \$100,000. For purposes of this example it is assumed that the tractor trade occurs in 2019 and qualifies as a like-kind exchange and that X elects such treatment for Iowa individual income tax purposes under paragraph 40.83(2) "b." At the time of the trade, the adjusted basis of X's old tractor is \$0 for federal tax purposes and is \$13,680 for Iowa tax purposes. X realizes a gain for Iowa purposes

on the exchange of the old tractor in the amount of \$11,320 (\$100,000 FMV of new tractor - \$75,000 cash paid - \$13,680 Iowa adjusted basis of old tractor). Because X did not receive any cash or other property that was not like-kind, or assume any liabilities from Y, the entire amount of X's \$11,320 realized gain qualifies for deferral, so X recognizes \$0 of gain on the exchange for Iowa tax purposes. As a result, X's basis in the new tractor for Iowa tax purposes is \$88,680 (\$13,680 Iowa adjusted basis of old tractor + \$75,000 cash paid by X).

*b. Iowa nonconformity adjustment.*

(1) The taxpayer must complete Part III of the IA 8824 Worksheet to adjust for the difference between any recognized Iowa gain from the exchange as calculated on the IA 8824 Worksheet, Part II, and any gain or loss (including gain or loss recaptured as ordinary income) recognized on the taxpayer's federal return.

EXAMPLE 2: Assume the same facts as given in Example 1. Because the tractor trade occurred in 2019, it will not qualify as a like-kind exchange for federal tax purposes but will instead be treated as two separate transactions: a sale of the old tractor and a purchase of the new tractor. X recognizes a gain for federal tax purposes on the sale of the old tractor in the amount of \$25,000 (\$25,000 sales price of old tractor - \$0 federal adjusted basis of old tractor), the entire amount of which is recaptured as ordinary income because of prior depreciation. X reports the \$25,000 of income on the federal return. X is required to report the same \$25,000 as income on the Iowa return but is also allowed a \$25,000 subtraction on the same Iowa return because X's recognized gain for Iowa tax purposes is \$0 as calculated in Example 1. X's nonconformity adjustment of -\$25,000 must be reported on the Iowa return in the manner prescribed on the IA 8824 Worksheet.

(2) If the total recognized federal gain is reported using the installment sale method under Section 453 of the Internal Revenue Code, the total amount of any Iowa nonconformity adjustment related to that federal gain must be claimed over the same installment period, and the proportion of the total Iowa nonconformity adjustment claimed for each tax year shall equal the same proportion that the federal gain reported for that tax year bears to the total amount of federal gain that will ultimately be reported for all tax years resulting from the disposition of the personal property. The taxpayer must complete an IA 8824 Worksheet for each tax year that an Iowa nonconformity adjustment is claimed.

*c. Cost recovery adjustments.*

(1) The taxpayer must complete the IA 4562A to account for any differences between the federal and Iowa cost recovery deductions related to the like-kind personal property involved in the like-kind exchange, including if the taxpayer's basis in the like-kind personal property received is different for federal and Iowa purposes, or if the taxpayer claimed additional first-year depreciation or a section 179 deduction for federal purposes on the like-kind property received in the exchange. See rule 701—40.60(422) for requirements related to the disallowance of additional first-year depreciation for Iowa individual income tax purposes. See rule 701—40.65(422) for the section 179 limitations imposed under the Iowa individual income tax.

(2) Treasury Regulation §1.168(i)-6 prescribes rules related to the calculation of depreciation for certain assets involved in a like-kind exchange, but a taxpayer may elect to not have those rules apply pursuant to Treasury Regulation §1.168(i)-6(i). A taxpayer may choose to make a similar election under Treasury Regulation §1.168(i)-6(i) for Iowa tax purposes with regard to a like-kind exchange under this rule if the personal property otherwise would have qualified for such federal election notwithstanding the fact that no like-kind exchange occurred for federal purposes or the fact that no election was actually made for federal tax purposes in accordance with Treasury Regulation §1.168(i)-6(j). The election is made by calculating depreciation for Iowa tax purposes on the personal property involved in the like-kind exchange using the method described in Treasury Regulation §1.168(i)-6(i) on the timely filed Iowa return, including extensions, for the same tax year that the like-kind exchange was completed. No special attachment or statement is required.

EXAMPLE 3: Assume the same facts as given in Examples 1 and 2. X elects additional first-year depreciation on the new tractor and claims a depreciation deduction on the federal return of \$100,000 (100 percent of X's federal basis). X is required to add back the total amount of the federal depreciation on the Iowa return because Iowa does not allow additional first-year depreciation. But X is permitted

deductions for regular depreciation on the new tractor with an Iowa basis of \$88,680 (\$13,680 carryover basis from old tractor + \$75,000 excess basis from cash paid) under Section 168 of the Internal Revenue Code, without regard to bonus depreciation under Section 168(k). See rule 701—40.60(422) for more information on the disallowance of additional first-year depreciation.

EXAMPLE 4: Assume the same facts as given in Examples 1 and 2. X elects to expense the entire cost of the new tractor under Section 179 of the Internal Revenue Code and claims a deduction on the federal return of \$100,000. X is also required to claim the section 179 deduction on the new tractor for Iowa tax purposes pursuant to subrule 40.65(2). However, the amount that represents the carryover basis from the old tractor (\$13,680) is not eligible for the deduction under Section 179(d)(3) of the Internal Revenue Code, so the cost of the new tractor that is eligible for the section 179 deduction for Iowa purposes is only \$75,000 (excess basis from cash paid). This is the amount of section 179 deduction that X must claim on the Iowa return, subject to the applicable Iowa dollar limitation and reduction limitations in rule 701—40.65(422). Because X is the taxpayer who placed the new tractor in service, X is permitted deductions for regular depreciation on the carryover basis in the new tractor (\$13,680) under Section 168 of the Internal Revenue Code, without regard to bonus depreciation under Section 168(k).

This rule is intended to implement Iowa Code section 422.7 as amended by 2018 Iowa Acts, chapter 1161 [Senate File 2417].

[ARC 4614C, IAB 8/14/19, effective 9/18/19]

#### **701—40.84(422) Broadband infrastructure grant exemption.**

**40.84(1) *Broadband infrastructure grant exemption, generally.*** For tax years beginning on or after January 1, 2019, certain qualifying communications service providers may subtract, to the extent included in income, the amount of qualifying government grants used to install broadband infrastructure that facilitates broadband service in targeted service areas at or above download and upload speeds identified by the Federal Communications Commission pursuant to Section 706 of the federal Telecommunications Act of 1996, as amended. This rule explains terms not defined in Iowa Code section 422.7.

##### **40.84(2) *Definitions.***

“Facilitate” shall have the same meaning as defined in Iowa Code section 8B.1.

“Grant” means a transfer for a governmental purpose of money or property to a transferee that is not a related party to or an agent of the transferor. The transfer must not impose any obligation or condition to directly or indirectly repay any amount to the transferor or a related party. Obligations or conditions intended solely to assure expenditure of the transferred moneys in accordance with the governmental purpose of the transfer do not prevent a transfer from being a grant.

1. “Federal grant” means any grant issued by the United States government, including any agency or instrumentality thereof.

2. “State grant” means any grant issued by any state of the United States, the District of Columbia, or a territory or possession of the United States, including any agency or instrumentality thereof.

3. “Local grant” means any grant issued by any city, county, township, school district, or any other unit of local government, including any agency or instrumentality thereof.

**40.84(3) *Limitation on certain refund claims.*** For tax years beginning on or after January 1, 2019, and before January 1, 2020, refund claims resulting from this exemption must be filed prior to October 1, 2020. No refunds shall be issued for claims filed on or after that date.

This rule is intended to implement Iowa Code section 422.7.

[ARC 5606C, IAB 5/5/21, effective 6/9/21]

[Filed 12/12/74]

[Filed 12/10/76, Notice 9/22/76—published 12/29/76, effective 2/2/77]

[Filed 10/14/77, Notice 9/7/77—published 11/2/77, effective 12/7/77]

[Filed 9/18/78, Notice 7/26/78—published 10/18/78, effective 11/22/78]

[Filed 12/7/79, Notice 10/31/79—published 12/26/79, effective 1/30/80]

[Filed emergency 7/17/80—published 8/6/80, effective 7/17/80]

[Filed 12/5/80, Notice 10/29/80—published 12/24/80, effective 1/28/81]

[Filed 11/20/81, Notice 10/14/81—published 12/9/81, effective 1/13/82]  
[Filed 10/22/82, Notice 9/15/82—published 11/10/82, effective 12/15/82]  
[Filed 12/3/82, Notice 10/27/82—published 12/22/82, effective 1/26/83]  
    [Filed 3/23/84, Notice 2/15/84—published 4/11/84, effective 5/16/84]  
[Filed 7/27/84, Notice 6/20/84—published 8/15/84, effective 9/19/84]<sup>◇</sup>  
    [Filed 8/10/84, Notice 7/4/84—published 8/29/84, effective 10/3/84]  
[Filed 1/25/85, Notice 12/19/84—published 2/13/85, effective 3/20/85]  
    [Filed 5/3/85, Notice 3/27/85—published 5/22/85, effective 6/26/85]  
    [Filed 5/31/85, Notice 4/24/85—published 6/19/85, effective 7/24/85]  
    [Filed 9/6/85, Notice 7/31/85—published 9/25/85, effective 10/30/85]  
[Filed 8/22/86, Notice 7/16/86—published 9/10/86, effective 10/15/86]  
[Filed 10/3/86, Notice 8/27/86—published 10/22/86, effective 11/26/86]  
    [Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]  
    [Filed emergency 12/23/87—published 1/13/88, effective 12/23/87]  
    [Filed 1/7/88, Notice 12/2/87—published 1/27/88, effective 3/2/88]  
    [Filed 2/19/88, Notice 1/13/88—published 3/9/88, effective 4/13/88]  
    [Filed 9/18/88, Notice 7/13/88—published 9/7/88, effective 10/12/88]  
    [Filed 1/4/89, Notice 11/30/88—published 1/25/89, effective 3/1/89]  
[Filed 9/29/89, Notice 8/23/89—published 10/18/89, effective 11/22/89]  
    [Filed 1/19/90, Notice 12/13/89—published 2/7/90, effective 3/14/90]  
    [Filed 8/30/90, Notice 7/25/90—published 9/19/90, effective 10/24/90]  
    [Filed 11/7/91, Notice 10/2/91—published 11/27/91, effective 1/1/92]<sup>◇</sup>  
    [Filed 1/17/92, Notice 12/11/91—published 2/5/92, effective 3/11/92]<sup>◇</sup>  
        [Filed emergency 5/8/92—published 5/27/92, effective 5/8/92]  
        [Filed 9/11/92, Notice 8/5/92—published 9/30/92, effective 11/4/92]  
        [Filed 10/9/92, Notice 9/2/92—published 10/28/92, effective 12/2/92]  
        [Filed 6/4/93, Notice 2/17/93—published 6/23/93, effective 7/28/93]  
        [Filed emergency 7/15/93—published 8/4/93, effective 7/15/93]  
        [Filed 9/10/93, Notice 8/4/93—published 9/29/93, effective 11/3/93]  
        [Filed emergency 10/22/93—published 11/10/93, effective 10/22/93]  
        [Filed 12/17/93, Notice 11/10/93—published 1/5/94, effective 2/9/94]  
        [Filed 5/20/94, Notice 4/13/94—published 6/8/94, effective 7/13/94]  
[Filed 9/23/94, Notice 8/17/94—published 10/12/94, effective 11/16/94]  
    [Filed 1/12/95, Notice 12/7/94—published 2/1/95, effective 3/8/95]  
    [Filed 7/14/95, Notice 6/7/95—published 8/2/95, effective 9/6/95]  
    [Filed 1/12/96, Notice 12/6/95—published 1/31/96, effective 3/6/96]  
    [Filed 7/25/96, Notice 6/19/96—published 8/14/96, effective 9/19/96]  
    [Filed 8/23/96, Notice 7/17/96—published 9/11/96, effective 10/16/96]  
    [Filed 5/30/97, Notice 4/23/97—published 6/18/97, effective 7/23/97]  
    [Filed 9/19/97, Notice 8/13/97—published 10/8/97, effective 11/12/97]<sup>◇</sup>  
    [Filed 2/20/98, Notice 1/14/98—published 3/11/98, effective 4/15/98]<sup>◇</sup>  
        [Filed 5/15/98, Notice 4/8/98—published 6/3/98, effective 7/8/98]  
    [Filed 10/2/98, Notice 8/26/98—published 10/21/98, effective 11/25/98]  
[Filed emergency 1/8/99 after Notice 12/2/98—published 1/27/99, effective 1/8/99]  
    [Filed 9/17/99, Notice 8/11/99—published 10/6/99, effective 11/10/99]  
    [Filed 12/23/99, Notice 11/17/99—published 1/12/00, effective 2/16/00]  
    [Filed 2/3/00, Notice 12/29/99—published 2/23/00, effective 3/29/00]  
    [Filed 1/5/01, Notice 11/29/00—published 1/24/01, effective 2/28/01]  
    [Filed 3/15/02, Notice 1/23/02—published 4/3/02, effective 5/8/02]  
    [Filed 10/11/02, Notice 9/4/02—published 10/30/02, effective 12/4/02]  
    [Filed 9/26/03, Notice 8/20/03—published 10/15/03, effective 11/19/03]  
    [Filed 11/6/03, Notice 10/1/03—published 11/26/03, effective 12/31/03]

- [Filed 1/30/04, Notice 12/24/03—published 2/18/04, effective 3/24/04]<sup>◇</sup>  
 [Filed 8/12/04, Notice 7/7/04—published 9/1/04, effective 10/6/04]  
 [Filed emergency 9/24/04—published 10/13/04, effective 9/24/04]  
 [Filed 10/22/04, Notice 9/15/04—published 11/10/04, effective 12/15/04]  
 [Filed 11/4/04, Notice 9/29/04—published 11/24/04, effective 12/29/04]  
 [Filed emergency 2/25/05—published 3/16/05, effective 2/25/05]  
 [Filed 9/22/05, Notice 8/3/05—published 10/12/05, effective 11/16/05]  
 [Filed 7/28/06, Notice 6/21/06—published 8/16/06, effective 9/20/06]  
 [Filed 11/1/06, Notice 8/16/06—published 11/22/06, effective 12/27/06]  
 [Filed 12/13/06, Notice 11/8/06—published 1/3/07, effective 2/7/07]  
 [Filed 1/11/07, Notice 12/6/06—published 1/31/07, effective 3/7/07]  
 [Filed 6/27/07, Notice 5/23/07—published 7/18/07, effective 8/22/07]  
 [Filed 10/5/07, Notice 8/15/07—published 10/24/07, effective 11/28/07]  
 [Filed 10/5/07, Notice 8/29/07—published 10/24/07, effective 11/28/07]  
 [Filed 3/7/08, Notice 1/30/08—published 3/26/08, effective 4/30/08]  
 [Filed 10/31/08, Notice 9/24/08—published 11/19/08, effective 12/24/08]  
 [Filed ARC 7761B (Notice ARC 7632B, IAB 3/11/09), IAB 5/6/09, effective 6/10/09]  
 [Filed ARC 8356B (Notice ARC 8223B, IAB 10/7/09), IAB 12/2/09, effective 1/6/10]  
 [Filed ARC 8589B (Notice ARC 8430B, IAB 12/30/09), IAB 3/10/10, effective 4/14/10]  
 [Filed ARC 8605B (Notice ARC 8481B, IAB 1/13/10), IAB 3/10/10, effective 4/14/10]  
 [Filed ARC 8702B (Notice ARC 8512B, IAB 2/10/10), IAB 4/21/10, effective 5/26/10]  
 [Filed ARC 9103B (Notice ARC 8944B, IAB 7/28/10), IAB 9/22/10, effective 10/27/10]  
 [Filed ARC 9821B (Notice ARC 9741B, IAB 9/7/11), IAB 11/2/11, effective 12/7/11]  
 [Filed ARC 9822B (Notice ARC 9739B, IAB 9/7/11), IAB 11/2/11, effective 12/7/11]  
 [Filed ARC 9820B (Notice ARC 9740B, IAB 9/7/11), IAB 11/2/11, effective 12/7/11]  
 [Filed ARC 0073C (Notice ARC 0005C, IAB 2/8/12), IAB 4/4/12, effective 5/9/12]  
 [Filed ARC 0251C (Notice ARC 0145C, IAB 5/30/12), IAB 8/8/12, effective 9/12/12]  
 [Filed ARC 0337C (Notice ARC 0232C, IAB 7/25/12), IAB 9/19/12, effective 10/24/12]  
 [Filed ARC 0398C (Notice ARC 0292C, IAB 8/22/12), IAB 10/17/12, effective 11/21/12]  
 [Filed ARC 1101C (Notice ARC 0976C, IAB 8/21/13), IAB 10/16/13, effective 11/20/13]  
 [Filed ARC 1137C (Notice ARC 1002C, IAB 9/4/13), IAB 10/30/13, effective 12/4/13]  
 [Filed ARC 1303C (Notice ARC 1231C, IAB 12/11/13), IAB 2/5/14, effective 3/12/14]  
 [Filed ARC 1665C (Notice ARC 1590C, IAB 8/20/14), IAB 10/15/14, effective 11/19/14]  
 [Filed ARC 2691C (Notice ARC 2617C, IAB 7/6/16), IAB 8/31/16, effective 10/5/16]  
 [Filed ARC 3085C (Notice ARC 2942C, IAB 2/15/17), IAB 5/24/17, effective 6/28/17]  
 [Filed ARC 3664C (Notice ARC 3542C, IAB 1/3/18), IAB 2/28/18, effective 4/4/18]  
 [Filed ARC 3770C (Notice ARC 3657C, IAB 2/28/18), IAB 4/25/18, effective 5/30/18]  
 [Filed ARC 4142C (Notice ARC 4022C, IAB 9/26/18), IAB 11/21/18, effective 12/26/18]  
 [Filed ARC 4309C (Notice ARC 4176C, IAB 12/19/18), IAB 2/13/19, effective 3/20/19]  
 [Filed ARC 4516C (Notice ARC 4408C, IAB 4/24/19), IAB 6/19/19, effective 7/24/19]  
 [Filed ARC 4517C (Notice ARC 4406C, IAB 4/24/19), IAB 6/19/19, effective 7/24/19]  
 [Filed ARC 4614C (Notice ARC 4500C, IAB 6/19/19), IAB 8/14/19, effective 9/18/19]  
 [Filed ARC 5606C (Amended Notice ARC 5503C, IAB 3/10/21; Notice ARC 5399C, IAB 1/27/21),  
 IAB 5/5/21, effective 6/9/21]  
 [Filed ARC 5673C (Notice ARC 5553C, IAB 4/7/21), IAB 6/2/21, effective 7/7/21]

<sup>◇</sup> Two or more ARCs



## **VETERINARY MEDICINE BOARD [811]**

Rules renumbered and transferred from agency number[842] to [811] to conform with the reorganization numbering scheme in general.

### CHAPTER 1

#### DESCRIPTION OF ORGANIZATION AND DEFINITIONS

- |              |                           |
|--------------|---------------------------|
| 1.1(17A,169) | Organization and duties   |
| 1.2(17A,169) | Headquarters of the board |
| 1.3(17A,169) | Meetings                  |
| 1.4(17A,169) | Definitions               |

### CHAPTER 2

#### PETITIONS FOR RULE MAKING

(Uniform Rules)

- |          |                                  |
|----------|----------------------------------|
| 2.1(17A) | Petition for rule making         |
| 2.3(17A) | Inquiries                        |
| 2.5(17A) | Petitions received by department |

### CHAPTER 3

#### DECLARATORY ORDERS

(Uniform Rules)

- |                    |  |
|--------------------|--|
| 3.1(17A,169,272C)  | Petition for declaratory order                   |
| 3.2(17A,169,272C)  | Notice of petition                               |
| 3.3(17A,169,272C)  | Intervention                                     |
| 3.4(17A,169,272C)  | Briefs   |
| 3.5(17A,169,272C)  | Inquiries  |
| 3.6(17A,169,272C)  | Service and filing of petitions and other papers |
| 3.7(17A,169,272C)  | Consideration                                    |
| 3.8(17A,169,272C)  | Action on petition                               |
| 3.9(17A,169,272C)  | Refusal to issue order                           |
| 3.12(17A,169,272C) | Effect of a declaratory order                    |

### CHAPTER 4

#### AGENCY PROCEDURE FOR RULE MAKING

(Uniform Rules)

- |                    |   |
|--------------------|---|
| 4.1(17A,169,272C)  | Applicability                                 |
| 4.3(17A,169,272C)  | Public rule-making docket                     |
| 4.4(17A,169,272C)  | Notice of proposed rule making                |
| 4.5(17A,169,272C)  | Public participation                          |
| 4.6(17A,169,272C)  | Regulatory analysis                           |
| 4.10(17A,169,272C) | Exemptions from public rule-making procedures |
| 4.11(17A,169,272C) | Concise statement of reasons                  |
| 4.13(17A,169,272C) | Agency rule-making record                     |

### CHAPTER 5

#### PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

(Uniform Rules)

- |              |   |
|--------------|---|
| 5.1(17A,22)  | Definitions   |
| 5.3(17A,22)  | Requests for access to records  |
| 5.6(17A,22)  | Procedure by which additions, dissents, or objections may be entered into certain records |
| 5.9(17A,22)  | Disclosures without the consent of the subject  |
| 5.10(17A,22) | Routine use   |
| 5.11(17A,22) | Consensual disclosure of confidential records   |

- 5.12(17A,22) Release to subject
- 5.13(17A,22) Availability of records
- 5.14(17A,22) Personally identifiable information
- 5.15(17A,22) Other groups of records
- 5.16(17A,22) Data processing systems
- 5.17(169,252J,272D) Release of confidential licensing information for collection purposes

## CHAPTER 6

### APPLICATION FOR VETERINARY LICENSURE

- 6.1(169) Procedure
- 6.2(169) Fee schedule for veterinarians
- 6.3(169) Reactivation fee
- 6.4(169) Graduates of foreign schools
- 6.5(169) License by endorsement
- 6.6(272C) Licensure by verification
- 6.7(169) Issuance of limited license; specialization
- 6.8(169) License renewal
- 6.9(169) Renewal, lapsed or inactive license

## CHAPTER 7

### VETERINARY EXAMINATIONS

- 7.1(169) Examination procedure
- 7.2(169) Conduct

## CHAPTER 8

### AUXILIARY PERSONNEL

- 8.1(169,17A) Definitions
- 8.2(169) Registration of veterinary technicians
- 8.3(169) Examination
- 8.4 Reserved
- 8.5(169) Supervision
- 8.6(169) Revocation or suspension of veterinary technician's certificate
- 8.7(169) Action against veterinarians
- 8.8(169,272C) Disciplinary procedure
- 8.9(169,272C) Certification by endorsement
- 8.10(169,272C) Continuing education
- 8.11(272C) Registration as veterinary technician by verification

## CHAPTER 9

### TEMPORARY VETERINARY PERMITS

- 9.1(169) Eligibility for a temporary permit
- 9.2(169) Application
- 9.3 Reserved
- 9.4(169) Practice without benefit of temporary permit or Iowa license
- 9.5(169) Grounds for discipline and disciplinary procedures

## CHAPTER 10

### DISCIPLINE

- 10.1(17A,169,272C) Board authority
- 10.2(17A,169,272C) Complaints and investigations
- 10.3(17A,169,272C) Investigatory subpoena powers
- 10.4(17A,169,272C) Board action
- 10.5(17A,169,272C) Peer review committee

10.6(17A,169,272C)	Grounds for discipline
10.7(17A,169,272C)	Sanctions
10.8(17A,169,272C)	Panel of specialists
10.9(17A,169,272C)	Informal settlement
10.10(17A,169,272C)	Voluntary surrender
10.11(17A,169,272C)	Application for reinstatement
10.12	Reserved
10.13(17A,169,272C)	Contested case proceedings
10.14(17A)	Definitions
10.15(17A)	Time requirements
10.16(17A)	Notice of hearing
10.17(17A)	Presiding officer
10.18(17A)	Waiver of procedures
10.19(17A)	Telephone proceedings
10.20(17A)	Disqualification
10.21(17A)	Consolidation—severance
10.22(17A)	Pleadings
10.23(17A)	Service and filing of pleadings and other papers
10.24(17A)	Discovery
10.25(17A)	Subpoenas
10.26(17A)	Motions
10.27(17A)	Prehearing conference
10.28(17A)	Continuances
10.29(17A)	Hearing procedures
10.30(17A)	Evidence
10.31(17A)	Default
10.32(17A)	Ex parte communication
10.33(17A)	Recording costs
10.34(17A)	Final decision
10.35(17A)	Appeals
10.36(17A)	Applications for rehearing
10.37(17A)	No factual dispute contested cases
10.38(17A)	Emergency adjudicative proceedings
10.39(272C)	Disciplinary hearing—fees and costs

#### CHAPTER 11

##### CONTINUING EDUCATION

11.1(169)	Continuing education required for a veterinary licensee
11.2(169)	Exemptions for an inactive veterinary licensee
11.3(169)	Reactivation of license

#### CHAPTER 12

##### STANDARDS OF PRACTICE

12.1(169)	Veterinarian/client/patient relationships
12.2(169)	Controlled substances, drugs, prescription medications and restricted immunization products
12.3(169)	Prescription drug or medication labeling and packaging
12.4(169)	Veterinary medical records
12.5(169)	Veterinary facilities

CHAPTER 13  
COLLECTION PROCEDURES

- 13.1(169,252J,272D) Licensing actions  
13.2(169,252J,272D) Collection procedures

CHAPTER 14  
WAIVER OR VARIANCE OF RULES

- 14.1(17A,169) Definition  
14.2(17A,169) Scope of chapter  
14.3(17A,169) Applicability  
14.4(17A,169) Criteria for waiver or variance  
14.5(17A,169) Filing of petition  
14.6(17A,169) Content of petition  
14.7(17A,169) Additional information  
14.8(17A,169) Notice  
14.9(17A,169) Hearing procedures  
14.10(17A,169) Ruling  
14.11(17A,169) Public availability  
14.12(17A,169) Summary reports  
14.13(17A,169) Cancellation of a waiver  
14.14(17A,169) Violations  
14.15(17A,169) Defense  
14.16(17A,169) Judicial review

CHAPTER 1  
DESCRIPTION OF ORGANIZATION AND DEFINITIONS

[Prior to 2/8/89, Veterinary Medicine, Board of[842] Ch 1]

**811—1.1(17A,169) Organization and duties.** The board of veterinary medicine shall consist of five members, three of whom shall be licensed veterinarians and two of whom shall not be licensed veterinarians and who shall represent the general public. One public member may be a graduate of an AVMA-accredited school of veterinary technology and be credentialed in Iowa as a veterinary technician. The state veterinarian shall serve as secretary. The board may administer examinations to applicants for a license or temporary permit to practice veterinary medicine and to applicants for licenses or certificates for auxiliary personnel. The board shall investigate and discipline, as necessary, persons for whom credentials have been issued or who are engaged in an activity regulated by the board.

**811—1.2(17A,169) Headquarters of the board.** The official mailing address of the board is: Iowa Board of Veterinary Medicine, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0053.

**811—1.3(17A,169) Meetings.** The board shall meet once a year at its headquarters and shall hold additional meetings as necessary for the purpose of administering examinations and conducting its duties. The organizational meeting shall be the first board meeting of the fiscal year. The fiscal year begins July 1. Three members shall constitute a quorum authorized to act in the name of the board.

**811—1.4(17A,169) Definitions.** As used in these rules, unless the context otherwise requires:

“*AAVSB*” means the American Association of Veterinary State Boards.

“*AVMA*” means the American Veterinary Medical Association.

“*AVMA-accredited*” means colleges in the United States and foreign colleges evaluated by the AVMA Council on Education and found to meet accreditation standards as published.

“*AVMA-listed*” means a foreign college recognized by the World Health Organization or the government of its own country whose graduates are eligible to practice veterinary medicine in that country and whose graduates may qualify for entrance in the ECFVG certification program.

“*Board*” means the Iowa board of veterinary medicine.

“*Certificate*” means a credential issued by the board to practice on an animal as a certified veterinary student pursuant to 811—subrule 6.7(3).

“*Certificate holder*” means a person issued a certificate by the board.

“*Client*” means the patient’s owner, owner’s designee, or other person responsible for the patient.

“*Client consent*” requires that the licensed veterinarian inform the client of the reasonable and usual diagnostic and treatment options available and provide an assessment of the risks and benefits of such choices, the prognosis and an estimate of the fees expected for the provision of services. The consent of the client shall be provided in verbal or written form prior to initiation of diagnostic and treatment procedures and shall be documented in the medical record by the licensed veterinarian or staff. The client shall indicate that the client’s questions have been answered to the client’s satisfaction and that the client consents to the recommended treatments or procedures.

“*Credential*” means, as applicable, a certificate, license, or permit issued by the board.

“*Credential holder*” means a person who holds a certificate, license, or permit issued by the board.

“*Department*” means the Iowa department of agriculture and land stewardship.

“*Direct supervision*” means that a licensed veterinarian is on the premises and is readily available.

“*ECFVG*” means the Educational Commission for Foreign Veterinary Graduates.

“*License*” means a credential issued by the board that permits a person to practice veterinary medicine.

“*Licensee*” means a person holding a license issued by the board.

“*NAVLE*” means the North American Veterinary Licensing Examination.

“*NBVME*” means the National Board of Veterinary Medical Examiners.

“*Patient*” means an animal or group of animals examined or treated by a licensed veterinarian.

“*PAVE*” means the Program for the Assessment of Veterinary Education Equivalence.

“*Permit*” means a temporary educational permit or a temporary in-state practice permit issued by the board pursuant to rule 811—9.1(169).

“*Permit holder*” means a person holding a permit issued by the board.

“*Qualifying military service personnel*” means a person, or the spouse of that person, who is currently or who has been during the past 12 months on federal active duty, state active duty, or national guard duty and has provided sufficient documentation to the board concerning the service and, if applicable, marriage.

“*RACE*” means the Registry of Approved Continuing Education, which is the national clearinghouse for approval of continuing education providers and their programs. All RACE-approved continuing education providers and programs are listed on the American Association of Veterinary State Boards website.

“*Veterinarian*” means a person who has received a doctor of veterinary medicine degree or its equivalent from an AVMA-accredited, -approved or -listed college of veterinary medicine.

“*VTNE*” means the Veterinary Technician National Examination.

[ARC 1465C, IAB 5/28/14, effective 7/2/14; ARC 1984C, IAB 4/29/15, effective 6/3/15; ARC 5638C, IAB 6/2/21, effective 7/7/21]

These rules are intended to implement Iowa Code section 17A.3 and chapter 169.

[Filed 3/2/78, Notice 9/21/77—published 3/22/78, effective 4/26/78]

[Filed 4/10/81, Notice 3/4/81—published 4/29/81, effective 6/3/81]

[Filed 12/2/83, Notice 10/26/83—published 12/21/83, effective 1/25/84]

[Filed 11/13/87, Notice 10/7/87—published 12/2/87, effective 1/6/88]

[Filed 1/20/89, Notice 11/16/88—published 2/8/89, effective 3/15/89]

[Filed 9/4/08, Notices 4/23/08, 6/18/08—published 9/24/08, effective 10/29/08]

[Filed ARC 1465C (Notice ARC 1377C, IAB 3/19/14), IAB 5/28/14, effective 7/2/14]

[Filed ARC 1984C (Notice ARC 1756C, IAB 12/10/14), IAB 4/29/15, effective 6/3/15]

[Filed ARC 5638C (Notice ARC 5434C, IAB 2/10/21), IAB 6/2/21, effective 7/7/21]

CHAPTER 6  
APPLICATION FOR VETERINARY LICENSURE

[Prior to 2/8/89, Veterinary Medicine, Board of[842] Ch 2]

Chapter 6, Suspension or Revocation of License, rescinded IAC 2/8/89; see 811—Ch 10.

**811—6.1(169) Procedure.**

**6.1(1)** *Application to take examination.* Any person desiring to take the NAVLE in Iowa for a license to practice veterinary medicine shall make application to the board in accordance with the guidelines and time lines established by the NBVME. The applicant shall submit to the board proof of completing the application process with NBVME along with the administrative fee by sending the proof and fee to:

Iowa Board of Veterinary Medicine  
Iowa Department of Agriculture and Land Stewardship  
Wallace State Office Building  
502 E. 9th Street  
Des Moines, Iowa 50319-0053

Proof of NAVLE application shall be submitted to the board in accordance with the guidelines and time lines established by the NBVME on forms to be provided by the board. The form shall be notarized and completely filled out. The completed form shall include one current passport size and quality photograph of the applicant. Incomplete applications shall be returned to the applicant along with the tendered fee and a written statement setting forth the reasons for such rejections.

The form shall be accompanied by satisfactory evidence of the applicant's having graduated from an AVMA-accredited school of veterinary medicine or satisfactory evidence that the applicant is expected to graduate within six months of the date of the examination.

Applications to take the NAVLE will not be accepted from any person who has previously taken and passed that examination in any jurisdiction, except on case-by-case petition to the board for good cause shown or other order of the board.

**6.1(2)** *License requirements.* Prior to the board's issuance of a license, the applicant shall:

- a. Successfully complete the NAVLE as provided in rule 811—7.1(169);
- b. Remit the proper application fee for licensure;
- c. Graduate from:
  - (1) An AVMA-accredited school of veterinary medicine; or
  - (2) An AVMA-listed school of veterinary medicine and have received a certificate from either ECFVG or PAVE;
- d. Provide a statement indicating all jurisdictions in which the applicant is or has ever been licensed to practice veterinary medicine. The applicant shall provide information and shall consent to release to the board license information from jurisdictions in which the applicant is or has ever been licensed;
- e. Provide information or consent to the release of information pertinent to the character and education of the applicant as the board may deem necessary in order to evaluate the applicant's qualifications; and
- f. Submit evidence of having completed at least 60 hours of approved continuing education within the last three licensing years. New graduates and applicants within one year after the date of graduation are exempt from continuing education requirements for initial licensing. Applicants who apply more than one year but less than two years after the date of graduation must complete at least 20 hours of approved continuing education. Applicants who apply more than two years but less than three years after the date of graduation must have completed at least 40 hours of approved continuing education. As used in this paragraph, "date of graduation" also includes the date of PAVE or ECFVG certification.

A license issued during a triennium, upon the applicant's completion of these requirements and payment of the prorated triennial license fee, shall be issued for the balance of the triennium. A license shall expire on June 30 of the third year if the triennium.

**811—6.2(169) Fee schedule for veterinarians.** The following fees shall be collected by the board and shall not be refunded except by board action in unusual instances such as documented illness of the

applicant, death of the applicant, inability of the applicant to comply with the rules of the board, or withdrawal of an examination application provided withdrawal is received in writing 45 days prior to the examination date. However, the state fees may be waived for qualifying military service personnel upon request. Examination fees shall be nontransferable from one examination to another.

The fee for the NAVLE, which is utilized by the board as a part of the licensure process, shall be the fee charged that year by NBVME, plus an administrative fee payable to the board.

Based on the board's anticipated financial requirements, the following fees are hereby adopted:

License—application fee . . . . .	\$50
NAVLE examination fee . . . . .	set by NBVME
Board administrative fee for NAVLE. . . . .	\$25
State veterinary examination fee. . . . .	set by board
State veterinary administration fee . . . . .	set by board
Triennial license . . . . .	\$60
Late renewal penalty . . . . .	\$100
License by endorsement—application fee . . . . .	\$50
License by verification—application fee . . . . .	\$50
Reactivation fee for lapsed or inactive license . . . . .	\$100
Reinstatement fee . . . . .	\$100
Duplicate license. . . . .	\$15
Temporary permit . . . . .	\$35
Temporary permit application fee . . . . .	\$15
Official licensure verification . . . . .	\$15
Charge for insufficient funds or returned checks. . . . .	\$25
Senior student certificate . . . . .	\$0

This rule is intended to implement Iowa Code sections 169.5 and 169.12.  
[ARC 1984C, IAB 4/29/15, effective 6/3/15; ARC 5641C, IAB 6/2/21, effective 7/7/21]

**811—6.3(169) Reactivation fee.** All applications for reactivation of a lapsed or inactive license to practice veterinary medicine shall be filed with the secretary of the board, together with the then current license fee, the current reactivation fee, and all applicable penalties for a lapsed or inactive license.

**811—6.4(169) Graduates of foreign schools.** Graduates of foreign veterinary schools may become eligible for examination and licensure by either of the following methods:

**6.4(1) Examination eligibility through ECFVG.** Graduates of foreign veterinary schools which, pursuant to the AVMA criteria, are not AVMA-accredited but are AVMA-listed may make application to take the NAVLE in this state provided that the application includes a copy of the applicant's diploma or certificate indicating the award of a degree in veterinary medicine from an AVMA-listed college and a letter from the ECFVG verifying that the applicant is or will be participating in an ECFVG certification program.

**6.4(2) Licensure eligibility through ECFVG.** Graduates of foreign veterinary schools which are not AVMA-accredited but are AVMA-listed will not be considered for licensing until they have received the certificate granted by the ECFVG. A license will not be issued to an applicant until the applicant submits a certified copy of the applicant's ECFVG certificate.

**6.4(3) Examination eligibility through PAVE.** Graduates of foreign veterinary schools may make application to take the NAVLE in this state provided that the application includes a certified copy of the applicant's diploma or certificate indicating the award of a degree in veterinary medicine from a foreign veterinary school and a letter from the AAVSB on behalf of PAVE verifying that the applicant

is participating in the PAVE certification program administered by the AAVSB, and has met the requirements for taking the NAVLE.

**6.4(4) *Licensure eligibility through PAVE.*** Graduates of foreign veterinary schools will not be considered for licensing until they have received the certificate granted by PAVE. A license will not be issued to an applicant until the applicant submits a copy of the applicant's PAVE certificate.

**811—6.5(169) License by endorsement.**

**6.5(1)** A license by endorsement may be granted by the board pursuant to either Iowa Code section 169.10(1) or 169.10(2). An applicant shall make application for a license by endorsement on a form provided by the board. The application fee and triennial license fee shall accompany the application. In addition to the information specified in Iowa Code section 169.10, the applicant shall supply all of the following:

*a.* A statement indicating all jurisdictions in which the licensee is or has ever been licensed to practice veterinary medicine. The applicant shall provide information and shall consent to the release of information to the board from jurisdictions in which the applicant is or has ever been licensed.

*b.* Information pertinent to the character and education of the applicant as the board may deem necessary in order to evaluate the applicant's qualifications.

*c.* Evidence of approved continuing education totaling at least 60 hours obtained within the last three licensing years. New graduates and applicants within one year after graduation are exempt from continuing education requirements for initial licensing. Applicants who apply more than one year but less than two years after the date of graduation must complete at least 20 hours of approved continuing education. Applicants who apply more than two years but less than three years after the date of graduation must have completed at least 40 hours of approved continuing education. As used in this paragraph, "date of graduation" also includes the date of PAVE or ECFVG certification. Foreign graduates licensed by PAVE or ECFVG certification are exempt from the continuing education requirement for one year from the date of certification by PAVE or ECFVG.

**6.5(2)** For an applicant with a non-Iowa license seeking licensure under Iowa Code section 169.10(1), the following shall apply:

*a.* If the applicant's non-Iowa license was issued between December 31, 1964, and December 31, 1979, the applicant shall have successfully completed the National Board Examination (NBE).

*b.* If the applicant's non-Iowa license was issued between January 1, 1980, and December 31, 2000, the applicant shall have successfully completed the National Board Examination (NBE) and the Clinical Competency Test (CCT).

*c.* If the applicant's non-Iowa license was issued on or after January 1, 2001, the applicant shall have successfully completed the NAVLE in accordance with rule 811—7.1(169).

**6.5(3)** An applicant who is a diplomate under Iowa Code section 169.10(2) shall also include a copy of the applicant's board or college specialty certificate. For the purpose of this rule, a specialty board or college means a specialty board or college which has been officially recognized by the AVMA. Changes of specialty status shall be reported to the board within 30 days of the action.

**811—6.6(272C) Licensure by verification.** Licensure by verification is available in accordance with the following:

**6.6(1) *Eligibility.*** A person may seek licensure by verification if the person is licensed in at least one other jurisdiction, and either:

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

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

**6.6(2) *Board application.*** The applicant must submit the following:

*a.* A completed application for licensure by verification.

*b.* Payment of the application fee.

*c.* A verification form, completed by the licensing authority in the jurisdiction that issued the applicant's license, verifying that the applicant's license in that jurisdiction complies with the

requirements of Iowa Code section 272C.12. The completed verification form must be sent directly from the licensing authority to the board. This form is available on the board's website.

*d.* Proof of residency in the state of Iowa or proof of military member's official permanent change of station in Iowa. Proof of residency includes one or more of the following:

- (1) A residential mortgage, lease, or rental agreement;
- (2) A utility bill;
- (3) A bank statement;
- (4) A paycheck or pay stub;
- (5) A property tax statement;
- (6) A federal or state government document;
- (7) Any other board-approved document that reliably confirms Iowa residency.

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

**6.6(3) Applicants with prior discipline.** If another jurisdiction has taken disciplinary action against an applicant, the board will determine whether the cause for the disciplinary action has been corrected and the matter has been resolved. If the board determines the disciplinary matter has not been resolved, the board will not take action on the application until the disciplinary matter has been resolved.

**6.6(4) Applicants with pending licensing complaints or investigations.** If an applicant currently has a complaint, allegation, or investigation relating to unprofessional conduct pending before any regulating entity in another jurisdiction, the board will not take action on the application until the complaint, allegation, or investigation has been resolved.

**6.6(5) Limitations.** A person who has had a license revoked, or who has voluntarily surrendered a license while under investigation for unprofessional conduct in another jurisdiction, is ineligible for licensure by verification.

[ARC 5638C, IAB 6/2/21, effective 7/7/21]

### **811—6.7(169) Issuance of limited license; specialization.**

**6.7(1)** The board may grant a license to practice veterinary medicine within a limited and specified scope:

- a.* As an option for board discipline under 811—Chapter 10.
- b.* To a qualified member of the faculty of the Iowa State University College of Veterinary Medicine.
- c.* To an applicant requesting limited or specialized status.

**6.7(2)** A licensed veterinarian shall not claim or imply specialization unless the veterinarian is a diplomate in good standing of the respective specialty board or college recognized by the AVMA.

**6.7(3)** Veterinary student certificate. The board may issue a veterinary student certificate to a senior veterinary student who is attending an AVMA-accredited college of veterinary medicine, upon endorsement by the college that the student is competent to perform veterinary duties. The certificate issued by the board shall limit the student to performing duties under the direction of an instructor of veterinary medicine or under the direct supervision of a licensed veterinarian. Veterinary student certificate holders are prohibited from administering rabies vaccine to dogs as described in Iowa Code section 351.35 and signing a certificate of veterinary inspection as described in Iowa Code section 163.12.

**6.7(4)** Limited licensure for faculty. Faculty, not including residents or interns, at Iowa State University College of Veterinary Medicine may be issued a limited license to practice veterinary medicine. The applicant for a limited license for faculty shall have graduated from an AVMA-accredited or AVMA-listed school of veterinary medicine or have received a PAVE or ECFVG certificate and shall submit a completed application and the required fees. Holders of limited licenses for faculty are limited to duties performed on the college premises during periods of employment at the college.

[ARC 5638C, IAB 6/2/21, effective 7/7/21]

### **811—6.8(169) License renewal.**

**6.8(1)** A license to practice veterinary medicine shall be issued for a three-year period, except that new licenses issued during a triennium shall be issued for the balance of that triennium, except that new certificates issued during a triennium shall be issued for the balance of the triennium and the certificate fee shall be prorated. A license shall expire on June 30 of the third year of the triennium.

**6.8(2)** At least two months before the end of a triennium, a renewal notice will be sent to each licensee at the last address in the board's file. Failure to receive the notice shall not relieve the licensee of the obligation to pay triennium renewal fees on or before June 30.

**6.8(3)** The license renewal application shall include a statement which certifies the jurisdictions in which the licensee is currently or has in the past been licensed to practice veterinary medicine.

**6.8(4)** Renewal fees shall be received by the board on or before the end of the triennium on June 30. Whenever renewal fees are not received as specified, the license lapses and the practice of veterinary medicine must cease until all renewal fees and penalty fees are received by the board.

**6.8(5)** If the renewal fee has not been received by the board before the license has lapsed, an application for renewal must be filed with the board with a renewal fee in addition to the reactivation fee and the late renewal penalty fee.

[ARC 5638C, IAB 6/2/21, effective 7/7/21]

**811—6.9(169) Renewal, lapsed or inactive license.** A veterinarian whose license has lapsed may renew an expired license within five years of the date of its expiration by making written application for renewal and paying the current renewal fee plus all delinquent renewal fees. After five years have elapsed since the date of expiration, a license may not be renewed, and the veterinarian must make application for a new license and take the license examination. A veterinarian whose license has lapsed or has been placed on inactive status shall, prior to receiving active status licensure in the practice of veterinary medicine in the state of Iowa, satisfy the requirements in either subrule 6.9(1) or subrule 6.9(2) for renewal of a lapsed or inactive license:

**6.9(1) *Renewal of a lapsed or inactive license.*** An applicant for renewal of a lapsed or inactive license shall do both of the following:

*a.* Submit written application for renewal of a lapsed or inactive license to the board upon forms provided by the board;

*b.* Furnish evidence of compliance with continuing education requirements specified in rule 811—11.3(169).

**6.9(2) *Renewal by endorsement.*** An applicant for renewal by endorsement may submit an application for renewal by endorsement by following the procedures set out in rule 811—6.5(169).

These rules are intended to implement Iowa Code chapters 17A and 169.

[Filed 3/2/78, Notice 9/21/77—published 3/22/78, effective 4/26/78]

[Filed 7/1/80, Notice 10/31/79—published 7/23/80, effective 8/27/80]

[Filed 4/10/81, Notice 3/4/81—published 4/29/81, effective 6/3/81]

[Filed 12/2/83, Notice 10/26/83—published 12/21/83, effective 1/25/84]

[Filed 12/1/86, Notice 10/22/86—published 12/17/86, effective 5/1/87]

[Filed 11/13/87, Notice 10/7/87—published 12/2/87, effective 1/6/88]

[Filed 1/20/89, Notice 11/16/88—published 2/8/89, effective 3/15/89]

[Filed 1/30/92, Notice 9/18/91—published 2/19/92, effective 3/25/92]

[Filed emergency 3/5/93—published 3/31/93, effective 3/5/93]

[Filed 10/6/94, Notice 7/6/94—published 10/26/94, effective 11/30/94]

[Filed 5/2/96, Notice 3/27/96—published 5/22/96, effective 6/26/96]

[Filed 10/27/98, Notice 9/9/98—published 11/18/98, effective 12/23/98]

[Filed 9/4/08, Notices 4/23/08, 6/18/08—published 9/24/08, effective 10/29/08]

[Filed ARC 1984C (Notice ARC 1756C, IAB 12/10/14), IAB 4/29/15, effective 6/3/15]

[Filed ARC 5062C (Notice ARC 5013C, IAB 3/25/20), IAB 6/17/20, effective 7/22/20]

[Filed ARC 5638C (Notice ARC 5434C, IAB 2/10/21), IAB 6/2/21, effective 7/7/21]

[Filed ARC 5641C (Notice ARC 5474C, IAB 2/24/21), IAB 6/2/21, effective 7/7/21]



CHAPTER 8  
AUXILIARY PERSONNEL

[Prior to 2/8/89, Veterinary Medicine, Board of[842] Ch 4]

**811—8.1(169,17A) Definitions.** As used in these rules, the following terms shall mean:

*“Accredited school of veterinary technology”* means a two-year college level training program providing basic training leading to a certificate of completion of a two-year program recognized and approved by the AVMA committee on accreditation of training for veterinary technicians or recognized and approved by the board.

*“Board”* means board of veterinary medicine.

*“Department”* shall mean the Iowa department of agriculture and land stewardship.

*“Veterinary assistant”* means an assistant employed by a licensed veterinarian for a purpose other than performing diagnosis, issuing prescriptions or performing surgery and includes, among other assistants, registered veterinary technicians.

*“Veterinary technician”* means any citizen of the United States who shall have graduated in veterinary technology from a two-year AVMA accredited school of veterinary technology; or in lieu thereof has assisted a licensed veterinarian for five years prior to 1980, or worked under the direction of a licensed veterinarian for at least three years, including at least one year of formal training approved by the board, in veterinary technology prior to 1981; and who shall have successfully passed an examination prescribed by the board.

**811—8.2(169) Registration of veterinary technicians.** All veterinary technicians shall be under the direct control of the board and shall be registered with the state veterinarian, bureau of animal industry, Iowa department of agriculture and land stewardship. Each veterinary technician must pass both the veterinary technician national examination and a veterinary technician state examination as approved by the board. Applications for registration shall be obtained from and remitted to the board. Applicants who have passed both examinations shall be issued a certificate by the board stating that the named candidate is registered as a veterinary technician.

[ARC 3696C, IAB 3/14/18, effective 4/18/18]

**811—8.3(169) Examination.** The veterinary technician state examination shall be given at least once annually at a site or sites to be designated by the board at least 60 days before the date of the examination. The board may provide for additional veterinary technician state examinations as deemed appropriate. In the event the board provides for additional examinations, the site or sites of the examination shall be designated by the board at least 60 days prior to the date of the examination.

**8.3(1)** An application fee in an amount determined by the board not to exceed \$45 shall accompany the application to take the veterinary technician state examination; both the fee and the application must be received by the board at least 30 days before the examination. An additional fee shall be submitted for the veterinary technician examination when a professional examination service is utilized by the board. The additional fee shall be the charges for the examination by the professional examination service plus administrative costs in an amount determined by the board. The fee for the veterinary technician state examination may be waived for qualifying military service personnel upon request.

**8.3(2)** An applicant who fails to earn a passing score on the veterinary technician state examination shall be entitled to retake the examination not earlier than 90 days since the applicant last took the examination. The applicant must submit a new application and the application fee in accordance with subrule 8.3(1) to retake the veterinary technician state examination. An applicant is limited to five total attempts at the veterinary technician state examination; any additional applications to retake the examination beyond the five allowable attempts may be considered by the board and may be granted at the board's discretion.

[ARC 1984C, IAB 4/29/15, effective 6/3/15; ARC 3696C, IAB 3/14/18, effective 4/18/18; ARC 3960C, IAB 8/15/18, effective 9/19/18]

**811—8.4** Reserved.

**811—8.5(169) Supervision.** All veterinary assistants, including veterinary technicians, shall be employed by and receive compensation from and be under the direct supervision of a licensed or license exempt veterinarian, and shall function at the same place of business as the veterinarian. Such supervision shall include, but not be limited to, the availability of the veterinarian on the premises.

**8.5(1) Veterinarian's responsibility:**

a. To personally examine the animal within 12 hours before the assistant carries out any procedures.

b. To direct, control and supervise the conduct of the assistant in the assistant's work.

**8.5(2) Veterinary assistant's responsibility:**

a. The veterinary assistant, including registered veterinarian technicians, shall not perform surgery; shall not make a diagnosis and prognosis of animal diseases; shall not prescribe drugs, medicine and appliances, and shall not administer rabies vaccine.

b. Under conditions of an emergency, a veterinary assistant including a registered veterinary technician may render without supervision such lifesaving aid and treatment as follows: administration of oxygen; maintenance of airways including the nonsurgical insertion of an endotracheal tube; and control of hemorrhage. Under conditions of emergency, a registered veterinary technician but not an unregistered veterinary assistant may render such additional lifesaving aid and treatment as follows: placement of an IV catheter and the administration of fluids; external cardiac massage; and the administration of corticosteroids. Emergency aid and treatment, if rendered to an animal not in the presence of a licensed veterinarian, shall only be continued under the direction of a licensed veterinarian, which in the case of emergency may include telephone or radio contact by a veterinarian en route to the site, until the veterinarian arrives in a timely manner. "Emergency" for the purpose of this rule means that the animal has been placed in a life-threatening condition where immediate treatment is necessary to sustain life.

**811—8.6(169) Revocation or suspension of veterinary technician's certificate.** The following shall be grounds for revocation or suspension of a certificate at the discretion of the board:

1. Fraud, misrepresentation or deception in obtaining a certificate.
2. Conviction of a felony, in which case the record of such conviction will be conclusive evidence.
3. Chronic inebriety or habitual use of drugs.
4. For having professional connection with, or lending one's name to any illegal practice of veterinary medicine and the various branches thereof.
5. Conduct reflecting unfavorably on the vocation of veterinary technology.
6. Conviction on the charge of cruelty to animals.
7. Failure to satisfy the continuing education requirements of rule 811—8.10(169,272C).

**811—8.7(169) Action against veterinarians.** The board of veterinary medicine shall take action against any veterinarian licensed to practice in the state of Iowa who:

1. Permits or directs any veterinary assistant, including a registered veterinary technician, to perform veterinary duties involving diagnosis, prescription or surgery.
2. Permits or directs any veterinary assistant, including a registered veterinary technician, to perform any act which would be a legal or ethical violation if committed by the veterinarian.

**811—8.8(169,272C) Disciplinary procedure.** Disciplinary action taken under rule 811—8.6(169) or 811—8.7(169) shall follow the procedure established by 811—10.50(169,272C). Where appropriate, references in 811—10.50(169,272C) to a person licensed to practice veterinary medicine shall be construed to mean persons certified as a veterinary assistant or technician.

**811—8.9(169,272C) Certification by endorsement.** On a case-by-case basis, the board may issue certification by endorsement and without examination to applicants who hold certification or licensure as veterinary technicians in another jurisdiction.

**811—8.10(169,272C) Continuing education.**

**8.10(1)** At least 30 hours of continuing education in courses approved by the board of veterinary medicine shall be completed triennially by each registered veterinary technician. The registrant has the responsibility for financing continuing education. These credit hours may be obtained by attending approved scientific seminars and meetings on the basis of one credit hour for each hour of attendance. Attendance at any board-approved national, state or regional meeting will be acceptable. Credit for qualified graduate college courses may be approved on the basis of multiplying each college credit hour by 10, to a maximum of 15 hours during any one triennial. A maximum of 10 hours during any one triennial may be achieved by the completion of approved home study courses.

**8.10(2)** Each registrant shall obtain the 30 credit hours between the registrant's certificate anniversary date and the last day of the following three-year period. However, a registrant who graduated from an accredited college of veterinary technology within three years of the issuance of an Iowa certificate is required to obtain only 20 credit hours for the first triennial. Continuing education credits in excess of 30 hours for any three-year period may be carried over to the next triennial period, but the total number of credits carried over shall not exceed 10 hours.

**8.10(3)** Completion of the continuing education will be reported to the secretary of the board of veterinary medicine on forms provided by the board by December 31 of the triennial anniversary year. The reporting form must be signed by the registrant and accompanied by an administration fee of \$15.

**8.10(4)** Compliance with this rule and subrule 8.6(7) is waived until January 1, 1993. Registrants whose certificate triennial anniversary dates fall in the year 1993 shall complete and report 10 credit hours. Registrants whose certificate triennial anniversary dates fall in the year 1994 shall complete and report 20 credit hours. All registrants whose certificate triennial anniversary dates fall in the year 1995 and subsequent years shall complete and report the full 30 credit hours.

**8.10(5)** The board may waive continuing education requirements for qualifying military service personnel upon request.

[ARC 1984C, IAB 4/29/15, effective 6/3/15]

**811—8.11(272C) Registration as veterinary technician by verification.** Registration by verification for a veterinary technician is available in accordance with the following:

**8.11(1) Eligibility.** A person may seek registration by verification if the person is registered or licensed in at least one other jurisdiction, and either:

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

**8.11(2) Board application.** The applicant must submit the following:

- a. A completed application for registration by verification.
- b. Payment of the application fee.
- c. A verification form, completed by the licensing/registration authority in the jurisdiction that issued the applicant's license or registration, verifying that the applicant's license or registration in that jurisdiction complies with the requirements of Iowa Code section 272C.12. The completed verification form must be sent directly from the licensing/registration authority to the board. This form is available on the board's website.

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

- (1) A residential mortgage, lease, or rental agreement;
  - (2) A utility bill;
  - (3) A bank statement;
  - (4) A paycheck or pay stub;
  - (5) A property tax statement;
  - (6) A federal or state government document;
  - (7) Any other board-approved document that reliably confirms Iowa residency.
- e. Proof of passing Iowa's veterinary technician state examination.

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

**8.11(3) Applicants with prior discipline.** If another jurisdiction has taken disciplinary action against an applicant, the board will determine whether the cause for the disciplinary action has been corrected and the matter has been resolved. If the board determines the disciplinary matter has not been resolved, the board will not take action on the application for registration until the matter has been resolved.

**8.11(4) Applicants with pending licensing/registration complaints or investigations.** If an applicant currently has a complaint, allegation, or investigation relating to unprofessional conduct pending before any regulating entity in another jurisdiction, the board will not take action on the application for registration until the complaint, allegation, or investigation has been resolved.

**8.11(5) Limitations.** A person who has had a license/registration revoked, or who has voluntarily surrendered a license/registration while under investigation for unprofessional conduct in another jurisdiction, is ineligible for registration by verification.

[ARC 5639C, IAB 6/2/21, effective 7/7/21]

These rules are intended to implement Iowa Code sections 17A.3, 169.4, 169.5, 169.9, 169.12, 169.20 and 272C.4.

[Filed 3/22/78, Notice 9/21/77—published 3/22/78, effective 4/26/78]

[Filed emergency 9/29/78—published 10/18/78, effective 9/29/78]

[Filed 7/1/80, Notice 10/31/79—published 7/23/80, effective 8/27/80]

[Filed 4/10/81, Notice 3/4/81—published 4/29/81, effective 6/3/81]

[Filed 12/2/83, Notice 10/26/83—published 12/21/83, effective 1/26/84]

[Filed 11/13/87, Notice 10/7/87—published 12/2/87, effective 1/6/88]

[Filed 1/20/89, Notice 11/16/88—published 2/8/89, effective 3/15/89]<sup>◇</sup>

[Filed 1/30/92, Notice 9/18/91—published 2/19/92, effective 3/25/92]

[Filed 10/6/94, Notice 7/6/94—published 10/26/94, effective 11/30/94]

[Filed ARC 1984C (Notice ARC 1756C, IAB 12/10/14), IAB 4/29/15, effective 6/3/15]

[Filed ARC 3696C (Notice ARC 3563C, IAB 1/17/18), IAB 3/14/18, effective 4/18/18]

[Filed ARC 3960C (Notice ARC 3821C, IAB 6/6/18), IAB 8/15/18, effective 9/19/18]

[Filed ARC 5639C (Notice ARC 5432C, IAB 2/10/21), IAB 6/2/21, effective 7/7/21]

<sup>◇</sup> Two or more ARCs

CHAPTER 12  
STANDARDS OF PRACTICE  
[Prior to 2/8/89, Veterinary Medicine, Board of[842] Ch 9]

**811—12.1(169) Veterinarian/client/patient relationships.**

**12.1(1)** The board shall determine, on a case-by-case basis, if a valid veterinarian/client/patient relationship exists. This relationship shall be deemed to exist when all of the following criteria have been met:

*a.* The licensed veterinarian has assumed the responsibility for making medical judgments regarding the health of the patient and the need for medical treatment, and the client has agreed to follow the instructions of the licensed veterinarian;

*b.* The licensed veterinarian has sufficient knowledge of the patient to initiate at least a general or preliminary diagnosis of the medical condition of the patient. Sufficient knowledge means that the licensed veterinarian has recently seen or is personally acquainted with the care of the patient by virtue of an examination of the patient or by medically appropriate and timely visits to the premises where the patient is kept; and

*c.* The licensed veterinarian is readily available or provides for follow-up in case of adverse reactions or failure of the regimen of therapy.

**12.1(2)** A valid veterinarian/client/patient relationship cannot be established by contact solely based on a telephonic or electronic communication.

**12.1(3)** Both the licensed veterinarian and the client have the right to establish or decline a valid veterinarian/client/patient relationship. Once the licensed veterinarian and the client have agreed and entered into a relationship, and the licensed veterinarian has begun patient care, the licensed veterinarian may not neglect the patient and must continue to provide professional services related to the patient's injury or illness within the previously agreed limits. As subsequent needs and costs for patient care are identified, the licensed veterinarian and the client must confer and reach agreement on the continued care and responsibility for fees. If the informed client declines future care or declines to assume responsibility for the fees, the relationship may be terminated by either party.

**12.1(4)** If no ongoing medical condition exists, a licensed veterinarian may terminate a valid veterinarian/client/patient relationship by notifying the client that the licensed veterinarian no longer wishes to serve that patient and client. However, if an ongoing medical or surgical condition exists, the patient should be referred to another licensed veterinarian for diagnosis, care, and treatment and the former attending licensed veterinarian should continue to provide care as needed during the transition.

**12.1(5)** Concerns about licensed veterinarian or staff safety may result in immediate termination of the veterinarian/client/patient relationship.

[ARC 1465C, IAB 5/28/14, effective 7/2/14]

**811—12.2(169) Controlled substances, drugs, prescription medications and restricted immunization products.** When state or federal law restricts a drug, medication or immunization product intended for use by or on the order of a licensed veterinarian, the licensed veterinarian shall sell, distribute, or order the drug or medication only in the course of the licensed veterinarian's professional practice. A prescription veterinary drug, medication or immunization product shall not be deemed to be used "in the course of the licensed veterinarian's professional practice" unless a valid veterinarian/client/patient relationship exists.

**12.2(1) Prescriptions.** The order for all such drugs, medications or immunization products shall be accompanied by the licensed veterinarian's original prescription that shows the following:

- a.* Licensed veterinarian's name, address and telephone number;
- b.* Client's name;
- c.* Patient's name or identification;
- d.* Date issued;
- e.* Drug, medication or product name, strength, and quantity;
- f.* Directions for use;
- g.* Number of times the prescription may be refilled;

- h.* Expiration date of the drug, medication or product; and
- i.* Applicable withdrawal period (paragraph 12.2(2)“*d*”) for livestock and poultry.

**12.2(2) Extra-label use of veterinary drugs, medications, and immunization products.** Any extra-label use of veterinary drugs, medications or immunization products shall be by or under the order of a licensed veterinarian only and shall be subject to the following criteria:

- a.* There shall be a veterinarian/client/patient relationship as defined in subrule 12.1(1).
- b.* For drugs or medications used in patients not intended for food, one of the following applies:
  - (1) There are no marketed drugs, medications and immunization products specifically labeled for the condition(s) diagnosed;
  - (2) The approved product is clinically ineffective; or
  - (3) In the licensed veterinarian’s clinical judgment, the labeled dosage is inappropriate for the condition or the extra-label use should result in a better outcome for the patient.
- c.* The health of the treated patient is immediately threatened, or suffering or death would result from a failure to treat the affected patient.
- d.* Appropriate withdrawal period shall be specified when the drugs, medications or immunization products are used in animals intended as food. Extra-label drug use in food-producing animals must follow Food and Drug Administration - Animal Medicinal Drug Use Clarification Act regulations (21 Code of Federal Regulations 530). Licensed veterinarians are encouraged to consult the Food Animal Residue Avoidance Databank (FARAD) or public peer-reviewed documents when determining appropriate withdrawal period.

[ARC 1465C, IAB 5/28/14, effective 7/2/14]

**811—12.3(169) Prescription drug or medication labeling and packaging.** A licensed veterinarian shall comply with all of the following requirements for the storage, handling, dispensing, and administering of a drug or medication.

**12.3(1)** All prescription drugs, medications and controlled substances must be purchased, maintained, handled, prescribed and dispensed in compliance with state and federal requirements including but not limited to the requirements of the Iowa board of pharmacy, the U.S. Occupational Safety and Health Administration, the U.S. Department of Agriculture, the U.S. Food and Drug Administration, the U.S. Environmental Protection Agency and the U.S. Drug Enforcement Administration.

*a.* A valid veterinarian/client/patient relationship must be established before prescription drugs or medications may be dispensed or a prescription released. All drugs or medications administered, prescribed or dispensed must be documented in the patient’s medical record. The sale of veterinary prescription drugs or medications or the extra-label use of any drug, medication or product by a licensed veterinarian without a valid veterinarian/client/patient relationship is not permissible.

*b.* If a veterinarian prescribes a drug for the client’s animal, the veterinarian shall, upon request, provide the prescription to the client, unless prohibited by state or federal law or to prevent inappropriate use. The veterinarian may charge a fee for issuing the prescription. This paragraph does not apply to livestock as defined in Iowa Code section 717.1(4).

**12.3(2)** All drugs or medications dispensed shall be labeled with the following information:

- a.* Name, telephone number, and address of the veterinary clinic, hospital, or service facility.
- b.* Name of the prescribing licensed veterinarian.
- c.* Date on which the prescription is dispensed.
- d.* Directions for use, including any cautionary statements and withdrawal times when appropriate.
- e.* Species of the patient.
- f.* Name, or identification, or location of the patient.
- g.* Name of the owner.
- h.* Name, strength, and dosage form of the drug or medication. If the drug or medication is a compounded product, all active ingredients must be listed on the label, with corresponding strengths or concentrations of each ingredient.
- i.* Number of units dispensed.

*j.* Expiration date. If the drug or medication is a compounded product with no assigned expiration date, the licensed veterinarian shall determine a beyond-use date as supported by the literature or by the licensed veterinarian's professional judgment when no such supportive information exists.

*k.* Appropriate withdrawal period for livestock or poultry, when the patient or its product is intended as food.

**12.3(3)** All drugs or medications dispensed in the original container shall retain the original label and, in addition, shall be labeled with the same information as required in subrule 12.3(2).

**12.3(4)** All drugs or medications that are dispensed in a container other than the original container shall be placed in a tamper-resistant container unless otherwise requested by the owner or unless the drug or medication is in a form or size that cannot be easily dispensed in a tamper-resistant container.

**12.3(5)** Drugs or medications which have expired shall be removed from current inventory and shall not be dispensed or sold. Expired drugs or medications shall be disposed of in accordance with local, state and federal regulations.

**12.3(6)** Drugs or medications shall be dispensed only for specific animals and for specific veterinary medical therapies with the exception of groups of similar animals and other groups such as pet fish, kennels, and catteries for which dispensing shall be done judiciously within a valid veterinarian/client/patient relationship.

[ARC 1465C, IAB 5/28/14, effective 7/2/14; ARC 5640C, IAB 6/2/21, effective 7/7/21]

#### **811—12.4(169) Veterinary medical records.**

**12.4(1)** *Controlled substances records.* The licensed veterinarian must maintain a controlled substance log which contains complete, accurate and readily retrievable records of all controlled substances possessed, administered, or dispensed.

*a.* Each record of a controlled substance which is dispensed must meet all U.S. Drug Enforcement Administration and Iowa board of pharmacy regulations for the controlled substances log.

*b.* Each log record must include the following information:

- (1) Name or identification of the patient.
- (2) Client's name and address, if not readily available from the licensed veterinarian's records.
- (3) Name, strength and quantity of the controlled substance dispensed.
- (4) Date on which the controlled substance was dispensed.
- (5) Initials of the dispensing licensed veterinarian or authorized auxiliary.
- (6) Name of the prescribing licensed veterinarian.

*c.* All controlled substances must be kept in a locked storage area, and access to the storage area must be restricted pursuant to state and federal laws and regulations.

*d.* Each package or container in which a controlled substance is stored or dispensed must be clearly labeled pursuant to the requirements set forth in state and federal laws and regulations.

*e.* Each package or container in which a controlled substance is stored or dispensed must comply with all state and federal packaging requirements and with rule 811—12.2(169).

**12.4(2)** *Patient records.* Veterinary medical records are an integral part of veterinary care. Medical records are the property of the veterinary practice. Each licensed veterinarian shall maintain for at least five years an easily retrievable record for each patient that receives veterinary services. The record must be available for inspection by the client during normal business hours. The information within veterinary medical records is privileged and confidential and shall not be released except by court order, a public health emergency, consent of the client, or as otherwise authorized by law. The licensed veterinarian in charge shall provide a copy of the complete record to the client not later than two business days after the licensed veterinarian or practice receives from the client a request for the record. A licensed veterinarian or veterinary practice may have an additional three business days to provide a copy of nondigital diagnostic images. The licensed veterinarian may charge reasonable and customary fees for the copying of records.

*a.* Records required for patients defined as "livestock" in Iowa Code section 717.1(4) include the following:

- (1) Name, address and telephone number of the client.

(2) Name or identity of the patient, pen, herd, flock, or group, including the identification number, if any.

(3) Date of service.

(4) Documentation of client consent.

(5) Diagnosis or condition at the beginning of treatment of the patient, including results of tests.

(6) Procedures/indications.

(7) Name of drug or medication and treatment administered indicating dosage, frequency and route of administration.

(8) Withdrawal period.

(9) Record of diagnostic images taken.

(10) Name of attending licensed veterinarian.

*b.* Records required for other patients include the following:

(1) Name, address and telephone number of the client.

(2) Name and identity of the patient, including the identification number, if any.

(3) Date of birth (or estimated age), sex, species and breed of patient.

(4) Dates of care, custody or treatment of the patient.

(5) A history of the patient's condition as it pertains to the patient's medical status.

(6) Documentation of client consent.

(7) Diagnosis or condition at the beginning of treatment of the patient, including results of tests and body weight.

(8) Surgery record, including preanesthesia medication, anesthesia, and the procedure performed.

(9) Name of drug or medication and treatment administered indicating dosage, frequency and route of administration.

(10) Progress and disposition of the case.

(11) Record of diagnostic images taken.

(12) Name of attending licensed veterinarian.

**12.4(3) Stored diagnostic images.**

*a.* Each stored diagnostic image must be identified with the following information:

(1) The name of the licensed veterinarian or facility that took the diagnostic image.

(2) The name or identifying number, or both, of the patient.

(3) The name of the client.

(4) The date on which the diagnostic image was taken.

(5) The anatomical orientation depicted by the diagnostic image.

*b.* Stored diagnostic images must be retained for at least five years.

*c.* A stored diagnostic image of the patient or a copy must be released, upon the written or verbal request, to another licensed veterinarian who has the authorization of the client. Original diagnostic images shall be returned in a reasonable time.

**12.4(4) General anesthesia.** General anesthesia is a condition caused by the administration of a drug or combination of drugs sufficient to produce a state of unconsciousness or dissociation and blocked response to a given pain or alarming stimulus. The following standards relating to general anesthesia must be adhered to:

*a.* Within 12 hours prior to the administration of a general anesthetic, the patient must receive a physical examination, with the results noted in the patient's medical records.

*b.* The patient under general anesthesia must be under observation for a length of time appropriate to the species for the patient's safe recovery.

*c.* The licensed veterinarian must provide a method of respiratory monitoring that may include observing the patient's chest movements, observing the rebreathing bag, or using a respirometer.

*d.* The licensed veterinarian must provide a method of cardiac monitoring which may include the use of a stethoscope or electrocardiograph monitor.

[ARC 1465C, IAB 5/28/14, effective 7/2/14; ARC 5485C, IAB 2/24/21, effective 3/31/21]

**811—12.5(169) Veterinary facilities.**

**12.5(1) Facility standards.** The following standards shall apply to all facilities used by a licensed veterinarian to provide veterinary services.

*a. Facilities for treatment or hospitalization.* In a facility where patients are examined and retained for treatment or hospitalization, the following must be provided:

- (1) An examination room, separate from the reception room or office, with sufficient size to accommodate the licensed veterinarian, assistant, patient and client.
- (2) Nonporous tabletops, countertops and floor coverings which can be adequately cleaned and disinfected.
- (3) The ability to house patients separately and maintain sanitary conditions.
- (4) Appropriate separation of patients with known or suspected infectious and contagious diseases from patients not known to have such diseases in a manner that reasonably guards against transmission of disease.
- (5) Provision for daily exercise of patients unless the primary enclosure is of sufficient size to provide exercise.
- (6) Exercise areas that are cleaned a minimum of once in each 24-hour period and more frequently as may be necessary to reduce disease hazards and odors.
- (7) A sanitary area for performing surgeries under sterile conditions. If sterile surgical procedures are performed on the premises, the licensed veterinarian must maintain the following at all times:
  1. Appropriate sterile surgical packs including drapes, sponges and instrumentation for use in each procedure.
  2. For each sterile surgical procedure, equipment sterilized and surgical packs properly prepared for sterilization sufficient to kill microorganisms.
  3. Clean attire, masks, and gloves for use in any sterile procedure.
- (8) Oxygen and equipment necessary to administer oxygen to the types of patients treated in the facility.
- (9) Capability to provide diagnostic radiological images in the facility or through an outside facility.
- (10) Provision for laboratory and pharmaceutical services in the facility or through another commercial facility.

*b. Facilities for services.* Veterinary service facilities where patients are only examined or provided vaccinations must provide the following:

- (1) An examination room, separate from the reception room or office, with sufficient size to accommodate the licensed veterinarian, assistant, patient and client.
- (2) Nonporous tabletops, countertops and floor coverings which can be adequately cleaned and disinfected.
- (3) A secure and sanitary area for the storage of instruments, drugs and medications.
- (4) Cooling/heating equipment for the storage of drugs, medications and immunization products.
- (5) Capability to provide diagnostic radiological images in the facility or through an outside facility.
- (6) Provision for laboratory and pharmaceutical services in the facility or through another commercial facility.

*c. Mobile clinics.* Mobile clinics are self-contained units for small animal, nonlivestock or nonpoultry patients and shall be equipped with the following:

- (1) Hot and cold water.
- (2) Nonporous tabletops, countertops and floor coverings which can be adequately cleaned and disinfected.
- (3) An adequate power source for diagnostic equipment.
- (4) A collecting tank for disposal of waste materials.
- (5) Adequate lighting.
- (6) Adequate heating, cooling and ventilation.
- (7) Sterile instrumentation which meets the requirements of the level of surgery to be performed.
- (8) Separate compartments for the transportation or holding of patients.
- (9) A secure and sanitary area for the storage of instruments, drugs and medications.
- (10) Cooling/heating equipment for the storage of drugs, medications and immunization products.

*d. House/farm call units.* House/farm call units are not self-contained units and must be equipped with or have access to all of the following:

- (1) Water.
- (2) Cooling/heating equipment for the storage of drugs, medications and immunization products.
- (3) A secure and sanitary area for the storage of instruments, drugs and medications.

*e. Emergency veterinary hospitals.* “Emergency veterinary hospital” means an animal hospital which provides emergency treatment to an ill or injured patient. Any facility advertising as an emergency facility shall have a licensed veterinarian and appropriate support staff on the premises during the hours of operation. Any facility which advertises using phrases similar or identical to “24-hour emergency veterinary hospital,” “Emergency,” “Open 24 hours,” or “Day or night care” must have treatment services continuously available.

**12.5(2) Safety and sanitation standards.** A veterinary facility must have a safe and sanitary environment that:

- a.* Protects the health of the patients and guards against the transmission of infection.
- b.* Provides for proper routine disposal of waste materials in compliance with all applicable local, state, and federal laws and regulations and for proper disposal of hypodermic devices, sharps and biomedical waste. Any person who is authorized to use hypodermic devices and sharps shall dispose of them in accordance with applicable local, state and federal regulations. Biomedical waste should be disposed of in accordance with applicable local, state and federal regulations.
- c.* Provides for proper sterilization or sanitation of all equipment used in diagnosis, treatment or surgery.
- d.* Ensures the maintenance of proper temperature and ventilation of the indoor facility.
- e.* Provides adequate lighting appropriate for the task being performed.
- f.* Includes legal and sanitary methods for the disposal or storage of deceased patients.
- g.* Meets the standards for radiological procedures as set by the Iowa department of public health.

**12.5(3) Resources.** A library of current journals or textbooks, or Internet access which provides readily accessible reference materials shall be available.

[ARC 1465C, IAB 5/28/14, effective 7/2/14]

These rules are intended to implement Iowa Code chapter 169.

[Filed 9/21/84, Notice 8/15/84—published 10/10/84, effective 11/14/84]

[Filed emergency 9/4/85—published 9/25/85, effective 9/4/85]

[Filed 11/1/85, Notice 9/25/85—published 11/20/85, effective 12/25/85]

[Filed 1/20/89, Notice 11/16/88—published 2/8/89, effective 3/15/89]

[Filed 9/4/08, Notices 4/23/08, 6/18/08—published 9/24/08, effective 10/29/08]

[Filed ARC 1465C (Notice ARC 1377C, IAB 3/19/14), IAB 5/28/14, effective 7/2/14]

[Filed ARC 5485C (Notice ARC 5297C, IAB 12/2/20), IAB 2/24/21, effective 3/31/21]

[Filed ARC 5640C (Notice ARC 5431C, IAB 2/10/21), IAB 6/2/21, effective 7/7/21]