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

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

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

# INSTRUCTIONS

## FOR UPDATING THE

# IOWA ADMINISTRATIVE CODE

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

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

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

Replace Chapter 45

### **Architectural Examining Board[193B]**

Replace Chapters 1 and 2

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

Replace Chapter 1

Replace Chapter 5

### **State Public Defender[493]**

Replace Analysis

Replace Chapter 1

Replace Chapter 4

Replace Chapter 7

Replace Chapters 11 to 14

### **Treasurer of State[781]**

Replace Chapter 15

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

Replace Chapter 10



CHAPTER 45  
PESTICIDES

[Appeared as Ch 9, 1973 IDR]

[Prior to 7/27/88 see Agriculture Department 30—Ch 10]

DIVISION I

**21—45.1(206) Definitions and standards.**

**45.1(1)** The following definitions are hereby adopted.

*“Aerial applicator”* means a licensed commercial applicator, certified in category #11, Aerial Application, who applies pesticides by using aircraft in compliance with Federal Aviation Administration regulations under Title 14 CFR Part 137 (1-1-08 Edition).

*“Aerial applicator consultant”* means a person who is a resident of Iowa and holds a valid applicator certification in category #11, Aerial Application, and either an Iowa commercial applicator license or pesticide dealer license, who coordinates the commercial application of pesticides by aerial applicators.

*“Certified handler”* means a person employed by a licensed commercial applicator, noncommercial applicator, public applicator, or pesticide dealer who handles pesticides in other than unopened containers for the purposes of preparing, mixing or loading pesticides for application by another person, repackaging bulk pesticides or disposing of pesticide-related wastes from these activities.

*“Defoliant”* means any substance or mixture of substances intended for causing the leaves or foliage to drop from the plant with or without causing abscission.

*“Desiccant”* means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

*“Fungi”* means all nonchlorophyll-bearing thallophytes, that is, all nonchlorophyll-bearing plants of a lower order than mosses and liverworts, as for example, rusts, smuts, mildews, molds, yeasts and bacteria except those on or in living man or other animals.

*“Fungicide”* means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any fungi.

*“Herbicide”* means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any weed or undesirable plant.

*“Insect”* means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class Insecta, comprising six-legged, usually winged forms, as for example, beetles, bugs, bees, flies and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as for example, spiders, mites, ticks, centipedes and wood lice.

*“Insecticide”* means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any insects and related forms which may be present in any environment whatsoever.

*“Nematocide”* means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating nematodes or subterranean pests.

*“Nematode”* means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform or saclike bodies covered with cuticle and inhabiting soil, water, plants or plant parts; may also be called nemas or eelworms.

*“Nonchemical pest control device”* means any instrument or contrivance, other than a firearm or trap, intended or purported to be a primary pest control device or a pest control aid for repelling insects or rodents without the use of chemicals through utilization of electromagnetic, sound, ultrasonic, subsonic, cosmic, geotechnical or other similar wave technology.

*“Noncommercial applicator”* means any person who applies restricted use pesticides on lands or property owned, rented or leased by the applicator or the applicator’s employer. This definition shall not apply to private applicators using restricted use pesticides in the production of agricultural commodities.

*“Resident of Iowa,”* for purposes of subrule 45.22(17), means a person who meets the following qualifications:

1. The person is an owner or employee of a corporation, association, partnership, company, or firm that maintains a physical place of business located within Iowa.

2. Agricultural aircraft owned and operated by the person are registered with the Iowa department of transportation.

“*Rodent*” means any animal of the order Rodentia, including, but not limited to, rats, mice, rabbits, gophers, prairie dogs and squirrels.

“*Rodenticide*” means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating rodents or any other vertebrate animal which the secretary shall designate to be a pest.

“*Use of a pesticide contrary to its labeling*” means to use any registered pesticide in a manner not permitted by the labeling provided that the phrase shall not include:

1. Applying a pesticide for agricultural or horticultural purposes only at any dosage, concentration or frequency less than that specified on the labeling.

2. Applying a pesticide for agricultural or horticultural purposes only against any target pest not specified on the labeling if the application is to the crop, animal or site specified on the labeling unless the labeling specifically states that the pesticide may be used only for the pests specified on the labeling; or

3. Employing any method of application not prohibited by the labeling for agricultural or horticultural purposes only.

4. Mixing pesticides or mixing pesticide with a fertilizer when such mixture is not prohibited by the labeling for agricultural or horticultural purposes only.

“*Weed*” means any plant which grows where not wanted.

“*Wood-destroying insect*” means subterranean termites, carpenter ants, and powder-post beetles.

**45.1(2)** Additional definitions and standards which are consistent and applicable to the pesticide Act shall be those established by the Association of American Pesticide Control Officials.

This rule is intended to implement Iowa Code section 206.5 and section 206.6 as amended by 2008 Iowa Acts, House File 2551.

[ARC 7556B, IAB 2/11/09, effective 2/1/09; ARC 8704B, IAB 4/21/10, effective 5/26/10]

**21—45.2(206) Methods of analysis.** The current methods of analysis of the Association of Official Analytical Chemists of North America shall be adopted as the official methods insofar as they are applicable, and such other methods shall be used as may be necessary to determine whether the product complies with the law.

**21—45.3(206) Registration required.** No person shall distribute, give, sell or offer to sell any pesticide which has not been registered with the department of agriculture and land stewardship.

**45.3(1) Registration fees.** All pesticides distributed for sale in the state of Iowa shall be registered pursuant to Iowa Code section 206.12. The registration period shall be January 1 through December 31 of each year. The annual registration fee for each brand and grade of pesticide shall be a minimum of \$250 and a maximum of \$3000. Intermediate fees shall be determined by multiplying the gross dollar amount of annual sales in Iowa for each pesticide product by one-fifth of 1 percent or 0.002.

Each registrant shall submit an application for registration on forms approved by the secretary of agriculture. The registration fee for each product shall be submitted with the application for registration. Application for new or initial registrations of pesticide products shall be accompanied by the minimum registration fee of \$250.

**45.3(2) Renewal fees.** Pesticide product registration renewal fees shall be based on the previous year’s gross annual sales with the dollar value derived from the first level of distribution for each pesticide product sold in the state of Iowa. Each registrant shall be responsible for determining total annual Iowa sales data for each pesticide product sold in Iowa whether the pesticide product is distributed for retail sale in Iowa by a manufacturer or from a distributor or wholesaler in the state or from outside the state. Registration renewal fees for pesticide products registered for sale and use in Iowa shall be based on one-fifth of 1 percent of the dollar amount of the total sales for each pesticide product sold. Registration

renewal fees shall be a minimum of \$250 and a maximum of \$3000 per pesticide product for each registration period.

The annual sales data for each pesticide product registered in Iowa shall be maintained on file for a minimum of three years with the registrant and shall be made available for audit upon request by the department.

**45.3(3) Exemption from minimum fee.** A manufacturer or registrant of a pesticide product may file a request for an exemption to the minimum product registration fee of \$250 and the secretary may grant an exemption to the minimum registration fee for a period not to exceed one year provided that at least one of the following conditions is met:

*a.* The application is for pesticide product renewal registration; and the total annual sales in Iowa are less than \$20,000; and no similar pesticides are registered in the state. A similar pesticide shall be of similar composition and labeled for a similar use pattern provided that the applicant submits a signed affidavit reflecting gross annual sales in Iowa of the pesticide produced for the previous year.

*b.* The pesticide product is formulated or comprised of naturally occurring substances including, but not limited to, plant or animal derivatives or microorganisms, and which has an oral LD50 toxicity of 5000 milligrams per kilogram or greater.

*c.* Pesticides registered under the authority of Section 18 of the Federal Insecticide, Fungicide, Rodenticide Act (FIFRA) for emergency, crisis or public health quarantine situations, when the secretary of agriculture initiates the application.

*d.* Pesticides registered under the authority of Section 24(c) of FIFRA when the secretary of agriculture initiates the application.

**45.3(4) Penalty for nonregistered pesticides.**

*a.* Any pesticide distributed in Iowa which is not registered in the state shall be subject to Stop Sale, Use or Removal Order. A penalty shall be assessed the registrant equal to 25 percent of the registration fee due to the department. Upon receipt of the required registration fee due and the required penalty, the pesticide product may be released for sale in Iowa for the effective registration period.

*b.* A manufacturer or registrant shall not be subject to penalties for nonregistered discontinued pesticide products if adequate proof can be provided to the department indicating that all distributors and retailers handling a discontinued pesticide product were properly notified.

**45.3(5) Discontinued pesticides.** Discontinued pesticide product registrations shall be renewed for a minimum of two years after the product is discontinued; and the pesticide product registration renewal application shall identify discontinued products. Any registrant that discontinues registration of a pesticide product shall accept the return of any product in its original unbroken container that remains in the channels of trade after the registration expires. This subrule shall not apply to registered custom blended pesticide products.

**45.3(6) Registration renewal grace period.** The registration period shall be January 1 through December 31 of each year. However, a registrant shall be granted a grace period of three months ending on the last day of March of each year for registration renewal. A registrant shall be assessed a late fee equaling 25 percent of the registration fees due by the registrant for a registration renewal received on or after the first day of April of each year. Application for registration renewal shall be made on forms prescribed by the secretary and certified by the registrant.

This rule is intended to implement Iowa Code section 206.12.

[ARC 0392C, IAB 10/17/12, effective 11/21/12]

**21—45.4(206) Registration of products.** One exact copy of the labeling of each proposed product shall be submitted with the application. Also, there shall be submitted an ingredient statement, which shall comply with the provisions of 21—45.13(206) herein, the proposed directions for use of the product, and a list of the specific pests that the product to be sold is intended to control, if such information is not contained in the labeling. Other pertinent information concerning ingredients and physical properties of the product shall also be included on request by the secretary.

[ARC 0392C, IAB 10/17/12, effective 11/21/12]

**21—45.5(206) Registration, general application of.** A registration of a pesticide is held to apply to the product even though manufactured at or shipped from other than the registered address. When a product has been registered by a manufacturer or jobber, no registration shall be required of other sellers of the product so registered, provided shipments or deliveries thereof are in the manufacturer's or registrant's original unopened and properly labeled container.

**21—45.6(206) Revocation, suspension or denial of registration.** Any of the following causes is sufficient to justify revocation or suspension of registration or denial of application of renewal of an expired/expiring registration of a pesticide.

1. If the labeling bears any statement, design or graphic representation relative thereto, or to its ingredients, which is false or misleading in any particular;

2. If the product is found to be an imitation of, or illegally offered for sale under the name of another pesticide;

3. If the labeling bears reference to Iowa registration number;

4. If the labeling accompanying the pesticide does not contain directions for use which are necessary and, if complied with, adequate for the protection of the public;

5. If the label does not contain a warning or caution statement which may be necessary and, if complied with, adequate to prevent injury to humans and other vertebrate animals;

6. If the label does not bear an ingredient statement on that part of the immediate container and on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read under customary conditions of purchase. Provided, however, the secretary may permit the ingredient statement to appear prominently on some other part of the container, if the size or form of the container makes it impracticable to place it on the part of the retail package which is displayed;

7. If any word, statement or other information required to appear on the label or labeling is omitted or not prominently placed thereon and in such terms as to render it likely to be read and understood under customary conditions of purchase and use;

8. If an insecticide, nematocide, antibiotic, bactericide, fungicide or herbicide is found to be injurious to humans or other useful vertebrate animals or to vegetation (except weeds), to which it is applied or to the person applying such pesticide when used as directed or in accordance with commonly recognized safe practice; or if a plant regulator, defoliant or desiccant when used as directed is found to be injurious to humans or other vertebrate animals or vegetation to which it is applied, or to the person applying such pesticide; provided, however, that physical or physiological effect on plants or parts thereof shall not be deemed to be injurious, when this is the purpose for which the plant regulator, defoliant or desiccant was applied in accordance with label claims and recommendations;

9. If the pesticide is misbranded;

10. If the registrant has been guilty of fraudulent and deceptive practices in the evasion or attempted evasion of the pesticide Act or any rules promulgated thereunder; provided, however, that no registration shall be revoked until the registrant shall have been given an opportunity for a hearing by the secretary.

Special local need registrations and permits. State registration of pesticides pursuant to Section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act as amended by Public Law 92-516 October 21, 1972, Public Law 94-140 November 28, 1975, and Public Law 95-396 September 30, 1978, or any special use permit issued pursuant to revisions of the Federal Insecticide, Fungicide, and Rodenticide Act as amended by Public Law 92-516 October 21, 1972, Public Law 94-140 November 28, 1975, and Public Law 95-396 September 30, 1978, or the Pesticide Control Act, Iowa Code chapter 206, may be denied, amended or revoked when the secretary has made a determination as follows: That such action is necessary to prevent unreasonable adverse effects to humans or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide; or that "special local need" which necessitated the registration or permit no longer exists. Expiration of 24(c) registrations and all special use permits shall be governed by Iowa Code section 206.12.

"Special Local Need" means a pest problem (existing or likely to occur within a state) which cannot be effectively controlled because:



- (1) There is no pesticide product registered by EPA for such use; or
- (2) There is no EPA-registered pesticide product which, under the conditions of use within the state, would be as safe or as efficacious for such use within the terms and conditions of EPA registration; or
- (3) An appropriate EPA-registered pesticide product is not available.

This rule is intended to implement Iowa Code sections 206.9, 206.11, and 206.12, along with the cooperative enforcement program entered into between the state of Iowa and U.S.E.P.A. pursuant to Sec. 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act amended as of September 30, 1978.

**21—45.7(206) Changes in labeling or ingredient statement.** Changes in the labeling or ingredient statement in registered pesticides shall be submitted in advance to the secretary for approval. The registrant must describe the exact change desired and proposed effective date and such other pertinent information that justify such changes. After the effective date of a change in labeling or ingredient statement the product shall be marketed only under the new claims or ingredient statement, except that a reasonable time may be allowed by the secretary for disposal of properly labeled stocks of the old product. Changes in the composition shall not be allowed if such changes would result in a lowering of the product's value as a pesticide.

**21—45.8(206) Label requirements.** Each package of pesticide sold separately shall bear a complete label. The label shall contain the name, brand or trademark of the product; name and address of the manufacturer, registrant or person for whom manufactured; directions for use which are necessary and if complied with, adequate for protection of the public; statement of net content in terms of weight or measure in general use; and an ingredient statement. The label of every pesticide, if necessary to prevent injury to humans, other animals and useful vegetation, must contain a warning or caution statement, in nontechnical language based on the hazard involved in the use of the pesticide. In addition, any pesticide highly toxic to humans shall be labeled with a skull and crossbones and with the word "poison" prominently in red on a background of distinctly contrasting color; the first-aid antidote for the poison shall be given and instructions for safe disposal of containers.

**NOTE:** Products subject to deterioration may bear on their label a statement such as "not to be sold or used after....date...." The use of such a statement, however, in no way relieves the manufacturer of the responsibility for label claims.

**21—45.9(206) Directions for use—when necessary.** Directions for use are required whenever they are necessary for the protection of the public. The public includes not only users of pesticides but also those who handle them or may be affected by their use, handling, or storage. Directions for use are considered necessary in the case of most small retail containers which go into the hands of users, and in the case of larger containers with the following exception:

Directions may be omitted if the pesticide is to be used by manufacturers in their regular manufacturing processes; provided, the label clearly shows that the product is intended for use only in manufacturing processes and bears an ingredient statement giving the name and percentage of each of the active ingredients.

**21—45.10(206) Other claims.** No claim shall be made for products in any written, printed or graphic matter accompanying the product at any time which differ in substance from written representations made in connection with registration.

**21—45.11(206) Name of product.** The name of the product shall appear on the labeling so as not to emphasize any one ingredient or otherwise be misleading. It shall not be arranged on the label in such a manner as to be confused with other terms, trade names or legends.

**21—45.12(206) Brand names, duplication of, or infringement on.** A brand name is distinctive with reference to the material to which it applies and the registration of a pesticide under the same brand name by two or more manufacturers or shippers should be denied or refused. This principle applies also to the registration of brand names so similar in character as to be likely to be confused by the purchaser. In

the event the same name or a closely similar one is offered by another manufacturer, the secretary may decline the said name a second time, for registration unless required to do so by an order of court.

**21—45.13(206) Ingredient statement.**

**45.13(1) *Location of ingredient statement.*** The ingredient statement must appear on that part of the label displayed under customary conditions of purchase except in cases where the secretary determines that, due to the size or form of the container, a statement on that portion of the label is impractical, and permits such statement to appear on another side or panel of the label. When so permitted, the ingredient statement must be in larger type and more prominent than would otherwise be possible. The ingredient statement must run parallel with other printed matter on the panel of the label on which it appears and must be on a clear contrasting background not obscured or crowded.

**45.13(2) *Names of ingredients.*** The well-known common name of the ingredient must be given or, if the ingredient has no common name, the correct chemical name. If there is no common name and the chemical composition is unknown or complex, the secretary may permit the use of a new or coined name which the secretary finds to be appropriate for the information and protection of the user. If the use of a new or coined name is permitted, the secretary may prescribe the terms under which it may be used. A trademark or trade name may not be used as the name of an ingredient except when it has become a common name.

**45.13(3) *Percentages of ingredients.*** Percentages of ingredients shall be determined by weight and the sum of the percentages of the ingredients shall be one hundred. Sliding scale forms of ingredient statements shall not be used.

**45.13(4) *Designation of ingredients.***

*a.* Active ingredients and inert ingredients shall be so designated, and the term “inert ingredient” shall appear in the same size type and be equally as prominent as the term “active ingredients.”

*b.* If the name but not the percentage of each active ingredient is given, the names of the active and inert ingredients shall respectively be shown in the descending order of the percentage of each present in each classification and the name of each ingredient shall be given equal prominence.

**45.13(5) *Active ingredient content.*** As long as a pesticide is subject to the Act the percentages of active ingredients declared in the ingredient statement shall be the percentages of such ingredients in the pesticide.

**21—45.14(206) Net contents.** Each package of pesticide shall show the net weight or measure of content, either stenciled or printed on the package or container, or on a tag attached thereto. Indefinite statements of content such as “. . . oz. when packed” shall not be used. Statements of liquid measure, or of specific gravity or density of liquid preparations, or expression of composition in terms of pounds per gallon shall be made on the basis of 68°F. (20°C.) except when other basis has been established through trade custom.

**21—45.15(206) Coloration of highly toxic materials.** The white powder pesticides hereinafter named shall be colored or discolored in accordance with this rule. Provided, however, that any such white powder pesticide which is intended solely for use by a textile manufacturer or commercial laundry, cleaner or dyer as a moth-proofing agent, which would not be suitable for such use if colored and which will not come into the hands of the public except when incorporated into a fabric, shall not be required to be so colored or discolored in accordance with this rule. The hues, values and chromas specified are those contained in the Munsell Book of Color, Munsell Color Company, 10 East Franklin Street, Baltimore, Maryland.

**45.15(1)** The coloring agent must produce a uniformly colored product not subject to change in color beyond the minimum requirements during ordinary conditions of marketing and storage and must not cause the product to become less effective or cause damage when used as directed or in accordance with commonly recognized safe practice.

**45.15(2)** Standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite and barium fluosilicate shall be colored any hue, except the yellow-reds and

yellows, having a value of not more than eight or a chroma of not less than four or shall be discolored to a neutral lightness value not over seven.

**45.15(3)** Sodium fluoride and sodium fluosilicate shall be colored blue or green having a value of not more than eight and a chroma of not less than four or shall be discolored to a neutral lightness value not over seven.

**45.15(4)** Other white powder pesticides may be required to be colored or discolored after investigation and public hearing.

**45.15(5)** The secretary may permit other hues to be used for any particular purpose if the prescribed hues are not feasible for such purposes, and if such action will not be injurious to the public.

**45.15(6)** The coloration requirements above shall apply to the materials named therein and not to nonhighly toxic mixtures consisting of other ingredients with highly toxic materials.

This rule is intended to implement Iowa Code section 206.11.

**21—45.16(206) Illegal acts.** All pesticides, whether registered or not, sold or offered for sale shall comply with the provisions of section 206.11(1) of the pesticide Act.

The secretary shall examine pesticides from time to time, and if it appears at any time that a pesticide fails to comply with any provision of the pesticide Act, notice may be given to the manufacturer or seller thereof and an opportunity to present views either orally or in writing about the alleged violation. If it then appears that the provisions of this Act have been violated, a statement of the facts may be sent to the county attorney in the county in which the violation occurred for the purpose of instituting criminal proceedings.

**21—45.17(206) Guarantee of pesticide.**

**45.17(1)** Any manufacturer or distributor or other person residing in the United States may furnish to any person to whom it sells a pesticide a guarantee that the pesticide was lawfully registered at the time of sale and delivery to such person, and that the pesticide complies with all the requirements of the Act and rules herein.

**45.17(2)** No reference to or suggestion that a guarantee of registration has been given shall be made in the labeling of any pesticide.

**21—45.18(206) Shipments for experimental use.** A pesticide shipped or delivered for experimental use shall not be considered a violation of section 206.11(1) of the pesticide Act.

**45.18(1)** When the pesticide is shipped or delivered for experimental use under the supervision of any federal or state agency authorized by law to conduct research.

**45.18(2)** By others if the pesticide is not sold and if the container thereof is plainly and conspicuously marked "For Experimental Use Only—Not To Be Sold".

**45.18(3)** Or provided that a written permit has been obtained from the secretary either specific or general subject to such restrictions or conditions as may be set forth in the permit. The application for such a permit shall contain such information as may be required by the secretary; and in addition the proposed labeling thereon shall bear (1) the prominent statement "For Experimental Use Only" on the container label; (2) a caution or warning statement which may be necessary and if complied with adequate for the protection of those who may handle or be exposed to the experimental products; (3) the name and address of the applicant; (4) the name or designation of the formulation; (5) if the pesticide is to be sold, the statement of the names and percentages of the principal active ingredients in the product.

**45.18(4)** A pesticide intended for experimental use shall not be offered for general sale by a retailer or others, or advertised for general sale.

**21—45.19(206) Enforcement.**

**45.19(1)** Collection of samples. Samples of pesticides and devices shall be collected by an official investigator or by any employee of the state who has been duly designated by the secretary, by entry into any place during reasonable business hours.

**45.19(2)** Nonchemical pest control devices. Manufacturers or their representatives intending to sell or lease a nonchemical pest control device in the state shall submit efficacy and safety data to the department of agriculture and land stewardship prior to the sale or lease. This requirement may include the furnishing of specimen devices or samples. The department or the department's designee shall examine or test the device as may be necessary to ascertain the reliability, efficacy and safety data of the device and actual or potential adverse effects of the device upon human health and safety. The costs of conducting the examination or test shall be borne by the manufacturer or the manufacturer's representative.

**45.19(3)** Notice of apparent violation. If from an examination or analysis a pesticide appears to be in noncompliance with the pesticide Act, a written stop sale, use or removal notice will be initiated by the secretary or the secretary's duly appointed authority. The notice shall state the manner in which the product fails to meet the requirements of the Act and the regulations and that the recipient shall be given an opportunity to offer such written explanation as the recipient may desire.

**45.19(4)** Any person may obtain an opportunity to present relevant arguments or comments by submitting a written request within 20 days from the date of mailing of the notice.

**45.19(5)** The secretary may suspend an applicator's license, permit or certification pending inquiry and, after opportunity for a hearing, may deny, suspend, revoke or modify any provision of any license, permit or certification issued under the Act, upon receipt of information from the environmental protection agency that the applicator has been convicted under the criminal provision of Section 14(b) of FIFRA or has been assessed a civil penalty under Section 14(a) of FIFRA.

[ARC 8704B, IAB 4/21/10, effective 5/26/10]

**21—45.20(206) Hazardous rodenticides.** Before the rodenticides sodium fluoracetate (1080), thallium sulfate, and phosphorous pastes are to be used by any federal, state, county, municipal, or public officers, or their deputies, employees, or agents, in their official duties in pest control; or licensed pest control operators for use in their service work; the applicator shall notify the department of agriculture and land stewardship prior to use, of: (1) The location or site where the rodenticide is to be used; (2) Date the application is to be made; and (3) The amount of hazardous rodenticide to be used. At the time of notification the licensee must give assurance that the certified applicator understands the hazards of the product, the standard operating procedures as provided by the manufacturer, and, assure the department that the certified applicator will comply with all label precautions. Failure to comply with this rule may result in the suspension or revocation of the applicator's license.

**21—45.21(206) Highly toxic.** A pesticide which falls within any of the following categories when tested on laboratory animals (mice, rats and rabbits) is highly toxic to humans within the meaning of these principles:

**45.21(1) Oral toxicity.** Those which produce death within 14 days in half or more than half the animals of any species at a dosage of 50 milligrams at a single dose, or less, per kilogram of body weight when administered orally to ten or more such animals of each species.

**45.21(2) Toxicity on inhalation.** Those which produce death within 14 days in half or more than half of the animals of any species at a dosage of 200 parts or less by volume of the gas or vapor per million parts by volume of air when administered by continuous inhalation for one hour or less to ten or more animals of each species, provided such concentration is likely to be encountered by humans when the pesticide is used in any reasonably foreseeable manner.

**45.21(3) Toxicity by skin absorption.** Those which produce death within 14 days in half or more than half of the animals (rabbits only) tested at a dosage of 200 milligrams or less per kilogram of body weight when administered by continuous contact with the bare skin for 24 hours or less to ten or more animals.

**45.21(4) Designation as highly toxic.** Provided, however, that the secretary may exempt any pesticide which meets the above standard but which is not in fact highly toxic to humans, from these principles with respect to pesticides highly toxic to humans, and may after a hearing designate as highly toxic to humans any pesticide which experience has shown to be so in fact.

**45.21(5) *Human data.*** If the secretary finds, after opportunity for hearing that available data on human experience with any pesticide indicates a toxicity greater than that indicated from the above described tests on animals, the human data shall take precedence and if that protection of the public health so requires, the secretary shall declare such pesticide to be highly toxic to humans for the purposes of this Act and the regulations thereunder.

**21—45.22(206) License and certification standards for pesticide applicators.** No person shall engage in the business of applying pesticides to the land or property of another at any time without being licensed and certified by the secretary. No person shall apply any restricted use pesticide without first complying with certification standards or unless the application is made under the direct supervision of a certified applicator as specified in this chapter.

**45.22(1) *License for commercial, noncommercial and public applicators.*** Before a license is issued, each commercial, noncommercial and public applicator shall demonstrate competence by qualifying for a commercial, noncommercial and public applicator's license by successfully completing the appropriate certification examinations administered by the secretary to demonstrate knowledge regarding the potential for pesticides contaminating groundwater aquifers and proper pesticide handling practices that will aid in preventing the contamination of groundwater aquifers, calibration, integrated pest management, recognition of common pests to be controlled, timing and methods of application, interpretation of label and labeling information, safety precautions and preharvest or reentry restrictions, specific procedures to be used in disposing of pesticides and containers, and related legal responsibility under the classifications for which such applicant is to be licensed.

*a.* Examination scores for individuals not completing certification requirements or paying the required fees shall be maintained on file as valid test scores for a maximum of one year following the date each examination was successfully completed.

*b.* Certification categories which are added to an individual's current certification shall expire on the same date the individual's current certification card expires.

**45.22(2) *Certification of commercial, noncommercial and public applicators.***

*a.* Initial certification. To be initially certified as a commercial, noncommercial or public applicator, a person shall demonstrate a fundamental knowledge of the minimum state and federal standards of competency for commercial applicators by passing an examination administered by the department. The examination may cover subjects relating to the safe handling, application and storage of pesticides, the correct calibration of equipment used for the application of pesticides, and the effects of pesticides upon groundwater. The examination may also cover subjects related to the minimum standards of competency for commercial applicators outlined in 40 CFR 171.4(b) and (c) as revised July 1, 1992.

*b.* A person who employs noncommercial applicators shall apply for a noncommercial applicator's license; and all noncommercial applicators shall be certified by successfully completing the appropriate examinations for the type of restricted use pesticide applications being made and shall be required to pay the certification fee of \$75 for a three-year certification for each employee certified. Noncommercial applicators shall be subject to the \$25 annual license fee. The provisions of Iowa Code section 206.13 relating to licenses and requirements for their insurance shall not apply to a noncommercial applicator, providing that the noncommercial applicator:

(1) Is a full-time employee of a privately held entity.

(2) Shall not publicly claim to be a commercial pesticide applicator nor engage in the business of applying pesticides other than as an employee of a company on company property.

*c.* Separate examinations shall be taken and passed for each classification or category in which the commercial, noncommercial or public applicator intends to become certified, including the following: #1a—Agriculture Weed Control, #1b—Agriculture Insect Control, #1c—Agriculture Crop Disease Control, #1d—Fruit and Vegetable Pest Control, #1e—Animal Pest Control, #2—Forest Pest Control, #3ot—Ornamental and Turf Pest Control, #3t—Turf Pest Control, #3o—Ornamental Pest Control, #3g—Greenhouse Pest Control, #4—Seed Treatment, #5—Aquatic Pest Control, #6—Right-of-Way Pest Control, #7a—General and Household Pest Control, #7b—Termite Control,

#7c—Fumigation, #7d—Community Insect Control, #7e—Wood Preservatives, #8—Public Health Pest Control, #9—Regulatory Pest Control, #10—Demonstration and Research Pest Control, and #11—Aerial Application.

*d.* Wood-destroying insect inspection. Persons conducting wood-destroying insect inspections for the purpose of issuing a wood-destroying insect report for real estate transactions, real estate refinance transactions, or for treatment for control or prevention of wood-destroying insect infestations shall have in effect a valid Iowa commercial pesticide applicator license and certification in category 7b—Termite Control.

**45.22(3)** *Certification of private applicators.*

*a.* Initial certification. To be initially certified as a private applicator, a person shall demonstrate a fundamental knowledge of the minimum state and federal standards of competency for private applicators by passing an examination administered by the department and submitting a \$15 certification fee. The examination shall cover subjects relating to the safe handling, application, and storage of pesticides, the correct calibration of equipment used for the application of pesticides, and the effects of pesticides upon groundwater. The examination shall also cover subjects related to the minimum standards of competency for private applicators outlined in 40 CFR 171.5 as revised July 1, 1992. A private applicator shall pay a certification fee of \$15 for a period not to exceed three years.

*b.* Renewal of private applicator certification. A private applicator's certification shall be renewed upon evidence that the applicator has paid the required certification fee and has successfully completed an instructional course consisting of either an examination or continuing instructional courses as prescribed by the department. A private applicator shall pass an examination each third year following initial certification or may elect to attend two hours of approved continuing instructional courses each year during the renewal period. A private applicator failing to complete the required two hours of approved instruction for each year during the renewal period following initial certification or recertification shall be required to pass an examination prior to recertification.

*c.* A private applicator who purchases or applies a grain fumigant which is classified as a restricted use pesticide shall pass an examination prescribed by the department for initial certification in the private fumigation category in addition to the examination required for initial private certification. Upon successfully completing the required private fumigation examination the private applicator's certification credentials shall be so designated. The fumigation category designation shall remain valid until the private applicator's certification expires. To renew the fumigation category certification a private applicator may elect to complete an instructional course consisting of either an examination or instructional course as prescribed by the department in addition to the examination or instruction required for private certification.

**45.22(4)** *Renewal of license classification and certification.*

*a.* Each commercial, noncommercial and public applicator's license classification shall expire annually on December 31 and shall be renewed upon payment of the required license fee provided that all of the applicant's personnel who apply pesticides are certified commercial, noncommercial or public applicators and are certified in the appropriate classifications covering their pesticide application activities.

*b.* Each commercial, noncommercial and public applicator's certification shall expire December 31 of the third year of the three-year certification and shall be renewed by the department upon receipt of evidence that the applicator has paid the required certification fee and has completed an instructional course consisting of either an examination or continuing instructional courses as prescribed by the department. A commercial, noncommercial or public applicator shall pass an examination each third year following initial certification or may elect to attend two hours of approved continuing instructional courses each year during the renewal period. A commercial, noncommercial or public applicator seeking recertification by attending continuing instructional courses shall attend courses approved for each certification category in which the person is seeking recertification. A two-hour continuing instructional course may be approved for more than one certification category. A commercial, noncommercial or public applicator failing to complete the required two hours of approved instruction for each year during the renewal period shall be required to pass an examination prior to recertification.

c. Any person who attempts to misrepresent anyone or attempts to use unauthorized assistance in passing any examination shall be denied the privilege of taking any examination for the period of one year.

d. The secretary may revise certification periods for pesticide applicators with certification fees adjusted to reflect an equivalent certification fee based on fees currently established in order to provide a more uniform distribution of pesticide applicator certification renewal dates.

**45.22(5)** *Certification renewal periods for commercial, noncommercial, public and private applicators.*

a. Renewal periods for commercial, noncommercial, and public applicators. The renewal period is the time within which the commercial, noncommercial, public and private applicators have to renew their certification by either completing the required certification examination or instructional courses and pay the required certification fee. Except as provided in paragraph 45.22(5)“c,” the renewal period for commercial, noncommercial and public applicators shall begin on the date a person has completed the required certification examination or instructional courses and paid the required certification fee. The renewal period shall end on December 31 of the third calendar year of the certification cycle.

b. The renewal period for private applicators. The renewal period for a private applicator shall begin on the date a person has completed the required certification examination or instructional courses and paid the required certification fee. The renewal period shall end on April 15 of the calendar year following the certification expiration date.

c. The renewal period for a person completing initial certification requirements on October 1 or any time thereafter during a calendar year shall begin on January 1 of the following calendar year.

d. Except as provided in paragraphs “a,” “b,” and “c” of this subrule, continuing instruction credits from a previous year in a certification renewal period shall not be accepted nor shall credits accumulated be accepted for use in a future year in a certification renewal period.

**45.22(6)** *Report of licensee.*

a. A commercial, noncommercial or public applicator applying for recertification without retesting shall file a report on a form provided by the department certifying that the required continuing instructional courses have been completed.

b. The licensee shall maintain a file of the certificates of completion required under subrule 45.52(4) for each employee recertifying by attending continuing instruction courses. The file shall contain the certificates of completion for the period covering the previous certification period and current certification period for each employee receiving continuing instruction courses.

c. An employee who transfers to a new employer shall, upon request, be provided copies of the certificates of completion on file with the previous employer for filing with a new employer.

d. Files containing certificates of completion shall be open for inspection upon request by the department.

**45.22(7)** *Standards for supervision of noncertified applicators by certified private and commercial applicators.* Certified applicators whose activities indicate a supervisory role must demonstrate a practical knowledge of federal and state supervisory requirements, including labeling, regarding the application of restricted use pesticides by noncertified applicators.

The availability of the certified applicator must be directly related to the hazard of the situation. In many situations, where the certified applicator is not required to be physically present, “direct supervision” shall include verifiable instruction to the competent person, as follows: (a) detailed guidance for applying the pesticide properly; and (b) provisions for contacting the certified applicator in the event the certified applicator is needed. In other situations, and as required by the label, the actual physical presence of a certified applicator may be required when application is made by a noncertified applicator.

**45.22(8)** *License application—contents.* Each license application submitted pursuant to Iowa Code section 206.6 shall include a complete list of all employees who may apply pesticides. Any changes regarding the status of the employees named on the application or new employees shall be reported immediately to the pesticide section of the Iowa department of agriculture and land stewardship.

**45.22(9) Exemption from certification.** An employee of a public agency who applies pesticides classified for general use and which are in ready-to-use formulations shall be exempt from the certification requirements of Iowa Code chapter 206 provided that the application of pesticides is an incidental part of the person's duties.

**45.22(10) Pesticide use on private golf courses.** Employees of private golf courses who apply pesticides shall comply with the same requirements for employees applying pesticides for public golf courses including, but not limited to, certification and notification requirements.

**45.22(11) Oral certification examination.** A private applicator may request certification by oral examination in lieu of a written examination. A written request shall be submitted to the secretary or an authorized representative describing in detail the reasons an oral examination is requested in lieu of the written examination. Oral examinations will be administered by appointment only.

The oral examination shall cover the same certification standards as the written examination, and a minimum passing grade shall be 70 percent of the questions answered correctly.

As a prerequisite for an oral examination, the secretary may require the applicant to attend a private applicator training program sponsored by the Iowa State University cooperative extension service.

**45.22(12) Temporary exemption from certification.** A commercial, noncommercial, public or private applicator need not be certified to apply pesticides for a period of 21 days from the date of initial employment if the commercial, noncommercial, public or private applicator is under the direct supervision of a certified applicator. Except for subrules 45.22(13) to 45.22(15), "under the direct supervision of" means the application of a pesticide is made by a competent person acting under the instructions and control of a certified applicator who is physically present by being in sight or hearing distance of the supervised person.

**45.22(13) Temporary exemption for certification for agricultural applicators.** A commercial applicator who applies pesticides to agricultural land may elect to be exempt from the certification requirements for a commercial applicator for a period of 21 days from the date of initial employment if the applicator meets the requirements of a private applicator. A commercial applicator who applies pesticides to agricultural land and elects to take advantage of the exemption as provided for in Iowa Code section 206.5 shall work under the instructions and control of a certified commercial applicator. The supervising applicator is not required to be physically present but shall be immediately available if and when necessary.

**45.22(14) Employees of food processing and distribution establishments.** An employee of a food processing and distribution establishment is exempt from the certification requirements of Iowa Code section 206.5 provided the following conditions are met:

- a. The employer has at least one person holding a supervisory position that is a certified applicator.
- b. The employer provides a program approved by the department for training, testing and certification of personnel who apply, as an incidental part of their duties, any restricted use pesticide on property owned or rented by the employer.
- c. The exempt employee applies pesticides under the direct supervision of a certified applicator. "Under direct supervision" shall not require the physical presence of the supervising certified applicator, if the supervising applicator is immediately available if and when needed.

**45.22(15) Certified handler.**

a. Certified handler. Each person employed by a licensed commercial applicator, noncommercial applicator, public applicator, or pesticide dealer who handles pesticides in other than unopened containers for the purposes of preparing, mixing or loading pesticides for application by another person, repackaging bulk pesticides or disposing of pesticide-related wastes from these activities shall become certified by taking and passing an examination as prescribed by the secretary.

b. A certified handler shall demonstrate a fundamental knowledge of the potential for pesticides contaminating groundwater aquifers or surface waters and proper handling practices that will aid in preventing the contamination of groundwater aquifers or surface waters, adverse effects on the environment and any other personal or public hazards associated with the use of pesticides by passing a fundamental examination administered by the secretary covering interpretation of label and labeling information, mixing and application of pesticides in accordance with label instructions including proper



concentration of pesticides to be used and local environmental situations that shall be considered during handling of pesticides to avoid contamination, specific procedures to be used in disposing of pesticides and containers, recognition of poisoning symptoms, procedures to follow in case of a pesticide accident, safe handling of pesticides and the effects on groundwater and surface water, the proper use of personal safety equipment and related legal responsibilities.

*c.* A certified handler's certification shall expire December 31 of the third year of the three-year certification and shall be renewed by the secretary upon receipt of evidence that the applicator has passed a written examination similar and equal to that required to obtain initial certification and has paid the required certification fee. A 21-day grace period from the day of initial employment shall be allowed to meet the certification requirements.

*d.* A certified handler employed by a licensed applicator shall work under the direct supervision of a certified commercial, noncommercial or public applicator employed by the same firm or agency. "Under direct supervision" shall not require the physical presence of the supervising certified applicator in reference to agricultural crop pesticide applications, if the supervisor is available if and when needed.

*e.* A certified handler shall not act in the capacity of a supervisor of other certified handlers or certified applicators.

**45.22(16) Transition to recertification by instruction.** Recertification may be accomplished by successful completion of the required written examination every third year or completion of an approved two-hour instructional course each year of the renewal period.

*a. Private applicator recertification.* A private applicator may apply for recertification by providing evidence of completion of an approved two-hour instructional course for each year during the preceding three-year renewal period. A private applicator failing to meet the required annual two-hour instruction requirement for recertification during the three-year certification renewal period shall apply for recertification by providing evidence of satisfactorily completing an examination. Applications for recertification shall be submitted with a \$15 certification fee.

*b. Commercial, noncommercial, and public applicator recertification.* A commercial, noncommercial or public applicator may apply for recertification by providing evidence of completion of an approved two-hour instructional course in each of the three calendar years preceding the expiration date. Applications for recertification shall be submitted with the appropriate certification fee.

**45.22(17) Requirements for commercial aerial applicator and aerial applicator consultant.**

*a. Commercial aerial applicator license.* The licensed aerial applicator applying pesticides to agricultural land shall operate in Iowa in consultation with an aerial applicator consultant. The application form for a commercial aerial applicator license shall be provided by the pesticide bureau. The completed application form, together with supporting documentation, will verify compliance with Iowa Code chapter 206 and the rules of this chapter. An aerial applicator license may be issued when the applicant has provided the name and license number of the aerial applicator consultant and other required information on the application form, passed the required certification examinations, and paid the commercial applicator license and certification fees in compliance with Iowa Code sections 206.5 and 206.6.

*b. Aerial applicator consultant duties.* An aerial applicator consultant shall:

(1) Complete requirements for category #11 aerial applicator certification and either a commercial pesticide applicator license or pesticide dealer license.

(2) Register with the pesticide bureau on forms provided by the pesticide bureau.

(3) Meet with each aerial applicator under the consultant's consultation prior to application of pesticides and verify compliance with Iowa's pesticide rules, the requirements of the Federal Aviation Administration, and the requirements of the Iowa department of transportation using a checklist provided by the pesticide bureau. A copy of the completed checklist shall be maintained on file for three years with the aerial applicator consultant.

(4) Provide detailed aerial maps for the intended application location which clearly depict field boundaries, roads, dwellings, adjacent fields, water bodies, and other pertinent information, as well as county, township and section and latitude/longitude if available.

(5) Maintain daily communication with the aerial applicator when pesticide applications are performed with a minimum of one meeting in person each day to emphasize safe pesticide application and handling procedures.

(6) Maintain daily oversight of pesticide handlers who supply or mix pesticides for the aerial applicator under the consultant's consultation to ensure required personal protection equipment is utilized.

(7) Provide information to the aerial applicator regarding sensitive areas listed on the department's sensitive crop registry and arrange for proper protection of registered apiaries. The aerial applicator consultant shall identify nearby sensitive areas including the location of endangered species as identified by the U.S. Environmental Protection Agency (EPA) and listed on the pesticide bureau's Web site, water bodies in or adjoining the field of application, roads adjoining the field of application, and places adjoining the field of application which may be occupied by people, including farmworkers.

(8) Provide instructions for proper emergency response procedures for the aerial applicator and pesticide handlers in the case of a pesticide spill or accident. Require that while in the air all pilots have an electronic communication device capable of communicating with a consultant.

(9) Provide information immediately upon request to regulatory officials regarding the identification of a pesticide applied to an area of concern and the name and license number of the applicator working under the consultant's consultation.

(10) Notify the aerial applicator in person and in writing upon termination of consultation services. The aerial applicator shall notify the pesticide bureau when the aerial applicator begins working with a new aerial applicator consultant.

*c. Procedures for aerial application.* The aerial applicator consultant shall provide the licensed aerial applicator the following:

(1) Name and telephone number where the consultant may be reached during hours of operation.

(2) Name and address or location of the property where the pesticide will be applied including detailed maps of fields which clearly depict the field boundaries, roads, dwellings, adjacent fields, water bodies, and other pertinent information, as well as county, township and section and latitude/longitude if available.

(3) Name of the pesticide(s) to be applied and copies of each label along with instructions necessary to comply with Iowa's pesticide rules. The aerial applicator consultant shall verify that the aerial applicator has read and understands the label instructions.

(4) Maps of the intended location for each pesticide application reviewed and approved by the aerial applicator consultant. The aerial applicator consultant shall provide information to the aerial applicator regarding sensitive areas listed on the department's sensitive crop registry and shall arrange for proper safety precautions to protect registered apiaries.

(5) The identification of nearby sensitive areas including the location of endangered species as identified by EPA and listed on the pesticide bureau's Web site, water bodies in or adjoining the field of application, roads adjoining the field of application, and places adjoining the field of application which may be occupied by people, including farmworkers.

*d. Responsibility.* The aerial applicator is responsible for applying pesticides in compliance with label directions and Iowa's pesticide rules. The aerial applicator consultant supplying a pesticide for application by the aerial applicator is responsible for handling and mixing the pesticides according to label directions and Iowa's pesticide rules.

*e. Aerial applicator certification and continuing instruction.* An aerial applicator and aerial applicator consultant shall pass an examination for initial certification. An aerial applicator from a state with an approved reciprocal certification agreement will be eligible for reciprocal certification. Each certified aerial applicator and aerial applicator consultant shall participate in a program of continuing instruction which shall consist of either an examination or educational program approved

by the department. The continuing instruction program shall include information regarding the safe application and handling of pesticides and responsible operation of aircraft spray equipment.

This rule is intended to implement Iowa Code sections 206.2, 206.4, 206.5, 206.7, and 206.31 and Iowa Code section 206.6 as amended by 2008 Iowa Acts, House File 2551.  
[ARC 7556B, IAB 2/11/09, effective 2/1/09; ARC 0392C, IAB 10/17/12, effective 11/21/12]

**21—45.23(206) Sale or possession of thallium.** No person shall sell or possess any thallium or thallium compound except federal, state, county, municipal officers or their deputies for use in their official duties in pest control; research or chemical laboratories in their respective fields; regularly licensed pest control operators for use in their own service work; properly registered ant, mole and rodent poisons containing thallium expressed as metallic not more than one percent; wholesalers or jobbers of pesticides for sale to the aforementioned persons; or for export.

**21—45.24(206) Warning, caution and antidote statements.** In order to promote uniformity between the requirements of the Iowa pesticide Act and requirements of the several states and the federal government, Iowa Code section 206.21 of the Iowa pesticide Act provides for the adoption of rules and regulations in conformity with those prescribed by the United States department of agriculture. Warning, caution and antidote statements required to appear on labels of pesticides under the pesticide Act shall conform to the warning, caution and antidote statements required under interpretation 18 and revisions thereof of the regulations for the enforcement of the federal Insecticide, Fungicide, and Rodenticide Act, which interpretation 18 and revisions thereof are hereby incorporated into this rule by this reference and made a part hereof.

**21—45.25(206) Declaration of pests.** The secretary declares the following to be pests:

1. Any insect, rodent, nematode, fungus, weed, or
2. Any form of plant and animal life, virus, or other microorganism, except viruses or other microorganisms on or in living man or other living animals, which exists under circumstances that make it unduly injurious to plants, man, domestic animals, other useful vertebrates, useful invertebrates, or other articles or substances.

**21—45.26(206) Record-keeping requirements.** Commercial applicators and retail dealers shall maintain records with respect to application of pesticides for a period of three years from the date of application of the pesticides to which the records refer; and shall furnish copies to the secretary upon request in writing.

**45.26(1) Retail dealers—sales to certified applicators.** Each restricted use pesticide retail dealer shall maintain at each individual dealership records of each transaction where a restricted use pesticide is made available for use by that dealership to a certified applicator. Record of each transaction shall include the following information:

- a. Name and address of the residence or principal place of business of each person to whom the pesticide was made available for use.
- b. The certification number on the document evidencing that person's certification, the state (or other governmental unit) that issued the document, the expiration date of the certification and the categories in which the applicator is certified, if appropriate.
- c. The product name, EPA registration number granted under Section 24(c) of the FIFRA (if any) on the label of the pesticide.
- d. The quantity of the pesticide made available for use in the transaction.
- e. The date of the transaction.

**45.26(2) Sales to uncertified persons.** No dealership may make a restricted use pesticide available to an uncertified person unless the dealer or dealership can document that the restricted use pesticide will be used by a certified applicator and the dealer or dealership maintains the records required in this subrule. Each restricted use pesticide retail dealer shall maintain records at each individual dealership of each transaction where a restricted use pesticide was made available to an uncertified person for use

by a certified applicator. Records of each transaction shall be maintained for a period of 36 months after the date of the transaction and shall include the following information:

- a. The name and address of the residence or principal place of business of the uncertified person to whom the restricted use pesticide is made available for use by a certified applicator.
- b. The name and address of the residence or principal place of business of the certified applicator who will use the restricted use pesticide.
- c. The certified applicator’s certification number, the state (or other governmental unit) that issued the certification document, the expiration date of the certification and the categories in which the applicator is certified, if appropriate.
- d. The product name, EPA registration number and the state special local need registration number granted under Section 24(c) of the FIFRA (if any) on the label of the pesticide.
- e. The quantity of the pesticide made available for use in the transaction.
- f. The date of the transaction.

**45.26(3) Commercial applicators.** Every commercial applicator shall make, or cause to have made, office records of all application activities on each pesticide applied. Records for application activities involving more than one licensed commercial applicator or billed through a licensed pesticide dealer shall be maintained by each licensee. Each set of records shall include the following:

- a. The name and license number of the licensee.
- b. The name and address of the landowner or customer.
- c. Address of the place of application of restricted use pesticide.
- d. Date of pesticide application.
- e. Trade name of pesticide product used.
- f. The quantity of pesticide product used and the concentration or rate of application.
- g. If applicable, the temperature and the direction and estimated velocity of wind at time of application to any outdoor area.
- h. Use of “restricted use” pesticide.
- i. Time pesticide application begins and ends.

This rule is intended to implement Iowa Code sections 206.11(3) and 206.15.  
[ARC 7572B, IAB 2/11/09, effective 1/22/09]

**21—45.27(206) Use of high volatile esters.** The use of high volatile esters formulations of 2,4-D and 2,4,5-T, the alcohol fraction of which contains five or fewer carbons, shall be prohibited in the counties of Harrison, Mills, Lee, Muscatine and that part of Pottawattamie county west of Range 41 West of the 5th P.M. to become effective upon filing.

**21—45.28(206) Emergency single purchase/single use of restricted pesticide.** The department shall issue a temporary certificate to private applicators for a single purchase/single use of restricted pesticides in situations declared to be an emergency by the department, upon receipt of the following completed and signed affidavit.

21—45.28(206) EMERGENCY USE OF A RESTRICTED USE  
PESTICIDE BY A PRIVATE APPLICATOR

Emergency Single Purchase/Single Use of Restricted Pesticide—Affidavit.

The Label which I have read, indicates:

Brand name of pesticide: \_\_\_\_\_

Federal Registration Number: \_\_\_\_\_

Name of Active Ingredient(s): \_\_\_\_\_

Percentage of Active Ingredient(s): \_\_\_\_\_

If the pesticide product is to be mixed with a carrier, show the amount of pesticide product per gallon of tank mix:

Application rate per acre: \_\_\_\_\_

Name pest to be controlled: \_\_\_\_\_

At what stage of development is the pest most easily controlled:

\_\_\_\_\_

State degree of hazard (signal word): \_\_\_\_\_

Describe safety equipment required: \_\_\_\_\_

What is the recommended antidote for this product: \_\_\_\_\_

List environmental precaution shown on label: \_\_\_\_\_

Length of time until re-entry, if given: \_\_\_\_\_

Preharvest interval days required: \_\_\_\_\_

Describe method of container disposal: \_\_\_\_\_

I wish to make application of this pesticide on (date)\_\_\_\_\_

and I hereby swear under penalty of perjury that I understand the above label information and warnings.

\_\_\_\_\_  
(name of private applicator)

This rule is intended to implement Iowa Code sections 206.4 and 206.5.

**21—45.29(206) Application of general use pesticide by nonlicensed commercial applicator.** A person may apply a general use pesticide without satisfying the licensing requirements of Iowa Code chapter 206, upon presenting evidence to the secretary of applying the pesticide under the direct supervision of a licensed commercial applicator or a public applicator.

**21—45.30(206) Restricted use pesticides classified.** Pesticide products containing active ingredients classified as restricted use are limited to use by or under the direct supervision of a certified applicator. The pesticide use classification as promulgated by the United States Environmental Protection Agency in 40 CFR, Section 152.160-175, revised as of May 4, 1988, is hereby adopted in its entirety by this reference.

This rule is intended to implement Iowa Code section 206.20.

[ARC 1508C, IAB 6/25/14, effective 7/30/14]

**21—45.31(206) Application of pesticides toxic to bees.**

**45.31(1)** Owners of apiaries, in order to protect their bees from pesticide applications, shall register the location of their apiaries with the state apiarist. Registration shall be on forms provided by the department. The registration expires December 31 each year and may be renewed the following year.

**45.31(2)** Between 8 a.m. and 6 p.m., a commercial applicator shall not apply to blooming crops pesticides labeled as toxic to bees when the commercial applicator is located within one mile of a registered apiary. A commercial applicator shall be responsible for maintaining the one-mile distance from apiaries that are registered and listed on the sensitive crop registry on the first day of each month.

This rule is intended to implement Iowa Code sections 206.6(5)“a”(3) and 206.19(2).

[ARC 7572B, IAB 2/11/09, effective 1/22/09]

**21—45.32(206) Use of DDT and DDD.** Pesticides containing dichloro diphenyl trichloroethane (DDT) or dichloro diphenyl dichloroethane (DDD) shall not be distributed, sold or used except for control of pests of public health importance and pests subject to state or federal quarantines where applications of pesticides are made under the direct supervision of public health officials or state or federal quarantine officials.

**21—45.33(206) Use of inorganic arsenic.**

**45.33(1) Home use.** Formulations of inorganic arsenic containing more than one percent arsenic (expressed as elemental arsenic) shall not be distributed or sold for use as a pesticide in or around the home for the purpose of preventing, destroying or repelling any weed, rodent, insect or other pests.

**45.33(2) Other uses.** Formulations of inorganic arsenic shall not be distributed or sold for use as a pesticide for the purpose of preventing, destroying or repelling any weed, rodent, insect or other pests,

unless there are no acceptable alternative methods of control available, as determined by the department. Where no acceptable alternative methods of control are available, and an inorganic arsenic formulation is approved for use by the department, such approval shall include specific conditions designed to protect the applicator, as well as the public health and welfare; and a permit must be secured by the user from the department prior to the application or use of the product.

**21—45.34(206) Use of heptachlor.** Pesticides containing heptachlor shall not be distributed, sold or used for the purposes of preventing, destroying or repelling mosquitoes or flies.

**21—45.35(206) Use of lindane.** Formulations of pesticides containing lindane or crystalline lindane shall not be distributed, sold or used when the lindane is prepared, identified, packaged or advertised to be vaporized through the use of thermal vaporizing devices.

**21—45.36(206) Reports of livestock poisoning.** Any person practicing veterinary medicine under the provisions of Iowa Code chapter 169 encountering a case of poisoning, or suspected poisoning, of domestic livestock through injury from contact with, exposure to, or ingestion of any biological or chemical agent or compound, shall immediately report by telephone or telegraph such poisoning to the head of the veterinary diagnostic laboratory of Iowa state university of science and technology who shall immediately notify the state veterinarian of any such reports. Reports made pursuant to this rule shall be confirmed in writing as provided in 45.36(2).

**45.36(1) Verbal report.** The verbal report of a case of such poisoning shall provide information on as many of the items listed in 45.36(2) as available data allows.

**45.36(2) Written report.** The written report of a case of such poisoning shall be submitted within 48 hours, with one copy to the department and one copy to the veterinary diagnostic laboratory, and shall contain the following information on forms provided by the veterinary diagnostic laboratory or the department:

- a. Location of incident.
- b. Time and date of incident.
- c. Number and type of livestock affected.
- d. Poison agent, known or suspected.
- e. Location of source of poisoning.
- f. Type and degree of poisoning.
- g. Name, mailing address and telephone number of livestock owner.
- h. Whether release of poisoning agent is continuing.
- i. Whether poisoning agent is on land or in water.
- j. Any other information that may assist in evaluation of the incident.
- k. Name and address of reporting veterinarian.

**45.36(3) Subsequent findings.** All subsequent findings and diagnostic results shall be submitted as soon as they become available.

**21—45.37(206) Approval of use of inorganic arsenic formulation.** There are two stages in obtaining approval for the use of an inorganic arsenic formulation pursuant to rule 45.33(206). First, the advisory committee must approve the use of the formulation in the state for a particular pest. Then, each individual desiring to use the approved formulation must secure a permit from the department. The required procedure is set out in this rule.

**45.37(1) Who may apply.** Any person may apply for approval for the use of an inorganic arsenic formulation to control a specific pest or pests pursuant to rule 45.33(206).

**45.37(2) Form of application.** All such applications shall be made in writing, signed by the applicant, and shall specify:

- a. Common name or scientific name of pest or pests to be controlled with the formulation,
- b. Crops which the pest or pests endanger,
- c. Chemical name of inorganic arsenic formulation for which approval is requested,

- d. Why there are no acceptable alternative methods of controlling the pests available,
- e. Rate of application needed for control,
- f. Number of applications needed annually for control,
- g. Name, address and telephone number of the applicant.

**45.37(3) Hearings, when held.**

- a. Applications for approval shall be considered at public hearings by the advisory committee.
- b. The committee shall grant, modify, or deny the request for approval within 72 hours of the conclusion of the hearing.

**45.37(4) Conditions of approval.** Approvals shall be valid until revoked by the department.

- a. In its approval, the committee shall specify:
  - (1) The inorganic arsenic formulation to be used.
  - (2) The pests for which it may be used.
  - (3) The crops on which it may be used.
  - (4) The maximum number of applications to be made annually, and
  - (5) Information to be submitted to the department following use of the formulation.
- b. The committee shall also specify the conditions designed to protect the public health and welfare as conditions for the issuance of a permit by the department. Such conditions shall include, but not be limited to:

- (1) That the permit applicant has sustained or will likely sustain damage from the pest for which control is approved,
- (2) Topographical requirements to ensure minimal runoff into waters of the state,
- (3) Minimum separation distance of area to be treated from waters of the state,
- (4) Minimum distance of area to be treated from property not under control of applicant,
- (5) Grass or other plant cover to prevent erosion on slopes to which the formulation is applied.

**45.37(5) Permits.** After an application for approval is granted, any person may use the formulation approved, provided that a permit is obtained from the department. The department and the committee shall review at least annually its approvals of uses of inorganic arsenic formulations and shall revoke an approval whenever it finds an acceptable alternative method of control is available.

Rules 45.33 to 45.37 are intended to implement Iowa Code sections 206.19, 206.20 and 206.23.

**21—45.38 to 45.44** Reserved.

**21—45.45(206) Ethylene dibromide (EDB) residue levels in food.** The following is the maximum allowable residue levels of Ethylene dibromide (EDB) for each of the three primary tiers of grain products:

**45.45(1)** For raw grain, the level should not exceed 900 parts per billion.

**45.45(2)** Intermediate level products—flour, various mixes for preparing baked goods, soft cereals and other products that would normally require cooking or baking before eating—the level should not exceed 150 parts per billion.

**45.45(3)** For ready-to-eat products—cold cereals, snack foods, bread and all baked goods—the level should not exceed 30 parts per billion.

**45.45(4)** For baby food, zero (0) tolerance—no acceptable level of EDB is permissible.

**45.45(5)** For fruit, the level should not exceed 250 parts per billion tolerance for the total fruit and should not exceed 30 parts per billion in the edible portion of the fruit.

This rule is intended to implement Iowa Code sections 189.17, 190.2 and 206.21.

**21—45.46(206) Use of pesticide Command 6EC.** The pesticide Command 6EC Herbicide EPA Reg. No. 279-3054 (active ingredient: 2-(2-Chlorophenyl) methyl-4, 4-dimethyl-3-isoxazolidinone . . . 64.3%) or any identically formulated compound shall be soil incorporated immediately following application. The method of application shall be limited to ground equipment.

**21—45.47(206) Reporting of pesticide sales.** Commercial pesticide applicators, pesticide dealers, pesticide manufacturers and pesticide distributors with the exception of manufacturers or distributors that distribute pesticides for resale purposes only shall submit annual reports to the Iowa department of agriculture and land stewardship by October 1 of each year on forms approved by the secretary of agriculture except that pesticide manufacturers or pesticide distributors that distribute pesticides only for resale purposes shall not be required to submit a report. The reports shall include information related to the gross dollar amount for all pesticides sold at retail for use in this state. The reports shall also list the individual label name, EPA registration number and the gross dollar amount of each pesticide sold at retail for which gross retail sales are \$3000 or more.

This rule is intended to implement Iowa Code sections 206.6, 206.8 and 206.12.

**21—45.48(206) Dealer license fees.** A dealer license fee for initial application for a dealer license shall be \$25. The annual dealer license renewal fee shall be based on one-tenth of one percent of the gross annual sales of all pesticides sold the previous fiscal year or \$25, whichever is greater. The fiscal year shall begin July 1 and end June 30 of the following year.

**45.48(1)** A pesticide dealer license expires on June 30 of each year. However, a grace period beginning July 1 and extending to October 1 of each year shall be allowed for renewal of pesticide dealer licenses. A late fee of 2 percent of the license fee due based on the gross pesticide retail sales shall be imposed upon the licensure of a pesticide dealer applying for licensure renewal during October; a late fee of 4 percent of the license fee due based on the gross pesticide retail sales shall be imposed upon the licensure of a pesticide dealer applying for licensure renewal during November; a late fee of 5 percent of the license fee due based on the gross pesticide retail sales shall be imposed upon the licensure of a pesticide dealer applying for licensure renewal during December; and an additional 5 percent penalty for each month thereafter shall be imposed. The application for renewal shall be considered complete once the required fees and reports have been submitted to the department.

**45.48(2)** The annual license fee for manufacturers or distributors distributing pesticides for resale purposes only shall be \$25. License fees required by this rule shall be due July 1 of each year.

This rule is intended to implement Iowa Code sections 206.6, 206.8 and 206.12.

**21—45.49(206) Pesticide use recommendations.** Persons making pesticide use recommendations shall be familiar with the safe and proper use of each pesticide for which recommendations are made and shall not make any recommendations which are contrary to label instructions. The employer or licensee shall be responsible for all pesticide use recommendations made by their employees which are contrary to label instructions.

This rule is intended to implement Iowa Code sections 206.2, 206.4, 206.5, 206.6, 206.7 and 206.31.

**21—45.50(206) Notification requirements for urban pesticide applications.** All commercial or public applicators who apply pesticides within urban areas in municipalities shall post or affix notification signs at the start of the application and for at least 24 hours following the application or longer if required by the reentry directions on the pesticide label(s). The requirements of this rule shall not apply to the application of pesticides within a structure or within six feet of the outside perimeter of a structure and to pesticide applications made by the homeowner or tenant to their property.

For purposes of enforcement of this rule the term “municipality” shall include any city or developed residential area in the state. The term “urban” shall mean any area within or belonging to a city or developed residential area.

**45.50(1) Residential lawns.**

*a.* Notification signs shall project at least 12 inches above the top of the grass line or 18 inches to the top of the signs.

*b.* The notification sign shall be posted on a lawn or yard between two feet and five feet from the sidewalk or street. Residences that have unfenced or open backyards shall be posted within two feet to five feet from the back lot line.



c. When landscaping or other obstructions prohibit compliance with the minimum distances specified, the notification signs shall be posted in a manner that is reasonably within the intent of this subrule.

**45.50(2) Golf courses.** Signs including posters or placards shall be posted in a conspicuous manner near the first tee of each nine-hole course. The sign shall be constructed of a weather-resistant material and be a minimum size of 8½ inches by 11 inches. The lettering shall not be less than ½ inch. The sign shall read “Pesticides are periodically applied to the golf course. If desired, you may contact your golf course superintendent or person in charge for further information.” The sign shall be displayed prior to the application of any pesticide on the golf course and left in place for at least 24 hours following any pesticide application. Where pesticide labeling requires specific notification or reentry restrictions, the applicator shall comply with the label instructions.

**45.50(3) Parks, playgrounds and athletic fields.** For parks, athletic fields, playgrounds or other similar recreational property, the notification signs shall be posted immediately adjacent to areas within the property where pesticides have been applied and at or near the entrances to the property where pesticides have been applied. The notification signs shall be placed in a conspicuous manner to provide a reasonable notification to the public.

**45.50(4) Public rights-of-way.**

a. Notice of the application of pesticides to public rights-of-way of highways, roads, streets, alleys, sidewalks and recreational trails within the corporate limits of municipalities shall be posted in a manner that provides reasonable notice to the occupants of properties immediately adjacent to the area being treated. A minimum of two signs shall be posted to denote the beginning and the end of the area being treated. Within developed residential zones, at least one sign shall be posted at the beginning and one at the end of each block. Signs shall be placed in a manner to be readable from the adjacent property.

b. Public rights-of-way bordered by a chain link fence, noise wall or other structures or enclosures that bar pedestrian access shall be exempt from the posting requirement.

c. The licensed pesticide applicator performing the application shall make pesticide application schedules and other community right-to-know information available to the public upon request at the applicator’s place of business during regular business hours.

d. The notification signs used for posting public rights-of-way shall consist of a weather-resistant poster or placard measuring at least 10 inches by 12 inches with lettering measuring a minimum of 1 inch. Notification signs shall project at least 2 feet above the top of the grass line or 3 feet to the top of the signs. The words “This area chemically treated. Keep off” shall be used for posting public rights-of-way.

**45.50(5) Public pest control programs.** Pesticides applied for or by any municipality for the control or abatement of pests related to public health programs such as mosquitoes or other pest control programs shall be exempt from posting requirements provided that the intended dates, time and locations are announced to the public in a conspicuous manner at least 24 hours prior to the application. The announcement shall be made on a major radio station, TV station, newspaper or any other means of mass communication that would normally reach the residents of that city or developed residential area.

**45.50(6) Notification signs.**

a. The notification signs shall be of a material that is rain-resistant for at least a 24-hour period and shall not be removed by the applicator for at least 24 hours from the time pesticides are applied or longer if required by the label of the pesticide applied. Each property owner, tenant, agent or person in charge of the property shall be provided with instructions that the notification sign is required to remain in place for a minimum of 24 hours following the pesticide application. When the labeling of the pesticide(s) applied requires a reentry restriction more than 24 hours, the sign shall be left in place for the specified period restricting reentry. After the required posting period has elapsed, all notification signs should be removed by either a representative of the business, organization, entity or person making said application or the owner, agent, person in charge of the property, or their representative, to which the pesticide was applied.

b. As a minimum, unless otherwise specified, the following information shall be printed on the notification sign in contrasting colors and block letters:

(1) The name and telephone number of the business, organization, entity or person applying the pesticide; and

(2) The words: "This area chemically treated. Keep off. Do not remove sign for twenty-four hours." As an alternative, a universally accepted symbol and text approved by the secretary that is recognized as having the same meaning or intent as specified in this paragraph may be used. When the labeling of the pesticide(s) applied requires a longer reentry restriction it shall be so stated on the notification sign.

The lettering for notification signs used for posting residential, commercial or public lawns or gardens or other similar areas shall measure at least three-eighths inch. The lettering for notification signs used for right-of-way areas required to be posted shall measure at least one inch.

*c.* The notification sign used for posting residential, commercial or public lawns or gardens or other similar areas shall consist of a sign or placard measuring at least four inches by five inches with letters measuring a minimum of three-eighths inch.

*d.* The label and other information normally associated with the use of the pesticide(s) being applied to any urban area that is required to be posted shall be provided to any individual upon request.

*e.* A commercial or public applicator who applies a pesticide with labeling that requires further maintenance after application shall provide the homeowner or agent in charge of property with a copy of the complete label of the pesticide(s) applied if requested and instructions on proper maintenance procedures.

*f.* Officials of the municipalities affected by this rule shall cooperate with the department in enforcing the requirements of this rule and shall report any infractions to the department.

**45.50(7) *Prenotification registry.*** In lieu of the requirement for public notification as specified in subrule 45.50(5), a municipality may maintain a registry of persons requesting to receive notification prior to pesticide applications and provide notification to those individuals at least 24 hours prior to a pesticide application made adjacent to their property.

*a.* A municipality may also choose to make arrangements with those persons upon request to refrain from applying pesticides to adjacent properties in lieu of prenotification.

*b.* The registry shall be updated annually and contain at least the name, address, and telephone number where occupant may be reached during normal business hours. The registry shall be made available upon request to licensed commercial and public pesticide applicators.

**45.50(8) *Prior notification of pesticide application to lawns, parks, playgrounds and athletic fields located in urban areas.***

*a.* An occupant of a property adjoining property where pesticides are applied by a commercial or public applicator may receive prior notification of a pesticide application by personally contacting the applicator in writing in a timely manner and providing the following information:

(1) Name and address of occupant.

(2) A telephone number of a location where occupant may be contacted during normal business hours and evening hours.

(3) Address of each property that adjoins occupant's property.

*b.* The applicator receiving a written request for prior notification shall provide notice at least the calendar day before a scheduled application to property adjoining the occupant's property. The notice may be made in writing, in person or by telephone and shall disclose the date and approximate time of day for the scheduled application. If the notice to the occupant is in a form other than writing the applicator shall document that notice was given and maintain a record of that notice at its place of business.

*c.* When an applicator is not successful in contacting an occupant of an adjoining property as provided in paragraph "b" of this subrule, the applicator shall, at least the calendar day before a scheduled application, leave a written notice at the residence of the person requesting prior notification indicating the date and approximate time of day for the scheduled application.

*d.* A request for prior notification shall expire on December 31 of each year, or the date when the occupant no longer occupies the property, whichever is earlier.

**45.50(9) *Prior notification of pesticide application to golf courses.***

*a.* An occupant of a property adjoining a golf course may receive prior notice of an application by contacting the golf course superintendent or other responsible person in a timely manner and providing the following information:

(1) Name and address of occupant.

(2) Telephone number of a location where the occupant may be contacted during normal business hours and evening hours.

*b.* A golf course representative receiving a request for prior notification shall provide notice at least the day before the scheduled application. The notice may be made in writing, in person or by telephone and shall disclose the date and approximate time of day for the scheduled application.

*c.* When a golf course representative is not successful in contacting an occupant of an adjoining property the day before a scheduled application, the representative shall leave a written notice at the residence of the person requesting prior notification which shall disclose the date and approximate time of day for the scheduled application.

*d.* A request for prior notification shall expire on December 31 of each year, or the date when the occupant no longer occupies the property, whichever is earlier.

This rule is intended to implement Iowa Code section 206.19 and 1995 Iowa Acts, Senate File 256.

**21—45.51(206) Restrictions on the distribution and use of pesticides containing the active ingredient atrazine or any combination of active ingredients including atrazine.**

**45.51(1)** Atrazine is the common name for the pesticide chemical 2-chloro-4-ethylamino-6-isopropylamino-1,3,5 triazine.

**45.51(2)** All pesticides containing the active ingredient atrazine or any combination of active ingredients including atrazine distributed for sale or use in Iowa shall be classified as restricted use pesticides. All pesticides containing the active ingredient atrazine shall be restricted for retail sale to and use by certified pesticide applicators only.

**45.51(3)** A pesticide dealer selling a pesticide containing the active ingredient atrazine shall file an annual report listing the full trade name of the pesticide product, EPA registration number and total volume in gallons or pounds of product sold. This report shall be included with the annual report required under rule 21—45.47(206), Iowa Administrative Code.

**45.51(4) Atrazine use limitations.**

*a.* The application rate for the actual active ingredient atrazine shall be limited to three pounds or less actual active ingredient per acre per calendar year with the exception where further restrictions on the maximum allowable application rates of the active ingredient atrazine apply.

*b.* Pesticides or any other substance containing the active ingredient atrazine shall not be applied within 50 feet of a sinkhole (outer edge of slope), well, cistern, lake, water impoundment or other similar areas. This includes, but is not limited to, abandoned wells, agricultural drainage wells and drainage well surface inlets and drinking water wells.

*c.* Pesticides, or any other substance containing the active ingredient atrazine unless handled in the original unopened container shall not be mixed, loaded or repackaged within 100 feet of any well, cistern, sinkhole (outer edge of slope), streambed, lake, water impoundment or other similar areas. This includes, but is not limited to, any well, whether in use or abandoned, including agricultural drainage wells and drainage well inlets. This paragraph shall not apply where pesticides are handled in compliance with the secondary containment of pesticide mixing and loading sites as specified in 21—Chapter 44, Iowa Administrative Code.

*d.* Atrazine mixing, loading, and equipment cleanout shall be carried out in a manner that meets the secondary containment requirements in 21—Chapter 44, Iowa Administrative Code or in the field of application provided all other restrictions are followed regarding the application of atrazine or rinsates containing atrazine to labeled use areas. Equipment and container wash waters shall be applied to labeled use areas or used as part of dilution makeup water and applied to labeled use areas in accordance with the label instructions and any other restrictions that may apply.

*e.* The following areas shall be designated as pesticide management areas regarding the application of pesticides containing the active ingredient atrazine. The application of atrazine shall be limited to no more than one and one-half pounds of the actual active ingredient atrazine per acre per calendar year in the following designated areas:

- (1) All of Allamakee, Clayton, Dubuque, Floyd, Humboldt, Jackson and Winneshiek counties.
- (2) All areas within the townships of the following counties:

<b>COUNTIES</b>	<b>TOWNSHIPS</b>
Black Hawk	Poyner
Bremer	Douglas, Fredericka, Jackson, Jefferson, Lafayette, Polk, Washington
Butler	Benezette, Butler, Coldwater, Dayton, Fremont, Pittsford
Cerro Gordo	Owen, Portland
Chickasaw	Bradford, Chickasaw, Deerfield
Clinton	Elk River, Hampshire
Delaware	Bremen, Colony, Delhi, Elk, Milo, North Fork, Oneida, South Fork, Union
Fayette	Auburn, Clermont, Dover, Eden, Fairfield, Illyria, Pleasant Valley, Union, Westfield, Windsor
Howard	Albion, Chester, Forest City, New Oregon, Vernon Springs
Jones	Castle Grove, Clay, Hale, Lovell, Oxford, Richland, Washington and Wyoming
Kossuth	Sherman
Linn	Marion
Mitchell	Burr Oak, Cedar, Liberty, Mitchell, Newberg, Osage, Otranto, Rock, Saint Ansgar, Union, West Lincoln
Pocahontas	Garfield
Worth	Barton, Kensett
Wright	Grant, Lincoln, Wall Lake

*f.* Persons conducting research with atrazine shall be exempt from the use limitations described in this rule provided that such research is under the supervision of a federal or state agency or educational institution authorized to conduct research and are properly certified.

**45.51(5)** Best management practices. The department of agriculture and land stewardship and the Iowa State University extension service shall jointly develop and implement a set of best management practices (BMPs) and a targeted education program aimed at preventing further contamination of groundwater with atrazine. The pesticide applicator certification training and testing programs shall include information related to the atrazine BMPs.

**45.51(6)** As new information becomes available, changes in atrazine use or management shall be reevaluated periodically.

This rule is intended to implement Iowa Code sections 206.19, 206.20, and 206.21.

**21—45.52(206) Continuing instructional courses for pesticide applicator recertification.** A certified private, commercial, noncommercial or public applicator may elect to renew the pesticide applicator certification by attending two hours of approved continuing instructional courses each year during the renewal period as specified in subrule 45.22(5) in lieu of passing an examination.

**45.52(1)** *Requirements for continuing instructional courses.*

*a.* An approved continuing instruction course for pesticide applicator recertification shall include, as a minimum, information on safe handling, application and storage of pesticides; the correct calibration of equipment used for the application of pesticides; effects of pesticides upon groundwater; and the

federal standards for pesticide applicator certification outlined in 40 CFR 171.5 as revised July 1, 1992, for private applicators or 40 CFR 171.4(b) and (c) revised as of July 1, 1992, for commercial applicators.

*b.* Instructional courses and materials for recertification shall be developed or approved by the department in cooperation with the Iowa Cooperative Extension Service in agriculture and home economics of Iowa State University of Science and Technology. The instructional course content shall be selected to cover the minimum standards outlined in paragraph “*a*” of this subrule and presented in two-hour blocks in three consecutive calendar years.

*c.* The instructional courses may be conducted by the department, Iowa State University Cooperative Extension Service or other persons interested in the application of pesticides as qualified under 45.52(2) “*b*.”

*d.* An instructional course offered by a college, university, industry association or other organization may be approved for continuing instruction credit provided the instructional course meets the minimum standards for certification specified in paragraph “*a*” of this subrule.

*e.* Courses for approved continuing instruction are not intended for the sale of products or services.

*f.* An approved instructional course shall designate the certification categories that are eligible for continuing instruction credit. A two-hour program may qualify for more than one certification category. No credit shall be approved for persons not certified in the corresponding categories.

**45.52(2) Provider approval.** Provider means the person, industry association or other organization providing continuing instructional courses for pesticide applicator recertification. No course for continuing instruction credit shall be approved unless the provider has first registered with the department.

*a.* Provider shall register with the department by providing the following information on forms as provided by the department:

- (1) Name and address of provider or sponsoring organization.
- (2) Name and telephone number of the contact person.
- (3) Names and qualifications of instructors.
- (4) Verification that provider has acquired adequate audiovisual or other necessary equipment and facilities conducive to a learning environment.
- (5) Verification that all instructors are qualified as provided in these rules.
- (6) Verification that a current authorized representative of the provider has completed a “train the trainer” course sponsored by the department in cooperation with Iowa State University Cooperative Extension Service.

*b.* Instructor qualifications. A qualified instructor shall meet the following minimum requirements:

- (1) Be current, knowledgeable and skillful in the subject matter.
- (2) As a minimum the equivalent of a four-year degree or experience in teaching in the specialized area within three years preceding the offering or one year of work experience in the specialized area within three years preceding the offering.
- (3) Be knowledgeable of the current state and federal pesticide laws and regulations.
- (4) Upon receipt of the required information and satisfactory verification that the provider and instructors have met the requirements as outlined in paragraphs “*a*” and “*b*” of this subrule, the department shall assign the provider a registration approval number for each qualified instructor.

*c.* A person who is the instructor of an approved continuing instructional course is entitled to the same credit as a participant completing the subject but may receive such credit only once in a calendar year, regardless of the number of times the person instructs the instructional course.

**45.52(3) Course approval.**

*a.* Any person, industry association or other organization intending to provide an instructional course for continuing instruction credit shall submit an application to the department for approval. Requests received later than 30 days prior to the date the instructional course is scheduled shall be disapproved.

*b.* The following information shall be furnished on the request for approval of a continuing instruction course:

- (1) Name and address of provider or sponsoring organization.
  - (2) Name and telephone number of the contact person for the provider.
  - (3) Course title.
  - (4) Whether the course is new, a repeat course, or a revised course.
  - (5) Course number, if course is repeat or revised.
  - (6) Date(s) course shall be offered.
  - (7) Location(s) where course shall be offered.
  - (8) For a new or revised course, an outline of the course including a schedule of times when subjects shall be presented. The topics covered in the course shall be listed individually. Under each separate topic, a summary of the instruction given and the material covered must be included.
  - (9) Names of instructors.
  - (10) Number of credit hours requested.
  - (11) Signature of the contact person.
- c. Any material changes in the instructional course as submitted to the department on the request form and attachments shall automatically void the approval.
- d. A copy of all course materials shall be provided upon request by the department.
- e. A provider shall be notified indicating approval or disapproval. Approved courses shall be assigned a course number.

**45.52(4) Certificate of completion.**

- a. The department shall adopt a standard certificate of completion form and provide the form to each registered provider. The form shall include the applicator's name, social security number, name of employer when applicable, course number, date and location of the course, the category or categories the course has been approved for and the signature of the course instructor.
- b. Once a course is approved, the provider shall furnish a certificate of completion to each person who satisfactorily completes such a course. The certificate shall be signed by the course instructor. Providers shall also maintain a list of all persons who attend courses offered by them for continuing instruction for at least three years from the end of the year in which the courses are offered. The list shall identify each participant by name, address, social security number and employer when applicable.

**45.52(5) Provider's responsibility.**

- a. A provider of an approved course is responsible for both the attendance of the participants and their attention. During the approved instructional course, if the provider finds that a participant is reading unrelated materials, sleeping, talking excessively with a neighbor or is otherwise disruptive or inattentive, the provider may refuse to grant the participant any credit for attendance.
- b. A provider may require participants to preregister for an approved course. In the event a provider cancels an approved course, the provider shall notify each individual registered for the course in a timely manner but not less than three business days prior, except as specified, to the scheduled date of the course.
- c. A provider who cancels a course which did not require participants to preregister shall notify prospective participants in a timely manner. Notification for cancellation may be accomplished by a similar means of communication as the original notification of the course availability or any other generally accepted means of reaching the expected target participants.
- d. Minimum lead time for participant notification of canceled courses shall be waived when courses are canceled because of emergency conditions such as extreme weather conditions, acts of God, military actions, or any other circumstance which is deemed to be an emergency condition. Providers shall attempt to notify prospective participants by public service announcements via radio or television broadcasts which may provide this service.
- e. A provider shall notify the pesticide bureau of the department in a timely manner prior to the cancellation of an approved course. Initial notice of cancellation may be made by telephone; however, cancellations made by telephone shall be followed by written verification.
- f. Provider records. The provider shall maintain a list of all persons who attend courses offered by them for continuing instruction credit for at least three years from the end of the year in which the courses are offered. The record system shall provide for secure storage and retrieval of individual attendance and

information regarding each instructional course offering. The provider's record of continuing instruction credits granted shall be available within two weeks upon request from individual participants or from the department.

g. If the provider is not the instructor, the provider shall inform the instructor of the instructor's responsibilities as provided in this subrule.

**45.52(6) Enforcement—providers.**

a. The department may, upon finding any one or more of the following, revoke or suspend a provider's registration after an opportunity for hearing:

- (1) Advertising that a course is approved, prior to approval;
  - (2) Presenting material not approved as provided in subrule 45.52(1) during the time of an approved course;
  - (3) Failing to present a course for the total time period specified in the request form submitted to the department;
  - (4) Distributing certificates of completion before the course has been completed;
  - (5) Refusing to issue certificates of completion to any participant who satisfactorily completes an approved course, except when 45.52(5) "a" applies;
  - (6) Failing to notify course registrants of a cancellation pursuant to 45.52(5) "b" and 45.52(5) "c";
- or

(7) Utilizing instructors who are not qualified as provided in these rules.

b. The department may suspend or revoke a provider's registration after notice and opportunity for hearing pursuant to 21—Chapter 2, Iowa Administrative Code.

c. In addition, the department may require any one or more of the following upon a finding of a violation of paragraph "a" of this subrule.

- (1) Upon receipt of an application to reregister, provide evidence that all violations have been cured;
- (2) Withdraw the possibility of course approvals of courses sponsored by such provider for a set period of time or indefinitely; or
- (3) Any other disciplinary action permitted by statute.

This rule is intended to implement Iowa Code Supplement section 206.5.

DIVISION II

**21—45.53 to 45.99** Reserved.

DIVISION III  
CIVIL PENALTIES

This division establishes a peer review panel solely to make recommendations to the department regarding the assessment of civil penalties and sets forth the policies and procedures for establishing, accessing, and collecting civil penalties against commercial pesticide applicators for violations of Iowa Code chapter 206 or rules promulgated pursuant to Iowa Code chapter 206. Iowa Code section 206.19(5) authorizes the assessment of civil penalties against commercial applicators for violations of Iowa Code chapter 206 or rules promulgated pursuant to Iowa Code chapter 206. Iowa Code section 206.23A mandates the department to establish a commercial pesticide applicator peer review panel and a period for the review and response by the panel.

**21—45.100(206) Definitions.** Where used in these rules:

"*Contested case hearing*" means an evidentiary hearing pursuant to Iowa Code chapter 17A.

"*Department*" means the pesticide bureau of the Iowa department of agriculture and land stewardship.

"*Informal settlement*" means an agreement between representatives of the department and a commercial applicator providing for sanctions for a violation of Iowa Code chapter 206 or the department's rules but does not include a contested case hearing.

“*Panel*” means the peer review panel.

“*Peer review panel*” means the peer review panel appointed by the secretary to assist in the review of proposed civil penalties for commercial applicators.

“*Review period*” means the period of time during which the department or commercial applicator subject to a civil penalty may seek review by the panel.

**21—45.101(206) Commercial pesticide applicator peer review panel.** The peer review panel was created by Iowa Code section 206.23A and is charged with the responsibility of assisting the department in assessing or collecting a civil penalty pursuant to Iowa Code section 206.19(5). This section does not apply to a license revocation proceeding, a referral for criminal prosecution or a referral to the United States Environmental Protection Agency.

**45.101(1) Organization and operation location.** The panel is located within the Iowa Department of Agriculture and Land Stewardship, Henry A. Wallace Building, Des Moines, Iowa 50319. The department’s office hours are from 8 a.m. to 4:30 p.m., Monday through Friday.

**45.101(2) Membership.** The panel consists of five members as set forth in Iowa Code section 206.23A.

**45.101(3) Staff.** Staff assistance is provided through the Iowa department of agriculture and land stewardship.

**45.101(4) Meetings.** The panel meets annually to elect a chairperson but may meet at other times at the call of the chairperson or upon written request to the chairperson of two or more members.

All panel meetings shall comply with Iowa Code chapter 21. A quorum of three-fifths of the panel members shall be present to transact business.

Action by the panel requires a vote of a majority of those on the panel. Meetings follow Robert’s Rules of Order. Minutes of each meeting are available from the Secretary of Agriculture, Iowa Department of Agriculture and Land Stewardship, Henry A. Wallace Building, Des Moines, Iowa 50319.

**21—45.102(206) Civil penalties—establishment, assessment, and collection.** Commercial applicators who violate provisions of Iowa Code chapter 206 or rules promulgated pursuant to Iowa Code chapter 206 may be subject to civil penalties. This rule outlines the criteria and procedures for establishing, assessing, and collecting civil penalties.

**45.102(1) Criteria.** In evaluating a violation to determine which cases may be appropriate for administrative assessment of penalties, and in determining the amount of penalty, or for purposes of assessing civil penalties, the department shall consider all of the following factors:

- a. Willfulness or recklessness of the violation.
- b. Actual or potential danger of injury to the public health, safety, or damage to the environment caused by the violation.
- c. Actual or potential cost of the injury or damage caused by the violation to the public health or safety or to the environment.
- d. Actual and potential cost incurred by the department in enforcing the provisions of Iowa Code chapter 206 and rules adopted pursuant to this chapter against the violator.
- e. Remedial action taken by the commercial applicator.
- f. Previous history of noncompliance by the commercial applicator being assessed the civil penalty.

**45.102(2) Notice and hearing.** Civil penalties may be assessed against a commercial applicator only after notice and an opportunity for a contested case hearing unless the parties agree to an informal settlement which assesses a civil penalty or other disciplinary action. The department may seek assessment of a civil penalty by serving a complaint upon the commercial applicator. The complaint shall include a statement of the time, place and nature of the hearing, a statement of the legal authority and jurisdiction under which the hearing will be held, a reference to the statute or rules involved, a statement of the matters asserted, and shall inform the applicator of the availability of review by the panel. The complaint may be served on the commercial applicator by personal service or by certified



mail, return receipt requested. The contested case shall be governed by the department's rules on contested case hearings. The department's procedures for informal settlement also apply.

**45.102(3) *Administrative order.*** Upon finding that a commercial applicator has violated Iowa Code chapter 206 or rules adopted pursuant to this chapter, an administrative order shall be issued assessing the civil penalty. The order shall recite the facts, the legal requirements which have been violated, the rationale for the assessment of the civil penalty and the date of issuance.

**45.102(4) *Amount of penalty.*** The civil penalty imposed on a commercial applicator shall not exceed \$500 per violation of Iowa Code chapter 206 or to the rules promulgated pursuant to Iowa Code chapter 206. Each day a commercial applicator is in violation following receipt of written notification of such violation from the department may be considered a separate violation.

**45.102(5) *Payment.*** The penalty shall be paid within 30 days of the date the order assessing the civil penalty becomes final. Failure to pay the civil penalty within three months of the date the order becomes final shall be grounds for suspension or revocation of the commercial applicator's license. The department may request that the attorney general institute judicial proceedings to recover an unpaid civil penalty.

**45.102(6) *Informal settlement.*** These rules do not apply to any settlement reached between the commercial applicator and the department prior to the initiation of a contested case proceeding. The department shall notify the applicator that it has found a probable violation with a proposed penalty and provide the applicator an opportunity to attend an informal settlement conference. The department and the applicator may attend an informal settlement conference and reach an agreement about the assessment of a civil penalty or other disciplinary action against the applicator. This agreement is not reviewable by the panel.

**21—45.103(206) *Review period.*** Either the department or commercial applicator may request peer review within 14 days following the department's notification of a probable violation and proposed penalty, if no agreement has been reached.

**45.103(1)** If the department seeks review, it shall prepare a brief summary of the case against the commercial applicator for the panel. The summary shall include the name of the applicator, a short and concise description of the facts, and the rationale for the penalty sought with reference to the factors to be considered in assessment of civil penalties as provided in these rules.

**45.103(2)** If the commercial applicator seeks review, the commercial applicator shall submit a short and concise statement of the facts of the case and a statement as to why the amount of civil penalty sought to be assessed is inappropriate under the circumstances of the case.

**21—45.104(206) *Review by peer review panel.*** The request for review shall be served in writing by regular mail upon the chairperson of the panel, with copies furnished to the other party. Upon receipt of the request for review, the chairperson shall schedule a meeting of the panel in Des Moines at the Henry A. Wallace Building. The panel may agree to meet telephonically, with the chairperson providing copies of the request for review to the members of the panel.

**45.104(1)** The panel shall confine its review to the department's summary or the information furnished by the commercial applicator. The department's investigative files, or parts thereof, may be made available to the panel upon request. The panel's review shall not be a contested case evidentiary hearing. The panel shall not have power to examine or cross-examine witnesses, nor shall it have power to subpoena witnesses or documents.

**45.104(2)** The panel's recommendation may include increasing the amount of civil penalty, reducing the amount of civil penalty or not imposing a penalty or that conditions be placed upon the license of the commercial applicator.

**21—45.105(206) *Response by peer review panel.*** The panel shall notify in writing the department and the commercial applicator of its recommendations within 30 days of receipt of a request for review. Upon receipt of the panel's recommendations, the department and the commercial applicator may reach an agreement on the amount of the civil penalty. If the parties do not agree, the department may initiate

or continue the contested case proceeding. The department is not required to follow the recommendation of the panel as to assessment of the civil penalty. If the department does not receive a recommendation from the panel within 30 days of the panel's receipt of a request for review, it may proceed with the hearing.

These rules are intended to implement Iowa Code section 206.23A.

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[Filed ARC 1508C (Notice ARC 1452C, IAB 4/30/14), IAB 6/25/14, effective 7/30/14]

<sup>◊</sup> Two or more ARCs

CHAPTER 1  
DESCRIPTION OF ORGANIZATION  
[Prior to 7/13/88, see Architectural Examiners, Board of[80]]

**193B—1.1(544A,17A) Duties.** The board shall enforce the provisions of Iowa Code chapter 544A and shall maintain a roster of all registered architects and a roster of all business entities authorized to practice architecture in the state.

**1.1(1) *President.*** The president shall preside at all meetings, shall appoint all committees, shall sign all certificates, and shall otherwise perform all duties pertaining to the office of the president.

**1.1(2) *Vice president.*** The vice president shall, in the absence or incapacity of the president, exercise the duties and possess the powers of the president. The vice president shall sign all certificates.

**1.1(3) *Secretary.*** The secretary shall sign all certificates.

**1.1(4) *Board administrator.*** The professional licensing and regulation bureau may employ a board administrator who will maintain all necessary records of the board and perform all duties in connection with the operation of the board office. The bureau chief or designee shall sign vouchers for payment of board obligations.

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

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

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

**193B—1.3(544A,17A) Meetings.** Meetings of the board are regularly scheduled for the second Tuesday of January, March, May, July, September, and November. Meetings may be postponed, canceled, or rescheduled by the president for the convenience of the board. Board members shall be informed of meetings by the board administrator in writing at least one week before the scheduled date of the meeting.

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

**193B—1.4(544A,17A) Certificates.** Certificates issued to successful applicants shall contain the registrant's name, state registration number and the signatures of the board president, vice president and secretary. All registrations are renewable biennially on July 1, with registrants whose last names begin with the letters A-K renewing in even-numbered years and registrants whose last names begin with the letters L-Z renewing in odd-numbered years as provided in rule 193B—2.5(17A,272C,544A).

The board shall maintain an electronic roster of those holders of certificates of registration who have failed to renew. The certificate of registration may be reinstated in accord with rule 193B—2.4(544A,17A).

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

**193B—1.5(544A,17A) Definitions.** Rescinded IAB 10/3/01, effective 11/7/01.

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

[Filed 4/8/70, amended 1/2/74]

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## CHAPTER 2 REGISTRATION

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

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

“*Applicant*” means an individual who has submitted an application for registration to the board.

“*Architectural Intern*” means an individual who holds a professional degree from an NAAB-accredited program, has completed or is currently enrolled in the NCARB Intern Development Program and intends to actively pursue registration by completing the Architect Registration Examination.

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

“*Examination*” means the current Architect Registration Examination (ARE) accepted by the board.

“*IDP*” means Intern Development Program.

“*IDP applicant*” means an individual who has completed the IDP training requirements set forth in the NCARB Handbook for Interns and Architects and has submitted an application for registration to the board.

“*Inactive*” means that an architect is not engaged in Iowa in any practice for which a certificate of registration is required.

“*Intern Architect*” has the same meaning as “Architectural Intern.”

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

“*NAAB*” means the National Architectural Accrediting Board.

“*NCARB*” means the National Council of Architectural Registration Boards.

“*NCARB Handbook for Interns and Architects*” means the most current edition of a document by the same title published by the National Council of Architectural Registration Boards. The document outlines the requirements for examination and registration as an architect and is available through the National Council of Architectural Registration Boards, 1801 K Street NW, Suite 1100, Washington, D.C. 20006; NCARB’s Web site [www.ncarb.org](http://www.ncarb.org); the architectural examining board or the state law library.

“*Retired*” means that an architect is not engaged in the practice of architecture or earning monetary compensation by providing professional architectural services in any licensing jurisdiction of the United States or a foreign country.

**193B—2.2(544A,17A) Application by reciprocity.** Applicants for registration are required to make application to the National Council of Architectural Registration Boards (NCARB) for a certificate. A completed state application form (available on the board’s Web site) and a completed NCARB certificate shall be filed in the board office before an application will be considered by the board.

**2.2(1) Registration requirements.** The board or its executive officer may waive examination requirements for applicants who, at the time of application, are registered as architects in a different jurisdiction, where the applicant’s qualifications for registration are substantially equivalent to those required of applicants for initial registration in this state. All such applicants who hold an active NCARB certificate shall be deemed to possess qualifications that are substantially equivalent to those required of applicants for initial registration in this state.

**2.2(2) Applicants seeking architectural commission in Iowa.** A person seeking an architectural commission in this state may be admitted to this state for the purpose of offering to provide architectural services, and for that purpose only, without first being registered in this state if:

- a. The person holds an NCARB certificate; and
- b. The person holds a current and valid registration issued by a registration authority recognized by this state; and
- c. The person notifies the board in writing on a form provided by the board that the person:

- (1) Holds an NCARB certificate and a current and valid registration issued by a registration authority recognized by this state,
  - (2) Is not currently registered in this state but will be present in this state for the purpose of offering to provide architectural services on a temporary basis, and
  - (3) Has no previous or pending disciplinary action by any registration authority; and
    - d. The person delivers a copy of the notice referred to in paragraph “c” to every potential client to whom the person offers to provide architectural services; and
    - e. The person provides the board with a sworn statement of intent to apply immediately to the board for registration if selected as the architect for a project in this state.
- The person is prohibited from actually providing architectural services until the person has been issued a valid registration in this state.

**2.2(3) Board refusal to issue registration.** The board may refuse to issue a certificate of registration to any person otherwise qualified upon any of the grounds for which a certificate of registration may be revoked or suspended or may otherwise discipline a registrant based upon a suspension, revocation, or other disciplinary action taken by a licensing authority in this or another jurisdiction. For purposes of this subrule, “disciplinary action” includes the voluntary surrender of a registration to resolve a pending disciplinary investigation or proceeding. A certified copy of the record or order of suspension, revocation, voluntary surrender, or other disciplinary action is prima facie evidence of such fact.  
[ARC 7737B, IAB 5/6/09, effective 6/10/09]

**193B—2.3(544A,17A) Application for registration by examination.**

**2.3(1)** To be admitted to the examination, an applicant for registration shall have completed the eligibility requirements of the education standards for NCARB certification which include a professional degree from a program accredited by the National Architectural Accrediting Board (NAAB) or the Canadian Architectural Certification Board (CACB) and shall be enrolled in the NCARB Intern Development Program. NCARB shall notify the testing service of the applicant’s eligibility prior to the applicant’s scheduling of an examination.

**2.3(2)** Documentation of IDP training units shall be submitted on IDP report forms, published by NCARB, verified by signatures of registered architects serving as (1) the intern architect’s supervisor in accordance with the requirements outlined in the NCARB Handbook for Interns and Architects, and (2) the intern architect’s mentor, usually outside the intern’s firm, with whom the intern has met for guidance and evaluation of the intern’s progress in the IDP. The completed IDP report form shall demonstrate attainment of an aggregate of the minimum number of value units in each training area and shall be submitted to NCARB for evaluation.

**2.3(3)** All eligibility requirements shall have been verified and satisfied in accordance with the NCARB Handbook for Interns and Architects. The Handbook is available through NCARB, the architectural examining board or the state law library.

**2.3(4)** Applicants who have passed one or more but not all divisions of the ARE by January 1, 2006, shall have a rolling five-year period to pass each of the remaining divisions. A passing grade for any remaining division shall be valid for five years, after which time the division must be retaken if all remaining divisions have not been passed. The rolling five-year period shall commence after January 1, 2006, on the date when the first division that has been passed is administered. Applicants who have passed no divisions of the ARE by January 1, 2006, shall be governed by the above rolling five-year requirement. The rolling five-year period shall commence on the date when the first division that has been passed is administered. Any division passed prior to January 1, 2006, shall no longer remain valid if all remaining divisions have not been passed by July 1, 2014.

Effective January 1, 2011, and thereafter, the Authorization to Test of any applicant shall terminate unless the applicant has passed or failed a division of the ARE within a period of five years, which includes the five-year period prior to January 1, 2011. Any applicant whose authorization is so terminated must establish a new eligibility under the then-current procedures of the board.

**2.3(5)** To be eligible for registration, all applicants shall have passed all divisions of the ARE prepared and provided by NCARB, have completed the NCARB Intern Development Program, and

have attained an NCARB council record. A completed NCARB council record shall be transmitted to and filed in the board office. Upon receipt of the council record, the board shall provide the applicant with an application for registration form. The board shall issue a registration number to the applicant upon receipt of the completed application form and appropriate fee.

**2.3(6)** The board may refuse to issue a certificate of registration to any person otherwise qualified upon any of the grounds for which a registration may be revoked or suspended or may otherwise discipline a registrant based upon a suspension, revocation, or other disciplinary action taken by a licensing authority in this or another jurisdiction. For purposes of this subrule, “disciplinary action” includes the voluntary surrender of a registration to resolve a pending disciplinary investigation or proceeding. A certified copy of the record or order of suspension, revocation, voluntary surrender, or other disciplinary action is prima facie evidence of such fact.

[ARC 8638B, IAB 4/7/10, effective 5/12/10]

**193B—2.4(544A,17A) Examination.** Examinations for registration as an architect shall be conducted by the board or its authorized representative.

**2.4(1) Content and grading of the examination.** The board shall make use of the ARE prepared and graded by NCARB under a plan of cooperation with the architectural examining boards of all states and territories of the United States.

**2.4(2) Testing service.** The board may make use of a testing service selected by NCARB to administer the examination, provided the examination is held in at least one location within the boundaries of this state.

**193B—2.5(17A,272C,544A) Renewal of certificates of registration.**

**2.5(1) Active status.** Certificates of registration expire biennially on June 30. In order to maintain authorization to practice in Iowa, a registrant is required to renew the certificate of registration prior to the expiration date. A registrant who fails to renew by the expiration date is not authorized to practice architecture in Iowa until the certificate is reinstated as provided in rule 193B—2.6(544A,17A).

*a.* A registrant whose last name begins with the letter A through K shall renew in even-numbered years, and a registrant whose last name begins with the letter L through Z shall renew in odd-numbered years.

*b.* It is the policy of the board to mail to each registrant a notice of the pending expiration date at the registrant’s last-known address approximately one month prior to the date the certificate of registration is scheduled to expire. Failure to receive this notice does not relieve the registrant of the responsibility to timely renew the certificate and pay the renewal fee. A registrant should contact the board office if the registrant does not receive a renewal notice prior to the date of expiration.

*c.* Upon the board’s receipt of a timely and sufficient renewal application as provided in 193—subrule 7.40(3), the board’s executive secretary shall issue a new certificate of registration reflecting the next expiration date, unless grounds exist for denial of the application. However, the board will accept an otherwise sufficient renewal application that is untimely if the board receives the application and late fee within 30 days of the date of expiration.

*d.* If grounds exist to deny a timely and sufficient application to renew, the board shall send written notification to the applicant by restricted certified mail, return receipt requested. Grounds may exist to deny an application to renew if, for instance, the registrant failed to satisfy the continuing education as required as a condition for registration. If the basis for denial is pending disciplinary action or disciplinary investigation which is reasonably expected to culminate in disciplinary action, the board shall proceed as provided in 193—Chapter 7. If the basis for denial is not related to a pending or imminent disciplinary action, the applicant may contest the board’s decision as provided in 193—subrule 7.40(1).

*e.* When a registrant appears to be in violation of mandatory continuing education requirements, the board may, in lieu of proceeding to a contested case hearing on the denial of a renewal application as provided in rule 193—7.40(546,272C), offer a registrant the opportunity to sign a consent order. While the terms of the consent order will be tailored to the specific circumstances at issue, the consent order will typically impose a penalty between \$50 and \$250, depending on the severity of the violation; establish

deadlines for compliance; and require that the registrant complete hours equal to double the deficiency in addition to the required hours; and may impose additional educational requirements on the registrant. Any additional hours completed in compliance with the consent order cannot again be claimed at the next renewal. The board will address subsequent offenses on a case-by-case basis. A registrant is free to accept or reject the offer. If the offer of settlement is accepted, the registrant will be issued a renewed certificate of registration and will be subject to disciplinary action if the terms of the consent order are not complied with. If the offer of settlement is rejected, the matter will be set for hearing, if timely requested by the applicant pursuant to 193—subrule 7.40(1).

*f.* The board may notify a registrant whose certificate of registration has expired. The failure of the board to provide this courtesy notification or the failure of the registrant to receive the notification shall not extend the date of expiration.

*g.* A registrant who continues to practice architecture in Iowa after the registration has expired shall be subject to disciplinary action. Such unauthorized activity may also be grounds to deny a registrant's application for reinstatement.

**2.5(2) Inactive status.** This subrule establishes a procedure under which a person issued a certificate of registration as an architect may apply to the board to register as inactive. Registration under this subrule is available to a certificate holder residing within or outside the state of Iowa who is not engaged in Iowa in any practice for which a certificate of registration as an architect is required. A person eligible to register as inactive may, as an alternative to such registration, allow the certificate of registration to lapse. During any period of inactive status, a person shall not use the title "architect" or any other title that might imply that the person is offering services as an architect by such an action in violation of Iowa Code section 544A.15. The board will continue to maintain a data base of persons registered as inactive, including information which is not routinely maintained after a certificate has lapsed through the person's failure to renew. A person who registers as inactive will accordingly receive renewal applications, board newsletters and other mass communications from the board.

*a. Affirmation.* The renewal application form shall contain a statement in which the applicant affirms that the applicant will not engage in any of the practices in Iowa that are listed in Iowa Code section 544A.16 without first complying with all rules governing reinstatement to active status. A person in inactive status may reinstate to active status at any time pursuant to rule 193B—2.8(544A).

*b. Renewal.* A person registered as inactive may renew the person's certificate of registration on the biennial schedule described in 193B—2.5(17A,272C,544A). This person shall be exempt from the continuing education requirements and will be charged a reduced renewal fee as provided in 193B—2.11(544A,17A). An inactive certificate of registration shall lapse if not timely renewed. However, the board will accept an otherwise sufficient renewal application that is untimely if the board receives the application and late fee within 30 days of the date of expiration.

*c. Permitted practices.* A person may, while registered as inactive, perform for a client, business, employer, government body, or other entity those services which may lawfully be provided by a person to whom a certificate of registration has never been issued. Such services may be performed as long as the person does not in connection with such services use the title "architect" or any other title restricted for use only by architects pursuant to Iowa Code section 544A.15 (with or without additional designations such as "inactive" or "retired"). Restricted titles may be used only by active architects who are subject to continuing education requirements to ensure that the use of such titles is consistently associated with the maintenance of competency through continuing education.

*d. Prohibited practices.* A person who, while registered as inactive, engages in any of the practices described in Iowa Code sections 544A.15 and 544A.16 is subject to disciplinary action.

**2.5(3) Retired status.** A person who held a registration as an architect and who does not reasonably expect to return to the workforce in any capacity for which a certificate of registration is required due to bona fide retirement or disability may apply to the board for retired status and, if granted, may use the title "architect retired" in the context of non-income-producing personal activities. If the board determines an applicant is eligible, the retired status would become effective on the first scheduled registration renewal date. Applicants do not need to reinstate an expired registration to be eligible for retired status. Applicants may apply for retired status on forms provided by the board. The board will not provide a



refund of biennial registration fees if an application for retired status is granted in a biennium in which the applicant has previously paid the biennial fees for either active or inactive status. Persons registered in retired status are exempt from the renewal requirement.

*a. Affirmation.* The retired status application form shall contain a statement in which the applicant affirms that the applicant will not engage in any of the practices in Iowa that are listed in Iowa Code section 544A.16 without first complying with all rules governing reinstatement to active status. A person in retired status may reinstate to active status at any time pursuant to rule 193B—2.8(544A).

*b. Permitted practices.* Persons registered in retired status may engage in the practices identified in paragraph 2.5(2)“c.” Such persons may also provide services as technical experts before a court, including prelitigation preparation, discovery, and testimony, on matters directly related to architectural services provided by such persons prior to registering with the board in retired status.

*c. Exemption.* A person whose registration as an architect has been placed on probation, suspended, revoked, or voluntarily surrendered in connection with a disciplinary investigation or proceeding shall not be eligible for retired status unless, upon appropriate application, the board first reinstates the registration to good standing.

[ARC 1210C, IAB 12/11/13, effective 1/15/14; ARC 1504C, IAB 6/25/14, effective 7/30/14]

**193B—2.6(544A,17A) Reinstatement of lapsed certificate of registration to active status.** An individual may reinstate a lapsed certificate of registration to active status as follows:

**2.6(1)** If the individual’s registration has been lapsed for up to 24 months, the individual may reinstate the registration by selecting either Option 1 or Option 2 as follows:

*a. Option 1.* The individual shall:

- (1) Pay the reinstatement fee of \$25 per month of expired registration;
- (2) Pay the current renewal fee;
- (3) Provide a written statement outlining the professional activities of the applicant during the period of nonregistration. The statement shall include a list of all projects with which the applicant had involvement and shall explain the service provided by the applicant; and
- (4) Submit documented evidence of completion of 12 contact hours (8 hours in public protection subjects) of continuing education requirements for each year or portion of a year of expired registration in compliance with requirements in 193B—Chapter 3 in addition to the 24 hours (16 hours in public protection subjects) which should have been reported on the June 30 renewal date on which the applicant failed to renew. The continuing education hours used for reinstatement may not be used again at the next renewal. Out-of-state residents may submit a statement from their resident state’s licensing board as documented evidence of compliance with their resident state’s mandatory continuing education requirements during the period of nonregistration. The statement shall bear the seal of the licensing board. Out-of-state residents whose resident state has no mandatory continuing education shall comply with the documented evidence requirements outlined in this subrule.

*b. Option 2.* The individual shall:

- (1) File a new application for registration as prescribed in rules 193B—2.2(544A,17A) and 193B—2.3(544A,17A), particularly subrules 2.2(1) and 2.3(3); and
- (2) Provide a written statement outlining the professional activities of the applicant during the period of nonregistration. The statement shall include a list of all projects with which the applicant had involvement and shall explain the service provided by the applicant.

**2.6(2)** If an individual’s registration has been lapsed for more than 24 months, the individual may reinstate the registration by selecting either Option 1 or Option 2 as follows:

*a. Option 1.* The individual shall:

- (1) Pay the reinstatement fee of \$25 per month of expired registration, up to a maximum of \$750;
- (2) Pay the current renewal fee;
- (3) Provide a written statement outlining the professional activities of the applicant during the period of nonregistration. The statement shall include a list of all projects with which the applicant had involvement and shall explain the service provided by the applicant; and

(4) Submit documented evidence of completion of 12 contact hours (8 hours in public protection subjects) of continuing education requirements for each year or portion of a year of expired registration in compliance with requirements in 193B—Chapter 3 up to a maximum of 48 contact hours (32 hours in public protection subjects). The continuing education hours used for reinstatement may not be used again at the next renewal. Out-of-state residents may submit a statement from their resident state's licensing board as documented evidence of compliance with their resident state's mandatory continuing education requirements during the period of nonregistration. The statement shall bear the seal of the licensing board. Out-of-state residents whose resident state has no mandatory continuing education shall comply with the documented evidence requirements outlined in this subrule.

*b. Option 2.* The individual shall:

(1) File a new application for registration as prescribed in rules 193B—2.2(544A,17A) and 193B—2.3(544A,17A), particularly subrules 2.2(1) and 2.3(3); and

(2) Provide a written statement outlining the professional activities of the applicant during the period of nonregistration. The statement shall include a list of all projects with which the applicant had involvement and shall explain the service provided by the applicant.

**193B—2.7(544A,17A) Reinstatement of lapsed certificate of registration to inactive status.** An individual may reinstate a lapsed certificate of registration to inactive status as follows:

1. Pay the reinstatement fee of \$25 per month of expired registration up to a maximum of \$750;
2. Pay the current renewal fee;
3. Provide a written statement in which the applicant affirms that the applicant has not engaged in any of the practices in Iowa that are listed in Iowa Code section 544A.16 during the period of lapsed registration.

**193B—2.8(544A) Reinstatement from inactive status or retired status to active status.**

**2.8(1)** An individual may reinstate an inactive registration or retired registration to active registration as follows:

*a.* Pay the current active registration fee. If reinstating to active status at a date that is less than 12 months from the next biennial renewal date, one-half of the current active registration fee shall be paid.

*b.* Submit documented evidence of completion of 24 contact hours (16 contact hours in public protection subjects) of continuing education in compliance with requirements in 193B—Chapter 3. The hours used to reinstate to active status cannot again be used to renew.

(1) At the first biennial renewal date of July 1 that is less than 12 months from the date of the filing of the application to restore the certificate of registration to active status, the person shall not be required to report continuing education.

(2) At the first biennial renewal date of July 1 which is more than 12 months, but less than 24 months, from the date of the filing of the application to restore the certificate of registration to active status, the person shall report 12 hours of previously unreported continuing education.

**2.8(2)** An individual shall not be allowed to reinstate to inactive status from retired status.

**193B—2.9(544A,17A) Finding of probable cause for unlicensed practice.** The board may find probable cause to file charges for unlicensed practice if the individual continues to offer services defined as the practice of architecture outlined in Iowa Code section 544A.16 while using the title “architect,” “architectural designer,” or similar designation during the period of lapsed registration.

**193B—2.10(544A) Practice by business entities.** Before engaging in the practice of architecture in this state, a foreign or domestic business corporation, a foreign professional corporation, a partnership, or sole proprietorship shall acquire an Authorization to Practice Architecture as a Business Entity from the board as provided in Iowa Code section 544A.21.

**2.10(1)** Application for the authorization shall be made to the board on forms prescribed by the board and shall be accompanied by the proper fee as provided in rule 193B—2.11(544A,17A). The application shall include but not be limited to the following:

- a. Name and address of the business entity;
- b. Type of business entity, the federal identification number of the business entity or social security number if a sole proprietorship;
- c. Names, addresses, and titles of the registered agent if a corporation, and of all officers, directors, partners, beneficial owners, or other principals of the business entity, or of the sole proprietor;
- d. Name and address of each registered architect in responsible charge of the practice of architecture on behalf of the business entity in the state of Iowa;
- e. Signature of an officer of a corporation, a partner of a partnership, or the sole proprietor.

**2.10(2)** A domestic professional corporation or professional limited liability company shall file with the board an application for Authorization to Practice Architecture as a Business Entity along with a copy of its annual report to the secretary of state.

**2.10(3)** A sole proprietorship shall file with the board an application for Authorization to Practice Architecture as a Business Entity only if practicing under an impersonal or fictitious name.

**2.10(4)** Upon approval of the Authorization to Practice Architecture as a Business Entity, the business entity shall not be required to apply for renewal of the authorization.

**2.10(5)** The business entity shall send notice to the board within 90 days of any change in name, address, registered agent if a corporation, officers, directors, partners, beneficial owners, or other principals of the business entity or any change in the name or address of each registered architect in responsible charge of the practice of architecture on behalf of the business entity in the state of Iowa.

**2.10(6)** A business entity which, after receiving authorization to practice architecture, is not in compliance with Iowa Code section 544A.21 or these rules as a result of a change in ownership or personnel shall take corrective action to bring the business entity back into compliance as soon as possible or apply to modify or amend the authorization. The board may grant a reasonable period of time, up to 90 days unless an extension is requested, for an entity to take such corrective action. Failure to comply within a period of time deemed reasonable by the board shall result in the suspension or revocation of the authorization to practice architecture as a business entity.

**2.10(7)** A business entity that loses its authorization by cancellation or other board action shall immediately cease to conduct architectural practice in the state of Iowa.

**2.10(8)** When a business entity is issued a new federal identification number, a new application for authorization must be filed with the board.

**193B—2.11(544A,17A) Fee schedule.** Under the authority provided in Iowa Code chapter 544A, the following fees are hereby adopted:

Examination fees:

Fees for examination subjects shall be paid directly to the testing service selected by NCARB

Initial registration fee	\$ 50
(plus \$5 per month until renewal)	
Reciprocal application and registration fee	\$200
Biennial renewal fee	\$200
Biennial renewal fee (inactive)	\$100
Retired status	None
Reinstatement of lapsed individual registration (per month)	\$ 25
Duplicate wall certificate fee	\$ 50
Late renewal fee	\$ 25
(for renewals postmarked on or after July 1 and before July 31)	

[ARC 1210C, IAB 12/11/13, effective 1/15/14; ARC 1504C, IAB 6/25/14, effective 7/30/14]

These rules are intended to implement Iowa Code chapters 544A and 17A.

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CHAPTER 1  
ORGANIZATION AND OPERATION

[Prior to 11/19/86, Racing Commission[693]]

[Prior to 11/18/87, Racing and Gaming Division[195]]

[Prior to 8/9/00, see also 491—Chs 6, 20 and 21]

**491—1.1(99D,99F) Function.** The racing and gaming commission was created by Iowa Code chapter 99D and is charged with the administration of the Iowa pari-mutuel wagering Act and excursion boat gambling Act. Iowa Code chapters 99D and 99F mandate that the commission shall have full jurisdiction over and shall supervise all race meetings and gambling operations governed by Iowa Code chapters 99D and 99F.

**491—1.2(99D,99F) Organization, meetings, and procedure.**

**1.2(1) Organization.**

*a.* The racing and gaming commission is located at 1300 Des Moines Street, Suite 100, Des Moines, Iowa 50309; telephone (515)281-7352. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday.

*b.* The racing and gaming commission consists of five members. The membership shall elect a chairperson and vice-chairperson in July of each year. No chairperson shall serve more than four consecutive one-year full terms.

**1.2(2) Meetings.**

*a.* The commission meets periodically throughout the year and shall meet in July of each year. Notice of a meeting is published on the commission's Web site at [www.iowa.gov/irgc/](http://www.iowa.gov/irgc/) at least five days in advance of the meeting or will be mailed to interested persons upon request. The notice shall contain the specific date, time, and place of the meeting. Agendas are available to any interested persons not less than five days in advance of the meeting.

*b.* Persons wishing to appear before the commission should submit a written request to the commission office not less than ten working days prior to the meeting. The administrator or commission may place a time limit on presentations after taking into consideration the number of presentations requested.

*c.* Special or electronic meetings may be called by the chairperson only upon a finding of good cause and shall be held in strict accordance with Iowa Code section 21.4 or 21.8.

**1.2(3) Procedure.** All meetings shall be open to the public unless a closed session is voted by four members or all members present for the reasons specified in Iowa Code section 21.5. The operation of commission meetings shall be governed by the following rules of procedure:

*a.* A quorum shall consist of three members.

*b.* When a quorum is present, a position is carried by an affirmative vote of the majority of the entire membership of the commission.

*c.* A commissioner, who is present at a meeting of the commission when action is taken, shall be presumed to have assented to the action unless the commissioner's dissent was requested to be entered in the minutes. A roll-call vote on any motion may be recorded in the minutes. Reconsideration of any action may only be initiated by a commissioner who voted with the prevailing side. The motion to reconsider any action may be made and seconded before the conclusion of the meeting when the action was approved, or it may be made in writing and submitted to the commission office within two business days following the meeting. Only the mover has the option to request that the motion be held in abeyance, when the motion to reconsider is offered during the same meeting. Any commissioner is eligible to call up the motion to reconsider at the next meeting of the commission. The official minutes shall record the offering of any motion to reconsider, whether placed during the meeting or by timely written submission.

*d.* The presiding officer may exclude any person from the meeting for behavior that disrupts or obstructs the meeting.

*e.* Cases not covered by this rule shall be governed by the most recent edition of Robert's Rules of Order Newly Revised.

[ARC 0734C, IAB 5/15/13, effective 6/19/13; ARC 1506C, IAB 6/25/14, effective 7/30/14]

**491—1.3(99D,99F) Administration of the commission.** The commission shall appoint an administrator for the racing and gaming commission who is responsible for the day-to-day administration of the commission's activities.

**491—1.4(17A,22,99D,99F) Open records.** Except as provided in Iowa Code sections 17A.2(11) "f," 22.7, 99D.7(8), and 99F.4(6), all public records of the commission shall be available for public inspection during business hours. Requests to obtain records may be made by mail, telephone, or fax or in person. Minutes of commission meetings, forms, and other records routinely requested by the public may be obtained without charge or viewed on the commission's Web site. Other records requiring more than ten copies may be obtained upon payment of the actual cost for copying. This charge may be waived by the administrator.

**491—1.5(17A,99D,99F) Forms.** All forms utilized in the conduct of business with the racing and gaming commission shall be available from the commission upon request. These forms include but are not limited to:

**1.5(1) *Racing, gambling structure, or excursion gambling boat license application.*** This form shall contain at a minimum the full name of the applicant, all ownership interests, balance sheets and profit-and-loss statements for three fiscal years immediately preceding the application, pending legal action, location and physical plant of the facility, and description of proposed operation. The form may include other information the commission deems necessary to make a decision on the license application. The qualified nonprofit corporation and the boat operator, if different than the qualified nonprofit corporation, shall pay a nonrefundable application fee in the amount of \$25,000 to offset the commission's cost for processing the application. Additionally, the applicant shall remit an investigative fee of \$30,000 to the department of public safety to do background investigations as required by the commission. The department of public safety shall bill the applicant/licensee for additional fees as appropriate and refund any unused portion of the investigative fee within 90 days after the denial or operation begins.

**1.5(2) *Renewal application for racing license.*** This form shall contain, at a minimum, the full name of the applicant, racing dates, simulcast proposal, feasibility of racing facility, distribution to qualified sponsoring organizations, table of organization, management agreement, articles of incorporation and bylaws, lease agreements, financial statements, information on the gambling treatment program, and description of racetrack operations. The form may include other information the commission deems necessary to make a decision on the license application.

**1.5(3) *Renewal application for excursion gambling boat or gambling structure license.*** This form shall contain, at a minimum, the full name of the applicant, annual fee, distribution to qualified sponsoring organizations, table of organization, internal controls, operating agreement, hours of operation, casino operations, Iowa resources, contracts, guarantee bond, notarized certification of truthfulness, and gambling treatment program. The form may include other information the commission deems necessary to make a decision on the license application. An annual fee to operate an excursion gambling boat shall be based on the passenger-carrying capacity including crew. For a gambling structure, the annual license fee shall be based on the capacity of the gambling structure. The fee shall be \$5 per person capacity and accompany this application.

**1.5(4) *Renewal application for racetrack enclosure license.*** This form shall contain, at a minimum, the full name of the applicant, annual fee, casino operations, internal controls, Iowa resources, guarantee bond, and notarized certification of truthfulness. The form may include other information the commission deems necessary to make a decision on the license application. A \$1,000 application fee must accompany this license application.

**1.5(5) *Occupational license application.*** This form shall contain, at a minimum, the applicant's full name, social security number, residence, date of birth, and other personal identifying information that the commission deems necessary. A fee set by the commission shall apply to this application. (Refer to 491—Chapter 6 for additional information.)

**1.5(6) *Season approvals.*** This form shall contain, at a minimum, a listing of the department heads and racing officials, minimum purse, purse supplements for Iowa-breds, grading system (greyhound racing only), schedule and wagering format, equipment, security plan, certification, and any other information the commission deems necessary for approval. This request must be submitted 45 days prior to the meet. Any changes to the items approved by the commission shall be requested in writing by the licensee and subject to the written approval of the administrator or commission representative before the change occurs.

**1.5(7) *Manufacturers and distributors license application.*** This form shall contain at a minimum the full name of the applicant, all ownership interests, balance sheets and profit-and-loss statements for three fiscal years immediately preceding the application, pending legal action, location and physical plant of the applicant, and description of proposed operation. The form may include other information the administrator deems necessary to make a decision on the license application. A license fee of \$1,000 for a distributor's license and a license fee of \$250 for a manufacturer's license shall accompany this application. (Refer to 491—Chapter 11 for additional information.)

**1.5(8) *Advance deposit wagering license application.*** This form shall contain at a minimum the full name of the applicant, all ownership interests, balance sheets and profit-and-loss statements for three fiscal years immediately preceding the application, pending legal action, location and physical plant of the applicant, and description of proposed operation. The form may include other information the administrator deems necessary to make a decision on the license application. A license fee of \$1,000 shall accompany this application. (Refer to 491—Chapter 8 for additional information.)

**1.5(9) *Asset/stock purchase form for commission approval.*** This form shall contain at a minimum the full name of the applicant, all ownership interests, balance sheets and profit-and-loss statements for three fiscal years immediately preceding the application, pending legal action, location and physical plant of the applicant, and description of proposed operation. The form may include other information the administrator deems necessary to make a decision.

[ARC 1506C, IAB 6/25/14, effective 7/30/14]

**491—1.6(99D,99F) Limitation on location and number of racetracks and excursion gambling boats.** Rescinded IAB 9/29/04, effective 11/3/04.

**491—1.7(99D,99F) Criteria for granting licenses, renewing licenses, and determining race dates.** The commission sets forth the following criteria which the commission will consider when deciding whether to issue a license to conduct racing or gaming in Iowa. The various criteria may not have the same importance in each instance, and other factors may present themselves in the consideration of an application for a license. The criteria are not listed in order of priority. After the initial consideration for issuing a license, applicable criteria need only be considered when an applicant has demonstrated a deficiency.

**1.7(1) *Compliance.*** The commission will consider whether or not the applicant is and has been in compliance with the terms and conditions specified in Iowa Code section 99D.9 or 99F.4. The commission will also consider whether the proposed facility is in compliance with applicable state and local laws regarding fire, health, construction, zoning, and other similar matters.

**1.7(2) *Gaming integrity.*** The commission will consider whether the proposed operation would ensure that gaming is conducted with a high degree of integrity in Iowa and that the officers, directors, partners, or shareholders of the operation are of good repute and moral character. The commission shall decide what weight and effect evidence about an officer, director, partner, or shareholder should have in the determination of whether there is substantial evidence that the individual is not of good reputation and character.

**1.7(3) *Economic impact and development.*** The commission will consider:

*a.* The amount of revenue to be provided by the proposed facility to the state and local communities through direct taxation on the facility's operation and indirect revenues from tourism, ancillary businesses, creation of new industry, and taxes on employees and patrons. The commission may engage an independent firm proficient in market feasibility studies in the industry for specific

analysis of any application to determine the potential market of any proposed facility as well as the impact on existing licensees.

b. The level of financial and other support the proposed operation will provide to the community in order to improve the quality of life of the residents of the community.

c. The viability and overall net benefit of the proposed operation to the state gaming industry, taking into consideration:

(1) Investment versus projected adjusted gross revenue.

(2) Impact on existing operators' adjusted gross revenue versus existing operators' ratio of adjusted gross revenue to investment.

(3) Ratio of equity to total investment and whether the proposed project is adequately and properly financed.

(4) Percent of projected adjusted gross revenue from underserved markets.

(5) Percent of projected adjusted gross revenue from existing Iowa operators.

(6) Stability and reliability of out-of-state market(s).

d. The benefits to Iowa tourism.

e. The number and quality of employment opportunities for Iowans.

f. The development and sale of Iowa products.

g. The number and types of developments and amenities associated with the proposed operation in addition to the gaming floor.

**1.7(4) *Efficient and safe operation.*** The commission will consider whether the proposed facility is planned in a manner that promotes efficient and safe operation of all aspects of the facility including providing adequate security for employees and patrons. Adequate employment to serve patrons' needs, facility scope and design, parking facilities, access to cashier windows, concessions, and restrooms will be considered.

**1.7(5) *Community support.*** The commission will consider support for the proposed project within the community in which a proposed facility is to be located.

**1.7(6) *Nurture of the racing industry.*** The commission will consider whether the proposed racetrack operation would serve to nurture, promote, develop, and improve the racing industry in Iowa and provide high-quality racing in Iowa. The commission will also consider if the proposed racetrack operation will maximize purses and is beneficial to Iowa breeders.

**1.7(7) *Other factors.*** The commission will consider such other factors as may arise in the circumstances presented by a particular application.

[ARC 8029B, IAB 8/12/09, effective 9/16/09]

**491—1.8(17A,99D,99F) Granting of a waiver.** For purposes of this rule, a waiver or variance means action by the commission that suspends in whole or in part the requirements or provisions of a rule as applied to an identified entity on the basis of the particular circumstances of that entity. For simplicity, the term "waiver" shall include both a waiver and a variance.

**1.8(1) *Scope of rule.*** This rule outlines generally applicable standards and a uniform process for the granting of a waiver from rules adopted by the commission in situations where no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this rule with respect to any waiver from that rule.

**1.8(2) *Applicability of rule.*** The commission may grant a waiver from a rule only if the commission has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The commission may not waive requirements created or duties imposed by statute.

**1.8(3) *Criteria for waiver.*** In response to a petition completed pursuant to subrule 1.8(5), the commission may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the commission finds, based on clear and convincing evidence, all of the following:

a. The application of the rule would impose an undue hardship on the entity for whom the waiver is requested;



b. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any entity;

c. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and

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

**1.8(4) Filing of petition.** A petition for a waiver must be submitted in writing to the commission as follows:

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

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

c. *Other.* If the petition does not relate to a license application or a pending contested case, the petition may be submitted to the administrator.

**1.8(5) Content of petition.** A petition for waiver shall include the following information where applicable and known to the requester:

a. The name, address, and telephone number of the person or entity for whom a waiver is being requested, and the case number of any related contested case.

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

c. The specific waiver requested, including the precise scope and duration.

d. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in subrule 1.8(3). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition, and a statement of reasons that the petitioner believes will justify a waiver.

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

f. Any information known to the requester regarding the commission's treatment of similar cases.

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

h. The name, address, and telephone number of any person or entity who would be adversely affected by the grant of a waiver.

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

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

**1.8(6) Additional information.** Prior to issuing an order granting or denying a waiver, the commission may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the commission may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the administrator, a committee of the commission, or a quorum of the commission.

**1.8(7) Notice.** The commission shall acknowledge a petition upon receipt. The commission shall ensure that notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law, within 30 days of the receipt of the petition. In addition, the commission may give notice to other persons.

To accomplish this notice provision, the commission may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law, and provide a written statement to the commission attesting that notice has been provided.

**1.8(8) Hearing procedures.** The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case and shall

otherwise apply to agency proceedings for a waiver only when the commission so provides by rule or order or is required to do so by statute.

**1.8(9) *Ruling.*** An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts, reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

**1.8(10) *Board discretion.*** The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the commission, upon consideration of all relevant factors. Each petition for a waiver shall be evaluated by the commission based on the unique, individual circumstances set out in the petition.

**1.8(11) *Burden of persuasion.*** The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the commission should exercise its discretion to grant a waiver from a commission rule.

**1.8(12) *Narrowly tailored exception.*** A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

**1.8(13) *Administrative deadlines.*** When the rule from which a waiver is sought establishes administrative deadlines, the commission shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

**1.8(14) *Conditions.*** The commission may place any condition on a waiver that the commission finds desirable to protect the public health, safety, and welfare.

**1.8(15) *Time period of waiver.*** A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the commission, a waiver may be renewed if the commission finds that grounds for the waiver continue to exist.

**1.8(16) *Time for ruling.*** The commission shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the commission shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

**1.8(17) *When deemed denied.*** Failure of the commission to grant or deny a petition within the required time period shall be deemed a denial of that petition by the commission. However, the commission shall remain responsible for issuing an order denying a waiver.

**1.8(18) *Service of order.*** Within seven days of its issuance, any order issued under this rule shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

**1.8(19) *Public availability.*** All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying a waiver petition are public records under Iowa Code chapter 22. Some petitions or orders may contain information the commission is authorized or required to keep confidential. The commission may accordingly redact confidential information from petitions or orders prior to public inspection.

**1.8(20) *Summary reports.*** Semiannually, the commission shall prepare a summary report identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the commission's actions on waiver requests. If practicable, the report shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

**1.8(21) *Cancellation of a waiver.*** A waiver issued by the commission pursuant to this rule may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the commission issues an order finding any of the following:

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

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

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

**1.8(22) Violations.** Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this rule who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

**1.8(23) Defense.** After the commission issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

**1.8(24) Judicial review.** Judicial review of the commission's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

These rules are intended to implement Iowa Code section 17A.9A and Iowa Code chapters 99D and 99F.

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<sup>◇</sup> Two or more ARCs

<sup>1</sup> Effective date of Item 1, subrule 1.6(4), delayed by the Administrative Rules Review Committee at its meeting held September 8, 1998, until the adjournment of the 1999 Session of the General Assembly.

<sup>2</sup> Effective date of 1.8 delayed 70 days by the Administrative Rules Review Committee at its meeting held March 10, 2000.



CHAPTER 5  
TRACK, GAMBLING STRUCTURE, AND EXCURSION GAMBLING BOAT  
LICENSEES' RESPONSIBILITIES

[Prior to 11/19/86, Racing Commission[693]]

[Prior to 11/18/87, Racing and Gaming Division[195]]

[Prior to 8/9/00, see also 491—Chs 20 and 25]

**491—5.1(99D,99F) In general.** For purposes of this chapter, the requirements placed upon an applicant shall become a requirement to the licensee once a license to race or operate a gaming facility has been granted. Every license is granted upon the condition that the license holder shall accept, observe, and enforce the rules and regulations of the commission. It is the affirmative responsibility and continuing duty of each officer, director, and employee of said license holder to comply with the requirements of the application and conditions of the license and to observe and enforce the rules. The holding of a license is a privilege. The burden of proving qualifications for the privilege to receive any license is on the licensee at all times. A licensee must accept all risks of adverse public notice or public opinion, embarrassment, criticism, or financial loss that may result from action with respect to a license. Licensees further covenant and agree to hold harmless and indemnify the Iowa racing and gaming commission from any claim arising from any action of the commission in connection with that license.

**491—5.2(99D,99F) Annual reports.** Licensees shall submit audits to the commission as required by Iowa Code sections 99D.20 and 99F.13. The audit of financial transactions and condition of licensee's operation shall include an internal control letter, documentation that the county board of supervisors selected the auditing firm, a balance sheet, and a profit-and-loss statement pertaining to the licensee's activities in the state, including a breakdown of expenditures and subsidies. If the licensee's fiscal year does not correspond to the calendar year, a supplemental schedule indicating financial activities on a calendar-year basis shall be included in the report. In the event of a license termination, change in business entity, or material change in ownership, the administrator may require the filing of an interim report, as of the date of occurrence of the event. The filing due date shall be the later of 30 calendar days after notification to the licensee or 30 calendar days after the date of the occurrence of the event, unless an extension is granted.

**5.2(1)** The annual audit report required by Iowa Code section 99D.20 shall include a schedule detailing the following information: number of performances; attendance; regulatory fee; total mutuel handle and taxes paid to state, city, county and gambler's treatment fund; unclaimed winnings; purses paid indicating sources; total breakage and disbursements; and the disbursements of 1 percent of exotic wagers on three or more racing animals.

**5.2(2)** The annual audit report required by Iowa Code section 99F.13 shall include:

- a. A schedule detailing a weekly breakdown of adjusted gross revenue; taxes paid to the state, city, county, county endowment fund, and gambler's treatment fund; and regulatory fees.
- b. A report on whether material weaknesses in internal accounting control exist.
- c. A report on whether the licensee has followed the system of internal accounting control approved by the administrator.

**491—5.3(99D,99F) Information.** The licensee shall submit all information specifically requested by the commission or commission representative.

**491—5.4(99D,99F) Uniform requirements.**

**5.4(1) Maintenance of premises and facilities.** Each licensee shall at all times maintain its premises and facilities so as to be neat and clean, well landscaped, painted and in good repair, handicapped accessible, with special consideration for the comfort and safety of patrons, employees, and other persons whose business requires their attendance.

**5.4(2) Facilities for commission.** Each licensee shall provide reasonable, adequately furnished office space, including utilities, direct long-distance access for voice and data lines, custodial services, and necessary office equipment, and, if applicable, work space on the boat for the exclusive use of the

commission employees and officials. The licensee shall also make available appropriate parking places for commission staff.

**5.4(3) Sanitary facilities for patrons.** Each licensee shall, on every day of operation, provide adequate and sanitary toilets and washrooms and furnish free drinking water for patrons and persons having business on the licensee's premises.

**5.4(4) First-aid room.**

*a.* During all hours of operation, each licensee shall equip and maintain adequate first-aid facilities and have, at a minimum, one employee trained in CPR, first aid, and the use of the automated external defibrillator (AED). During live racing at racetracks and while excursion gambling boats are cruising, the licensee shall have present either a physician, a physician assistant, a registered nurse, a licensed practical nurse, a paramedic, or an emergency medical technician.

*b.* All individuals specified under paragraph 5.4(4) "a" must be currently licensed or certified, including active status, in accordance with the requirements of the Iowa department of public health.

*c.* Each licensee is required to have a properly functioning and readily accessible AED at the licensee's facility.

**5.4(5) Security force.**

*a. Peace officer.* Each licensee shall ensure that a person who is a certified peace officer is present during all gaming hours, unless permission is otherwise granted by the administrator. A certified peace officer pursuant to this rule must be employed by a law enforcement agency and have police powers.

*b. Employ adequate security.* Each licensee shall employ sufficient security to remove from the licensed premises a person violating a provision of Iowa Code chapter 99D or 99F, commission rules, or orders; any person deemed to be undesirable by racing and gaming commission officials; or any person engaging in a fraudulent practice. Security shall also be provided in and about the premises to secure restricted areas including, but not limited to, the barn area, kennel area, paddock, and racing animal drug testing area.

*c. Incident reports.* The licensee shall be required to file a written report, within 72 hours, detailing any incident in which an employee or patron is detected violating a provision of Iowa Code chapter 99D or 99F, a commission rule or order, or internal controls; or is removed for reasons specified under paragraph 5.4(5) "b." In addition to the written report, the licensee shall provide immediate notification to the commission and DCI representatives on duty or, if representatives are not on duty, provide notification on each office's messaging system if the incident involved employee theft, criminal activity, Iowa Code chapter 99D or 99F violations, or gaming receipts.

*d. Ejection or exclusion.* A licensee may eject or exclude any person, licensed or unlicensed, from the premises or a part thereof of the licensee's facility, solely of the licensee's own volition and without any reason or excuse given, provided ejection or exclusion is not founded on constitutionally protected grounds such as race, creed, color, disability, or national origin.

Reports of all ejections or exclusions for any reason, other than voluntary exclusions, shall be made promptly to the commission representative and DCI and shall state the circumstances. The name of the person must be reported when the person is ejected or excluded for more than one gaming day.

The commission may exclude any person ejected by a licensee from any or all pari-mutuel facilities, gambling structures, or excursion gambling boats controlled by any licensee upon a finding that attendance of the person would be adverse to the public interest.

**5.4(6) Firearms possession within licensed facility.**

*a.* No patron or employee of the licensee, including the security department members, shall possess or be permitted to possess any pistol or firearm within a licensed facility without the express written approval of the administrator unless:

- (1) The person is a peace officer, on duty, acting in the peace officer's official capacity; or
- (2) The person is a peace officer possessing a valid peace officer permit to carry weapons who is employed by the licensee and who is authorized by the administrator to possess such pistol or firearm while acting on behalf of the licensee within that licensed facility.

b. Each licensee shall post in a conspicuous location at each entrance a sign that may be easily read stating, "Possession of any firearm within the licensed facility without the express written permission of the Iowa racing and gaming commission is prohibited".

**5.4(7) Video recording.** Licensees shall conduct continuous surveillance with the capability of video recording all gambling activities under Iowa administrative rules 661—Chapter 141, promulgated by the department of public safety.

a. "Gambling activities" means participating in or wagering on gambling games on the gaming floor; the movement, storage, and handling of uncounted gambling revenues; manual exchange of moneys for forms of wagering credit on the gaming floor; entrance of the public onto the gaming floor; and any other activity as determined by the commission administrator or administrator's designee.

b. Commission and DCI representatives shall have unrestricted access to and use of, including independent access capabilities, both live and recorded views and images of the surveillance system.

c. A commission representative may allow a gambling game to be placed in operation pending approval under 661—Chapter 141.

d. A surveillance department shall develop a standard operating procedure manual, which shall include surveillance system maintenance and emergency plans. This manual shall be made available for inspection by the commission and DCI.

e. A facility may include capabilities within the surveillance system for video recording of other areas of a facility and grounds, provided that commission and DCI access is unrestricted.

**5.4(8) Commission approval of contracts and business arrangements.**

a. *Qualifying agreements.*

(1) All contracts and business arrangements entered into by a facility are subject to commission jurisdiction. Written and verbal contracts and business arrangements involving a related party or in which the term exceeds three years or the total value in a calendar year exceeds \$100,000 are agreements that qualify for submission to and approval by the commission. For the purpose of this subrule, a qualifying agreement shall be limited to:

1. Any obligation that expends, encumbers, or loans facility assets to anyone other than a not-for-profit entity or a unit of government for the payment of taxes or utilities.

2. Any disposal of facility assets or provision of goods and services at less than market value to anyone other than a not-for-profit entity or a unit of government.

3. A previously approved qualifying agreement, if consideration exceeds the approved amount in a calendar year by the greater of \$100,000 or 25 percent.

4. Any type of contract, regardless of value or term, where a third party provides electronic or mechanical access to cash or credit for a patron of the facility. The contract must contain a clause that provides for immediate notification and implementation when technology becomes available to allow a person to voluntarily bar the person's access to receive cash or credit from such devices located on the licensed premises.

(2) A debt transaction greater than \$3 million entered into by a licensee or licensee's parent company assigning an obligation to a licensee, except a debt transaction previously approved in subrule 5.4(20), is subject to commission jurisdiction. The request for approval shall include:

1. The names and addresses of all parties;

2. The amount and source of funds;

3. The nature and amount of security and collateral provided;

4. The specific nature and purpose of the transaction; and

5. The term sheet or executive summary of the transaction.

(3) A qualifying agreement must be submitted within 30 days of execution. Commission approval must be obtained prior to implementation, unless the qualifying agreement contains a written clause stating that the agreement is subject to commission approval. Qualifying agreements that are ongoing or open-ended need only be submitted on initiation, unless there is a material change in terms or noncompliance with 5.4(8) "b"(4).

b. *Purpose of review.* The commission conducts reviews to serve the public interest to ensure that:

(1) Gaming is free from criminal and corruptive elements.

(2) Gaming-related funds are directed to the lawful recipient.  
(3) Gaming profits are not improperly distributed.  
(4) Iowa resources, goods and services are utilized. Resources, goods, and services shall be considered to be made in Iowa, be provided by Iowans, or emanate from Iowa if one or more of the following apply:

1. Goods are manufactured in Iowa.
2. Goods are distributed through a distributor located in Iowa.
3. Goods are sold by a retailer/wholesaler located in Iowa.
4. Resources are produced or processed in Iowa.
5. Services are provided by a vendor whose headquarters/home office is in Iowa.
6. Goods, resources or services are provided by a vendor whose headquarters/home office is located outside Iowa, but which has a tangible business location (not simply a post office box) and does business in Iowa.

7. Services beyond selling are provided by employees who are based in Iowa.

A facility shall be considered to have utilized a substantial amount of Iowa resources, goods, services and entertainment in compliance with Iowa Code sections 99D.9 and 99F.7(4) as amended by 2004 Iowa Acts, House File 2302, section 11 and section 43, respectively, if the facility demonstrates to the satisfaction of the commission that preference was given to the extent allowed by law and other competitive factors.

*c. Related parties.* Other submittal requirements notwithstanding, agreements negotiated between the facility and a related party must be accompanied by an economic and qualitative justification. For the purpose of this subrule, related party shall mean any one of the following having any beneficial interest in any other party with whom the facility is seeking to negotiate an agreement:

- (1) Any corporate officer or member of a facility's board of directors.
- (2) Any owner with more than a 5 percent interest in a facility.
- (3) A member of either the qualified sponsoring organization or the qualifying organization under Iowa Code section 99D.8 associated with a facility.

*d. Review criteria.* The commission shall approve all qualifying agreements that, in the commission's sole opinion, represent a normal business transaction and may impose conditions on an approval. The commission may deny approval of any agreement that, in the commission's sole opinion, represents a distribution of profits that differs from commission-approved ownership and beneficial interest. This subrule does not prohibit the commission from changing the approved ownership or beneficial interest.

**5.4(9) Checks.** The acceptance of personal checks shall be allowed; however, "counter" checks shall not be allowed. All checks accepted must be deposited in a bank by the close of the banking day following acceptance.

**5.4(10) Taxes and fees.**

*a. Annual taxes and fees.* All taxes and fees, whose collection by the state is authorized under Iowa Code chapters 99D and 99F, shall be accounted for on a fiscal-year basis, each fiscal year beginning on July 1 and ending on June 30.

*b. Submission of taxes and fees.* All moneys collected for and owed to the commission or state of Iowa under Iowa Code chapter 99F shall be accounted for and itemized on a weekly basis in a format approved by the commission. A week shall begin on Monday and end on Sunday. The reporting form must be received in the commission office by noon on Wednesday following the week's end. The moneys owed, according to the reporting form, must be received in the treasurer's office by 11 a.m. on the Thursday following the week's end. Additionally, each licensee shall file a monthly report indicating adjusted gross receipts received from gambling games, total number of admissions, and amount of regulatory fees paid. These reports shall be by calendar month and filed by noon on the first Wednesday following the end of the month unless the end of the month is a Monday or Tuesday, in which case the reports shall be filed by noon on the second Wednesday following the end of the month.



**5.4(11) Rate of tax revenue.** Each licensee shall prominently display at the licensee's gambling facility the annual percentage rate of state and local tax revenue collected by state and local government from the gambling facility annually.

**5.4(12) Problem gambling.**

a. The holder of a license to operate gambling games shall adopt and implement policies and procedures designed to:

- (1) Identify problem gamblers; and
- (2) Allow persons to be voluntarily excluded for life from all facilities. Each facility will disseminate information regarding the exclusion to all other facilities.

b. The policies and procedures shall be developed in cooperation with the gambling treatment program and shall include without limitation the following:

- (1) Training of key employees to identify and report suspected problem gamblers;
- (2) Procedures for recording and tracking identified problem gamblers;
- (3) Policies designed to prevent serving alcohol to intoxicated casino patrons;
- (4) Steps for removing problem gamblers from the casino; and
- (5) Procedures for preventing reentry of problem gamblers.

c. A licensee shall include information on the availability of the gambling treatment program in a substantial number of its advertisements and printed materials.

**5.4(13) Records regarding ownership.**

a. In addition to other records and information required by these rules, each licensee shall maintain the following records regarding the equity structure and owners:

(1) If a corporation:

1. A certified copy of articles of incorporation and any amendments thereto.
2. A copy of bylaws and amendments thereto.
3. A current list of officers and directors.
4. Minutes of all meetings of stockholders and directors.
5. A current list of all stockholders and stockholders of affiliates, including their names and the names of beneficial shareholders.
6. A complete record of all transfers of stock.
7. A record of amounts paid to the corporation for issuance of stock and other capital contributions and dates thereof.
8. A record, by stockholder, of all dividends distributed by the corporation.
9. A record of all salaries, wages, and other remuneration (including perquisites), direct and indirect, paid by the corporation during the calendar or fiscal year to all officers, directors, and stockholders with an ownership interest at any time during the calendar or fiscal year, equal to or greater than 5 percent of the outstanding stock of any class of stock.

(2) If a partnership:

1. A schedule showing the amounts and dates of capital contributions, the names and addresses of the contributors, and percentage of interest in net assets, profits, and losses held by each.
2. A record of the withdrawals of partnership funds or assets.
3. A record of salaries, wages, and other remuneration (including perquisites), direct and indirect, paid to each partner during the calendar or fiscal year.
4. A copy of the partnership agreement and certificate of limited partnership, if applicable.

(3) If a sole proprietorship:

1. A schedule showing the name and address of the proprietor and the amount and date of the original investment.
2. A record of dates and amounts of subsequent additions to the original investment and withdrawals therefrom.
3. A record of salaries, wages, and other remuneration (including perquisites), direct or indirect, paid to the proprietor during the calendar or fiscal year.

b. All records regarding ownership shall be located in a place approved by the commission.

c. If the licensee is publicly held, upon the request of the administrator, the licensee shall submit to the commission one copy of any report required to be filed by such licensee or affiliates with the Securities and Exchange Commission or other domestic or foreign securities regulatory agency. If the licensee is privately held, upon the request of the administrator, the licensee shall submit financial, ownership, or other entity records for an affiliate.

**5.4(14) Retention, storage, and destruction of books, records, and documents.**

a. Except as otherwise provided, all original books, records, and documents pertaining to the licensee's operations shall be:

- (1) Prepared and maintained in a complete and accurate form.
- (2) Retained at a site approved by the administrator until audited.
- (3) Held immediately available for inspection by the commission during business hours of operations.
- (4) Organized and indexed in such a manner as to provide immediate accessibility to the commission.

b. For the purpose of this subrule, "books, records, and documents" shall be defined as any book, record, or document pertaining to or prepared or generated by the licensee including, but not limited to, all forms, reports, accounting records, ledgers, subsidiary records, computer-generated data, internal audit records, correspondence, contracts, and personnel records, including information concerning a refusal to submit to drug testing and test results conducted pursuant to Iowa Code section 730.5.

c. All original books, records, and documents may be copied and stored on microfilm, microfiche, or other suitable media system approved by the administrator.

d. No original book, record, document, or suitable media copy may be destroyed by a licensee, for three years, without the prior approval of the administrator.

**5.4(15) Remodeling.** For any change to be made to the facility itself directly associated with racing or gaming or in the structure of the boat itself, the licensee must first submit plans to and receive the approval of the administrator.

**5.4(16) Officers, agents, and employees.** Licensees are accountable for the conduct of their officers, agents, and employees. The commission or commission representative reserves the right to impose penalties against the license holder or its officer, agent, employee, or both as the commission or commission representative determines appropriate. In addition, the licensee shall be responsible for the conduct of nonlicensed persons in nonpublic areas of the excursion gambling boat, gambling structure, or racetrack enclosure.

**5.4(17) Designated gaming floor.** The designated gaming floor is all areas occupied by or accessible from a gambling game, not otherwise obstructed by a wall, door, partition, barrier, or patron entrance. A patron entrance shall be identified by a sign visible to patrons approaching the gaming floor. The sign shall denote entrance to the gaming floor and specify that the gaming floor is not accessible to persons under the age of 21. A floor plan identifying the area shall be filed with the administrator for review and approval. Modification to a previously approved plan must be submitted for approval at least ten days prior to implementation.

**5.4(18) State fire and building codes.**

a. Barges, as defined in 5.6(1) "c," and other land-based gaming facilities and such facilities that undergo major renovation shall comply with the state building code created by Iowa Code chapter 103A, if there is no local building code in force in the local jurisdiction in which the facility is located. A licensee shall submit construction documents and plans to the state building code commissioner and receive approval prior to construction, if a facility is subject to the state building code.

b. If there is no enforcement of fire safety requirements by a local fire department, a licensee shall also submit construction plans and documents to the state fire marshal and receive approval prior to construction. The fire marshal may cause a facility subject to this paragraph to be inspected for compliance with fire marshal rules prior to operation of the facility and shall notify the commission and the licensee of the results of any such inspection.

c. If a proposed new or renovated facility is subject to both paragraphs "a" and "b," a single submission of construction plans and documents to the building code commissioner, with a cover letter

stating that review and approval are required with respect to both the state building code and rules of the fire marshal, is sufficient to meet both requirements. Facilities subject to both paragraphs “a” and “b” shall have received approval from both the fire marshal and the building code commissioner prior to construction.

**5.4(19) *Gambling setoff.*** Each licensee shall adopt and implement policies and procedures designed to set off winnings of patrons who have a valid lien established under Iowa Code chapters 99D and 99F.

**5.4(20) *Shelf application for debt.***

a. The commission may grant approval of a shelf application for a period not to exceed three years.

b. Licensees whose parent company has issued publicly traded debt or publicly traded securities may apply to the commission for a shelf approval of debt transactions if the parent company has:

(1) A class of securities listed on the New York Stock Exchange, the American Stock Exchange or the National Association of Securities Dealers Automatic Quotation System (NASDAQ) or has stockholders’ equity in the amount of \$15 million or more as reported in the parent company’s most recent report on Form 10-K or Form 10-Q filed with the Securities and Exchange Commission (SEC) immediately preceding application; and

(2) Filed all reports required by the SEC.

c. The application shall be in writing and shall contain:

(1) Proof of qualification to make the application in accordance with the criteria of this subrule.

(2) A statement of the amount of debt sought to be approved and the intended use of potential proceeds.

(3) Duration sought for the shelf approval.

(4) Financing rate sought during shelf approval.

(5) Evidence of signature by authorized representative of the licensee under oath.

(6) Other supplemental documentation requested by the commission or commission representative following the initial submission.

d. Once an application is approved by the commission:

(1) The licensee shall notify the commission representative of all debt transactions within ten days of consummation, including subsequent amendments and modifications of debt transactions, and provide executed copies of the documents evidencing the transactions as may be required.

(2) The commission representative may rescind a shelf approval without prior written notice. The rescission shall be in writing and set forth the reasons for the rescission and shall remain in effect until lifted by the commission upon the satisfaction of any such terms and conditions as required by the commission.

[**ARC 8029B**, IAB 8/12/09, effective 9/16/09; **ARC 9018B**, IAB 8/25/10, effective 9/29/10; **ARC 0734C**, IAB 5/15/13, effective 6/19/13; **ARC 1456C**, IAB 5/14/14, effective 6/18/14; **ARC 1506C**, IAB 6/25/14, effective 7/30/14]

#### **491—5.5(99D) *Pari-mutuel uniform requirements.***

**5.5(1) *Insect and rodent control.*** The licensee shall provide systematic and effective insect and rodent control, including control of flies, mosquitoes, fleas, and mice, to all areas of licensee’s premises at all times during a race meeting.

**5.5(2) *Results boards, totalizators required.*** Each licensee shall provide and maintain computerized totalizators and electronic boards showing odds, results, and other racing information located in plain view of patrons.

**5.5(3) *Photo finish camera.*** A licensee shall provide two electronic photo finish devices with mirror image to photograph the finish of each race and record the time of each racing animal in at least hundredths of a second. The location and operation of the photo finish device must be approved by the commission before its first use in a race. The licensee shall promptly post a photograph, on a monitor, of each photo finish for win, place or show, or for fourth place in superfecta races, in an area accessible to the public. The licensee shall ensure that the photo finish devices are calibrated before the first day of each race meeting and at other times as required by the commission. On request by the commission, the licensee shall provide, without cost, a print of a photo finish to the commission. A photo finish of each

race shall be maintained by the licensee for not less than six months after the end of the race meeting, or such other period as may be requested by the commission.

**5.5(4) *Electric timing device.*** Any electric timing device used by the licensee shall be approved by the commission.

**5.5(5) *Official scale.*** The licensee shall provide and maintain in good working order official scales or other approved weighing devices. The licensee shall provide to the stewards certification of the accuracy of the scales at the beginning of each race meeting or more frequently if requested by the stewards.

**5.5(6) *Lighting.*** Each licensee shall provide and maintain adequate illumination in the barn/kennel area, parking area, and racetrack area.

**5.5(7) *Fencing.*** The stable and kennel areas should be properly fenced as defined by the commission and admission permitted only in accord with rules of the commission.

**5.5(8) *Guest passes.*** The licensee shall develop a policy to be approved by the stewards for the issuance of guest passes for entrance to the kennel or stable area. The guest pass is not an occupational license and does not permit the holder to work in any capacity or in any way confer the benefits of an occupational license to participate in racing. The license holder sponsoring or escorting the guest shall be responsible for the conduct of the guest pass holder.

**5.5(9) *Stewards.*** There shall be three stewards for each racing meet, two appointed by the commission and one nominated by the licensee for approval by the commission. The names of licensees' nominees for steward and biographical information describing the experience and qualifications of the nominees shall be submitted no later than 45 days before commencement of a race meeting. The commission may consider for appointment or approval a person who meets all of the following requirements. The person shall have:

- a. Engaged in pari-mutuel racing in a capacity and for a period satisfactory to the commission.
- b. Satisfactorily passed an optical examination within one year prior to approval as a steward evidencing corrected 20/20 vision and the ability to distinguish colors correctly.
- c. Satisfied the commission that income, other than salary as a steward, is independent of and unrelated to patronage of or employment by any occupational licensee under the supervision of the steward, so as to avoid the appearance of any conflict of interest or suggestion of preferential treatment of an occupational licensee.

**5.5(10) *Purse information.*** Each licensee shall provide to the commission at the close of each racing meet the following purse information:

a. The identity of each person or entity to which purse money is paid by the licensee for purses won by racing animals at the facility. This report shall include the name, residential or business address and amount paid to that person or entity. The data should be assembled separately for Iowa and non-Iowa addressees, and aggregates should be presented in descending order of magnitude.

b. The identity of each person or entity to which purse money is paid by the licensee for purses won by Iowa-bred animals at the facility. This report shall include the name, residential or business address and amount paid to that person or entity in supplemental funds for ownership of Iowa-bred animals. The data should be assembled separately for Iowa and non-Iowa addressees, and aggregates should be presented in descending order of magnitude.

**5.5(11) *Designated wagering area.*** The designated wagering area is a rectangular area within a minimum of five feet from the front and from either side of a stationary wagering window or self-service wagering device, not otherwise obstructed by a wall or other barrier. The facility shall either section off or clearly delineate the floor of the area and post a sign near the area, which is visible to patrons approaching the area, denotes the wagering area and specifies that the wagering area is not accessible to persons under the age of 21. The designation applies only when the wagering window or device is open to transact wagering. A floor plan identifying the area shall be filed with the administrator for review and approval. Modification to a previously approved plan must be submitted for approval at least ten days prior to implementation.

**491—5.6(99F) Excursion gambling boat uniform requirements.****5.6(1) Excursion gambling boat.**

- a. Capacity.* The minimum passenger capacity necessary for an excursion gambling boat is 250.
- b. Excursion boat.* A self-propelled, floating “vessel” as defined by the U.S. Coast Guard may contain more than one vessel. In order to be utilized for gaming purposes, the vessel containing the casino must either contain a permanent means of propulsion or have its means of propulsion contained in an attached vessel. In the event that the vessel containing the casino is propelled by a second vessel, the boat will be considered self-propelled only when the vessels are designed, constructed, and operated as a single unit.
- c. Moored barge.* “Barge” means any stationary structure approved by the commission, where the entire gaming floor is located on or near a body of water as defined under Iowa Code section 99F.7, subsection 1, and which facility is subject to land-based building codes rather than maritime or Iowa department of natural resources inspection laws and regulations.

**5.6(2) Excursions.**

- a. Length.* The excursion season shall be from April 1 through October 31 of each calendar year. An excursion boat must operate at least one excursion during the excursion season to operate during the off-season, although a waiver may be granted by the commission in the first year of a boat’s operation if construction of the boat was not completed in time for the boat to qualify. Excursions shall consist of a minimum of one hour in transit during the excursion season. The number of excursions per day is not limited. During the excursion season and the off-season, while the excursion gambling boat is docked, passengers may embark or disembark at any time during business hours pursuant to Iowa Code section 99F.4(17).
- b. Dockside completion of excursions.* If, during the excursion season, the captain determines that it would be unsafe to complete any portion of an excursion, or if mechanical problems prevent the completion of any portion of an excursion, the boat may be allowed to remain at the dock or, if the excursion is underway, return to the dock and conduct the gaming portion of the excursion while dockside, unless the captain determines that passenger safety is threatened.
- c. Notification.* If an excursion is not completed due to reasons specified in paragraph 5.6(2) “b,” a commission representative shall be notified as soon as is practical.

**5.6(3) Drug testing of boat operators.** Captains, pilots, and physical operators of excursion gambling boats shall be drug tested, as permitted by Iowa Code section 730.5, on a continuous basis with no more than 60 days between tests. The testing shall be conducted by a laboratory certified by the United States Department of Health and Human Services or approved under the rules adopted by the Iowa department of public health. The facility shall report positive test results to a commission representative.

These rules are intended to implement Iowa Code chapters 99D and 99F.

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**STATE PUBLIC DEFENDER[493]**

Created within the Department of Inspections and Appeals[481] by Iowa Code section 13B.2

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- 1.2(13B) Function
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CHAPTER 1  
ADMINISTRATION

**493—1.1(13B) Scope.** This chapter sets forth the organizational structure of the state public defender system and describes its purpose. See 493—Chapter 7 for definitions of terms used in this chapter.

**493—1.2(13B) Function.** The position of state public defender is established by Iowa Code chapter 13B. The state public defender is charged with the supervision of the operation of the state public defender system and with the coordination of the provision of legal defense representation of indigent persons in the state of Iowa.

**493—1.3(13B) Overall organization and method of operations.**

**1.3(1) State public defender system.** The state public defender system is administered by the state public defender. The system consists of three divisions: an administrative division, a local public defender division, and an appellate division.

**1.3(2) Types of cases.** Based on statutes and appropriate case law, the state public defender system provides representation for persons found to be indigent in the following types of cases:

- a. Felonies;
- b. Misdemeanors, if there exists a potential for jail sentence;
- c. Juvenile matters, including delinquency, termination of parental rights, child in need of assistance (CINA), judicial bypass proceedings, and juvenile commitments;
- d. Probation and parole revocation cases;
- e. Civil commitment proceedings under Iowa Code chapter 229A; and
- f. Other matters authorized by law.

**1.3(3) State public defender.** The state public defender is appointed by the governor, subject to confirmation by the senate. The state public defender is the chief administrative officer of the state public defender system and in that capacity coordinates the legal representation of indigent clients in criminal, juvenile and related cases in Iowa. The duties of the state public defender include, but are not limited to:

- a. Supervising the operations of the local public defender offices;
- b. Acting as chief legal officer of the state public defender system;
- c. Preparing and submitting the annual budget, personnel and employment policies, and preparing an annual report of the activities of the office;
- d. Determining locations for establishing future local public defender offices;
- e. Coordinating the provision of legal representation of all indigents under arrest or charged with a crime, on appeal in criminal cases, in a proceeding to obtain postconviction relief when ordered to do so by the court, against whom a contempt action is pending, in proceedings under Iowa Code chapter 229A, in juvenile cases under Iowa Code chapters 232 and 600A, or in probation or parole violations under Iowa Code chapter 908;
- f. Filing with the clerk of court in each county served by a public defender a designation of which local public defender office shall receive notice of appointment of cases;
- g. Contracting with licensed attorneys in the state to provide legal services to indigent persons where there is no local public defender available to provide such services; and
- h. Reviewing claims for indigent defense services and costs and participating in hearings regarding claims.

**1.3(4) Administrative division.** The administrative division carries out all the duties of the state public defender including, but not limited to: budget preparation, processing claims for payment of public defender-related costs and expenses, coordinating hiring and disciplinary matters, maintaining statistics regarding case management and handling of cases, and all other administrative matters.

**1.3(5) Local public defender division.** The local public defender division provides legal representation at the trial level to qualified persons charged with adult crimes or in juvenile matters in counties where local public defender services are provided. The division also provides representation

to qualified persons in juvenile appeals and in civil commitment proceedings under Iowa Code chapter 229A at the trial and appellate levels.

The local public defender division consists of independent local offices and branch offices. Each independent local office is under the direct supervision of a local public defender. A local public defender may supervise a branch office. If so, the branch office may be considered part of the local office.

**1.3(6) Appellate division.** The appellate division is administered by the state appellate defender who reports directly to the state public defender. The appellate division provides legal representation to indigent clients in posttrial matters in the appellate courts of the state of Iowa.

**1.3(7) Civil commitment unit.** Rescinded IAB 12/28/11, effective 2/1/12.  
[ARC 9938B, IAB 12/28/11, effective 2/1/12; ARC 1512C, IAB 6/25/14, effective 7/30/14]

**493—1.4(13B) Information.** Information concerning the office of the state public defender or the state public defender system may be obtained by contacting the Office of the State Public Defender, Lucas State Office Building, Des Moines, Iowa 50319-0087; or by telephone (515)242-6158 or fax (515)281-7289. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding state holidays. The state public defender's Web site address is <http://spd.iowa.gov>.  
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CHAPTER 4  
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

The state public defender adopts the fair information practices segments of the Uniform Administrative Rules which are printed in the first volume of the Iowa Administrative Code with the following amendments:

**493—4.1(17A,22) Definitions.** As used in this chapter:

“Agency.” In lieu of the words “(official or body issuing these rules)”, insert “state public defender”.

**493—4.3(17A,22) Requests for access to records.**

**4.3(1) Location of record.** In lieu of the words “(insert agency head)”, insert “state public defender”. In lieu of the words “(insert agency name and address)”, insert “Office of the State Public Defender, Lucas State Office Building, Des Moines, Iowa 50319-0087”.

**4.3(2) Office hours.** In lieu of the words “(insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)”, insert “8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays”.

**4.3(7) Fees.**

*c. Supervisory fee.* In lieu of the words “(specify time period)”, insert “one hour”.

**493—4.6(17A,22) Procedures by which additions, dissents, or objections may be entered into certain records.** In lieu of the words “(designate office)”, insert “the office of the state public defender”.

**493—4.9(17A,22) Disclosures without the consent of the subject.**

**4.9(1)** Open records are routinely disclosed without the consent of the subject.

**4.9(2)** To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without the consent of the subject:

*a.* For a routine use as defined in rule 493—4.10(17A,22) or in the notice for a particular record system.

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

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

*d.* To the legislative services agency under Iowa Code section 2A.3.

*e.* Disclosures in the course of employee disciplinary proceedings.

*f.* In response to a court order or subpoena.

**493—4.10(17A,22) Routine use.** “Routine use” means the disclosure of a record without the consent of the subject or subjects for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

To the extent allowed by law, the following uses are considered routine uses of all agency records:

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

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

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

4. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

**493—4.11(17A,22) Consensual disclosure of confidential records.**

**4.11(1)** *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 493—4.7(17A,22).

**4.11(2)** *Complaints to public officials.* A letter from the subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency may, to the extent permitted by law, be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

**493—4.12(17A,22) Release to subject.**

**4.12(1)** A written request to review confidential records may be filed by the subject of the record as provided in rule 493—4.6(17A,22). The agency need not release the following records to the subject:

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

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

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

d. Others authorized by law.

**4.12(2)** Where a record has multiple subjects with interest in the confidentiality of the record, the state public defender may take reasonable steps to protect confidential information relating to another subject.

**493—4.13(17A,22) Availability of records.**

**4.13(1)** *Open records.* Agency records are open for public inspection and copying unless otherwise provided by rule or law.

**4.13(2)** *Confidential records.* The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Sealed bids received prior to the time set for public opening of bids. (Iowa Code section 72.3)

b. Tax records made available to the agency. (Iowa Code sections 422.20 and 422.72)

c. Records which are exempt from disclosure under Iowa Code section 22.7.

d. Minutes of closed meetings of a government body. (Iowa Code section 21.5(4))

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

f. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa R.C.P. 1.503, the rules of evidence, the Code of Professional Responsibility, and case law.

g. Criminal investigative reports. (Iowa Code section 22.7(5))

h. A claim for compensation and reimbursement for legal assistance and supporting documents submitted to the state public defender for payment of costs incurred in the legal representation of an indigent person pursuant to Iowa Code section 13B.4B, except as disclosure is authorized under that section.

i. Any other records considered confidential by law.

[ARC 1512C, IAB 6/25/14, effective 7/30/14]

**493—4.14(22) Personally identifiable information.** The state public defender maintains systems of records which contain personally identifiable information.

**4.14(1)** By authority of Iowa Code chapter 13B, the appellate defender division maintains information and records relating to criminal and postconviction relief cases that are being appealed.

Records contain names and identifying numbers of persons involved in these cases. Case information is stored in a data processing system and may be compared with information in any data processing system. By authority of Iowa Code section 910A.13, the names of child victims shall not be disclosed. Confidential juvenile records under Iowa Code section 232.147 shall not be disclosed except as otherwise permitted by law. Presentence investigation reports in the possession of the appellate defender are confidential records pursuant to Iowa Code section 901.4.

**4.14(2) Litigation files.** Litigation files or records contain information regarding litigation or anticipated litigation, which include judicial and administrative proceedings. The records include briefs, depositions, docket sheets, documents, correspondence, attorney's notes, memoranda, research materials, witness information, investigation materials, information compiled under the direction of the attorney, and case management records. The files contain materials which are confidential as attorney work product and attorney-client communications. Some materials are confidential under other applicable provisions of law or because of a court order. Persons wishing copies of pleadings and other documents filed in litigation should obtain them from the clerk of the appropriate court which maintains the official copy.

**4.14(3) Contracts.** Contractual agreements are maintained by the state public defender. These records contain personally identifiable information when the agreement is with a specific individual. In those instances, the records include the name, address, and social security number of the contracting attorney. Other information in these records may include the proposal of the contracting attorney, budget figures, correspondence, and business information. Personally identifiable information is contained in a data processing system and may be compared with information in any data processing system.

**4.14(4) Personnel files.** Personnel files contain information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship. Some of this information is confidential under Iowa Code section 22.7(11).

[ARC 1512C, IAB 6/25/14, effective 7/30/14]

**493—4.15(17A,22) Other groups of records.** Other groups of records are maintained by the state public defender other than the records described in rule 493—4.14(22). These records are routinely available to the public; however, the agencies' files may contain confidential information. The records may contain information about individuals. All records are stored on paper and in some cases in automated data processing systems.

**4.15(1) Rule making.** Rule-making records may contain information about individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. This information is available for public inspection and is not stored in an automated data processing system.

**4.15(2) Commission records.** Agendas, minutes, and materials presented to the indigent defense advisory commission are available from the office of the state public defender, except those records concerning closed sessions exempt under Iowa Code section 21.5(4). Commission records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. This information is not retrieved by individual identifier and is not stored in an automated data processing system.

**4.15(3) Statistical reports.** Periodic reports on the state public defender system and the delivery of indigent defense services are available from the office of the state public defender.

**4.15(4) Address lists.** Rescinded IAB 12/28/11, effective 2/1/12.

[ARC 9938B, IAB 12/28/11, effective 2/1/12]

These rules are intended to implement Iowa Code sections 17A.3, 22.7 and 22.11.

[Filed emergency 10/7/92 after Notice 8/19/92—published 10/28/92, effective 10/7/92]

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[Filed ARC 1512C (Notice ARC 1437C, IAB 4/30/14), IAB 6/25/14, effective 7/30/14]





CHAPTER 7  
DEFINITIONS

**493—7.1(13B,815) Definitions.** As used in these rules, unless the context otherwise requires, the following definitions apply:

“*Affidavit of financial status*” means a full written disclosure of all income, assets, liabilities, dependents, and other information required to determine if an applicant qualifies for legal assistance by an appointed attorney.

“*Appeal*” means a proceeding, other than an interlocutory appeal, application for discretionary review, or juvenile court petition on appeal, filed with the Iowa supreme court.

“*Applicant*” means a person requesting legal assistance by an appointed attorney.

“*Appointed attorney*” means an attorney appointed by the court to represent an indigent person.

“*Assets*” means all resources or possessions of the applicant.

“*Attorney*” means an individual licensed to practice law in Iowa.

“*Attorney time*” means the total time the attorney appointed to a case spends on in-court time, out-of-court time, and in travel time attributable to that specific case. Attorney time does not include time spent performing clerical activities.

“*Case*” means all charges or allegations arising from the same transaction or occurrence or contained in the same trial information or indictment in a criminal proceeding or in the same petition in a civil or juvenile proceeding. A probation violation or contempt proceeding is a case separate from the case out of which the violation or contempt arose.

“*Child*” or “*juvenile*” means a person so defined in Iowa Code chapter 232.

“*Claim*” means an application or request for payment.

“*Claimant*” means an appointed attorney or other person seeking reimbursement of costs or fees payable from the indigent defense fund.

“*Claims for other professional services*” means claims submitted by nonattorneys, including but not limited to investigators, foreign language interpreters, experts, certified shorthand reporters, and persons conducting medical or psychological evaluations.

“*Contract*” means a written agreement between the state public defender and an attorney to provide legal services to an indigent person. The contract may be for the provision of legal services at either the trial court level or the appellate court level.

“*County base*” means the amount of expenses in juvenile cases for which the county remains liable pursuant to Iowa Code section 232.141(2).

“*Court-appointed attorney*” means an attorney appointed by the court to represent an indigent person.

“*Department*” means the department of inspections and appeals.

“*Expert witness*” or “*expert*” means a person who is retained to render an opinion regarding an issue relevant to a case, whether or not the person actually testifies in court.

“*Family*” or “*household*” means the applicant, applicant’s spouse, including a common-law spouse, and applicant’s children living in the same residence.

“*Fee limitations*” means the attorney fee limitations established by the state public defender for specific classes of cases as specified in rule 493—12.6(13B,815), together with out-of-pocket expenses approved by the state public defender, whether submitted by a public defender, by an appointed attorney pursuant to 493—Chapter 12, or by another professional pursuant to 493—Chapter 13.

“*Fees*” means the consideration paid to an appointed attorney to represent an indigent person.

“*Fiscal year*” means the 12-month period beginning July 1 and ending June 30.

“*Governmental assistance program*” means any public assistance program from which a person is receiving assistance.

“*Income*” means any money received from any source, including but not limited to remuneration for labor, products or services; money received from governmental assistance programs; tax refunds; prize winnings; pensions; investments; and money received from any other source.

*“In-court time”* means time spent by an appointed attorney engaged before a judge or jury including, but not limited to, arraignments, bail hearings, pretrial conferences, pretrial motion hearings, evidentiary hearings, jury selection, trial, plea proceedings, posttrial hearings, and probation violation hearings. In-court time does not include time spent at foster care review board hearings, staffings, family drug court, or any other meetings with other state agencies.

*“Indigent”* means a person entitled to an appointed attorney pursuant to Iowa Code section 815.9.

*“Juvenile proceeding”* means a case in juvenile court wherein the attorney acts as guardian ad litem for the child in interest or provides legal counsel for the child, parent, guardian or custodian.

*“Liabilities”* means all living, business or farming expenses and fixed debts.

*“Local public defender”* means an attorney in the trial division of the state public defender system who performs the duties outlined in Iowa Code section 13B.9.

*“Notice of action letter”* means a letter sent by the state public defender to notify the claimant that the claimant’s fees or expenses were reduced.

*“Out-of-court time”* means time actually spent by the attorney appointed to the case in drafting documents, case preparation, depositions and other discovery, client or witness interviews, investigation, research, brief drafting, conferences or negotiations with opposing counsel or the court, reviewing records, and other productive case-related time that is not in-court time or travel time. Out-of-court time does not include clerical activities.

*“Paralegal time,”* which is payable from the indigent defense fund, means time spent in a Class A felony case at the trial court level in which only one attorney is appointed preparing pleadings and motions, reviewing transcripts, performing legal research, and interviewing witnesses and may include time spent in court assisting the appointed attorney. Paralegal time does not include typing, scheduling, answering the telephone, talking on the telephone except when interviewing witnesses, or other clerical activities or activities that duplicate work performed by the appointed attorney. Paralegal time is not payable in any other cases or in Class A felony cases in which two attorneys are appointed.

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

*“Poverty income guidelines”* means the annual poverty income guidelines established by the U.S. Department of Health and Human Services (DHHS).

*“Returned fee claim letter”* means a letter in which the state public defender returns the claim and notifies the claimant as to the reason the claim was returned.

*“Rules of criminal procedure”* means the rules prescribed by the supreme court that govern criminal actions and proceedings in all courts in the state.

*“State public defender”* means the state public defender appointed pursuant to Iowa Code chapter 13B and those other persons authorized to act on behalf of the state public defender.

*“State public defender system”* means a system for providing defense services within the state by means of a centrally administered organization having a full-time staff.

*“Written”* as used in these rules may include electronically transmitted communication except where a statute or rule expressly requires an original signature, mailing or any other special form of delivery other than electronic transmission.

This rule is intended to implement Iowa Code chapters 13B and 815.

[ARC 9293B, IAB 12/29/10, effective 12/7/10; ARC 9447B, IAB 4/6/11, effective 5/11/11; ARC 1512C, IAB 6/25/14, effective 7/30/14]

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[Filed ARC 1512C (Notice ARC 1437C, IAB 4/30/14), IAB 6/25/14, effective 7/30/14]

<sup>1</sup> 12/29/04 effective date delayed 70 days by the Administrative Rules Review Committee at its meeting held 12/14/04.



CHAPTER 11  
ATTORNEY FEE CONTRACTS

**493—11.1(13B) Scope.** This chapter sets forth the rules for private attorneys entering into contracts for indigent defense legal services with the state public defender. See 493—Chapter 7 for definitions of terms used in this chapter.

**493—11.2(13B) Contracts.** An attorney may enter into a contract with the state public defender for the provision of legal services to indigent persons.

**11.2(1) Eligibility.** To be eligible to contract with the state public defender, an attorney must be licensed to practice law in the state of Iowa and must meet the minimum qualification requirements for contracting as set forth in rule 493—11.3(13B) for the types of cases for which the attorney is contracting.

**11.2(2) Contract copy.** A copy of an original contract is available from the Office of the State Public Defender, Lucas State Office Building, Des Moines, Iowa 50319-0087, by telephoning (515)242-6158, or on the Web at <http://spd.iowa.gov>.

**11.2(3) Notice of contract opportunities.** The state public defender will give notice to attorneys of the availability of contracts for indigent defense legal services in a manner reasonably calculated to make attorneys aware of the availability of the contracts.

**11.2(4) Contract types.** Unless the attorney and state public defender agree in writing to a contract covering a different type of case, the contract shall cover one or more of the following categories of case types:

- a. Juvenile cases, including juvenile petitions on appeal;
- b. Appellate cases, including direct appeals of criminal cases, appeals from postconviction relief proceedings, and any other case for which counsel is statutorily authorized to be paid from the indigent defense fund at the trial level;
- c. Postconviction relief cases at the trial level;
- d. Class A and B felony cases at the trial level;
- e. Class C and D felony cases at the trial level, and Class A felony cases in which another attorney who meets the minimum requirements for such cases is also appointed as the lead counsel;
- f. Misdemeanor cases, probation and parole revocation cases, contempt proceedings, and any other adult criminal or civil cases for which counsel is statutorily authorized to be paid from the indigent defense fund at the trial level.

**11.2(5) Written approval required.** A contract can only be in force and effect when a contract acceptance form is signed by the contracting attorney and approved by the state public defender. The approved contract is only effective for those types of cases and those counties requested by the attorney and approved by the state public defender in writing on the acceptance and approval form, renewal form, or a subsequent written amendment. Nevertheless, a contract covering appellate cases is effective for all 99 counties.

**11.2(6) Independent contractor.** The contracting attorney shall be an independent contractor and shall not be an agent or employee of the state of Iowa. The attorney shall exercise the attorney's best independent professional judgment on behalf of clients to whom the attorney is assigned.

**11.2(7) Notification to clerks.** On a monthly basis, the state public defender shall notify the clerks of court in each county of those attorneys who have an approved contract for each type of case in each respective county.

**11.2(8) Contract terms.** A contract between the state public defender and an attorney shall cover, but is not limited to, the following subjects:

- a. The types of cases in which the attorney is to provide services;
- b. The counties in which the attorney is to provide services;
- c. The term of the contract and the responsibility of the attorney for provision of services in cases undertaken pursuant to the contract;
- d. Identification of the attorney who will perform legal representation under the contract;

- e.* A prohibition against assignment of the obligations undertaken pursuant to the contract and a description of the manner in which temporary substitute counsel may be utilized;
- f.* The qualifications of the contracting attorney to undertake legal representation pursuant to the contract;
- g.* A description of the compensation to be paid and the manner of payment;
- h.* A description of any expenses which may be provided under the contract;
- i.* A description of the record-keeping and reporting requirements under the contract;
- j.* A description of the manner in which the contract may be terminated;
- k.* A description of the manner of disposition of ongoing obligations following termination of the contract.

**11.2(9) Compensation.** Unless the contract provides for a different rate or manner of payment, the attorney shall be compensated as set forth in rule 493—12.4(13B,815).

**11.2(10) Contract form.** Unless the attorney and state public defender agree in writing to vary the terms of the contract between them, the terms contained in the Indigent Defense Legal Services Contract No. 493-14 shall constitute the agreement between the parties for the provision of legal services.

**11.2(11) No guarantee of appointments.** An attorney under contract with the state public defender is not guaranteed any minimum number of court appointments. The process by which attorneys under contract with the state public defender are appointed to specific cases is governed by Iowa Code chapters 814 and 815. The state public defender shall retain sole authority to determine the length of each contract or contract renewal.

[ARC 9293B, IAB 12/29/10, effective 12/7/10; ARC 9447B, IAB 4/6/11, effective 5/11/11; ARC 1514C, IAB 6/25/14, effective 7/30/14]

**493—11.3(13B) Attorney minimum qualifications.** To be eligible to contract with the state public defender for a type of case after January 1, 2015, the attorney must meet the minimum qualification requirements established by this rule for the particular type of case. Prior to contracting with the state public defender, an attorney shall certify the attorney's compliance with these requirements and, prior to renewal of the contract, shall certify compliance with any ongoing requirements. Satisfying these minimum requirements does not guarantee an attorney a contract with the state public defender. The state public defender retains the discretion to deny or terminate contracts if the state public defender determines that such action is in the best interests of the state.

**11.3(1) Juvenile cases.** To be eligible to contract to represent indigent persons in juvenile cases, including juvenile petitions on appeal, an attorney must be in compliance with Rule 8.36 of the Iowa Rules of Juvenile Procedure, regardless of whether the attorney seeks to represent parents or children or serve as guardian ad litem in juvenile court. An attorney contracting to represent indigent persons in juvenile cases must:

*a.* Participate in three hours of continuing legal education related to juvenile court proceedings prior to contracting with the state public defender; and

*b.* Continue to participate in three hours of continuing legal education related to juvenile court proceedings each year.

**11.3(2) Appellate cases.** To be eligible to contract to represent indigent persons in appellate cases, including direct appeals of criminal cases, appeals from postconviction relief proceedings, and appeals from any other case for which counsel is statutorily authorized to be paid from the indigent defense fund at the trial level, an attorney must:

*a.* Participate in the basic criminal appeals training sponsored by the state public defender within one year of entering into the contract, unless the attorney has already handled a criminal appeal in Iowa state court; and

*b.* Participate in three hours of continuing legal education related to criminal law each calendar year in which the attorney has an active indigent defense contract.

**11.3(3) Postconviction relief cases.** To be eligible to contract to represent indigent persons in postconviction relief cases at the trial level, an attorney must:

- a. Have practiced criminal law or served as a judicial law clerk for two years or more in any state or federal court;
- b. Participate in five hours of continuing legal education related to criminal law each calendar year in which the attorney has an active indigent defense contract and in the year prior to entering into the contract;
- c. Participate in a postconviction relief basic training sponsored by the state public defender prior to entering into the contract, unless the attorney has previously handled at least three postconviction relief proceedings to completion; and
- d. Provide the names of at least three judges or magistrates who can discuss the qualifications and effectiveness of the attorney to represent indigent persons in postconviction relief cases.

**11.3(4) Class A and B felonies.** To be eligible to contract to represent indigent persons in Class A and Class B felony cases at the trial level, an attorney must:

- a. Have practiced criminal law for four years or more in any state or federal court;
- b. Have tried at least five criminal jury trials to completion as lead counsel;
- c. Participate in five hours of continuing legal education related to criminal law each calendar year in which the attorney has an active indigent defense contract and in the year prior to entering into the contract; and
- d. Provide the names of at least three judges or magistrates who can discuss the qualifications and effectiveness of the attorney to represent indigent persons in Class A and Class B felony cases.

If an attorney satisfies the requirements for Class C and Class D felonies, the attorney may contract to serve as the second attorney representing an indigent person in a Class A felony in a case where the first appointed attorney meets these requirements. An attorney who does not meet all the requirements of this subrule but who has previously tried a Class A or Class B felony case to completion as lead counsel may provide the state public defender additional detail regarding the attorney's experience and qualifications and the circumstances preventing the attorney from meeting all the requirements and may be approved for contracting by the state public defender at the state public defender's sole discretion.

**11.3(5) Class C and D felonies.** To be eligible to contract to represent indigent persons in Class C and Class D felony cases at the trial level, an attorney must:

- a. Have practiced criminal law for two years or more in any state or federal court;
- b. Have tried at least one criminal jury trial to completion as lead counsel;
- c. Participate in five hours of continuing legal education related to criminal law each calendar year in which the attorney has an active indigent defense contract and in the year prior to entering into the contract; and
- d. Provide the names of at least three judges or magistrates who can discuss the qualifications and effectiveness of the attorney to represent indigent persons in felony cases.

An attorney who has met all requirements except for the jury trial requirement set forth in paragraph 11.3(5) "b" may provide the state public defender additional detail regarding the attorney's experience and qualifications and the circumstances preventing the attorney from obtaining jury trial experience and may be approved for contracting by the state public defender at the state public defender's sole discretion.

**11.3(6) Misdemeanor and other cases.** To be eligible to contract to represent indigent persons in misdemeanor cases, probation and parole revocation cases, contempt proceedings, and any other adult criminal or civil cases for which counsel is statutorily authorized to be paid from the indigent defense fund at the trial level, an attorney must:

- a. Participate in the basic criminal defense training sponsored by the state public defender within one year of entering into the contract, unless the attorney already has an active indigent defense contract or has practiced criminal law for more than two years; and
- b. Participate in three hours of continuing legal education related to criminal law each calendar year in which the attorney has an active indigent defense contract.

**11.3(7) Amended charges.** An attorney who is appointed to a case that is initially within the scope of the attorney's contract but is subsequently amended to contain more serious charges that are outside the scope of the attorney's contract shall request that the court authorize the attorney's withdrawal from the case and appoint an attorney with a contract that covers the amended charges in the county in which

the action was pending unless the court determines that no such attorney with an applicable contract is available or the state public defender consents to the continued representation by the original attorney.  
[ARC 1514C, IAB 6/25/14, effective 7/30/14]

**493—11.4(13B) Contract approval or denial.**

**11.4(1)** The state public defender or a person designated by the state public defender may confer with judges, attorneys and others with knowledge of a potential contracting attorney's competence, effectiveness, trustworthiness, compliance with the minimum qualification requirements set forth in rule 493—11.3(13B), and ability to provide services to eligible individuals and may conduct such additional investigation as deemed warranted in the sole discretion of the state public defender. The information received may be taken into consideration in determining whether it would be in the best interests of the state to enter into an initial or renewal contract with the potential contracting attorney.

**11.4(2)** The state public defender or a person designated by the state public defender may hold discussions with, or otherwise obtain information from, a potential contracting attorney to determine the attorney's qualifications and ability to perform the conditions of an initial or renewal contract.

**11.4(3)** The state public defender or a person designated by the state public defender may hold discussions with, or otherwise obtain information from, a potential contracting attorney to establish under an initial or renewal contract the types of cases the contracting attorney will handle and the geographic area in which the cases will be handled.

**11.4(4)** The state public defender may decline to award an initial or renewal contract to a proposed contracting attorney if the state public defender determines that the contract would not be in the best interests of the state, as described in rule 493—11.8(13B). The state public defender may limit the contract to specific types of cases, a specified geographic area, or both. The state public defender shall give written notice of this action to the attorney. The attorney may seek reconsideration of this decision in the manner prescribed in rule 493—11.9(13B).

**11.4(5)** Nothing contained in this rule shall obligate the state public defender to enter into an initial or renewal contract if the state public defender determines that it is not in the best interests of the state to enter into such contract.

[ARC 1514C, IAB 6/25/14, effective 7/30/14]

**493—11.5(13B) Contract elements.** Rescinded ARC 1514C, IAB 6/25/14, effective 7/30/14.

**493—11.6(13B) Contract renewal.** Prior to renewal of any contract, the state public defender may contact judges, attorneys, court personnel, and others to determine if any existing contract is being properly fulfilled and may conduct such additional investigation as is described in rule 493—11.4(13B). If the state public defender has determined that a contract renewal is in the best interests of the state, the state public defender may offer a new contract to the contracting attorney. The contracting attorney may accept the new contract by signing the contract renewal and returning it to the state public defender prior to the date that the existing contract expires. If the contracting attorney does not sign and return the contract renewal, the contract shall terminate on its expiration date without regard to whether the contracting attorney receives any further notice. If a contracting attorney is not offered a contract renewal, the state public defender shall give the contracting attorney written notice of this action. The attorney may seek reconsideration of this decision in the manner prescribed in rule 493—11.9(13B).

[ARC 1514C, IAB 6/25/14, effective 7/30/14]

**493—11.7(13B) Termination.**

**11.7(1) Termination at will.** Either the state public defender or the contracting attorney may terminate a contract upon 30 days' advance written notice to the other party for any reason or no reason. Such termination may affect the entire contract, or may relate solely to a particular county or geographical area, or particular type of case.



**11.7(2) Termination for cause.**

*a. License suspension or revocation.* A contract for indigent defense shall automatically terminate without notice upon the suspension or revocation of the attorney's license to practice law in the state of Iowa.

*b. Default.* The state public defender may issue a notice of default based on any of the grounds described in rule 493—11.8(13B). A notice of default shall state the grounds of default and, if feasible, request that the contracting attorney remedy the default within 10 days of the date of the notice. If the events triggering the notice of default continue to be evidenced more than 10 days beyond the date of written notice, the state public defender may immediately terminate the contract without further notice by issuing a notice of termination. An attorney may seek reconsideration of the state public defender's decision to terminate a contract based on the attorney's default in the manner described in rule 493—11.9(13B).

*c. Improper billing practices.* The state public defender may notify the attorney that the state public defender is considering the exercise of the state public defender's contract right to terminate the contract for improper billing practices. The notification shall explain the basis for the state public defender's concern and provide the attorney at least 14 days to provide a response. After consideration of the response, the state public defender may terminate the contract for improper billing practices if the state public defender determines that the attorney has engaged in a pattern of willful, intentional, reckless, or negligent submission of false fee claims. An attorney may seek reconsideration of the state public defender's decision to terminate a contract for improper billing practices in the manner described in rule 493—11.9(13B).

**11.7(3) Termination by mutual consent.** Upon the mutual consent, confirmed in writing, of the state public defender and the contracting attorney, the contract may be terminated on less than 30 days' notice. Such termination may affect the entire contract or may relate solely to a particular county or geographical area or to a particular type of case.

[ARC 1514C, IAB 6/25/14, effective 7/30/14]

**493—11.8(13B) Grounds to deny or terminate a contract.** In determining whether the award, renewal, or termination of a contract is in the best interests of the state, the state public defender may take into consideration factors such as, but not limited to, the following:

1. The attorney's eligibility for contracting pursuant to rule 493—11.2(13B) for the type of case in which the attorney is to provide services or the attorney's failure to comply with such requirements;
2. The attorney's compliance with the terms of an existing or prior contract to represent indigent persons;
3. Any form of dishonesty or deception directed to judicial officials, the state public defender, indigent persons, other clients, or any other person in the practice of law;
4. Unprofessional or unethical conduct, or other act or omission that is or may be detrimental or harmful to indigent representation;
5. An attorney's failure to attend, or untimely attendance at, hearings, depositions, or other case-related proceedings;
6. An attorney's failure to abide by a court order, applicable statutes or administrative rules governing indigent representation, or local or state rules of procedure applicable to the cases in which the attorney has been appointed;
7. Repetitive, willful, deceptive, unexplained or uncorrected errors in claims for fees;
8. Disciplinary action against a legal or other professional license or conviction of a crime in any jurisdiction when the disciplinary action or conviction implicates an attorney's honesty, trustworthiness, or competence to practice law, or is otherwise related to the practice of indigent defense;
9. Use of alcohol or controlled substances during court proceedings or in a manner impairing competent performance;
10. Judicial orders or rulings finding that an attorney engaged in untruthful, incompetent, unprofessional, or unethical behavior in the practice of indigent defense, submission of fee claims, or otherwise in the practice of law; or

11. Any other behavior implicating an attorney's competence, effectiveness, or trustworthiness in the practice of indigent defense.

[ARC 1514C, IAB 6/25/14, effective 7/30/14]

**493—11.9(13B,17A) Reconsideration.**

**11.9(1) *Written notice.*** A request for reconsideration is perfected by giving written notice of the request for reconsideration to the state public defender within ten business days of the date of mailing of the notice of denial of an initial or renewal contract, or notice of termination following issuance of a notice of default. A request for reconsideration must be in writing and must specify the factual or legal errors the attorney contends were made by the state public defender. The attorney may provide such additional information, explanation or documentation as the attorney believes would be relevant to the reconsideration decision. The request for reconsideration is deemed made on the date of the United States Postal Service nonmetered postmark or the date of personal service on the state public defender.

**11.9(2) *Exhaustion of administrative remedies.*** A request for reconsideration of the state public defender's decision to deny or terminate a contract for cause is an administrative prerequisite to seeking any form of judicial review pursuant to Iowa Code chapter 17A.

**11.9(3) *Informal conference.*** Upon receipt of a request for reconsideration, the state public defender or a person designated by the state public defender may schedule an informal conference with the attorney if in the state public defender's judgment such a conference may foster resolution of the dispute. To the extent that the participation of the state public defender or a person designated by the state public defender in an informal conference could be considered personal investigation as that term is used in Iowa Code section 17A.17, an attorney agreeing to participate in an informal conference waives the right to seek to disqualify the state public defender or a person designated by the state public defender from acting as presiding officer or advising the presiding officer in a subsequent contested case proceeding based solely on the ground of personal investigation during an informal conference. The attorney does not waive the right to raise any other type of disqualification.

**11.9(4) *Reconsideration decision.*** The state public defender shall issue a written reconsideration decision which may uphold, reverse, or modify the initial decision to deny or terminate a contract. The reconsideration decision is final agency action, unless an attorney timely requests a contested case hearing pursuant to rule 493—11.10(13B,17A).

**493—11.10(13B,17A) Contested case hearing.**

**11.10(1) *Written request for contested case hearing.*** An attorney who is aggrieved by a reconsideration decision and who desires to contest the factual basis for the reconsideration decision shall request a contested case hearing within 10 days of the date the reconsideration decision is mailed. The request for contested case hearing shall identify the fact issues in dispute and any other claimed error, and shall state the manner in which the state public defender is alleged to have relied upon erroneous facts.

**11.10(2) *Procedures.*** The request for contested case hearing is deemed made on the date of the United States Postal Service nonmetered postmark or the date of personal service on the state public defender. A contested case hearing shall be conducted pursuant to the procedures set forth in 481 IAC Chapter 10.

**11.10(3) *A timely request for contested case hearing is an administrative prerequisite to seeking any form of judicial review pursuant to Iowa Code chapter 17A.***

**11.10(4) *Presiding officer.*** The state public defender or a person designated by the state public defender may preside over the contested case hearing and issue a final decision, or the state public defender may request that the hearing be conducted by an administrative law judge from the department of inspections and appeals who shall issue a proposed decision subject to review by or appeal to the state public defender. If the notice of hearing does not identify an administrative law judge as the presiding officer, an attorney may file a written request that an administrative law judge serve as the presiding officer at hearing. Such request must be filed within 20 days after service of the notice of hearing by

certified mail, return receipt requested, to the attorney's last-known address. The state public defender may deny the request only upon a finding that one or more of the following apply:

- a. There is a compelling need to expedite issuance of a final decision.
- b. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.
- c. Funds are unavailable to pay the costs of an administrative law judge and possible resulting interagency appeal.
- d. The request was not timely made.
- e. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.

**493—11.11(13B,17A) Judicial review.**

**11.11(1)** The final decision by the state public defender to deny an attorney's request to enter into an initial or renewal contract for indigent representation, to terminate such a contract for cause following issuance of a notice of default, or to terminate such contract for improper billing practices is reviewable pursuant to Iowa Code chapter 17A.

**11.11(2)** Nothing in this rule shall prevent the informal resolution of a decision to deny or terminate an initial or renewal contract through mutually agreeable settlement at any stage of the proceeding.

[ARC 1514C, IAB 6/25/14, effective 7/30/14]

These rules are intended to implement Iowa Code chapter 13B.

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<sup>1</sup> 12/29/04 effective date delayed 70 days by the Administrative Rules Review Committee at its meeting held 12/14/04.



CHAPTER 12  
CLAIMS FOR INDIGENT DEFENSE SERVICES

**493—12.1(13B,815) Scope.** This chapter sets forth the rules for submission, payment and court review of indigent defense fee claims. See 493—Chapter 7 for definitions of terms used in this chapter.

**12.1(1)** The state public defender will pay from the indigent defense fund attorney fees and costs for the following types of cases: commitment of sexually violent predators under Iowa Code chapter 229A; contempts; postconviction relief proceedings to the extent authorized under Iowa Code chapter 822; juvenile justice under Iowa Code section 232.141(3)(c); guardians ad litem for children in juvenile court under Iowa Code chapter 600 or respondents under Iowa Code chapter 600A; fees for appellate attorneys under Iowa Code section 814.11; fees to attorneys under Iowa Code section 815.7; fees for court-appointed counsel under Iowa Code section 815.10; violation of probation or parole under Iowa Code chapter 908; indigent's right to transcript on appeal under Iowa Code section 814.9; indigent's application for transcript in other cases under Iowa Code section 814.10; and special witnesses for indigents under Iowa Code section 815.4.

**12.1(2)** The state public defender will not pay for the costs for any type of administrative proceeding or any other proceeding under Iowa Code chapter 598, 600, 600A, 633, or 915 or other provisions of the Iowa Code.

**12.1(3)** The Iowa Code requires the state public defender to approve only those indigent defense fee claims that are reasonable and appropriate under applicable statutes. In exercising this duty, the state public defender publishes rules and makes judgments considering what is statutorily permitted, fair for claimants, fair for indigent clients (who, by law, are required to reimburse the state for the costs of their defense to the extent they are reasonably able to pay such costs), and consistent with good stewardship of public appropriations.

[ARC 1512C, IAB 6/25/14, effective 7/30/14]

**493—12.2(13B,815) Submission and payment of attorney claims.**

**12.2(1) Required claim documents.** Court-appointed attorneys shall submit written indigent defense fee claims to the state public defender for review, approval and payment. These claims shall include the following:

*a.* A completed fee claim on a form promulgated by the state public defender. Adult fee claims, including all trial-level criminal and postconviction relief proceedings, misdemeanor appeals to district court, and applications for discretionary review or applications for interlocutory appeals to the Iowa supreme court, must be submitted on an Adult form. Juvenile fee claims, including petitions on appeal and applications for interlocutory appeals, must be submitted on a Juvenile form. Appellate fee claims, including claims for all criminal and postconviction relief appeals, work performed after the granting of an application for discretionary review or for interlocutory appeal, and work performed after full briefing is ordered following a juvenile petition on appeal, must be submitted on an Appellate form. The claim forms may be downloaded from the state public defender Web site: <http://spd.iowa.gov>.

*b.* A copy of all orders appointing the attorney to the case.

(1) The appointment order must be signed by the court and either dated by the court or have a legible file-stamp.

(2) If, at the time of appointment, the attorney does not have a contract to represent indigent persons in the type of case and the county in which the action is pending, the appointment order must include either a finding that no attorney with a contract to represent indigent persons in that specific type of case and that county is available or a finding that the state public defender was consulted and consented to the appointment.

(3) Claims for probation or parole violations and contempt actions are considered new cases, and the attorney must submit a copy of an appointment order for these cases. Appointment orders in parole violation cases must also contain the following findings:

1. The alleged parole violator requests appointment of counsel;
2. The alleged parole violator is indigent as defined in Iowa Code section 815.9;

3. The alleged parole violator, because of lack of skill or education, would have difficulty in presenting the alleged violator's version of a disputed set of facts, particularly when presentation requires the examining or cross-examining of witnesses or the offering or dissecting of complex documentary evidence; and

4. The alleged parole violator has a colorable claim that the alleged violation has not been committed, or there are substantial reasons which justify or mitigate the violation and make revocation inappropriate.

(4) If the venue is changed in a juvenile case, an order appointing the attorney in the new county must be submitted.

(5) A new appointment order is not necessary for trial counsel to request or resist an interlocutory appeal or an application for discretionary review.

(6) A new appointment order is not necessary to pursue or respond to a juvenile petition on appeal if the attorney was properly appointed to represent the client in juvenile court. If the original trial counsel withdraws or is removed from the case, the new appellate counsel must attach an order appointing the attorney for the appeal.

(7) An appointment order is not necessary if the state public defender determines the appointment order is unnecessary.

c. A copy of any application and court order authorizing the attorney to exceed the attorney fee limitations.

d. A copy of any court order that affects the amount to be paid or the client's right to counsel.

e. A copy of the dispositional order, the order granting a motion to withdraw prior to disposition, procedendo, or other court order documenting the "date of service" for the claim.

f. An itemization detailing all work performed on the case for which the attorney seeks compensation and all expenses incurred for which the attorney seeks reimbursement.

(1) The itemization must state the date and amount of time spent on each activity. Time must be reported in tenths of an hour. Time shall be rounded to the nearest tenth of an hour. For example, an attorney spending ten minutes performing an activity shall bill 0.2 hours, while an attorney spending seven minutes performing an activity shall bill 0.1 hours. The time spent on each activity must be separately itemized, except that one or more activities on the same day, each taking less than 0.1 hours, must be aggregated together with other activities so that the aggregate amount billed is at least 0.1 hours. If an attorney performs only a single activity taking less than 0.1 hours for a client on a day, the attorney may bill 0.1 hours regardless of the precise length of time spent on the activity. If an attorney performs multiple related activities on the same day, such as multiple e-mail or telephone exchanges, the activities must be aggregated together if separately itemizing the activities would result in claiming more time than the attorney actually spent performing the activities.

(2) The itemization shall separately designate time claimed for in-court time, out-of-court time, paralegal time and travel time.

(3) If another attorney performed any of the work, the itemization shall specify the name of the attorney performing each activity. It is permissible to use initials representing the name, so long as an explanation is provided as to the full name for each set of initials with the itemization.

(4) The itemization must be in chronological order.

(5) If the attorney seeks reimbursement for expenses incurred, the itemization must separately state each expense incurred, including any specific information required by rule 493—12.8(13B).

(6) The itemization must be typed in at least 10-point type on 8½" × 11" paper.

g. If the attorney was privately retained to represent the client prior to appointment, a copy of any representation agreement, written notice of the dollar amount paid to the attorney, and an itemization of services performed and how any funds provided were spent during the period prior to the court appointment. The state public defender will review the amount paid and hours spent before and after the court appointment in determining the appropriate attorney compensation on the claim.

**12.2(2) Failure to submit required documents.** Submitted claims for which the entire claim form has not been properly completed or which do not include the documents required by subrule 12.2(1) may be returned to the attorney for additional information and resubmission within the time required by

paragraph 12.2(3) “d.” If the attorney fails to submit all the required documentation to support a claim, the state public defender may request additional information or may deny all or a portion of the claim.

**12.2(3) *Timely claims required.*** Claims submitted prior to the date of service shall be returned to the claimant unpaid and may be resubmitted to the state public defender after the date of service. Claims that are not submitted within 45 days of the date of service as defined in this subrule shall be denied as untimely unless the delay in submitting the claim is excused by paragraph 12.2(3) “f.” Attorney fees and expenses that are submitted on a claim denied as untimely under this subrule may be resubmitted on a subsequent claim that is timely submitted with respect to a subsequent date of service in the same case. For purposes of this subrule, a probation, parole, or contempt proceeding is not the “same case” as the underlying proceeding.

*a. Adult claims.* For adult claims, “date of service” means the date of filing of an order indicating that the case was dismissed or the client was acquitted or sentenced, the date of a final order in a postconviction relief case, the date of mistrial, the date on which a warrant was issued for the client, or the date of a court order authorizing the attorney’s withdrawal from a case prior to the date of a dismissal, acquittal, sentencing, mistrial or the issuance of a warrant. The filing of a notice of appeal is not a date of service. If a motion for reconsideration is filed, the date on which the court rules on that motion is the date of service. For interim adult claims authorized by subrule 12.3(3) or 12.3(4), the date of service is the last day on which the attorney claimed time on the itemization of services.

*b. Juvenile claims.* For juvenile claims, “date of service” means the date of filing of an order as a result of the dispositional hearing or most recent postdispositional hearing that occurs while the client is still an active party in the case, the date on which the client ceased to be a party, the date of a court order authorizing the attorney’s withdrawal from a case prior to the filing of the final ruling with respect to the client, the date jurisdiction is waived to adult court, the date on which the venue is changed, the date of dismissal, or the file-stamped date of a procedendo resulting from a petition on appeal. The date of a family drug court meeting, family team meeting, staffing, or foster care review board hearing is not a date of service.

*c. Appellate claims.* For appellate claims, “date of service” means the date on which the case was dismissed, the date of a court order authorizing the attorney’s withdrawal prior to the filing of the proof brief, the date on which the proof brief was filed, or the date on which the procedendo was issued.

*d. Notices of action and returned claims.* For claims of any type that are filed as a result of a notice of action letter or a returned fee claim letter, “date of service” means the date of the notice of action letter or returned fee claim letter. But a claim that is denied as untimely does not become timely merely because it was resubmitted within 45 days of a returned fee claim letter. A timely claim returned to the attorney for additional information shall continue to be deemed timely only if resubmitted with the required information within 45 days of being returned by the state public defender.

*e. Court orders.* For claims of any type that are filed as a result of a court order after hearing for review of the fee claim, “date of service” means the file-stamped date of the order.

*f. Exceptions to the 45-day rule.* The state public defender may in the state public defender’s sole discretion approve a claim that was not submitted within 45 days of the date of service only if the delay in submitting the claim was caused by one of the following circumstances:

- (1) The death of the attorney;
- (2) The death of the spouse of the attorney, a child of the attorney, or an employee of the attorney who was responsible for assisting in the preparation of the attorney’s fee claims;
- (3) A serious illness, injury, or other medical condition that prevents the attorney from working for more than 3 consecutive days and occurs in the last 5 days before the expiration of the 45-day period for timely claims;
- (4) The attorney’s need to care for the attorney’s spouse or child with a serious illness, injury, or other medical condition that prevents the spouse or child from working, attending school, or performing other regular daily activities for more than 3 consecutive days and occurs in the last 5 days before the expiration of the 45-day period for timely claims.

Any claim submitted pursuant to subparagraph (1) must be submitted within 45 days of the death of the attorney. Any claim submitted pursuant to subparagraph (2) must be submitted within 30 days of the

death that caused the delay. Any claim submitted pursuant to subparagraph (3) or (4) must be submitted within 15 days of the end of the illness, injury, or medical condition that caused the delay. An attorney claiming an exception to the 45-day rule shall submit with the claim a letter explaining the applicable exception and written documentation supporting the exception.

**12.2(4) *Valid appointment required.*** Claims for compensation from an attorney appointed as counsel or guardian ad litem may be denied if the attorney was appointed contrary to Iowa Code section 814.11 or 815.10. Claims for which court-appointed counsel at state expense is not statutorily authorized or which are not payable from the indigent defense fund created by Iowa Code section 815.11 shall be denied.

*a. Appellate appointments.* Claims for compensation from an attorney whose appointment as counsel or guardian ad litem at the appellate level does not comply with Iowa Code section 814.11 shall be denied.

*b. Trial-level designations.* Claims by an attorney whose appointment in a case as counsel or guardian ad litem at the trial level was made on or after July 1, 2009, shall be denied if the state public defender filed a designation effective at the time of the appointment designating a local public defender, nonprofit corporation, or attorney to represent indigent persons in that type of case in the county in which the case was filed, unless the appointment order and any supporting documentation submitted with the claim demonstrate that:

(1) The state public defender's designee and any successor designee have withdrawn from the case or have been offered and declined to take the case; or

(2) The state public defender's designee and any successor designee would have withdrawn from or would have declined to take the case had the appointment been offered.

*c. Trial-level contract attorney preference.* Claims by an attorney whose appointment in a case as counsel or guardian ad litem at the trial level was made on or after February 1, 2012, shall be denied unless:

(1) At the time of the appointment, the attorney had a contract with the state public defender to represent indigent persons in that specific type of case and that county in which the action was pending; or

(2) The appointment order includes a specific finding that no attorney with a contract to represent indigent persons in that specific type of case and that county in which the action was pending is available or a finding that the state public defender was consulted and consented to the appointment; or

(3) After the appointment, the attorney entered into a contract with the state public defender, or amended the attorney's existing contract, to represent indigent persons in the specific type of case and the county in which the action was pending, in which case only the portion of the claim for the services performed prior to the effective date of the contract shall be denied.

**12.2(5) *Scope of appointment.*** Claims shall only be paid for services rendered and expenses incurred within the scope of the attorney's court appointment. Any other fees or expenses claimed shall be denied.

*a. Services prior to appointment.* Claims for services rendered or expenses incurred prior to the effective date of the attorney's appointment are not payable within the scope of the attorney's appointment and shall be denied.

*b. Representation of parents after termination of parental rights.* Claims for services rendered or expenses incurred by an attorney for representing a parent in a child in need of assistance case or termination of parental rights case for work performed after the date on which the termination of that parent's parental rights becomes final, either on appeal or because no appeal was taken, are not payable within the scope of the attorney's appointment and shall be denied.

*c. Guardian ad litem for children over the age of 18.* Claims for services rendered or expenses incurred by a guardian ad litem for a child who is aged 18 or older and involved in a juvenile court proceeding are only within the scope of appointment if the court enters an order appointing the guardian ad litem for the limited purposes of continuing a relationship with the child and to provide advice to the child relating to the child's transition plan under Iowa Code section 232.2 beyond the child's eighteenth birthday. The appointment shall end on the date a court order relieving the guardian ad litem of further duties or the date of a court order closing the juvenile case, whichever occurs first, and claims for services



rendered or expenses incurred after such date shall be denied. Neither a parent nor guardian of the child in interest is entitled to court-appointed counsel during the post-age 18 transition period.

**12.2(6) Rate of compensation.** Claims for compensation in excess of the applicable rate of compensation established by rule 493—12.4(13B,815) or in the attorney's contract with the state public defender are not payable and shall be reduced to the applicable rate of compensation.

**12.2(7) Excessive claims.** The amount of a claim for services provided or expenses incurred that is excessive shall be reduced by the state public defender to an amount which is not excessive. Only reasonable and necessary compensation and expenses will be approved for payment.

**12.2(8) Review of claims after contract termination for improper billing practices.** A claim submitted by an attorney whose contract with the state public defender is terminated for improper billing practice shall be paid only to the extent that the claim is supported by authentic, independent, written documentation originating from sources other than the attorney, even if such a claim would otherwise be payable under this chapter. Any portion of a claim for a service performed or expense incurred that is not independently verified by such documentation is not payable under the contract and shall be denied.

*a. Acceptable documentation.* Independent, written documentation that may support a claim for services performed or expenses incurred by the attorney includes, but is not limited to:

(1) Affidavits of clients, witnesses, prosecutors, service providers, department of human services staff, court staff, or other persons who can verify that the attorney performed a service for a specific length of time on a specific day. Affidavits from employees of the attorney or the attorney's firm, family members of the attorney, or other attorneys within the same law firm as the attorney are not independent documentation and are insufficient to confirm a claim for a service performed or expense incurred.

(2) Court orders or other documents in the court file that verify the attorney's attendance at a court proceeding, as well as the date, time, duration, and location of the proceeding.

(3) Deposition transcripts and other records of the certified shorthand reporter that verify the attorney's attendance at a deposition, as well as the date, time, duration, and location of the deposition.

(4) Records of a jail or correctional facility that document the date, time, and duration of visits, telephone calls, or videoconferencing sessions with clients or witnesses in custody in the facility.

(5) Records of a telecommunication provider that verify the length of telephone calls, long-distance expenses, or fax expenses.

(6) Records of an online legal research service that document the date, time, duration, and nature of legal research performed.

(7) Calculations from mapping software, such as MapQuest or Google Maps, of the distance traveled to a location where a verified service was provided.

(8) Original printed receipts for expenses incurred.

*b. Pending claims.* Any claims submitted by an attorney that have not yet been approved by the state public defender when the attorney's contract with the state public defender is terminated for improper billing practices shall be returned to the attorney. The attorney may resubmit any claim returned in its entirety, or a portion thereof, within the time required by paragraph 12.2(3) "d," with the additional documentation required by this subrule confirming all time and expenses claimed on the itemization. The resubmitted claim shall be reviewed consistent with the requirements of this subrule. Any claim not resubmitted within the time required by paragraph 12.2(3) "d" shall be denied.

*c. Court review.* An attorney whose claim is denied or reduced pursuant to this subrule may seek court review of the state public defender's action on that claim by filing a motion for court review as provided for by rule 493—12.9(13B,815). But if the attorney has sought review of the state public defender's decision to terminate the attorney's contract for improper billing practices, the court shall stay proceedings on the attorney's motion until the attorney has exhausted all administrative remedies, final judgment has been entered in any judicial review action under Iowa Code chapter 17A, and any appeal of such judgment is decided. The final judgment of any judicial review action under Iowa Code chapter 17A regarding the termination of the attorney's contract conclusively determines the applicability of this subrule. If the attorney fails to seek judicial review of the state public defender's decision to terminate the attorney's contract, the state public defender's notice to the attorney that the state public defender is terminating the attorney's contract for improper billing practices is conclusive evidence that

this subrule applies, and the attorney may not challenge the termination decision or the applicability of this subrule in the motion for review of the state public defender's action on the fee claim under rule 493—12.9(13B,815).

**12.2(9) Approval of claims.** Claims shall be forwarded to the department for final processing and payment only after the state public defender has determined that payment of the claim is appropriate under this chapter and under Iowa law. No payments shall be made from the indigent defense fund except with the authorization of the state public defender.

[ARC 8090B, IAB 9/9/09, effective 9/15/09; ARC 8372B, IAB 12/16/09, effective 1/20/10; ARC 9293B, IAB 12/29/10, effective 12/7/10; ARC 9447B, IAB 4/6/11, effective 5/11/11; ARC 9938B, IAB 12/28/11, effective 2/1/12; ARC 1512C, IAB 6/25/14, effective 7/30/14]

**493—12.3(13B,815) Interim claims.** Claims will be paid at the earlier of the conclusion of the case or when legal representation of the client under the original court appointment is concluded, except as provided for in subrule 12.3(1), 12.3(2), 12.3(3), or 12.3(4).

**12.3(1) Juvenile cases.** An initial claim for services in a juvenile case may be submitted after the dispositional hearing, if any. Subsequent claims may be submitted after each court hearing held in the case. A court hearing does not include family drug court, family team meetings, staffings or foster care review board hearings.

**12.3(2) Appellate cases.** A claim for work performed may be submitted in appellate cases after the filing of the attorney's proof brief. A subsequent claim may be submitted after the procedendo is filed.

**12.3(3) Class A felonies.** Interim claims in Class A felony cases may be submitted once every three months, with the first claim submitted at least 90 days following the effective date of the attorney's appointment.

**12.3(4) Other cases.** In all other cases, claims filed prior to the conclusion of the case will not be paid except with prior written consent of the state public defender.

**12.3(5) Change of employment.** A change of employment is not a basis for submitting an interim claim. An attorney changing firms must wait to submit a claim until the conclusion of the case unless the attorney withdraws from the case or subrule 12.3(1), 12.3(2), or 12.3(3) applies. Because indigent defense contracts are with the attorney and not with the law firm, the state public defender shall send payments to whatever person or law firm the departing attorney directs.

**12.3(6) Approval of interim claims.** Approval of any interim claims shall not affect the right of the state public defender to review subsequent claims or the aggregate amount of the claims submitted.

[ARC 1512C, IAB 6/25/14, effective 7/30/14]

**493—12.4(13B,815) Rate of compensation.** Unless the attorney has a contract that provides for a different manner or rate of payment, the following hourly rates shall apply to payment of all claims for cases to which the attorney was appointed after June 30, 1999, and before July 1, 2006:

Attorney time:	Class A felonies	\$60/hour
	Class B felonies	\$55/hour
	All other criminal cases	\$50/hour
	All other cases	\$50/hour
Paralegal time:		\$25/hour

Unless the attorney has a contract that provides for a different manner or rate of payment, the following hourly rates shall apply to payment of all claims for cases to which the attorney was appointed after June 30, 2006, and before July 1, 2007:

Attorney time:	Class A felonies	\$65/hour
	All other criminal cases	\$60/hour
	All other cases	\$55/hour
Paralegal time:		\$25/hour

Unless the attorney has a contract that provides for a different manner or rate of payment, the following hourly rates shall apply to payment of all claims for cases to which the attorney was appointed after June 30, 2007:

Attorney time:	Class A felonies	\$70/hour
	Class B felonies	\$65/hour
	All other criminal cases	\$60/hour
	All other cases	\$60/hour
Paralegal time:		\$25/hour

**12.4(1) *Applicability to juvenile cases.*** In a juvenile case to which the attorney was appointed before July 1, 1999, the state public defender will pay the attorney \$50 per hour for all services performed following the dispositional hearing or the first regularly scheduled review hearing occurring after June 30, 1999. In a juvenile case to which the attorney was appointed after June 30, 1999, but before July 1, 2006, the state public defender will pay the attorney \$55 per hour for all services performed following the dispositional hearing or the first regularly scheduled review hearing occurring after June 30, 2006. In a juvenile case to which the attorney was appointed after June 30, 2006, but before July 1, 2007, the state public defender will pay the attorney \$60 per hour for all services performed following the dispositional hearing or the first regularly scheduled review hearing occurring after June 30, 2007. However, the attorney must file separate claims for services before and after said hearing. If a claim is submitted with two hourly rates on it, the claim will be paid at the lower applicable rate.

**12.4(2) *Appointments before July 1, 1999.*** In a case to which the attorney was appointed before July 1, 1999, attorney time shall be paid at a rate that is \$5 per hour less than the rates established pursuant to 2000 Iowa Acts, chapter 1115, section 10. Claims for compensation in excess of these rates are not payable under the attorney's appointment and will be reduced.

**12.4(3) *Applicability to appellate contracts.*** Rescinded IAB 6/25/14, effective 7/30/14.

**12.4(4) *All other cases.*** As used in this rule, the term "all other cases" includes appeals, juvenile cases, contempt actions, representation of material witnesses, and probation/parole violation cases, postconviction relief cases, restitution, extradition, and sentence reconsideration proceedings without regard to the level of the underlying charge.

[ARC 1512C, IAB 6/25/14, effective 7/30/14]

#### **493—12.5(13B,815) Payable attorney time.**

**12.5(1) *Maximum daily hours.*** An attorney appointed as counsel or guardian ad litem must not perform services for indigent persons or submit claims to the state public defender for payment for such services for more than 12 hours of the attorney's time in any calendar day except as provided in this subrule.

*a.* An attorney may perform services for indigent persons and submit claims to the state public defender for payment for such services for more than 12 hours and less than or equal to 16 hours in a calendar day if and only if the attorney is in trial or other contested court hearing lasting more than one day or the attorney is preparing for such a trial or hearing that will be occurring within the next seven days.

*b.* If an attorney performs services for indigent persons and submits claims to the state public defender for payment for such services for more than 12 hours and less than or equal to 16 hours in a calendar day, the attorney shall include with each claim form submitted to the state public defender that claims time for that date, even if the amount claimed on that claim form is less than 12 hours, a letter specifying the total hours worked for indigent persons, any additional time billed to other private clients on that date or certifying that no other time was billed to any other client, and explaining the need to work more than 12 hours.

*c.* Any time claimed by an attorney appointed as counsel or guardian ad litem in excess of 12 hours on a calendar day, except as permitted by this subrule, and any time claimed in excess of 16 hours on a

calendar day, shall not be paid. If the time is claimed on multiple claims, the most recently submitted claim claiming time on a particular calendar day shall be reduced so as not to pay more than the maximum authorized daily hours. If more than the maximum authorized amount is inadvertently paid by the state public defender, the attorney shall reimburse the state public defender upon written notice of the improper payment.

**12.5(2) Standardized and estimated billing prohibited.** All time submitted on the itemization of services must be the actual time worked providing services to the client. Attorneys are prohibited from using standardized billing estimates for tasks, such as billing 0.1 for every page of a document reviewed or 0.2 for every e-mail sent or received, or 1.0 hour for every court proceeding. Attorneys must also not use standardized billing for cases, such as billing the same set of standard tasks in every case regardless of whether the task was actually performed.

**12.5(3) Nonbillable time.** The following activities are not reasonable and necessary legal services for the indigent client, and therefore time and expenses for such activities are not payable under the attorney's appointment and shall be denied:

- a. Clerical work, including but not limited to opening and closing files; making photocopies; opening or sending mail; sending cover letters; transmitting copies of documents to a client, another party or clerk of court; sending faxes; picking up or delivering documents; drafting internal file memos; giving instructions to support staff; or billing;
- b. Preparation of motions to withdraw from a case, and other time related to withdrawing from a case, when the withdrawal is made in order to retire from the practice of law, discontinue or reduce indigent defense representation, pursue another job, or is otherwise for the attorney's personal benefit;
- c. Overhead, including time spent managing the operations of the attorney's law practice, office lease payments, or support staff salaries;
- d. Preparation of the fee claim, itemization of services, or other time-keeping activities;
- e. Preparation of an application or proposed order to exceed the fee limitations, court time obtaining such an order, or review of the order granting or denying the application;
- f. Preparation of a motion for judicial review of the state public defender's action on an attorney fee claim, preparation for or attendance at a hearing on such a motion, review of an order granting or denying the motion, preparation of appellate briefs or other documents in an appeal of such a court order, preparation for or participation in oral arguments in the appeal, or review of an appellate decision regarding such a court order.

**12.5(4) Travel time.** Time spent by an attorney or guardian ad litem traveling is only payable when the travel is reasonable and necessary to represent the indigent client and the attorney or guardian ad litem is traveling:

- a. To and from the scene of a crime in a criminal case or juvenile delinquency proceeding;
- b. To and from the location of a pretrial hearing, trial, or posttrial hearing in a criminal case if the venue has been changed from the county in which the crime occurred or if the location of the court hearing has been changed, without changing venue, to a different county for the convenience of the court;
- c. To and from the place of incarceration of a client in a postconviction relief case, criminal appeal, or postconviction relief appeal;
- d. To and from the place of detention of a client in a juvenile delinquency or criminal case if the place of detention is located outside the county in which the action is pending;
- e. To and from the location of the placement of a child in a juvenile case if the guardian ad litem is required by statute to visit the placement and the placement is located in Iowa, but outside the county in which the case is pending;
- f. To and from the location of the placement of a child in a juvenile case if the guardian ad litem is required by statute and court order to visit the placement and the placement is outside the state of Iowa;
- g. To and from the location of a family team meeting, if the place of the meeting is located outside the county in which the action is pending and the court approves that the location of the meeting is appropriate;
- h. To and from a court of appeals or supreme court argument;
- i. To and from the location where the deposition of an expert witness is being taken; or

*j.* To other locations for which travel authorization is obtained from the state public defender.

**12.5(5) Substitute counsel time.** Work performed by substitute counsel on behalf of an attorney appointed as counsel or guardian ad litem is payable only as provided for under this subrule. The appointed attorney is at all times personally responsible for the representation of the client and must ensure that substitute counsel is qualified to perform the work directed and that the client is effectively represented at all times. The appointed attorney is responsible for compensating substitute counsel. Claims for payment directly by substitute counsel or claims for payment by the appointed attorney that are inconsistent with this subrule shall be denied.

*a. Court time.* An attorney appointed as counsel or guardian ad litem must handle all court appearances unless the appointed attorney has an unavoidable scheduling conflict, illness, or other personal emergency, in which case the matter may be covered by substitute counsel. Unless substitute counsel appears for the sole purpose of alerting the court of the appointed attorney's unavailability and requesting a continuance, substitute counsel may not cover for the appointed attorney at a trial in any criminal, juvenile, or postconviction relief case, or in any other hearing in which the court determines that the appointed attorney's personal participation is required. Substitute counsel may never cover for oral arguments in appellate cases.

*b. Out-of-court time.* Substitute counsel must not perform out-of-court legal services, except that substitute counsel may perform out-of-court legal services to prepare for handling a payable court appearance, and in a juvenile case, substitute counsel may attend a department of human services staffing or family team meeting if appointed counsel has an unavoidable scheduling conflict, illness, or other personal emergency. Time spent by substitute counsel that duplicates work performed by the appointed attorney and time spent receiving direction from or conferencing with the appointed attorney is not payable.

*c. Exceptional circumstances.* Substitute counsel may be used in situations that would otherwise be impermissible if the state public defender concludes that use of such substitute counsel would be in the best interest of the client and the administration of justice and provides prior written consent to the appointed attorney.

*d. Supervisory time.* Time spent by the appointed attorney directing, reviewing, or correcting the work of substitute counsel is not payable.

*e. Qualification of substitute counsel.* Unless the state public defender has given prior written consent to use the attorney as substitute counsel, substitute counsel must have an active contract with the state public defender to perform indigent defense services, although the contract need not cover the type of case or county of the case for which the claim is submitted.

*f. Inapplicability to co-counsel in Class A felonies.* The previous paragraphs of this subrule do not apply to a co-counsel who is separately appointed in a Class A felony. Each separately appointed co-counsel in a Class A felony shall submit a separate indigent defense fee claim that claims only the work actually performed by the appointed attorney submitting the claim. The use of substitute counsel is not permissible in a Class A felony in which co-counsel has been separately appointed.

[ARC 9293B, IAB 12/29/10, effective 12/7/10; ARC 9447B, IAB 4/6/11, effective 5/11/11; ARC 1512C, IAB 6/25/14, effective 7/30/14]

**493—12.6(13B,815) Attorney fee limitations.**

**12.6(1) Adult cases.** The state public defender establishes attorney fee limitations for combined attorney time and paralegal time for the following categories of adult cases:

Class A felonies	\$18,000
Class B felonies	\$3,600
Class C felonies	\$1,800
Class D felonies	\$1,200
Aggravated misdemeanors	\$1,200
Serious misdemeanors	\$600

Simple misdemeanors	\$300
Simple misdemeanor appeals to district court	\$300
Contempt/show cause proceedings	\$300
Proceedings under Iowa Code chapter 229A	\$10,000
Probation/parole violation	\$300
Extradition	\$300
Postconviction relief—the greater of \$1,000 or one-half of the fee limitation for the conviction from which relief is sought.	

Nothing in this subrule is intended to in any manner diminish, increase, or modify the state public defender's authority to review any and all claims for services as authorized by the Iowa Code.

The fee limitations are applied separately to each case, as that term is defined in rule 493—7.1(13B,815). If more than one charge is included within a case, the charge with the higher fee limitation will apply to the entire case.

For example, in an adult criminal proceeding, if an attorney were appointed to represent a client charged with four counts of forgery arising at four separate times, and if the client were charged in four separate trial informations, the fee limitations for each charge would apply separately. If all four charges were contained in one trial information, the fee limitation would be \$1,200 even if there were more than one separate occurrence. If the attorney were appointed to represent a person charged with a drug offense and failure to possess a tax stamp, the fee limitation would be the limitation for the offense with the higher limitation, not the total of the limitations.

If the Iowa Code section listed on the claim form defines multiple levels of crimes and the claimant does not list the specific level of crime on the claim form, the state public defender will use the least serious level of crime in reviewing the claim.

For example, Iowa Code section 321J.2 defines crimes ranging from a serious misdemeanor to a Class D felony. If the attorney does not designate the subsection defining the level of the crime, the state public defender will deem the charge to be a serious misdemeanor.

**12.6(2) Juvenile cases.** The state public defender establishes attorney fee limitations for attorney time for the following categories of juvenile cases:

Delinquency (through disposition)	\$1,200
Child in need of assistance (CINA) (through disposition)	\$1,200
Termination of parental rights (TPR) (through disposition)	\$1,800
Juvenile court review and other postdispositional court hearings	\$300
Judicial bypass hearings	\$180
Juvenile commitment hearings	\$180
Juvenile petition on appeal	\$600
Motion for further review after petition on appeal	\$300

Nothing in this subrule is intended to in any manner diminish, increase, or modify the state public defender's authority to review any and all claims for services as authorized by the Iowa Code.

The fee limitations are applied separately to each case, as that term is defined in rule 493—7.1(13B,815).

For example, in a juvenile proceeding in which the attorney represents a parent whose four children are the subject of four child in need of assistance petitions, if the court handles all four petitions at the same time or the incident that gave rise to the child in need of assistance action is essentially the same for each child, the fee limitation for the attorney representing the parent is \$1,200 for all four proceedings, not \$1,200 for each one.

For a child in need of assistance case that becomes a termination of parental rights case, the fee limitations shall apply to each case separately. For example, the attorney could claim up to \$1,200 for the child in need of assistance case and up to \$1,800 for the termination of parental rights case.

In a delinquency case, if the child has multiple petitions alleging delinquency and the court handles the petitions at the same time, the fee limitation for the proceeding is the fee limitation for one delinquency.

In a juvenile case in which a petition on appeal is filed, the appointed trial attorney does not need to obtain a new appointment order to pursue a petition on appeal. The claim, through the filing of a petition on appeal, must be submitted on a Juvenile form. If an appellate court orders full briefing, the attorney fee claim for services subsequent to an order requiring full briefing must be submitted on an Appellate form and is subject to the rules governing appeals.

**12.6(3) Appellate cases.** Except as otherwise provided in this rule with respect to simple misdemeanor appeals to the district court and juvenile petitions on appeal, there is no fee limitation established for appellate cases. Nothing in this subrule is intended to in any manner diminish, increase, or modify the state public defender's authority to review any and all claims for services as authorized by the Iowa Code.

**12.6(4) Claims in excess of fee limitations.** A claim in excess of the attorney fee limitations will not be paid unless the attorney seeks and obtains authorization from the appointing court to exceed the attorney fee limitations prior to exceeding the attorney fee limitations. If authorization is granted, payment in excess of the attorney fee limitations shall be made only for services performed after the date of submission of the request for authorization.

**12.6(5) Retroactivity of authorization.** Authorization to exceed the attorney fee limitations shall be effective only as to services performed after a request for authorization to exceed the attorney fee limitations is filed with the court unless the court enters an order before submission of the claim to the state public defender specifically authorizing a late filing of the application and finding that good cause exists excusing the attorney's failure to file the application prior to the attorney's exceeding the attorney fee limitations. "Good cause" as used in this subrule means a sound, effective and truthful reason. "Good cause" is more than an excuse, plea, apology, extenuation, or some justification. Inadvertence or oversight does not constitute good cause. Retroactive court orders entered after the date of the state public defender's action on a claim are void. See Iowa Code section 13B.4(4).

[ARC 9293B, IAB 12/29/10, effective 12/7/10; ARC 9447B, IAB 4/6/11, effective 5/11/11; ARC 1512C, IAB 6/25/14, effective 7/30/14]

#### **493—12.7(13B,815) Reimbursement for specific expenses.**

**12.7(1)** The state public defender shall reimburse the attorney for the payments made by the attorney for necessary certified shorthand reporters, investigators, foreign language interpreters, evaluations, and experts, if the following conditions are met:

*a.* The attorney obtained court approval for a certified shorthand reporter, investigator, foreign language interpreter, evaluation or expert prior to incurring any expenses with regard to each.

*b.* A copy of each of the following documents is attached to the claim:

(1) The application and court order authorizing the expenditure of funds at state expense for the certified shorthand reporter, investigator, foreign language interpreter, evaluation, or expert.

(2) If the expenses are for services of investigators, foreign language interpreters, or experts, a court order setting the maximum dollar amount of the claim. If the initial court order authorizing the expenditure sets the maximum amount of the claims, a subsequent order is unnecessary.

(3) An itemization detailing the expenses incurred, the services rendered, the date(s) on which the services were rendered, the time spent on each date, and the manner in which the amount of the claim for services was calculated.

(4) If the expenses are for foreign language interpreters, the court order and itemization required by subparagraphs 12.7(1) "b"(2) and (3) shall be submitted on the Fee Itemization Form and Court Order Approving Claim for Court Interpreter Services form promulgated by the judicial branch.

(5) If the expenses are for a certified shorthand reporter, any additional documentation required in 493—paragraph 13.2(4)“b” when applicable to the services provided.

(6) Documentation that the attorney has already paid the funds to the certified shorthand reporter, investigator, foreign language interpreter, provider of an evaluation, or expert.

*c.* The expenses would be payable if the certified shorthand reporter, investigator, foreign language interpreter, provider of an evaluation, or an expert submitted such claim directly pursuant to 493—Chapter 13, except for the requirement that the claim be submitted on the miscellaneous claim form promulgated by the state public defender.

*d.* The certified shorthand reporter, investigator, foreign language interpreter, provider of an evaluation, or expert does not submit a claim for the same services.

*e.* In claims for the cost of an evaluation requested by an appointed attorney, the attorney shall be reimbursed for the reasonable cost of an evaluation of the client to establish a defense in the case or to determine if the client is competent to stand trial. In either instance, a copy of the court order authorizing the evaluation for one of these specific purposes and an order approving the amount of the evaluation must accompany the claim form. Claims for the cost of an evaluation to be used for any other purpose, such as sentencing or placement, will not be reimbursed.

**12.7(2)** Nothing contained in this rule is intended to require the attorney to provide notice to any other party prior to seeking such an order or to require the attorney to disclose confidential information, work product, or trial strategy in order to obtain the order.

**12.7(3)** In an appeal, the state public defender will pay the cost of obtaining the transcript of the trial records and briefs. In such instance, subrule 12.7(1) shall apply.

**12.7(4)** Claims for expenses that do not meet these conditions are not payable under the attorney’s appointment and will be denied.

[ARC 0137C, IAB 5/30/12, effective 7/11/12]

#### **493—12.8(13B,815) Reimbursement of other expenses.**

**12.8(1)** The state public defender shall reimburse the attorney for the following out-of-pocket expenses incurred by the attorney in the case to the extent that the expenses are reasonable and necessary:

*a.* Mileage for automobile travel at the rate of 39 cents per mile. The number of miles driven each day shall be separately itemized on the itemization of services, specifying the date of the travel, the origination and destination locations, the total number of miles traveled that day and, if it is not otherwise clear from the itemization, the purpose of the travel. If the travel is to perform services for multiple clients on the same trip, the mileage must be split proportionally between each client and the itemization must note the manner in which the mileage is split. The total miles traveled for the case shall also be listed on the claim form. Other forms of transportation costs incurred by the attorney may be reimbursed only with prior approval from the state public defender.

*b.* The actual cost of lodging, limited by the state-approved rate, is reimbursed only if the attorney is entitled to be paid for travel time for the travel associated with the lodging and the attorney is required to be away from home overnight. An itemized receipt showing the expenses incurred must be attached to the claim form.

*c.* The actual cost of meals, limited by the state-approved rate, is reimbursed only if the attorney is entitled to be paid for travel time for the travel associated with these meals. An itemized receipt showing the expenses incurred must be attached to the claim form.

*d.* Necessary photocopying at the attorney’s office at the rate of 10 cents per copy. The number of copies made each day must be separately itemized in the itemization of services. The total number of copies must also be listed on the claim form.

*e.* Ordinary and necessary postage, toll calls, collect calls, and parking for the actual cost of these expenses. Toll and collect calls will be reimbursed at 10 cents per minute or the actual cost. A receipt for the actual cost of the toll or collect call must be attached to the claim form. A statement from a correctional facility or jail detailing a standard rate for such calls shall constitute a receipt for purposes of this paragraph. For parking in excess of \$2, a receipt must be attached to the claim form. Claims for



the cost of a parking ticket shall be denied. Unless a receipt is provided, any postage, toll calls, collect calls, or parking shall be separately itemized on the itemization of services, specifying the date on which the expense was incurred and, if it is not otherwise clear from the itemization, the purpose of the expense.

*f.* Receiving faxes in the attorney's office at the rate of 10 cents per page. There is no direct cost reimbursement for sending a fax unless there is a toll charge associated with it. Any fax charges claimed shall be separately itemized on the itemization of services, specifying the date on which the expense was incurred and, if it is not otherwise clear from the itemization, the purpose of the expense.

*g.* The actual cost of photocopying or faxing for which the attorney must pay an outside vendor. A receipt for the actual cost must be attached to the claim form.

*h.* Other claims for expenses such as process service, medical records, DVDs, CDs, videotapes, and photographic printing will be reimbursed for the actual cost. A receipt or invoice from an outside vendor must be attached to the claim form.

*i.* Other specific expenses for which prior approval by the state public defender is obtained.

**12.8(2)** Claims for expenses other than those listed in this rule or at rates in excess of the rates set forth in this rule are not payable under the attorney's appointment and will be reduced or denied.

[ARC 1512C, IAB 6/25/14, effective 7/30/14]

**493—12.9(13B,815) Court review.** An attorney whose claim for compensation is denied, reduced, or otherwise modified by the state public defender, for other than mathematical errors, may seek court review of the action of the state public defender.

**12.9(1) Motions for court review.** Court review of the action of the state public defender is initiated by the filing of a motion with the trial court requesting the review. The following conditions shall apply to all such motions:

*a.* The motion must be filed with the court within 20 days of the action of the state public defender. This time limit is jurisdictional and will not be extended by the filing of another claim, submitting a letter or e-mail requesting reconsideration, or obtaining a court order affecting the amount of the claim.

*b.* The motion must set forth each and every ground on which the attorney intends to rely in challenging the action of the state public defender.

*c.* The motion must have attached to it a complete copy of the claim, together with the notice of action or returned fee claim letter that the attorney seeks to have reviewed.

*d.* A copy of all documents filed must be provided to the state public defender.

*e.* It is unnecessary for the state public defender to file any response to the motion.

**12.9(2) Hearings.** The following shall apply to hearings on motions for court review:

*a.* The motion shall be set for hearing by the court. Notice of the hearing on the attorney's request for review shall be provided to the attorney and the state public defender at least ten days prior to the date and time set by the reviewing court.

*b.* Unless the state public defender appears or specifically indicates an intention to appear in person at the hearing, the state public defender shall participate by telephone. If the state public defender participates by telephone, the state public defender shall be responsible for initiating and paying for the telephone call. If the attorney intends to participate by telephone, the attorney shall notify the state public defender of this intent and provide a telephone number for the hearing at least two business days prior to the date scheduled for the hearing.

*c.* The burden shall be on the attorney requesting the review.

*d.* The court shall consider only the issues raised in the attorney's motion.

*e.* The court shall issue a written ruling on the issues properly presented in the request for review.

*f.* If a ruling is entered modifying the state public defender's action on the claim, the attorney must file a new claim with the state public defender within 45 days of the date of the court's order modifying the state public defender's action on the claim. A copy of the court's ruling and the original claim form and supporting documents must be attached to the claim form. The "date of service" for such a claim is the date of the court's order.

**12.9(3) Failure to seek review.** Failure to seek court review within 20 days of the action of the state public defender will preclude court review of the state public defender's action.

**12.9(4) Other court orders.** Any court order entered after the state public defender has taken action on a claim that affects that claim is void unless the state public defender is first notified and given an opportunity to be heard.

[ARC 1512C, IAB 6/25/14, effective 7/30/14]

**493—12.10(13B,815) Payment errors.** If an error resulting in an overpayment or double payment of a claim is discovered by the attorney, by the state public defender, by the department, or otherwise, the claimant shall reimburse the indigent defense fund for the amount of the overpayment. An overpayment shall be paid by check. The check, made payable to the “Treasurer, State of Iowa,” together with a copy of the payment voucher containing the overpayment or double payment, shall be mailed to the Office of the State Public Defender, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319. [ARC 0137C, IAB 5/30/12, effective 7/11/12; ARC 1512C, IAB 6/25/14, effective 7/30/14]

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<sup>◇</sup> Two or more ARCs

<sup>1</sup> 12/29/04 effective date delayed 70 days by the Administrative Rules Review Committee at its meeting held 12/14/04.

CHAPTER 13  
CLAIMS FOR OTHER PROFESSIONAL SERVICES

**493—13.1(13B,815) Scope.** This chapter sets forth the rules for submission, payment and court review of claims for other professional services. See 493—Chapter 7 for definitions of terms used in this chapter.

**493—13.2(815) Claims for other professional services.** The state public defender shall review and approve claims for necessary and reasonable expenses for investigators, foreign language interpreters, expert witnesses, certified shorthand reporters, and medical/psychological evaluations if the claimant has a form W-9 on file with the department and the claim conforms to the requirements of this rule. Claims that do not comply with this rule will be returned.

**13.2(1) Claims for investigative services.** The state public defender shall review, approve and forward for payment claims for necessary and reasonable expenses for investigators if the following conditions are met:

*a.* The investigator submits a signed original and one copy of a claim containing the following information:

- (1) The case name, case number and county in which the action is pending.
- (2) The name of the attorney for whom the services were provided.
- (3) The date on which services commenced.
- (4) The date on which services ended.
- (5) The total number of hours claimed.
- (6) The total amount of the claim.
- (7) The claimant's name, address, social security number or federal tax identification number, and telephone number.

*b.* Court approval to hire the investigator was obtained before any expenses for the investigator were incurred.

*c.* One copy of each of the following documents is attached to the claim:

- (1) The application and order granting authority to hire the investigator.
- (2) The order appointing counsel. This order is unnecessary if the attorney is not court-appointed but the court, in granting the application noted above, determines that, although the client is able to employ counsel, funds are not available to the client to pay for the necessary investigation.
- (3) An itemization of the investigator's services detailing the expenses incurred, the services rendered, the date(s) on which the services were rendered, the time spent on each date, and the manner in which the amount of the claim for services was calculated.
- (4) A court order setting the maximum dollar amount of the claim. For purposes of this subrule, if the court order that authorizes hiring the investigator sets a limit for the claim, this court order is unnecessary.

*d.* Timely claims required. Claims for services are timely if submitted to the state public defender for payment within 45 days of completion of services in the case. Claims that are not timely shall be denied.

**13.2(2) Claims for foreign language interpreters.** The state public defender shall review, approve and forward for payment claims for necessary and reasonable expenses for foreign language interpreters in accordance with the administrative directive of the state court administrator in the matter of court interpreter compensation, effective September 1, 2007, if the following conditions are met:

*a.* The interpreter submits a signed original and one copy of a claim containing the following information:

- (1) The case name, case number and county in which the action is pending.
- (2) The name of the attorney for whom the services were provided.
- (3) The date on which services commenced.
- (4) The date on which services ended.
- (5) The total number of hours claimed.
- (6) The total amount of the claim.

(7) The claimant's name, address, social security number or federal tax identification number, E-mail address, if any, and telephone number.

b. Court approval to hire the interpreter was obtained before any expenses for the interpreter were incurred.

c. One copy of each of the following documents is attached to the claim:

(1) The application and order appointing the interpreter. This appointment is presumed to continue until the conclusion of the matter, unless limited by the court or modified by a subsequent order.

(2) The order appointing counsel. This order is unnecessary if the attorney is not court-appointed but the court, in granting the application for the appointment of the interpreter, makes one of the following specific findings:

1. The client is indigent, or

2. Although the client is able to employ counsel, funds are not available to the client to pay for necessary interpreter services.

(3) An itemization of the interpreter's services detailing the expenses incurred, the services rendered, the date(s) on which the services were rendered, the time spent on each date including the time services began and ended on each day, and the manner in which the amount of the claim for services was calculated. With regard to expenses and services, the following shall apply:

1. Receipts for parking expenses are required for actual costs of \$2 or more per day.

2. Claims for translating documents will be paid by the hour, not by the word or line.

(4) A court order setting the maximum dollar amount of the claim.

d. Timely claims required. Claims for services are timely if submitted to the state public defender for payment within 45 days of completion of services in the case. Claims that are not timely submitted shall be denied.

**13.2(3)** *Claims for expert witnesses.* The state public defender shall review, approve and forward for payment claims for necessary and reasonable expenses for expert witnesses if the following conditions are met:

a. The expert witness submits an original and one copy of a signed claim containing the following information:

(1) The case name, case number and county in which the action is pending.

(2) The name of the attorney for whom the services were provided.

(3) The date on which services commenced.

(4) The date on which services ended.

(5) The total number of hours claimed.

(6) The total amount of the claim.

(7) The claimant's name, address, social security number or federal tax identification number, and telephone number.

b. Court approval to hire the expert witness was obtained before any expenses for the expert witness were incurred.

c. One copy of each of the following documents is attached to the claim:

(1) The application and order granting authority to hire the expert witness.

(2) The order appointing counsel. This order is unnecessary if the attorney is not court-appointed but the court, in granting the application noted above, determines that, although the client is able to employ counsel, funds are not available to the client to pay for necessary expert witness services.

(3) An itemization of the expert witness's services detailing the expenses incurred, the services rendered, the date(s) on which the services were rendered, the time spent on each date, and the manner in which the amount of the claim for services was calculated.

(4) A court order setting the maximum dollar amount of the claim. For purposes of this subrule, if the court order that authorizes hiring the expert sets a limit for the claim, this court order is unnecessary.

(5) If the expert charges a "minimum" amount for services based on a specific time, a certification by the expert that no other services have been performed or charges made by the expert for any portion of that specific time.

**13.2(4) Claims for certified shorthand reporters.** The state public defender shall review, approve and forward for payment claims for necessary and reasonable expenses for depositions and transcripts provided by certified shorthand reporters only in accordance with the requirements of this subrule.

*a. Claim form.* The certified shorthand reporter shall submit a signed original and one copy of a miscellaneous claim form containing the following information:

- (1) The case name, case number and county in which the action is pending.
- (2) The name of the attorney for whom the services were provided.
- (3) The date on which the transcript was ordered.
- (4) The date on which the transcript was delivered.
- (5) The total amount of the claim.
- (6) The claimant's name; address; social security number, federal tax identification number or vendor identification number; e-mail address, if any; and telephone number.

*b. Required documentation.* One copy of each of the following documents must be attached to the claim:

- (1) The court order granting authority to hire the certified shorthand reporter at state expense.
- (2) The order appointing counsel. This order is unnecessary if the attorney is not court-appointed but the court, in granting authority to hire the certified shorthand reporter, determines that, although the client is able to employ counsel, funds are not available to the client to pay for necessary certified shorthand reporter services.

(3) Itemization of services. If the transcript is for a deposition, the itemization must include the date of deposition, persons deposed, arrival and departure time at the deposition, number of pages and the cost per page, travel time and listing of any other charges. If the transcript is for an audio or video recording, the itemization must include a description of the recording being transcribed, the length of the recording transcribed, the number of pages and the cost per page, and a listing of any other charges.

(4) If expedited transcript rates are claimed under subparagraph 13.2(4) "d"(10), an e-mail or other written statement from the attorney explaining that expedited delivery is required.

(5) If a cancellation fee is claimed under subparagraph 13.2(4) "d"(6), documentation of the date and time that notice of cancellation was given.

(6) If the certified shorthand reporter is a state employee, a certification by the certified shorthand reporter that none of the time for which the claim is being submitted is time for which the certified shorthand reporter was being paid by the state.

*c. Rates for court transcripts.* If the certified shorthand reporter is a judicial branch employee, claims for certified shorthand reporter services for preparation of court transcripts will be limited to the rate approved by the Iowa supreme court for preparation of transcripts and other certified shorthand reporter services.

*d. Rates for other transcripts.* Unless the certified shorthand reporter has a contract with the state providing for a different rate or manner of payment or the certified shorthand reporter submits a claim for a lesser amount, claims for certified shorthand reporter services for a non-judicial branch employee will be paid only at the rates set forth in this paragraph:

(1) Hourly rate when no transcript ordered. Fees for attending depositions when no transcript is ordered will be paid at the rate of \$45 per hour for the actual time the certified shorthand reporter is present at the depositions including setup and takedown of equipment. If multiple witnesses are deposed in a deposition session on a single day, this hourly rate shall only apply if no transcript is ordered for any of the witnesses. If the transcript is ordered for some of the witnesses, the hourly rate when a transcript is ordered shall apply for the entire deposition session.

(2) Hourly rate when transcript ordered. Fees for attending depositions when a transcript is ordered will be paid at the rate of \$35 per hour for the actual time the certified shorthand reporter is present at the depositions including setup and takedown of equipment. Fees for performing a transcription of an audio or video recording will be paid at the rate of \$35 per hour for the actual length of the recording transcribed.

(3) Travel time. Fees for travel time will be paid at the rate of \$15 per hour for travel outside of the county of the certified shorthand reporter's office location. Travel time within the county of the

certified shorthand reporter's office location will not be paid. No travel time is payable for the delivery of a transcript or related to the transcription of an audio or video recording.

(4) Transcripts. Unless expedited delivery is requested, fees will be paid at the rate of \$3.50 per page for an original, one copy, and an electronic version of the transcript. Copies of a transcript for which an original has already been ordered by any party will be paid at the rate of \$1 per page.

(5) Exhibits. A rate of \$0.10 per page for black and white and \$0.30 per page for color copies will be paid.

(6) Cancellation fees. No cancellation fees will be paid as long as the certified shorthand reporter is given notice of cancellation at least 24 hours before the time scheduled for a deposition. If the deposition is canceled with less than 24 hours' notice, a fee for two hours or the actual time that the certified shorthand reporter is present at the site of the deposition including setup and takedown of equipment, whichever is greater, is payable at the rate set forth in subparagraph 13.2(4) "d"(1). A certified shorthand reporter is deemed to have been given notice of cancellation when an attorney or representative of the attorney delivers notice of a cancellation to the e-mail address provided by the certified shorthand reporter or leaves a message on voicemail or with a representative of the certified shorthand reporter at the telephone number provided by the certified shorthand reporter, not when the certified shorthand reporter actually hears or reads the message. No cancellation fee will be paid related to the transcription of an audio or video recording.

(7) Minimum time. One hour minimum, exclusive of travel time, will be paid for a deposition or transcription of an audio or video recording that takes less than one hour.

(8) Other time. Except for the initial one hour minimum, all time billed at an hourly rate shall be billed in 15-minute increments.

(9) Postage. Actual postage costs that are reasonable and necessary will be paid.

(10) Expedited transcripts. Expedited transcripts are those that are required to be delivered within five business days of the date requested. Fees of \$6 per page for an original, one copy, and an electronic version of the transcript will be paid for expedited transcripts. Copies of an expedited transcript for which an original has already been ordered by any party will be paid at the rate of \$1 per page.

(11) Other expenses. Any additional expenses or fees for certified shorthand reporting services not set forth above will only be paid with the prior written consent of the state public defender obtained before the services are provided.

*e. Timely claims required.* Claims for services are timely if submitted to the state public defender for payment within 45 days of the date on which services are completed. For depositions, services are completed on the date the deposition transcript is delivered or on the date of disposition of the case if no transcript is ordered, whichever date is earlier. For trial transcripts or transcripts of an audio or video recording, services are completed on the date the transcript is delivered. Claims that are not timely shall be denied.

*f. Designation of preferred certified shorthand reporter.* The state public defender may enter into a contract with one or more certified shorthand reporters to provide court reporting services for depositions in one or more counties and may designate such certified shorthand reporters to be the preferred certified shorthand reporters in the respective counties. Such designations shall be provided to the chief judge of the judicial district for the respective counties and shall be summarized on the Web site of the state public defender, <http://spd.iowa.gov>. Claims for services provided in a county in which the state public defender has designated a certified shorthand reporter as the preferred certified shorthand reporter shall be denied unless the claims are submitted by the certified shorthand reporter pursuant to the terms of the contract or are submitted by another certified shorthand reporter and include written documentation that the designated certified shorthand reporter was unavailable to handle the deposition.

**13.2(5) Claims for court-ordered evaluations.** The state public defender shall review, approve and forward for payment claims for necessary and reasonable evaluations requested by an appointed attorney only if the purpose of the evaluation is to establish a defense or to determine whether an indigent is competent to stand trial, and not for any other purpose such as sentencing or placement, if the following conditions are met:

*a.* The person performing the evaluation submits a signed original and one copy of a claim containing the following information:

- (1) The case name, case number and county in which the action is pending.
- (2) The name of the attorney for whom the services were provided.
- (3) The date on which services commenced.
- (4) The date on which services ended.
- (5) The total number of hours claimed.
- (6) The total amount of the claim.
- (7) The claimant's name, address, social security number or federal tax identification number, and telephone number.

*b.* Court approval to conduct the evaluation was obtained before any expenses for the evaluation were incurred.

*c.* One copy of each of the following documents is attached to the claim:

(1) The application and order granting authority to conduct the evaluation. This order must specify that the purpose of the evaluation is either to establish a defense to a pending charge or to determine whether an indigent is competent to stand trial.

(2) The order appointing counsel. This order is unnecessary if the attorney is not court-appointed but the court, in granting the application noted above, determines that, although the client is able to employ counsel, funds are not available to the client to pay for the evaluation.

(3) An itemization of the evaluator's services detailing the expenses incurred, the services rendered, the date(s) on which the services were rendered, the time spent on each date, and the manner in which the amount of the claim for services was calculated.

(4) A court order setting the maximum dollar amount of the claim. For purposes of this subrule, if the court order authorizing the evaluation sets a limit for the claim, this court order is unnecessary.

(5) If the evaluator charges a "minimum" amount for services based on a specific time, a certification by the evaluator that no other services have been performed or charges made by the evaluator for any portion of that specific time.

**13.2(6) *Submission of claims.*** Claims for payment for professional services provided to a public defender must be submitted to the local public defender office for which the services were provided. Other claims for professional services must be submitted, on a form promulgated by the state public defender, to the state public defender at the following address: State Public Defender, Claims, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319.

**13.2(7) *Claims from state employees.*** Claims submitted by state of Iowa employees must be submitted on a form promulgated by the state public defender and on a state travel voucher form.

**13.2(8) *Claim form for other professional services.*** Rescinded IAB 1/3/07, effective 2/7/07.  
[ARC 0137C, IAB 5/30/12, effective 7/11/12; ARC 1512C, IAB 6/25/14, effective 7/30/14]

**493—13.3(13B,815) Court review.** A claimant whose claim for compensation is denied, reduced, or otherwise modified by the state public defender, for other than mathematical errors, may seek court review of the action of the state public defender.

**13.3(1) *Motions for court review.*** Court review of the action of the state public defender is initiated by filing a motion with the trial court requesting the review. The following conditions shall apply to all such motions:

*a.* The motion must be filed with the court within 20 days of the action of the state public defender.

*b.* The motion must set forth each and every ground on which the claimant intends to rely in challenging the action of the state public defender.

*c.* The motion must have attached to it a complete copy of the claim, together with the notice of action that the claimant seeks to have reviewed.

*d.* A copy of all documents filed must be provided to the state public defender.

It is unnecessary for the state public defender to file any response to the motion.

**13.3(2) *Hearings.*** The following shall apply to hearings on motions for court review:

*a.* The motion shall be set for hearing by the court. Notice of the hearing on the claimant's request for review shall be provided to the claimant and the state public defender at least ten days prior to the date and time set by the reviewing court.

*b.* Unless the state public defender specifically indicates an intention to appear in person at the hearing, the state public defender shall participate by telephone. If the state public defender participates by telephone, the state public defender shall be responsible for initiating and paying for the telephone call.

*c.* The burden shall be on the claimant requesting the review.

*d.* The court shall consider only the issues raised in the claimant's motion.

*e.* The court shall issue a written ruling on the issues properly presented in the request for review.

*f.* If a ruling is entered allowing additional fees, the claimant must file a new claim with the state public defender. A copy of the court's ruling must be attached to the claim form. The date of service on the claim form is the date of the court's order.

**13.3(3) *Failure to seek review.*** Failure to seek court review within 20 days of the action of the state public defender will preclude court review of the state public defender's action.

**493—13.4(13B,815) Processing and payment.** The state public defender will submit claims to the department for processing and payment. The department will submit claims that are not approved in the current fiscal year to the state appeal board for processing and payment.

**493—13.5(13B,815) Payment errors.** If an error resulting in an overpayment or double payment of a claim is discovered by the claimant, by the state public defender, by the department, or otherwise, the claimant shall reimburse the indigent defense fund for the amount of the overpayment. An overpayment or double payment shall be repaid by check. The check, made payable to "Treasurer, State of Iowa," together with a copy of the payment voucher containing the overpayment or double payment, shall be mailed to the Office of the State Public Defender, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083.

[ARC 0137C, IAB 5/30/12, effective 7/11/12; ARC 1512C, IAB 6/25/14, effective 7/30/14]

**493—13.6(815) Claims submitted by a county.** Rescinded IAB 1/3/07, effective 2/7/07.

These rules are intended to implement Iowa Code chapters 13B and 815 as amended by 2004 Iowa Acts, House File 2138.

[Filed emergency 6/4/04—published 6/23/04, effective 7/1/04]

[Filed 11/3/04, Notice 6/23/04—published 11/24/04, effective 12/29/04]<sup>1</sup>

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<sup>1</sup> 12/29/04 effective date delayed 70 days by the Administrative Rules Review Committee at its meeting held 12/14/04.



CHAPTER 14  
CLAIMS FOR ATTORNEY FEES IN 600A TERMINATIONS

**493—14.1(13B,600A,815) Scope.** This chapter sets forth specific rules for submission, review and payment of claims for attorney fees in proceedings under Iowa Code chapter 600A. Unless modified in this chapter, the provisions of 493—Chapters 7, 11 and 12 apply to such claims.

**493—14.2(13B,600A,815) Definitions.** The following definitions apply only to this chapter.

*“Indigent”* means the person has an income level at or below 100 percent of the United States poverty level as defined by the most recently revised poverty income guidelines published by the U.S. Department of Health and Human Services, unless the court determines that the person is able to pay for the cost of an attorney in the pending case. In making the determination of a person’s ability to pay for the cost of an attorney, the court shall consider not only the person’s income, but also the availability of any assets subject to execution, including but not limited to cash, stocks, bonds, and any other property which may be applied to the satisfaction of judgments, and the nature and complexity of the case.

[ARC 1512C, IAB 6/25/14, effective 7/30/14]

**493—14.3(13B,600A,815) Hourly rate and fee limitations.** Unless the attorney has a contract with the state public defender that provides for a different rate or manner of payment, claims for attorney fees in a termination of parental rights case under Iowa Code chapter 600A to which the attorney was appointed after March 11, 2004, and before July 1, 2006, shall be paid at the rate of \$50 per hour, with a fee limitation of \$500 for the trial court proceedings and \$500 for appellate proceedings. Claims for attorney fees in a termination of parental rights case under Iowa Code chapter 600A to which the attorney was appointed after June 30, 2006, and before July 1, 2007, shall be paid at the rate of \$55 per hour, with a fee limitation of \$550 for the trial court proceedings and \$550 for appellate proceedings. Claims for attorney fees in a termination of parental rights case under Iowa Code chapter 600A to which the attorney was appointed after June 30, 2007, shall be paid at the rate of \$60 per hour, with a fee limitation of \$600 for the trial court proceedings and \$600 for appellate proceedings.

**493—14.4(13B,600A,815) Limitations on other charges and expenses.** For appeals, the state public defender shall approve claims for the actual cost of a transcript and printing of necessary briefs. The state public defender shall not approve claims for travel time, paralegal time, or other out-of-pocket expenses at the trial or appellate level.

**493—14.5(13B,600A,815) Claims for attorney fees.** Except as provided in this chapter, claims for attorney fees for representing the respondent in proceedings for termination of parental rights cases under Iowa Code chapter 600A shall be reviewed by the state public defender in the same manner as provided in 493—Chapter 12.

**14.5(1)** Claim forms. Claims for services provided at the trial level shall be submitted on a Juvenile claim form. Claims for services provided on appeal shall be submitted on an Appellate claim form.

**14.5(2)** Required documents. In addition to the other requirements provided in 493—Chapter 12, the attorney shall submit a copy of both the petitioner’s and respondent’s financial affidavit and any order of the juvenile court determining that the state public defender rather than the petitioner is responsible for payment of the respondent’s attorney fees.

**14.5(3)** The provisions for review of the state public defender’s action provided in 493—Chapter 12 shall apply to claims submitted under this chapter.

**14.5(4)** If the petitioner or prospective parent is responsible for payment of the indigent respondent’s attorney fees and expenses, the state public defender does not receive, review, or pay the fee claim. Any such claim submitted to the state public defender will be returned to the attorney who submitted the claim.

[ARC 1512C, IAB 6/25/14, effective 7/30/14]

**493—14.6(13B,600A,815) Report to judicial branch.** The state public defender shall submit quarterly to the state court administrator a report detailing all approved and paid attorney fee claims for termination of parental rights cases under Iowa Code chapter 600A.

These rules are intended to implement Iowa Code chapters 13B, 600A, 815 and 908 as amended by 2005 Iowa Acts, House File 683.

[Filed emergency 5/25/05—published 6/22/05, effective 5/25/05]

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[Filed ARC 1512C (Notice ARC 1437C, IAB 4/30/14), IAB 6/25/14, effective 7/30/14]

CHAPTER 15  
REQUIRED PUBLIC FUNDS CUSTODIAL AGREEMENT PROVISIONS

**781—15.1(12B) Scope.**

**15.1(1)** Iowa Code section 12B.10C requires the treasurer of state to adopt rules requiring the inclusion in public funds custodial agreements of any provisions necessary to prevent loss of public funds. As used in this chapter, “public funds custodial agreement” means any public funds custodial agreement as defined in Iowa Code section 12B.10C.

**15.1(2)** This chapter shall apply to any public unit, as defined in 781—Chapter 13, which uses a public funds custodial agreement for or relating to the investment of public funds. As used in this chapter, “public funds” means public funds as defined in Iowa Code section 12C.1(2).

**15.1(3)** A public unit may only enter into a public funds custodial agreement if the custodian is a state or national bank that is located in the state of Iowa and has a safekeeping or trust department. Notwithstanding the foregoing, the treasurer of state may exercise its discretion under Iowa Code section 12C.4 to enter into public funds custodial agreements with a custodian located outside the state of Iowa. Each public unit that enters into a public funds custodial agreement shall require the inclusion in the public funds custodial agreement those provisions contained in rule 781—15.2(12B) of this chapter or substantially equivalent provisions.

**15.1(4)** Public funds that are invested under the provisions of a resolution or indenture for the issuance of bonds, notes, certificates, warrants, or other evidences of indebtedness are not subject to this chapter.

**15.1(5)** This chapter does not apply to those entities described in Iowa Code section 12B.10C(4) or to any other entities that may otherwise be exempted by law. This chapter does not apply to public funds custodial agreements entered into by the treasurer of state when such agreements are on behalf of the aforementioned entities.

**15.1(6)** This chapter does not apply to custodial agreements between an open-end management investment company registered with the federal Securities and Exchange Commission under the federal Investment Company Act of 1940, 15 U.S.C. Sec. 80(a) and a custodian bank.

**15.1(7)** This chapter does not apply to any custodial agreements entered into by a public unit or the treasurer of state for the purposes of securing public funds deposits under Iowa Code chapter 12C.

**15.1(8)** This chapter does not apply to Treasury Direct accounts established by a public unit with a federal reserve bank for the purpose of making direct purchases of United States Treasury bills, notes or bonds.

[ARC 1464C, IAB 5/14/14, effective 6/18/14; see Delay note at end of chapter]

**781—15.2(12B) Required provisions for inclusion in public funds custodial agreements.** All public funds custodial agreements shall be in writing and shall include the following provisions:

**15.2(1)** The custodian shall represent and warrant that it has the resources and expertise to act as the custodian of public funds or any security or document of ownership or title evidencing public funds investments and to perform its responsibilities under the public funds custodial agreement.

**15.2(2)** The scope of duties and services to be performed by the custodian shall be described in detail satisfactory to the public unit and shall include, as applicable, custodial, settlement, collection of income and investment proceeds, reporting, and securities valuation services.

**15.2(3)** The custodian shall agree to provide the public unit with written confirmation of its custody, on behalf of the public unit, of all assets subject to the public funds custodial agreement.

**15.2(4)** The custodian shall agree to segregate the public fund’s assets from the custodian’s own assets and to maintain records adequate to describe the public unit’s ownership of or beneficial interest in the assets held by the custodian.

**15.2(5)** The custodian shall agree to maintain and make available to the public unit, its employees and its designees accurate, current, and complete records that sufficiently and properly document the custodian’s performance under the public funds custodial agreement, including records that document all fees and other amounts charged and all transactions occurring during the term of the agreement. The

custodian shall, at a minimum, agree to allow the public unit or its designees, at no charge, to access, examine and audit any directly pertinent records of the custodian relating to or created as a result of the public funds custodial agreement.

**15.2(6)** If the custodian proposes to use a subcustodian to perform any services in connection with the public funds custodial agreement, the custodian shall agree to take appropriate action to recover losses incurred by the public unit as a result of the acts or omissions of any subcustodian.

**15.2(7)** The custodian shall settle all transactions on a payment-versus-delivery settlement basis except those specifically exempted in the agreement or unless such settlement is not market practice or unless otherwise directed by the public unit.

**15.2(8)** If a public unit has engaged an investment advisor or investment manager, the public funds custodial agreement must limit the authority of the investment manager or advisor to authorizing a sale or purchase of an investment on a delivery versus payment basis pursuant to an instruction procedure which is consistent with the requirements of the public funds custodial agreement and the internal control policies of the public unit. The public funds custodial agreement shall not permit an investment manager or investment advisor to deliver, transfer, or move cash or securities to another account, location or entity.

**15.2(9)** The delivery, transfer or movement of cash or securities held in custody for the public unit (except for trades on a delivery versus payment basis) shall only be made pursuant to instructions given to the custodian by the public unit, its employees or designees, consistent with the internal controls established by the public unit.

**15.2(10)** The public funds custodial agreement shall specify in satisfactory detail the procedures for instructions to be furnished to the custodian in connection with the sales or purchases of securities and the delivery, transfer or movement of cash or securities held in the custody account. The instruction provisions must be consistent with the internal control policies established by the public unit. These procedures must specify the individual or individuals authorized to issue instructions, the scope of their authority, require current specimen signatures of authorized individuals to be maintained by the custodian and require written instructions to be furnished to the custodian. If oral instructions are permitted, the procedures or protocol for them must be specified in detail and must address verification and confirmation procedures and follow-up written instructions required by the custodian and the public unit.

**15.2(11)** The public funds custodial agreement shall require the custodian to furnish a monthly report describing in satisfactory detail the inventory of the account and transaction history during the preceding month and other reports at such times as may be adequate to satisfy the public unit's internal control procedures for reconciliation. In addition, the custodian shall, to the extent not prohibited by law, provide written notice to the public unit (within a time period acceptable to the public unit) of the custodian's receipt of an audit by an independent or internal auditor or regulatory authority which indicates that there is a material weakness in the custodian's internal control structure or receipt of a regulatory order or sanction which relates to the type of work performed under the public funds custodial agreement. The custodian shall include in the written notice a detailed description of the comment or sanction and any curative measures which the custodian proposes to take in response thereto.

**15.2(12)** The public funds custodial agreement shall not provide for the compensation of the custodian based on investment performance.

**15.2(13)** The custodian shall agree to comply with all applicable federal, state, and local laws and rules when performing within the scope of the public funds custodial agreement.

**15.2(14)** At a minimum, the custodian shall agree to exercise the standard of care expected of a professional custodian of public funds in holding, maintaining and servicing the public fund's assets and cash and in performing the custodian's duties and obligations under the public funds custodial agreement. [ARC 1464C, IAB 5/14/14, effective 6/18/14; see Delay note at end of chapter]

**781—15.3(12B) Optional provisions which public units should consider.** The provisions set forth in rule 781—15.2(12B) are minimum requirements and are not exclusive. A public unit should determine whether the services performed by the custodian (except for any custodian hired by the treasurer of state pursuant to Iowa Code section 12C.4) pursuant to the public funds custodial agreement will be performed in the safekeeping department or the trust department and, based upon the advice of its counsel, should

also consider other appropriate or more favorable provisions that may customarily be included in a public funds custodial agreement. Such things include, but are not limited to: additional representations and warranties; agreements or covenants pertaining to insurance and fidelity bond of the custodian and its employees; permitted use of subcustodians; adequate description of fees and expenses and billing procedures; the requirement of additional reports, including advices of transactions; conditions to the effectiveness of the public funds custodial agreement regarding deliveries of related documents and certificates; a higher standard of care; the ability of the public unit to terminate the public funds custodial agreement on a short-term basis without cause; and indemnification and default provisions, including recovery of attorneys' fees.

[ARC 1464C, IAB 5/14/14, effective 6/18/14; see Delay note at end of chapter]

**781—15.4(12B) Custodial functions.** The required provisions contained in rule 15.2(12B) address only custodial functions and do not purport to address discretionary authority pertaining to the investments which shall be set forth in a separate written contract with the investment manager or advisor.

**781—15.5(12B) Implementation deadline.** Public units shall have until July 1, 2015, to incorporate the required provisions contained in rule 781—15.2(12B) into existing public funds custodial agreements. Any new public funds custodial agreement executed after the effective date of these rules shall contain the provisions of rule 781—15.2(12B).

[ARC 1464C, IAB 5/14/14, effective 6/18/14; see Delay note at end of chapter]

These rules are intended to implement Iowa Code section 12B.10C.

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[Filed ARC 1464C (Notice ARC 1383C, IAB 3/19/14), IAB 5/14/14, effective 6/18/14]<sup>1</sup>

<sup>1</sup> June 18, 2014, effective date of ARC 1464C [15.1 to 15.3, 15.5] delayed 70 days by the Administrative Rules Review Committee at its meeting held June 10, 2014.



CHAPTER 10  
GENERAL INDUSTRY SAFETY AND HEALTH RULES

[Prior to 9/24/86, Labor, Bureau of [530]]

[Prior to 10/7/98, see 347—Ch 10]

**875—10.1(88) Definitions.** As used in these rules, unless the context clearly requires otherwise:

“*Part*” means 875—Chapter 10, Iowa Administrative Code.

“*Standard*” means a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

**875—10.2(88) Applicability of standards.**

**10.2(1)** None of the standards in this chapter shall apply to working conditions of employees with respect to which federal agencies other than the United States Department of Labor, exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health.

**10.2(2)** If a particular standard is specifically applicable to a condition, practice, means, method, operation, or process, it shall prevail over any different general standard which might otherwise be applicable to the same condition, practice, means, method, operation, or process.

**10.2(3)** However, any standard shall apply according to its terms to any employment and place of employment in any industry, even though particular standards are also prescribed for the industry, as in 1910.12, 1910.261, 1910.262, 1910.263, 1910.264, 1910.265, 1910.266, 1910.267, and 1910.268 of 29 CFR 1910, to the extent that none of such particular standards applies.

**10.2(4)** In the event a standard protects on its face a class of persons larger than employees, the standard shall be applicable under this part only to employees and their employment and places of employment.

**10.2(5)** An employer who is in compliance with any standard in this part shall be deemed to be in compliance with the requirement of Iowa Code section 88.4, but only to the extent of the condition, practice, means, method, operation or process covered by the standard.

**875—10.3(88) Incorporation by reference.** The standards of agencies of the U.S. Government, and organizations which are not agencies of the U.S. Government which are incorporated by reference in this chapter have the same force and effect as other standards in this chapter. Only mandatory provisions (i.e., provisions containing the word “shall” or other mandatory language) of standards incorporated by reference are adopted under the Act.

**875—10.4(88) Exception for hexavalent chromium exposure in metal and surface finishing job shops.** Prior to December 31, 2008, for employers that comply with the requirements of this rule, the labor commissioner shall enforce respiratory protection provisions only with respect to employees who fall into one of the six categories outlined in Paragraph 4, Appendix A, 29 CFR 1910.1026, except that the phrase “Exhibit B to this Agreement” shall refer to Exhibit B, Appendix A, 29 CFR 1910.1026. This exception is limited to the narrow circumstances outlined below and shall expire on May 31, 2010.

**10.4(1) Eligibility.** An employer’s facility is eligible for this exception if the employer is a member of the Surface Finishing Industry Council or the facility is a surface-finishing or metal-finishing job shop that sells plating or anodizing services to other companies.

**10.4(2) Participation.** To be covered by this exception, eligible employers must complete and submit a Declaration of Participation via mail to the Labor Commissioner, 1000 East Grand Avenue, Des Moines, Iowa 50319, or via facsimile to (515)281-7995. Declarations of Participation must be postmarked or received on or before April 7, 2007. Each declaration shall apply only to one facility. Declaration of Participation forms are available at <http://www.iowaworkforce.org/labor/iosh/index.html> or by calling (515)242-5870.

**10.4(3) Applicability.** This exception applies only to surface- and metal-finishing operations within covered facilities.

**10.4(4) Feasible engineering controls.** Participating employers must implement feasible engineering controls necessary to reduce hexavalent chromium levels at their facilities to or below five micrograms per cubic meter of air calculated as an eight-hour, time-weighted average by December 31, 2008. In fulfilling this obligation, participating employers may select from the engineering and work practice controls listed in Exhibit A, Appendix A, 29 CFR 1910.1026, or may adopt other controls.

**10.4(5) Employee training.** Participating employers shall train their employees in accordance with the provisions of 29 CFR 1910.1026(l)(2). Using language the employees can understand, participating employers will also train their employees on the provisions of this exception no later than June 7, 2007.

**10.4(6) Compliance and monitoring.** Participating employers shall comply with the requirements set forth in Paragraphs 3 and 4, Appendix A, 29 CFR 1910.1026, except that as used in Appendix A:

- a. The acronym “OSHA” shall refer to the labor commissioner;
- b. The word “Company” shall refer to employers participating in this exception;
- c. The word “Agreement” shall refer to this rule; and
- d. The phrase “Exhibit B to this Agreement” shall refer to Exhibit B, Appendix A, 29 CFR 1910.1026.

**875—10.5 and 10.6** Reserved.

**875—10.7(88) Definitions and requirements for a nationally recognized testing laboratory.** The federal regulations adopted at 29 CFR, Chapter XVII, Part 1910, regulation 1910.7 and Appendix A, as published at 53 Fed. Reg. 12120 (April 12, 1988) and amended at 53 Fed. Reg. 16838 (May 11, 1988), 54 Fed. Reg. 24333 (June 7, 1989) and 65 Fed. Reg. 46818 (July 31, 2000) are adopted by reference.

**875—10.8 to 10.11** Reserved.

**875—10.12(88) Construction work.**

**10.12(1) Standards.** The standards prescribed in 875—Chapter 26 are adopted as occupational safety and health standards and shall apply, according to the provisions thereof, to every employment and place of employment of every employee engaged in construction work. Each employer shall protect the employment and places of employment of each employee engaged in construction work by complying with the provisions of 875—Chapter 26.

**10.12(2) Definition.** For the purpose of this rule, “*construction work*” means work for construction, alteration, or repair including painting and redecorating, and where applicable, the erection of new electrical transmission and distribution lines and equipment, and the alteration, conversion, and improvement of the existing transmission and distribution lines and equipment. This incorporation by reference of 875—Chapter 26 (Part 1926) is not intended to include references to interpretative rules having relevance to the application of the construction safety Act, but having no relevance to the application of Iowa Code chapter 88.

**875—10.13 to 10.18** Reserved.

**875—10.19(88) Special provisions for air contaminants.**

**10.19(1) Asbestos, tremolite, anthophyllite, and actinolite dust.** Reserved.

**10.19(2) Vinyl chloride.** Rule 1910.1017 of the federal rules as adopted by reference in 875—10.20(88) shall apply to the exposure of every employee to vinyl chloride in every employment and place of employment covered by 875—10.12(88), in lieu of any different standard on exposure to vinyl chloride which would otherwise be applicable by virtue of any rule adopted in 875—Chapter 26.

**10.19(3) Acrylonitrile.** Rule 1910.1045 of the federal rules as adopted by reference in 875—10.20(88) shall apply to the exposure of every employee to acrylonitrile in every employment and place of employment covered by 875—10.12(88), in lieu of any different standard on exposure to acrylonitrile which would otherwise be applicable by virtue of any rule adopted in 875—Chapter 26.

**10.19(4) Inorganic arsenic.** Rule 1910.1018 of the federal rules as adopted by reference in 875—10.20(88) shall apply to the exposure of every employee to inorganic arsenic in every employment



and place of employment covered by 875—10.12(88), in lieu of any different standard on exposure to inorganic arsenic which would otherwise be applicable by virtue of any rule adopted in 875—Chapter 26.

**10.19(5)** Rescinded, effective 6/10/87.

**10.19(6)** *Lead*. Rescinded IAB 8/5/92, effective 8/5/92.

**10.19(7)** *Ethylene oxide*. Rule 1910.1047 of the federal rules as adopted by reference in 875—10.20(88) shall apply to the exposure of every employee to ethylene oxide in every employment and place of employment covered by 875—10.12(88), in lieu of any different standard on exposure to ethylene oxide which would otherwise be applicable by virtue of any rule adopted in 875—Chapter 26.

**10.19(8)** *Benzene*. Rule 1910.1028 of the federal rules as adopted by reference in 875—10.20(88) shall apply to the exposure of every employee to benzene in every place of employment covered by 875—10.12(88), in lieu of any different standard on exposure to benzene which would otherwise be applicable by virtue of any rule adopted in 875—Chapter 26.

**10.19(9)** *Formaldehyde*. Rule 1910.1048 of the federal rules as adopted by reference in 875—10.20(88) shall apply to the exposure of every employee to formaldehyde in every place of employment covered by 875—10.12(88), in lieu of any different standard on exposure to formaldehyde which would otherwise be applicable by virtue of any rule adopted in 875—Chapter 26.

**10.19(10)** *Methylene chloride*. Rule 1910.1052 of the federal rules as adopted by reference in 875—10.20(88) shall apply to the exposure of every employee to methylene chloride in every employment and place of employment covered by 875—10.12(88) in lieu of any different standard on exposure to methylene chloride which would otherwise be applicable by virtue of any rule adopted in 875—Chapter 26.

**875—10.20(88) Adoption by reference.** The rules beginning at 1910.20 and continuing through 1910, as adopted by the United States Secretary of Labor shall be the rules for implementing Iowa Code chapter 88. This rule adopts the Federal Occupational Safety and Health Standards of 29 CFR, Chapter XVII, Part 1910 as published at 37 Fed. Reg. 22102 to 22324 (October 18, 1972) and as amended at:

37 Fed. Reg. 23719 (November 8, 1972)  
37 Fed. Reg. 24749 (November 21, 1972)  
38 Fed. Reg. 3599 (February 8, 1973)  
38 Fed. Reg. 9079 (April 10, 1973)  
38 Fed. Reg. 10932 (May 3, 1973)  
38 Fed. Reg. 14373 (June 1, 1973)  
38 Fed. Reg. 16223 (June 21, 1973)  
38 Fed. Reg. 19030 (July 17, 1973)  
38 Fed. Reg. 27048 (September 28, 1973)  
38 Fed. Reg. 28035 (October 11, 1973)  
38 Fed. Reg. 33397 (December 4, 1973)  
39 Fed. Reg. 1437 (January 9, 1974)  
39 Fed. Reg. 3760 (January 29, 1974)  
39 Fed. Reg. 6110 (February 19, 1974)  
39 Fed. Reg. 9958 (March 15, 1974)  
39 Fed. Reg. 19468 (June 3, 1974)  
39 Fed. Reg. 35896 (October 4, 1974)  
39 Fed. Reg. 41846 (December 3, 1974)  
39 Fed. Reg. 41848 (December 3, 1974)  
40 Fed. Reg. 3982 (January 27, 1975)  
40 Fed. Reg. 13439 (March 26, 1975)  
40 Fed. Reg. 18446 (April 28, 1975)  
40 Fed. Reg. 23072 (May 28, 1975)  
40 Fed. Reg. 23743 (June 2, 1975)  
40 Fed. Reg. 24522 (June 9, 1975)

40 Fed. Reg. 27369 (June 27, 1975)  
40 Fed. Reg. 31598 (July 28, 1975)  
41 Fed. Reg. 11504 (March 19, 1976)  
41 Fed. Reg. 13352 (March 30, 1976)  
41 Fed. Reg. 35184 (August 20, 1976)  
41 Fed. Reg. 46784 (October 22, 1976)  
41 Fed. Reg. 55703 (December 21, 1976)  
42 Fed. Reg. 2956 (January 14, 1977)  
42 Fed. Reg. 3304 (January 18, 1977)  
42 Fed. Reg. 45544 (September 9, 1977)  
42 Fed. Reg. 46540 (September 16, 1977)  
42 Fed. Reg. 37668 (July 22, 1977)  
43 Fed. Reg. 11527 (March 17, 1978)  
43 Fed. Reg. 19624 (May 5, 1978)  
43 Fed. Reg. 27394 (June 23, 1978)  
43 Fed. Reg. 27434 (June 23, 1978)  
43 Fed. Reg. 28472 (June 30, 1978)  
43 Fed. Reg. 28473 (June 30, 1978)  
43 Fed. Reg. 31330 (July 21, 1978)  
43 Fed. Reg. 35032 (August 8, 1978)  
43 Fed. Reg. 45809 (October 3, 1978)  
43 Fed. Reg. 49744 (October 24, 1978)  
43 Fed. Reg. 51759 (November 7, 1978)  
43 Fed. Reg. 53007 (November 14, 1978)  
43 Fed. Reg. 56893 (December 5, 1978)  
43 Fed. Reg. 57602 (December 8, 1978)  
44 Fed. Reg. 5447 (January 26, 1979)  
44 Fed. Reg. 50338 (August 28, 1979)  
44 Fed. Reg. 60981 (October 23, 1979)  
44 Fed. Reg. 68827 (November 30, 1979)  
45 Fed. Reg. 6713 (January 29, 1980)  
45 Fed. Reg. 8594 (February 8, 1980)  
45 Fed. Reg. 12417 (February 26, 1980)  
45 Fed. Reg. 35277 (May 23, 1980)  
45 Fed. Reg. 41634 (June 20, 1980)  
45 Fed. Reg. 54333 (August 15, 1980)  
45 Fed. Reg. 60703 (September 12, 1980)  
46 Fed. Reg. 4056 (January 16, 1981)  
46 Fed. Reg. 6288 (January 21, 1981)  
46 Fed. Reg. 24557 (May 1, 1981)  
46 Fed. Reg. 32022 (June 19, 1981)  
46 Fed. Reg. 40185 (August 7, 1981)  
46 Fed. Reg. 2632 (August 21, 1981)  
46 Fed. Reg. 42632 (August 21, 1981)  
46 Fed. Reg. 45333 (September 11, 1981)  
46 Fed. Reg. 60775 (December 11, 1981)  
47 Fed. Reg. 39161 (September 7, 1982)  
47 Fed. Reg. 51117 (November 12, 1982)  
47 Fed. Reg. 53365 (November 26, 1982)  
48 Fed. Reg. 2768 (January 21, 1983)  
48 Fed. Reg. 9641 (March 8, 1983)  
48 Fed. Reg. 9776 (March 8, 1983)

48 Fed. Reg. 29687 (June 28, 1983)  
49 Fed. Reg. 881 (January 6, 1984)  
49 Fed. Reg. 4350 (February 3, 1984)  
49 Fed. Reg. 5321 (February 10, 1984)  
49 Fed. Reg. 25796 (June 22, 1984)  
50 Fed. Reg. 1050 (January 9, 1985)  
50 Fed. Reg. 4648 (February 1, 1985)  
50 Fed. Reg. 9800 (March 12, 1985)  
50 Fed. Reg. 36992 (September 11, 1985)  
50 Fed. Reg. 37353 (September 13, 1985)  
50 Fed. Reg. 41494 (October 11, 1985)  
50 Fed. Reg. 51173 (December 13, 1985)  
51 Fed. Reg. 22733 (June 20, 1986)  
51 Fed. Reg. 24325 (July 3, 1986)  
51 Fed. Reg. 25053 (July 10, 1986)  
51 Fed. Reg. 33033 (September 18, 1986)  
51 Fed. Reg. 33260 (September 19, 1986)  
51 Fed. Reg. 34560 (September 29, 1986)  
51 Fed. Reg. 45663 (December 19, 1986)  
52 Fed. Reg. 16241 (May 4, 1987)  
52 Fed. Reg. 17753 (May 12, 1987)  
52 Fed. Reg. 34562 (September 11, 1987)  
52 Fed. Reg. 36026 (September 25, 1987)  
52 Fed. Reg. 36387 (September 28, 1987)  
52 Fed. Reg. 46291 (December 4, 1987)  
52 Fed. Reg. 49624 (December 31, 1987)  
53 Fed. Reg. 6629 (March 2, 1988)  
53 Fed. Reg. 8352 (March 14, 1988)  
53 Fed. Reg. 11436 (April 6, 1988)  
53 Fed. Reg. 12120 (April 12, 1988)  
53 Fed. Reg. 16838 (May 11, 1988)  
53 Fed. Reg. 17695 (May 18, 1988)  
53 Fed. Reg. 27346 (July 20, 1988)  
53 Fed. Reg. 27960 (July 26, 1988)  
53 Fed. Reg. 34736 (September 8, 1988)  
53 Fed. Reg. 35625 (September 14, 1988)  
53 Fed. Reg. 37080 (September 23, 1988)  
53 Fed. Reg. 38162 (September 29, 1988)  
53 Fed. Reg. 39581 (October 7, 1988)  
53 Fed. Reg. 45080 (November 8, 1988)  
53 Fed. Reg. 47188 (November 22, 1988)  
53 Fed. Reg. 49981 (December 13, 1988)  
54 Fed. Reg. 2920 (January 19, 1989)  
54 Fed. Reg. 6888 (February 15, 1989)  
54 Fed. Reg. 9317 (March 6, 1989)  
54 Fed. Reg. 12792 (March 28, 1989)  
54 Fed. Reg. 28054 (July 5, 1989)  
54 Fed. Reg. 29274 (July 11, 1989)  
54 Fed. Reg. 29545 (July 13, 1989)  
54 Fed. Reg. 30704 (July 21, 1989)  
54 Fed. Reg. 31456 (July 28, 1989)  
54 Fed. Reg. 31765 (August 1, 1989)

54 Fed. Reg. 36687 (September 1, 1989)  
54 Fed. Reg. 36767 (September 5, 1989)  
54 Fed. Reg. 37531 (September 11, 1989)  
54 Fed. Reg. 41364 (October 6, 1989)  
54 Fed. Reg. 46610 (November 6, 1989)  
54 Fed. Reg. 47513 (November 15, 1989)  
54 Fed. Reg. 49971 (December 4, 1989)  
54 Fed. Reg. 50372 (December 6, 1989)  
54 Fed. Reg. 52024 (December 20, 1989)  
55 Fed. Reg. 3146 (January 30, 1990)  
55 Fed. Reg. 3300 (January 31, 1990)  
55 Fed. Reg. 3723 (February 5, 1990)  
55 Fed. Reg. 4998 (February 13, 1990)  
55 Fed. Reg. 7967 (March 6, 1990)  
55 Fed. Reg. 12110 (March 30, 1990)  
55 Fed. Reg. 12819 (April 6, 1990)  
55 Fed. Reg. 13696 (April 11, 1990)  
55 Fed. Reg. 14073 (April 13, 1990)  
55 Fed. Reg. 19259 (May 9, 1990)  
55 Fed. Reg. 25094 (June 10, 1990)  
55 Fed. Reg. 26431 (June 28, 1990)  
55 Fed. Reg. 32014 (August 6, 1990)  
55 Fed. Reg. 38677 (September 20, 1990)  
55 Fed. Reg. 46053 (November 1, 1990)  
55 Fed. Reg. 46949 (November 8, 1990)  
55 Fed. Reg. 50686 (December 10, 1990)  
56 Fed. Reg. 15832 (April 18, 1991)  
56 Fed. Reg. 24686 (May 31, 1991)  
56 Fed. Reg. 43700 (September 4, 1991)  
56 Fed. Reg. 64175 (December 6, 1991)  
57 Fed. Reg. 6403 (February 24, 1992)  
57 Fed. Reg. 7847 (March 4, 1992)  
57 Fed. Reg. 7878 (March 5, 1992)  
57 Fed. Reg. 22307 (May 27, 1992)  
57 Fed. Reg. 24330 (June 8, 1992)  
57 Fed. Reg. 24701 (June 10, 1992)  
57 Fed. Reg. 27160 (June 18, 1992)  
57 Fed. Reg. 29204 (July 1, 1992)  
57 Fed. Reg. 29206 (July 1, 1992)  
57 Fed. Reg. 35666 (August 10, 1992)  
57 Fed. Reg. 42388 (September 14, 1992)  
58 Fed. Reg. 4549 (January 14, 1993)  
58 Fed. Reg. 15089 (March 19, 1993)  
58 Fed. Reg. 16496 (March 29, 1993)  
58 Fed. Reg. 21778 (April 23, 1993)  
58 Fed. Reg. 34845 (June 29, 1993)  
58 Fed. Reg. 35308 (June 30, 1993)  
58 Fed. Reg. 35340 (June 30, 1993)  
58 Fed. Reg. 40191 (July 27, 1993)  
59 Fed. Reg. 4435 (January 31, 1994)  
59 Fed. Reg. 6169 (February 9, 1994)  
59 Fed. Reg. 16360 (April 6, 1994)

59 Fed. Reg. 26115 (May 19, 1994)  
59 Fed. Reg. 33661 (June 30, 1994)  
59 Fed. Reg. 33910 (July 1, 1994)  
59 Fed. Reg. 36699 (July 19, 1994)  
59 Fed. Reg. 40729 (August 9, 1994)  
59 Fed. Reg. 41057 (August 10, 1994)  
59 Fed. Reg. 43270 (August 22, 1994)  
59 Fed. Reg. 51741 (October 12, 1994)  
59 Fed. Reg. 65948 (December 22, 1994)  
60 Fed. Reg. 9624 (February 21, 1995)  
60 Fed. Reg. 11194 (March 1, 1995)  
60 Fed. Reg. 33344 (June 28, 1995)  
60 Fed. Reg. 33984 (June 29, 1995)  
60 Fed. Reg. 47035 (September 8, 1995)  
60 Fed. Reg. 52859 (October 11, 1995)  
61 Fed. Reg. 5508 (February 13, 1996)  
61 Fed. Reg. 9230 (March 7, 1996)  
61 Fed. Reg. 9583 (March 8, 1996)  
61 Fed. Reg. 19548 (May 2, 1996)  
61 Fed. Reg. 21228 (May 9, 1996)  
61 Fed. Reg. 31430 (June 20, 1996)  
61 Fed. Reg. 43456 (August 23, 1996)  
61 Fed. Reg. 56831 (November 4, 1996)  
62 Fed. Reg. 1600 (January 10, 1997)  
62 Fed. Reg. 29668 (June 2, 1997)  
62 Fed. Reg. 40195 (July 25, 1997)  
62 Fed. Reg. 42018 (August 4, 1997)  
62 Fed. Reg. 42666 (August 8, 1997)  
62 Fed. Reg. 43581 (August 14, 1997)  
62 Fed. Reg. 48175 (September 15, 1997)  
62 Fed. Reg. 54383 (October 20, 1997)  
62 Fed. Reg. 65203 (December 11, 1997)  
62 Fed. Reg. 66276 (December 18, 1997)  
63 Fed. Reg. 1269 (January 8, 1998)  
63 Fed. Reg. 13339 (March 19, 1998)  
63 Fed. Reg. 17093 (April 8, 1998)  
63 Fed. Reg. 20098 (April 23, 1998)  
63 Fed. Reg. 33467 (June 18, 1998)  
63 Fed. Reg. 50729 (September 22, 1998)  
63 Fed. Reg. 66038 (December 1, 1998)  
63 Fed. Reg. 66270 (December 1, 1998)  
64 Fed. Reg. 13700 (March 22, 1999)  
64 Fed. Reg. 13908 (March 23, 1999)  
64 Fed. Reg. 22552 (April 27, 1999)  
65 Fed. Reg. 76567 (December 7, 2000)  
66 Fed. Reg. 5324 (January 18, 2001)  
66 Fed. Reg. 18191 (April 6, 2001)  
67 Fed. Reg. 67961 (November 7, 2002)  
68 Fed. Reg. 75780 (December 31, 2003)  
69 Fed. Reg. 7363 (February 17, 2004)  
69 Fed. Reg. 31881 (June 8, 2004)  
69 Fed. Reg. 46993 (August 4, 2004)

70 Fed. Reg. 53929 (September 13, 2005)  
 70 Fed. Reg. 1140 (January 5, 2005)  
 71 Fed. Reg. 10373 (February 28, 2006)  
 71 Fed. Reg. 36008 (June 23, 2006)  
 71 Fed. Reg. 63242 (October 30, 2006)  
 72 Fed. Reg. 7190 (February 14, 2007)  
 72 Fed. Reg. 64428 (November 15, 2007)  
 72 Fed. Reg. 71068 (December 14, 2007)  
 73 Fed. Reg. 75583 (December 12, 2008)  
 68 Fed. Reg. 32638 (June 2, 2003)  
 74 Fed. Reg. 46355 (September 9, 2009)  
 74 Fed. Reg. 40447 (August 11, 2009)  
 75 Fed. Reg. 12685 (March 17, 2010)  
 76 Fed. Reg. 33606 (June 8, 2011)  
 76 Fed. Reg. 75786 (December 5, 2011)  
 77 Fed. Reg. 17764 (March 26, 2012)  
 76 Fed. Reg. 80738 (December 27, 2011)  
 77 Fed. Reg. 37598 (June 22, 2012)  
 77 Fed. Reg. 46949 (August 7, 2012)  
 78 Fed. Reg. 9313 (February 8, 2013)  
 78 Fed. Reg. 69549 (November 20, 2013)  
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These rules are intended to implement Iowa Code section 88.5.

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