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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

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Replace Chapter 48

Inspections and Appeals Department[481]

Replace Chapter 10

Lottery Authority, Iowa[531]

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Insert Chapter 21

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Replace Chapter 11
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HISTORIC PRESERVATION AND CULTURAL AND ENTERTAINMENT DISTRICT TAX CREDITS

223—48.1(303,404A) Purpose. A historic preservation and cultural and entertainment district tax credit (hereafter referred to as historic tax credit) for the substantial rehabilitation of eligible commercial property, residential property and barns located in this state is granted to approved projects, subject to availability of the credit, to apply against the income tax imposed under Iowa Code chapter 422, division II, III, or V, or Iowa Code chapter 432. Historic tax credits are restricted to rehabilitation projects for eligible properties in Iowa. Rehabilitation projects for eligible properties must be conducted in accordance with the federal Standards for Rehabilitation (36 CFR Part 67.7) as described in the U.S. Secretary of the Interior's Standards for the Treatment of Historic Properties (hereafter referred to as Standards).
[**ARC 9608B**, IAB 7/13/11, effective 6/22/11]

223—48.2(303,404A) Definitions. The definitions listed in Iowa Code section 17A.2 and rules 223—1.2(17A,303), 223—1.6(303), 223—13.2(303), 223—22.2(303), and 223—35.2(303) shall apply to terms as they are used throughout this chapter. In addition, the following definitions apply:

"Applicant" means the person, partnership, corporation, qualifying nonprofit organization, or public agency applying for the tax credit. In most cases, this will be the entity holding a fee-simple interest in the property or any other person or entity recognized by the Internal Revenue Code for purposes of the applicable tax benefits. If an application is made by someone other than the fee-simple owner, the application must be accompanied by a written statement signed by the fee-simple owner indicating the fee-simple owner does not object to the applicant claiming the tax credit.

"Assessed value" means the amount of the most current property tax assessment.

"Barn" means an agricultural building or structure, in whatever shape or design, which is used for the storage of farm products or feed or for the housing of farm animals, poultry, or farm equipment.

"Commercial property" means a building used for retail, office, or other uses not otherwise defined in this rule.

"Disaster recovery project" means an eligible property located in an area declared a disaster area by the governor of Iowa or by the president of the United States. The property must have been physically impacted as a result of the disaster.

"Employment base" means the number of jobs that exist at an eligible property on the date part one of the application is approved.

"Historic tax credit(s)" means the historic preservation and cultural and entertainment district tax credit established in Iowa Code chapter 404A.

"Mixed-use property" means an eligible property that includes three or more residential units and may also contain a commercial property component in the same building.

"New permanent jobs" means the number of new jobs that exist at an eligible property within two years of the date on which the tax credit certificate is issued. New permanent jobs are calculated as those over and above the employment base.

"Placed in service" means the same as used in Section 47 of the Internal Revenue Code.

"Qualifying nonprofit organization" means an organization, other than governmental bodies, described in Section 501 of the Internal Revenue Code unless the exemption is denied under Section 501, 502, 503 or 504 of the Internal Revenue Code.

"Rehabilitation period" means the period of time during which an eligible property is rehabilitated commencing from the date on which the first qualified rehabilitation cost is incurred and ending with the end of the taxable year in which the property is placed in service.

"Reserved tax credit" means the amount of tax credits set aside from the available tax credit fund for an approved project.

"Residential property" means a building with two or fewer residential units, with each unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.

"Standards" means the Standards for Rehabilitation as described in the U.S. Secretary of the Interior's Standards for the Treatment of Historic Properties.

"Substantial rehabilitation" means qualified rehabilitation costs that meet or exceed the following: (1) in the case of commercial property, costs totaling at least 50 percent of the assessed value of the property, excluding the land, prior to the rehabilitation; or (2) in the case of residential property or barns, costs totaling at least $25,000 or 25 percent of the assessed value, excluding the land, prior to rehabilitation, whichever is less.

"Tax basis" means the same as defined in department of revenue 701—subrule 42.15(3).

"Tax credit year" means the tax year in which a tax credit certificate holder is eligible to redeem a tax credit certificate based on the availability of tax credits for an eligible project.

[**ARC 7943B**, IAB 7/15/09, effective 6/16/09; **ARC 9608B**, IAB 7/13/11, effective 6/22/11]

223—48.3(303,404A) Eligible property. "Eligible property" means property for which a taxpayer may receive the historic preservation and cultural and entertainment district tax credit computed under this chapter and includes all of the following:

1. Property listed on the National Register of Historic Places or eligible for such listing.
2. Property designated as of historic significance to a district listed in the National Register of Historic Places or eligible for such designation.
3. Property or district designated a local landmark by a city or county ordinance.
4. A barn constructed prior to 1937.

[**ARC 9608B**, IAB 7/13/11, effective 6/22/11]

223—48.4(303,404A) Qualified and nonqualified rehabilitation costs.

48.4(1) "Qualified rehabilitation costs" means expenditures made for the rehabilitation of eligible property and includes qualified rehabilitation expenditures as defined in Section 47 of the Internal Revenue Code.

a. Qualified rehabilitation costs include amounts if they are properly includable in computing the basis for tax purposes of the eligible property.

b. Amounts treated as an expense and deducted in the tax year in which they are paid or incurred and amounts that are otherwise not added to the basis for tax purposes of the eligible property are not qualified rehabilitation costs.

c. Amounts incurred for architectural and engineering fees, site survey fees, legal expenses, insurance premiums, development fees, and other construction-related costs are qualified rehabilitation costs to the extent they are added to the basis for tax purposes of the eligible property.

d. Costs of sidewalks, parking lots, and landscaping do not constitute qualified rehabilitation costs.

48.4(2) Any submission of a part three of the application with qualified rehabilitation costs of more than $500,000 shall include a certified statement by a certified public accountant verifying that the expenses statement includes only qualified rehabilitation costs incurred in the time period established in subrule 48.5(2).

[**ARC 7943B**, IAB 7/15/09, effective 6/16/09; **ARC 9608B**, IAB 7/13/11, effective 6/22/11]

223—48.5(303,404A) Rehabilitation cost limits and amount of credit.

48.5(1) The amount of the tax credit equals 25 percent of the qualified rehabilitation costs incurred for the substantial rehabilitation of eligible property, subject to the provisions in subrule 48.6(8). Rehabilitation projects that do not meet the definition of a substantial rehabilitation are not eligible to receive a historic tax credit.

48.5(2) Computing the tax credit. SHPO shall compute the tax credit based on the final qualified rehabilitation costs documented on part three of the application and shall issue a tax credit certificate pursuant to subrule 48.6(8).

a. For projects for which part two of the application was approved before July 1, 2009: The only costs which may be included on part three of the application are the qualified rehabilitation costs incurred between the period ending on the project completion date and beginning on the date two years prior to the project completion date, provided that any qualified rehabilitation costs incurred prior to the date on which part two of the application was approved must be qualified rehabilitation expenditures under the federal rehabilitation credit in Section 47 of the Internal Revenue Code.

b. For projects for which part two of the application was approved on or after July 1, 2009: The only costs which may be included on part three of the application are those qualified rehabilitation costs incurred for the rehabilitation of eligible property during the rehabilitation period, provided that any costs incurred prior to the date on which part two of the application was approved must be qualified rehabilitation expenditures as defined in Section 47(c)(2) of the Internal Revenue Code.

48.5(3) For residential or mixed-use property, the amount of rehabilitation costs shall not exceed $100,000 per residential unit excluding any qualified rehabilitation costs for the public or commercial space and excluding any qualified rehabilitation costs for the weather surfaces of the building envelope including exterior windows and doors. This subrule does not apply to projects for which part two of the application was approved and tax credits were reserved on or after July 1, 2009.

48.5(4) Questions concerning specific tax consequences or interpretation of the state tax code must be addressed to the department of revenue.

48.5(5) Applicants may develop subsequent projects for qualified rehabilitation costs not previously included in a tax credit application for a building which had tax credits previously reserved or awarded. Each subsequent application shall meet eligibility requirements and shall be reviewed individually and independently.

48.5(6) For applicants receiving credits through the small projects fund, the cumulative total for multiple applications for a single building shall not exceed $500,000 in qualified rehabilitation costs. The SHPO will not accept an application for a building previously receiving credits through the small projects fund that causes the cumulative total to exceed $500,000. The applicant may either:

a. Apply for the cumulative total of qualified rehabilitation costs under any other fund for which the project is eligible. If the applicant receives a tax credit reservation from another fund, the applicant shall abandon the entirety of the applicant's tax credit reservation in the small projects fund in accordance with rule 223—48.12(303,404A); or

b. Apply for only the qualified rehabilitation costs up to a cumulative total of $500,000. If the applicant has already received and claimed a tax credit certificate on the applicant's annual tax return, the applicant shall select this option.

[**ARC 7943B**, IAB 7/15/09, effective 6/16/09; **ARC 9608B**, IAB 7/13/11, effective 6/22/11]

223—48.6(303,404A) Application and review process.

48.6(1) All applications for historic tax credits shall be on the current state fiscal year's forms and in accordance with the current state fiscal year's instructions provided by the SHPO. All applications must be complete and include all required supporting documentation before being considered for review and before beginning the review periods outlined in subrule 48.6(3). Application forms are available from the Tax Incentives Program Manager, State Historic Preservation Office, Department of Cultural Affairs, 600 E. Locust Street, Des Moines, Iowa 50319-0290. Applications may also be downloaded from the department of cultural affairs—state historical society of Iowa Web site.

a. Part one of the application identifies the eligibility of the property for the historic tax credit. Part one of the application is accepted year-round. Part one of the application must include all requested information. SHPO staff shall notify the applicant if part one of the application is incomplete. Incomplete applications will not be processed.

b. Part two of the application provides a detailed description of the rehabilitation project. Part two of the application is accepted when tax credits are available for the fund specified by the applicant pursuant to subrule 48.7(6) or, if no tax credits are available, in accordance with rule 223—48.8(303,404A). Part two of the application must include all requested information. SHPO staff

shall notify the applicant if part two of the application is incomplete. Incomplete applications will not be processed.

c. Part three of the application provides the information and documentation required to request certification of project completion and includes an economic impact questionnaire. Part three of the application must include all requested information including certification in accordance with subrule 48.4(2). SHPO staff shall notify the applicant if part three of the application is incomplete. Incomplete applications will not be processed. Incomplete applications may be subject to abandonment as outlined in rule 223—48.12(303,404A).

(1) For projects for which part two of the application was approved and tax credits reserved before July 1, 2009, part three of the application shall be submitted within 6 months of the date on which the building is placed in service.

(2) For projects for which part two of the application was approved and tax credits reserved on or after July 1, 2009, part three of the application shall be submitted within 24 months of the date on which the rehabilitation period ends.

d. Amendments to applications. An applicant shall amend an approved part one of the application or an approved part two of the application if the property changes ownership or if the applicant's name or address changes. An applicant shall amend an approved part two of the application to notify SHPO of, and to request review of, modifications to the original description of the rehabilitation project. Amendments to part two of the application shall not include modification of the rehabilitation costs estimated in the originally approved part two of the application. Amendments to part two of the application shall not result in the reservation of additional tax credits for a project. Amendments to part two will not be accepted after SHPO has approved part three of the application pursuant to subrule 48.6(8). An applicant may amend an approved part three of the application. Any amendment to part three shall meet all requirements applicable to part three. The total application processing fee charged for part three under rule 223—48.16(303,404A) is based on the final qualified rehabilitation costs as reported on the part three amendment.

48.6(2) SHPO staff trained by the National Park Service for reviewing rehabilitation projects to ensure compliance with Standards will review part two and part three of each submitted application.

48.6(3) SHPO staff shall review and respond to each part of a completed or amended application within 90 days of receipt when submitted pursuant to subrule 48.6(1). If an applicant submits more than one part of the application simultaneously, SHPO staff shall review each part sequentially and the 90-day review period for part two or three of the application will begin upon approval of the previous part.

48.6(4) Applicants who undertake rehabilitation projects without prior approval from the SHPO do so at their own risk.

48.6(5) Response to application parts.

a. Review of part one of the application shall result in one of two responses:

(1) The property is eligible for the historic tax credit; or

(2) The property is not eligible for the historic tax credit.

b. Review of part two of the application shall result in one of three responses which may be provided to the department of revenue:

(1) The rehabilitation described in the application is consistent with the historic character of the property or the district in which it is located, and the project meets the Standards. The initial review of part two is a preliminary determination only. A formal certification of rehabilitation shall be issued only after rehabilitation work is completed;

(2) The rehabilitation or proposed rehabilitation described in part two of the application will meet the Standards if the stipulated conditions are met; or

(3) The rehabilitation described in part two of the application is not consistent with the historic character of the property or the district in which it is located, and the project does not meet the Standards. The application will not be approved and SHPO will not reserve tax credits for the project.

c. Review of part three of the application shall result in one of two responses which may be provided to the department of revenue:

(1) The completed rehabilitation meets the Standards and is consistent with the historic character of the property or the district in which it is located. Effective on the date of approval of part three of the application, the project shall be designated a "certified rehabilitation"; or

(2) The rehabilitation is not consistent with the historic character of the property or the district in which it is located, and the project does not meet the Standards. If the work cannot be corrected to meet the Standards, the SHPO shall recapture the tax credit reservation in accordance with the provisions of rule 223—48.12(303,404A).

48.6(6) Approval of part one of the application. Upon approval of part one of the application, an applicant may proceed to submission of part two of the application. If the applicant submitted part two of the application simultaneously, the SHPO shall complete review of part one of the application before reviewing part two of the application.

48.6(7) Approval of part two of the application.

a. Upon approval of part two of the application with no conditions, the SHPO shall reserve tax credits for the project in an amount equal to 25 percent of the estimated qualified rehabilitation costs for the earliest year in which tax credits are available in the appropriate fund, and the applicant may proceed to implement the project.

b. Upon approval of part two of the application with conditions, the SHPO shall reserve tax credits for the project in an amount equal to 25 percent of the estimated qualified rehabilitation costs for the earliest year in which tax credits are available in the appropriate fund. The applicant may proceed to implement the project, and the applicant shall document compliance with the conditions.

c. An authorized representative of the SHPO, with due notice to the applicant, may inspect projects to determine if the work meets the Standards.

48.6(8) Approval of part three of the application. Upon approval of part three of the application, the SHPO shall issue a tax credit certificate to the applicant in an amount equal to 25 percent of the qualified rehabilitation costs as estimated in part two of the application for the tax credit year originally reserved for the project upon approval of part two of the application, unless the qualified rehabilitation costs in part three of the application differ from the estimated qualified rehabilitation costs in part two of the application.

a. If the qualified rehabilitation costs documented in part three of the application are less than the qualified rehabilitation costs estimated in part two of the application, the SHPO shall issue a certificate in an amount equal to 25 percent of the final qualified rehabilitation costs and return any unused tax credits to the tax credit fund from which they were reserved.

b. For projects with tax credits reserved from the small projects fund and final qualified rehabilitation costs of $500,000 or less: If the final qualified rehabilitation costs documented in part three of the application are greater than the qualified rehabilitation costs estimated in part two of the application, the SHPO shall issue tax credit certificates totaling 25 percent of the final qualified rehabilitation costs, with the initial tax credit certificate issued in the amount originally reserved for the project and the remainder for the earliest year in which tax credits are available in the small projects fund or, if no tax credits are available, in accordance with rule 223—48.8(303,404A).

c. For projects with tax credits reserved from the small projects fund and final qualified rehabilitation costs over $500,000: The SHPO shall notify the applicant that the applicant may either:

(1) Apply for the cumulative total of qualified rehabilitation costs under any other fund for which the project is eligible. If the applicant receives a tax credit reservation from another fund, the applicant shall abandon the entirety of the applicant's tax credit reservation in the small projects fund in accordance with rule 223—48.12(303,404A); or

(2) Claim only the final qualified rehabilitation costs up to $500,000. If the applicant chooses this option, the SHPO shall issue tax credit certificates totaling no more than $125,000 for the project, with the initial tax credit certificate issued in the amount originally reserved for the project and the remainder for the earliest year in which tax credits are available in the small projects fund or, if no tax credits are available, in accordance with rule 223—48.8(303,404A).

d. For projects with tax credits reserved from any other fund: If the final qualified rehabilitation costs documented in part three of the application are greater than the qualified rehabilitation costs

estimated in part two of the application, the SHPO shall issue tax credit certificates totaling 25 percent of the final qualified rehabilitation costs in the same fund from which tax credits were initially awarded, with the initial tax credit certificate issued for the amount originally reserved for the project and the remainder for the earliest year in which tax credits are available in the appropriate fund or, if no tax credits are available, in accordance with rule 223—48.8(303,404A).

48.6(9) Disaster recovery projects. An applicant may apply for the disaster recovery fund as described in subrule 48.7(3) if the project meets the following requirements:

a. The initial submittal of part two of the application shall be made no later than the first filing window (see subrule 48.8(2)) that occurs after the five-year anniversary of the disaster declaration date.

b. Disasters declared before January 1, 2008, will not be considered.

48.6(10) Projects creating new permanent jobs. An applicant may apply for the new permanent jobs fund as described in subrule 48.7(4) if the applicant meets the following requirements:

a. The applicant shall document the employment base for an eligible property on the date part one of the application is approved;

b. The applicant must provide information to SHPO documenting the creation of at least 500 new permanent jobs within two years of the date on which the tax credit certificate is issued. This information shall be verified by the Iowa department of economic development using the process outlined in 261—Chapter 188, Iowa Administrative Code. If the Iowa department of economic development is unable to verify the number of new permanent jobs required, tax credits claimed by the applicant will be subject to repayment to the department of revenue and unclaimed credits shall be unavailable; and

c. The applicant (and any leaseholders or tenants, if applicable) must enter into a contract with the SHPO specifying the employment base, reporting mechanisms required to document 500 new permanent jobs, applicable dates for reporting, and the penalty incurred if reporting requirements are not met. If the contract is not executed before the building is placed in service, the SHPO shall recapture any tax credits reserved in accordance with rule 223—48.12(303,404A).

[**ARC 7943B**, IAB 7/15/09, effective 6/16/09; **ARC 9608B**, IAB 7/13/11, effective 6/22/11]

223—48.7(303,404A) Tax credit funds.

48.7(1) *The small projects fund.* The SHPO shall reserve 10 percent of the tax credit allocation for any tax credit year in a small projects fund for projects with final qualified rehabilitation costs totaling $500,000 or less.

a. At the end of each state fiscal year, any credits in the small projects fund that have not been reserved for small projects shall be available for small projects in subsequent fiscal years.

b. If the small projects fund is fully reserved, any applications for small projects received after full reservation of the small projects fund may be eligible for the statewide fund.

48.7(2) *The cultural and entertainment district and great places fund.* The SHPO shall reserve 30 percent of the tax credit allocation for any tax credit year in a cultural and entertainment district and great places project (CED-GP) fund for projects located in cultural and entertainment districts certified in accordance with Iowa Code section 303.3B or for projects identified in Iowa great places agreements developed in accordance with Iowa Code section 303.3C.

48.7(3) *The disaster recovery fund.* The SHPO shall reserve 20 percent of the tax credit allocation for any tax credit year in a disaster recovery fund for projects located in an area declared a disaster area by the governor of Iowa or by the president of the United States. The eligible property must have been physically impacted as a result of the natural disaster as documented in accordance with the current state fiscal year's forms and instructions. The initial application for the project must be submitted within the time frame provided by subrule 48.6(9).

48.7(4) *The new permanent jobs fund.* The SHPO shall reserve 20 percent of the tax credit allocation for any tax credit year in a new permanent jobs fund for projects that involve the creation of more than 500 new permanent jobs within two years of the date on which the tax credit certificate is issued.

48.7(5) *The statewide fund.* The SHPO shall reserve the remaining percentage of the tax credit allocation for any tax year in a statewide fund, which is to be used for eligible projects throughout the

state of Iowa. If the statewide fund is fully reserved before the end of the state fiscal year, subsequent applications will be accepted utilizing the procedures in rule 223—48.8(303,404A).

48.7(6) *Fund selection.* Part two of the application shall clearly indicate the fund for which the applicant is applying. Only one fund may be selected. Any applications not indicating a specific fund shall be considered for the statewide fund. If an application is not eligible for the fund selected, it shall be considered for the statewide fund.

48.7(7) *Disposition of unreserved credits.* In reference to the new permanent jobs fund, CED-GP fund, and disaster recovery fund, at the end of the filing window in any fiscal year, any tax credits that have not been reserved will be reallocated in the same fiscal year as follows:

a. Unreserved CED-GP fund and new permanent jobs fund credits will be reallocated to the disaster recovery fund.

b. Unreserved disaster recovery fund credits will be reallocated to the statewide fund.

c. For purposes of this subrule, the phrase "in any fiscal year" refers to each of the three fiscal years for which credits may be reserved pursuant to Iowa Code section 404A.4(5) as amended by 2009 Iowa Acts, Senate File 481, section 3.

[**ARC 7943B**, IAB 7/15/09, effective 6/16/09; **ARC 9608B**, IAB 7/13/11, effective 6/22/11]

223—48.8(303,404A) Sequencing of applications for review.

48.8(1) *Order of review.* The SHPO anticipates the receipt of a large number of applications for historic tax credits for projects with qualified rehabilitation costs in excess of $500,000 at the beginning of each state fiscal year. At the start of each state fiscal year, the SHPO will utilize a project review sequencing and prioritization system to establish the order in which applications will be reviewed.

a. Applications for projects with qualified rehabilitation costs of $500,000 or less applying for credits from the small projects fund will be accepted and reviewed throughout the calendar year until all available credits from that fund are reserved. When all available credits are reserved from the small projects fund, subsequent applications will be accepted utilizing the procedures in subrules 48.8(2) to 48.8(7).

b. If all available credits are reserved before review of all projects submitted within the filing window specified in subrule 48.8(2), applications not reviewed will be returned to the applicant.

48.8(2) *Filing window.* Part two applications for state historic tax credits received during the first ten working days of the state fiscal year shall be included in a project review sequencing system to determine the order in which they will be reviewed. The filing window for applications submitted in July 2011 will be extended to August 5, 2011.

48.8(3) *Initial sequencing process.* An initial sorting process based on the status of the project application at the start of the state fiscal year will be used to associate applications with the appropriate initial sequencing category. Following initial sorting into a category and subcategory, each application within the assigned category and subcategory will be sequenced in accordance with subrule 48.8(4).

a. Category A projects do not need to be resubmitted during the filing window and are comprised of two subcategories in the following order:

(1) Projects reviewed in the previous year's sequencing and review process that did not receive a reservation for the full 25 percent of their qualified rehabilitation costs.

(2) Projects with final qualified rehabilitation costs documented in part three of the application in excess of the estimated rehabilitation costs in part two pursuant to paragraph 48.6(8)*"b"* and which could not be otherwise reserved from available credits in the appropriate fund.

b. Category B projects are comprised of projects for which part two of a state historic tax credit application was submitted during any previous year's filing window, as verified by records maintained at the SHPO, and was included in that year's sequencing system, and did not receive a tax credit reservation. Category B projects must be resubmitted during the current year's filing window and must specify a fund pursuant to subrule 48.7(6). Category B projects will be divided into subcategories arranged in the following order:

(1) Projects will be included in a subcategory for the state fiscal year of original submission provided the project was included in each successive state fiscal year's sequencing system and did not

receive a tax credit reservation. These subcategories will be arranged chronologically beginning with the earliest state fiscal year.

(2) Any projects for which applications were not submitted in successive state fiscal years will be included in a subcategory after those defined in subparagraph 48.8(3)*"b"*(1).

c. Category C projects are comprised of an entirely new part two of a state historic tax credit application not meeting the requirements for any other category and having been received within the specified filing window. Category C projects must be submitted during the current year's filing window and must specify a fund pursuant to subrule 48.7(6).

48.8(4) *Secondary sequencing process.* Using a random number generator, SHPO staff will assign unique, random numbers to all applications that are eligible for inclusion in the review sequencing system within each category and subcategory of the initial sequencing system. Applications within each category and subcategory shall then be placed in numeric order from lowest to highest. SHPO staff shall then create a master sequence list, with category A applications, arranged by subcategory, sequenced first; category B applications, arranged by subcategory, sequenced next; and category C applications sequenced last.

48.8(5) *Random number generator.* SHPO staff shall use a random number generator utility found in Microsoft Excel 2003 or the current version of Microsoft Excel generally used by the department of cultural affairs.

48.8(6) *Outside observer.* The initial sequencing process, the secondary sequencing process, and the development of the master sequence list will be observed and certified by an official state witness.

48.8(7) *Prioritization of review according to fund.* Once the master sequence list is set, the projects will be reviewed by fund in the sequential order in which they fall on the list.

a. Category A projects will be reviewed and reserved first. SHPO shall reserve the remaining credits for the project from the same tax credit fund selected by the applicant pursuant to subrule 48.7(6) if a selection was made. Otherwise, SHPO shall reserve the remaining credits for the project from the same tax credit fund from which the original reservation came or from another fund for which the project is eligible.

b. Following review of category A projects, tax credit funds will be reviewed in the following order:

(1) Small projects fund, CED-GP fund, and new permanent jobs fund.

(2) Disaster recovery fund.

(3) Statewide fund.

c. Any tax credits that have not been reserved in a particular fund will be transferred, if applicable, to the appropriate fund as outlined in rule 223—48.7(303,404A). If a fund is exhausted before the completion of reviews for that fund, all remaining projects in that fund shall be eligible for the statewide fund and will be considered in the order shown on the master sequence list.

[**ARC 7943B**, IAB 7/15/09, effective 6/16/09; **ARC 9608B**, IAB 7/13/11, effective 6/22/11]

223—48.9(303,404A) Reserved tax credits.

48.9(1) Upon written approval of part two of the project application, the SHPO shall reserve an estimated tax credit under the name of the applicant(s) in an amount equal to 25 percent of the estimated qualified rehabilitation costs for the earliest year in which tax credits are available.

48.9(2) If the amount of estimated qualified rehabilitation costs changes during the course of project implementation, the applicant may include those costs in part three of the application.

48.9(3) The SHPO shall not reserve tax credits for more than two state fiscal years beyond the current state fiscal year.

48.9(4) Of the amount of tax credits that may be reserved in state fiscal years 2010, 2011, and 2012:

a. For state fiscal year 2010, SHPO will not reserve more than $20 million worth of tax credits that can be claimed on a tax return for a taxable year beginning on or after January 1, 2009. SHPO will not reserve more than $30 million worth of tax credits that can be claimed on a tax return for a taxable year beginning on or after January 1, 2010.

b. For state fiscal year 2011, SHPO will not reserve more than $20 million worth of tax credits that can be claimed on a tax return for a taxable year beginning on or after January 1, 2010. SHPO will not reserve more than $30 million worth of tax credits that can be claimed on a tax return for a taxable year beginning on or after January 1, 2011.

c. For state fiscal year 2012, SHPO will not reserve more than $20 million worth of tax credits that can be claimed on a tax return for a taxable year beginning on or after January 1, 2011. SHPO will not reserve more than $30 million worth of tax credits that can be claimed on a tax return for a taxable year beginning on or after January 1, 2012.

[**ARC 7943B**, IAB 7/15/09, effective 6/16/09]

223—48.10(303,404A) Project commencement.

48.10(1) Once a tax credit reservation is made for a project, rehabilitation must begin before the end of the state fiscal year in which the SHPO approved part two of the application. The applicant shall submit to the SHPO a project commencement report and cover letter certifying the commencement date of rehabilitation and outlining expenditure of qualified rehabilitation costs. This report and cover letter are due within the first ten working days of the next state fiscal year. Information about the project commencement report is available from the Tax Incentives Program Manager, State Historic Preservation Office, Department of Cultural Affairs, 600 E. Locust Street, Des Moines, Iowa 50319-0290. It may also be downloaded from the department of cultural affairs—state historical society of Iowa Web site.

48.10(2) In the event rehabilitation on a project does not begin before the end of the state fiscal year in which the SHPO approved part two of the application, the SHPO shall recapture the tax credit reservation in accordance with the provisions of rule 223—48.12(303,404A).

[**ARC 7943B**, IAB 7/15/09, effective 6/16/09; **ARC 8873B**, IAB 6/30/10, effective 6/10/10]

223—48.11(303,404A) Project completion and eligible property placed in service.

48.11(1) Once a tax credit reservation is made for a project, construction must be completed and the eligible property must be placed in service as follows:

a. For projects for which part two of the application was approved and tax credits reserved before July 1, 2009: The project shall be completed and the building shall be placed in service on or before June 30, 2011.

b. For projects for which part two of the application was approved and tax credits were reserved on or after July 1, 2009: The project shall be completed and the eligible property shall be placed in service within 60 months of the date on which part two of the application was approved.

48.11(2) In the event actual construction on a project is not completed and the eligible property is not placed in service within the time period allowed in accordance with subrule 48.11(1), the SHPO shall recapture the tax credit reservation in accordance with the provisions of rule 223—48.12(303,404A).

[**ARC 7943B**, IAB 7/15/09, effective 6/16/09; **ARC 9608B**, IAB 7/13/11, effective 6/22/11]

223—48.12(303,404A) Abandonment and recapture of tax credit reservation.

48.12(1) *Project abandonment due to inability to meet commencement deadline.* If the applicant has not provided the SHPO documentation of project commencement in accordance with rule 223—48.10(303,404A), the SHPO shall, by registered U.S. mail or courier sent to the last-known address of the applicant, request that the appropriate documentation be filed within 30 days of the date of the letter. If the SHPO has not received the documentation by the 30-day deadline, then the SHPO shall notify the applicant by registered U.S. mail or courier that the project has been abandoned and the tax credit reservation has been recaptured. If either letter is returned as undeliverable, the letter shall be filed and the tax credit reservation processed in accordance with subrule 48.12(5). Application processing fees for part two of the application as allowed by rule 223—48.16(303,404A) will not be returned.

48.12(2) *Project abandonment due to inability to meet project completion deadline.* If the applicant has not provided the SHPO documentation of project completion in accordance with rule 223—48.11(303,404A), the SHPO shall, by registered U.S. mail or courier sent to the last-known address of the applicant, request that part three of the application be filed within 30 days of the date of

the letter. If the SHPO has not received part three of the application by the 30-day deadline, then the SHPO shall notify the applicant by registered U.S. mail or courier that the project has been abandoned and the tax credit reservation has been recaptured. If either letter is returned as undeliverable, the letter shall be filed and the tax credit reservation processed in accordance with subrule 48.12(5). Application processing fees for part two of the application as allowed by rule 223—48.16(303,404A) will not be returned.

48.12(3) *Project abandonment at the request of an applicant.* An applicant may choose to abandon tax credits reserved in accordance with subrule 48.6(7) at any time after the date on which the tax credit was reserved. A tax credit reservation may be voluntarily abandoned for any reason, including abandonment of a reservation from the small projects fund for consideration in another fund in accordance with subrule 48.5(6) or paragraph 48.6(8)*"c."* Submittal of a new application will require the submittal of a new processing fee. Processing fees for the original part two application(s) as allowed by rule 223—48.16(303,404A) will not be returned. To abandon a tax credit reservation, the applicant shall send a letter to the SHPO requesting that the tax credit project be abandoned. The SHPO shall notify the applicant by registered U.S. mail or courier that the project has been abandoned and the tax credit reservation has been recaptured. SHPO shall process the tax credit reservation in accordance with subrule 48.12(5).

48.12(4) *Tax credit recapture if part three of the application is not approved.* If as part of the SHPO review of part three of the application pursuant to subrule 48.6(5) rehabilitation work is found to be inconsistent with the historic character of the property or the district in which it is located and the applicant is unwilling or unable to correct the work accordingly, the SHPO shall notify the applicant by registered U.S. mail or courier that the tax credit reservation has been recaptured and shall process the tax credit reservation in accordance with subrule 48.12(5).

48.12(5) *Tax credit return to appropriate fund.* The SHPO shall return any recaptured tax credit reservations to the tax credit fund from which they were reserved.

[**ARC 7943B**, IAB 7/15/09, effective 6/16/09; **ARC 9608B**, IAB 7/13/11, effective 6/22/11]

223—48.13(303,404A) Transfer of tax credit certificate. The applicant may transfer the tax credit certificate to one or more parties in accordance with department of revenue 701—subrule 42.15(6).

223—48.14(303,404A) Redemption of tax credit certificate. The tax credit holder shall attach the tax credit certificate and a copy of the signed part three of the application to the taxpayer's state income tax return and submit these documents to the department of revenue in the tax year for which the tax credit certificate is valid.

223—48.15(303,404A) Tax credits in excess of tax liability.

48.15(1) An applicant whose tax credit exceeds the tax liability in the tax year for which the tax credit may be redeemed is entitled to a refund of the excess tax credit with interest under Iowa Code section 422.25. See also administrative rules of the department of revenue, particularly rules 701—42.15(422) and 701—52.18(422).

48.15(2) In lieu of a refund, the applicant may have the excess tax credit applied to the tax liability for the following year.

223—48.16(303,404A) Application processing fees. A nonrefundable fee for application processing of parts two and three of an application will be charged for review of requests for certification of a rehabilitation project for historic tax credits. An initial review fee will be due with the filing of part two of an application. An additional fee for review of completed rehabilitation work will be due with the filing of part three of an application. Fees will be based on the amount of qualified rehabilitation costs. The fee schedule is as follows:

For projects with qualified rehabilitation costs of:	Part 2 Processing Fee	Part 3 Processing Fee
$50,000 or less	No cost	No cost
$50,001 to $100,000	$250	$250
$100,001 to $500,000	$500	$500
$500,001 to $1,000,000	$750	0.5 percent of qualified rehabilitation costs (i.e., 0.005 × costs)
$1,000,001 to $6,000,000	$1,000	
Over $6,000,000	$1,500	$30,000

[**ARC 7943B**, IAB 7/15/09, effective 6/16/09]

223—48.17(303,404A) Appeals.

48.17(1) Applicants may appeal a decision of the SHPO on any of the following bases:

a. Action was outside statutory authority;

b. Decision was influenced by a conflict of interest;

c. Action violated state law or administrative rules;

d. Insufficient public notice was given; or

e. Alteration of the review and certification process was detrimental to the applicant.

48.17(2) Appeals in writing shall be delivered to the director of the department of cultural affairs within 30 days of the decision giving rise to the appeal. All appeals shall be directed to the Director, Department of Cultural Affairs, 600 E. Locust Street, Des Moines, Iowa 50319; telephone (515)281-7471.

48.17(3) All appeals shall contain:

a. The facts of the case;

b. Argument(s) in support of the appeal; and

c. The remedy sought.

48.17(4) The director of the department of cultural affairs shall consider and rule on an appeal after receiving all documentation from the appellant and shall notify the appellant in writing of the decision within 30 days. The decision of the director of the department of cultural affairs shall be final except as provided in Iowa Code sections 17A.19 and 17A.20.

48.17(5) Applicants may appeal SHPO decisions provided under subrule 48.6(5) regarding eligibility of a property to be placed on the National Register as determined during part one of the application and review process or regarding whether a proposed scope of work meets the Standards as determined during part two of the application and review process. The SHPO shall provide procedural guidance to the applicant should the applicant choose to appeal to the National Park Service under this subrule.

[**ARC 7943B**, IAB 7/15/09, effective 6/16/09]

These rules are intended to implement Iowa Code chapter 303 and chapter 404A as amended by 2009 Iowa Acts, Senate File 481.

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CHAPTER 10
CONTESTED CASE HEARINGS

[Prior to 2/10/88, see Inspections and Appeals Department[481],Ch 4]

481—10.1(10A) Definitions.

"Administrative law judge (ALJ)" means the person who presides over contested cases and other proceedings.

"Agency" means the agency as defined in Iowa Code subsection 17A.2(1) which has original subject matter jurisdiction in the contested case.

"Appointing authority" means the appointed or elected chief administrative head of a department, commission, board, independent agency, or statutory office or that person's designee or in the case of gubernatorial appointees, the governor.

"Board" means a licensing board as defined in Iowa Code chapter 272C.

"Department" means the department of inspections and appeals (DIA).

"Division" means the division of administrative hearings in the department of inspections and appeals.

"Ex parte" means a communication, oral or written, to an ALJ or other decision maker in a contested case without notice and an opportunity for all parties to be heard.

"Filing" is defined in subrule 10.12(3) except where otherwise specifically defined by law.

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

"Party" means a party as defined in Iowa Code subsection 17A.2(5).

"Personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other agency functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case.

"Presiding officer" means, as used in the code of administrative judicial conduct, all persons who preside in contested case proceedings under Iowa Code section 17A.11(1) as amended by 1998 Iowa Acts, chapter 1202, section 15.

"Proposed decision" means the administrative law judge's recommended findings of fact, conclusions of law, and decision and order in contested cases where the agency did not preside.

481—10.2(10A,17A) Time requirements. Time shall be computed as provided in Iowa Code subsection 4.1(22). For good cause, the administrative law judge may extend or shorten the time to take any action, except as provided otherwise by rule or law.

This rule is intended to implement Iowa Code sections 10A.202(1) and 17A.22.

481—10.3(10A) Requests for a contested case hearing. Requests for a contested case hearing are made to the agency with subject matter jurisdiction. That agency shall determine whether to initiate a contested case proceeding.

This rule is intended to implement Iowa Code section 10A.202(1).

481—10.4(10A) Transmission of contested cases.

10.4(1) In every proceeding filed with the division, the agency shall complete a transmittal form. The following information is required:

a. The name of the transmitting agency;

b. The name, address and telephone number of the contact person in the transmitting agency;

c. The name or title of the proceeding, which may include a file number;

d. Any agency docket or reference number;

e. A citation to the jurisdictional authority of the agency regarding the matter in controversy;

f. Any anticipated special features or requirements which may affect the hearing;
g. Whether the hearing should be held in person or by telephone conference call;
h. Any special legal or technical expertise needed to resolve the issues in the case;
i. The names and addresses of all parties and their attorneys or other representatives;
j. The date the request for a contested case hearing was received by the agency;
k. A statement of the issues involved and a reference to statutes and rules involved;
l. Any mandatory time limits that apply to the processing of the case;
m. Earliest appropriate hearing date; and
n. Whether a petition or answer is required.

10.4(2) The agency and the department determine by agreement whether the agency or the department shall issue the notice of hearing.

a. If agreed by the agency and the department, the agency shall attach a notice of hearing to the transmittal form.

b. If the division by agreement issues the notice of hearing, the agency must provide the information required by Iowa Code section 17A.12(2) (except for the date, time and place of the hearing) for inclusion in the notice.

c. The agency, and not the division, shall prepare:
(1) The citation to the jurisdictional authority of the agency regarding the matter in controversy;
(2) A statement of the issues involved;
(3) A reference to statutes and rules involved; and
(4) The remaining information required by the transmittal form as stated in subrule 10.4(1).

10.4(3) The following documents shall be attached to the completed transmittal form when it is sent to the division:

a. A copy of the document showing the agency action in controversy; and
b. A copy of any document requesting a contested case hearing.

10.4(4) When a properly transmitted case is received, it is marked with the date of receipt by the division. An identifying number shall be assigned to each contested case upon receipt.

This rule is intended to implement Iowa Code section 10A.202(1).

481—10.5(17A) Notices of hearing.

10.5(1) Responsibility for issuance of notice of hearing and the manner of service shall be resolved by agreement between the division and the transmitting agency.

10.5(2) Notices of hearing shall contain the information required by Iowa Code subsection 17A.12(2) and any additional information required by statute or rule. Notices shall be served by first-class mail, unless otherwise required by statute or rule, or agreed pursuant to subrule 10.5(1).

This rule is intended to implement Iowa Code sections 17A.12(1) and 17A.12(2).

481—10.6(10A) Waiver of procedures. Unless otherwise precluded, the parties in a contested case may waive any provision of this chapter pursuant to Iowa Code section 17A.10.

This rule is intended to implement Iowa Code section 10A.202(2).

481—10.7(10A,17A) Telephone proceedings. A prehearing conference or a hearing may be held by telephone conference call pursuant to a notice of hearing or an order of the ALJ. The division shall determine the location of the parties and witnesses in telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, shall be considered when location is chosen.

481—10.8(10A,17A) Scheduling. Contested case hearings are scheduled according to the following criteria:

10.8(1) *Agency hearings.* The division shall promptly schedule hearings. The availability of an administrative law judge and any special circumstances shall be considered.

10.8(2) *Board hearings.* Boards are requested to consult with the division prior to scheduling hearings to determine the availability of an administrative law judge. The board shall determine the time and place of hearing.

481—10.9(17A) Disqualification.

10.9(1) An administrative law judge shall withdraw from contested cases for lack of impartiality or other legally sufficient cause including, but not limited to, cases where:

a. The ALJ has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the case;

b. The ALJ has prosecuted or advocated in connection with the case, the specific controversy underlying the case, or another pending factually related contested case or pending factually related controversy that may culminate in a contested case involving the same parties;

c. A private party is a client or has been a client of the ALJ within the past two years;

d. The ALJ has a financial interest in the case or any other interest that could be substantially affected by the outcome of the case; or

e. The ALJ, the ALJ's spouse, or relative within the third degree of relationship:

(1) Is a party to the case or an officer, director or trustee of a party;

(2) Is a lawyer in the case;

(3) Is known by the ALJ to have an interest that could be substantially affected by the outcome of the case; or

(4) Is to the ALJ's knowledge likely to be a material witness in the case.

10.9(2) If an ALJ does not withdraw, the ALJ shall disclose on the record any information relevant to the grounds listed in subrule 10.9(1).

10.9(3) If a party asserts disqualification on any appropriate ground, including those listed in subrule 10.9(1), the party shall file an affidavit pursuant to Iowa Code subsection 17A.17(4). The affidavit must be filed with the division within 15 days of the date of the notice of hearing, or as soon as the reason alleged in the affidavit becomes known to the party, but in any case shall be filed prior to the hearing.

This rule is intended to implement Iowa Code section 17A.17.

481—10.10(10A,17A) Consolidation—severance.

10.10(1) *Consolidation.* The administrative law judge may, upon motion by any party or the ALJ's own motion, consolidate any or all matters at issue in two or more proceedings docketed under these rules where:

a. There exist common parties or common questions of fact or law;

b. Consolidation would expedite and simplify consideration of the issues; and

c. Consolidation would not adversely affect the rights of parties engaged in otherwise separate proceedings.

At any time prior to the hearing, any party may on motion request that the matters not be consolidated, and the motion shall be granted for good cause shown.

10.10(2) *Severance.* The administrative law judge may, upon motion by any party or upon the ALJ's own motion, for good cause shown, order any proceeding or portion thereof severed.

This rule is intended to implement Iowa Code sections 10A.202(1) and 17A.22.

481—10.11(10A,17A) Pleadings. Pleadings may be required by the notice of hearing or by order of the administrative law judge. If pleadings are required, they shall be filed as follows:

10.11(1) *Petition.* When an action of the agency is appealed and pleadings are required under subrule 10.10(1), the aggrieved party shall file the petition.

a. Any required petition shall be filed within 20 days of delivery of the notice of hearing, unless otherwise ordered.

b. The petition shall state in separately numbered paragraphs the following:

(1) The relief demanded and the facts and law relied upon for relief;

(2) The particular provisions of the statutes and rules involved;

(3) On whose behalf the petition is filed; and

(4) The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

10.11(2) *Answer.* If pleadings are required, the answer shall be filed within 20 days of service of the petition or notice of hearing, unless otherwise ordered.

a. Any party may move to dismiss or apply for a more definite, detailed statement when appropriate.

b. The answer shall show on whose behalf it is filed and specifically admit, deny or otherwise answer all material allegations of the pleading to which it responds. It shall state any facts deemed to show an affirmative defense and may contain as many defenses as the pleader may claim.

c. The answer shall state the name, address and telephone number of the person filing the answer and of the attorney representing that person, if any.

d. Any allegation in the petition not denied in the answer is considered admitted. Any defense not raised which could have been raised on the basis of facts known when the answer was written may be waived unless manifest injustice would result.

10.11(3) *Amendment.* Any petition, notice of hearing or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed may be allowed at the discretion of the ALJ or board if applicable. The presiding ALJ or board may impose terms or grant a continuance without terms, as a condition of allowing late amendments.

This rule is intended to implement Iowa Code sections 10A.202(1) and 17A.12(6)*"a."*

481—10.12(17A) Service and filing of pleadings and other papers.

10.12(1) *When service is required.* Except where otherwise specifically authorized by law, every pleading, motion, document or other paper filed in the contested case proceeding and every paper relating to discovery in the proceeding shall be served upon each of the parties to the proceeding, including the originating agency. Except for the notice of the hearing and an application for rehearing as provided in Iowa Code subsection 17A.16(2), the party filing a document is responsible for service on all parties.

10.12(2) *Methods of performing service.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by first-class mail is rebuttably presumed to be complete upon mailing, except where otherwise specifically provided by statute, rule or order.

10.12(3) *Filing.* After a matter has been assigned to the division, and until a proposed decision is issued, documents shall be filed with the division, rather than the originating agency. All papers filed after the notice is issued that are required to be served upon a party shall be filed simultaneously with the division.

a. Except where otherwise provided by law, a document is deemed filed at the time it is:

(1) Delivered to the division of appeals and fair hearings, department of inspections and appeals and date-stamped received;

(2) Delivered to an established courier service for immediate delivery;

(3) Mailed by first-class mail or by state interoffice mail so long as there is adequate proof of mailing; or

(4) Sent by facsimile transmission (fax) as provided in subrule 10.12(3), paragraph *"b."*

b. All documents filed with the division pursuant to these rules, except a person's request or demand for a contested case proceeding, (see Iowa Code subsection 17A.12(9)) may be filed by facsimile transmission (fax). A copy shall be filed for each case involved. A document filed by fax is presumed to be an accurate reproduction of the original. If a document filed by fax is illegible, a legible copy may be substituted and the date of filing shall be the date the illegible copy was received. The date of filing by fax shall be the date the document is received by the division. The division will not provide a mailed file-stamped copy of documents filed by fax.

10.12(4) *Proof of mailing.* Adequate proof of mailing includes the following:

a. A legible United States postal service postmark on the envelope;

b. A certificate of service;

c. A notarized affidavit; or

d. A certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Department of Inspections and Appeals, Appeals Division, Lucas State Office Building, 2nd Floor, Des Moines, Iowa 50319, and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed) or (state interoffice mail).

(date) (signature)

481—10.13(17A) Discovery.

10.13(1) Pursuant to Iowa Code section 17A.13, discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by rules of the agency or by a ruling by the ALJ, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

10.13(2) Any motion relating to discovery shall allege that the moving party has made a good faith attempt to resolve the issues raised by the motion with the opposing party. Motions in regard to discovery shall be ruled on by the ALJ. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 10.13(1). The ALJ may rule on the basis of the written motion and any response or may order argument on the motion.

This rule is intended to implement Iowa Code section 17A.13.

481—10.14(10A,17A) Subpoenas.

10.14(1) *Issuance.*

a. Pursuant to Iowa Code subsection 17A.13(1), the division shall issue an agency subpoena to a party on request unless otherwise excluded pursuant to this rule. A request for a subpoena shall be in writing. The request may be made in person, or by mail, fax, or electronic mail. The request shall include the names of the parties, the case number, the name and address of the requested witness, and a description or list of any documents or other items requested. A request for a subpoena shall be received by the division at least seven calendar days before the scheduled hearing. The request shall include the name, address and telephone number of the requesting party.

b. The division shall provide the subpoena to the requesting party by regular mail, fax, or electronic mail or allow for pickup during the department's regular business hours. Parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

c. When authorized by law, an administrative law judge (ALJ) may issue a subpoena on the ALJ's own motion.

d. When there is reasonable ground to believe a subpoena is requested for the purpose of harassment, or that the subpoena requests irrelevant evidence or is untimely, the ALJ may refuse to issue the subpoena. The ALJ may require the requesting party to provide a statement of testimony expected to be elicited from the subpoenaed witness and a showing of relevancy. If the ALJ refuses to issue a subpoena, the ALJ shall provide a written statement of the ground for refusal. A party to whom a refusal is issued may obtain a prompt hearing regarding the refusal by filing a written request with the division.

10.14(2) *Motion to quash or modify.*

a. A subpoena may be quashed or modified upon motion for any lawful ground in accordance with the Iowa Rules of Civil Procedure.

b. A motion to quash or modify a subpoena shall be served on all parties of record.

c. The motion may be set for argument at the discretion of the ALJ.

This rule is intended to implement Iowa Code sections 10A.104(6) and 17A.13.

[**ARC 9616B**, IAB 7/13/11, effective 8/17/11]

481—10.15(10A,17A) Motions.

10.15(1) No technical form is required for motions. Prehearing motions, however, must be written, state the grounds for relief and state the relief sought. Any motion for summary judgment shall be filed in compliance with the requirements of Iowa Rules of Civil Procedure.

10.15(2) Any party may file a written resistance or response to a motion within 14 days after the motion is served, unless the time period is extended or shortened by rules of the agency or the administrative law judge. The ALJ may consider a failure to respond within the required time period in ruling on a motion.

10.15(3) The administrative law judge may schedule oral argument on any motion on the request of any party or the ALJ's own motion.

10.15(4) Except for good cause, all motions pertaining to the hearing must be filed and served at least ten days prior to the hearing date unless the time period is shortened or lengthened by rules of the agency or the administrative law judge.

481—10.16(17A) Prehearing conference.

10.16(1) Any party may request a prehearing conference. A request for prehearing conference or an order for prehearing conference on the ALJ's own motion shall be filed in writing and served on all parties of record not less than ten days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

Notice of the prehearing conference shall be given by the division to all parties. For good cause the ALJ may permit variances from this rule.

10.16(2) Each party shall bring to the prehearing conference:

a. A final list of witnesses who the party reasonably anticipates will testify at the hearing. Witnesses not listed may be excluded from testifying.

b. A final list of exhibits which the party reasonably anticipates will be introduced at the hearing. Exhibits not listed, except rebuttal exhibits, may be excluded from admission into evidence.

10.16(3) In addition to the requirements of subrule 10.16(2), the parties at a prehearing conference may:

a. Enter into stipulations of law;

b. Enter into stipulations of fact;

c. Enter into stipulations on the admissibility of exhibits;

d. Identify matters which the parties intend to request be officially noticed;

e. Unless precluded by statute, enter into stipulations for waiver of the provisions of Iowa Code chapter 17A allowed by Iowa Code section 17A.10(2) or waiver of agency rules; and

f. Consider any additional matters which will expedite the hearing.

10.16(4) A prehearing conference shall be conducted by telephone conference call unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists prior to a telephone prehearing conference.

This rule is intended to implement Iowa Code section 17A.10.

481—10.17(10A) Continuances. Unless otherwise provided, application for continuance shall be made to the ALJ or to the division if an ALJ has not been assigned.

10.17(1) A written application for continuance shall:

a. Be made before the hearing;

b. State the specific reasons for the request; and

c. Be signed by the requesting party or their representative.

10.17(2) If the ALJ waives the requirement for a written motion, an oral application for continuance may be made. A written application shall be submitted no later than five days after the oral request. The ALJ may waive this requirement. No application for continuance will be made or granted ex parte without notice except in an emergency where notice is not feasible. The agency may waive notice of requests for a case or a class of cases.

10.17(3) Except where otherwise provided, a continuance may be granted at the discretion of the ALJ. The administrative law judge shall consider, in addition to the grounds stated in the motion:

a. Any prior continuances;

b. The interests of all parties;

c. The likelihood of informal settlement;

d. Existence of emergency;
e. Objection to the continuance;
f. Any applicable state or federal statutes or regulations;
g. The existence of a conflict in the schedules of counsel or parties or witnesses; and
h. The timeliness of the request.

The ALJ may require documentation of any ground for continuance.

This rule is intended to implement Iowa Code section 10A.202(1).

481—10.18(10A,17A) Withdrawals. The party which requested an evidentiary hearing regarding agency action may withdraw prior to the hearing only in accordance with agency rules. Requests for withdrawal may be oral or written. If oral, the ALJ may require the party to submit a written request after the oral request. Unless otherwise provided, a withdrawal shall be with prejudice.

This rule is intended to implement Iowa Code sections 10A.202(1) and 17A.22.

481—10.19(10A,17A) Intervention.

10.19(1) *Motion.* A motion for leave to intervene shall be served on all parties and shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within ten days of service of the motion to intervene unless the time period is extended or shortened by the ALJ.

10.19(2) *When filed.* Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the disposition of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if one is held, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. The intervenor shall be bound by any agreement, arrangement or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the hearing will be denied.

10.19(3) *Grounds for intervention.* The movant shall demonstrate that:

a. Intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties;

b. The movant will be aggrieved or adversely affected by a final order; and

c. The interests of the movant are not being adequately represented by existing parties; or that it is otherwise entitled to intervene.

10.19(4) *Effect of intervention.* If appropriate, the ALJ may order consolidation of petitions and briefs and limit the number of representatives allowed to participate in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues to be raised or otherwise condition the intervenor's participation in the proceeding.

This rule is intended to implement Iowa Code sections 10A.202(1) and 17A.22.

481—10.20(17A) Hearing procedures.

10.20(1) When an ALJ has been appointed as the presiding officer in a contested case, the ALJ may:

a. Rule on motions;
b. Preside at the hearing;
c. Require the parties to submit briefs;
d. Issue a proposed decision; and
e. Issue orders and rulings to ensure the orderly conduct of the proceedings.

10.20(2) All objections to procedures, admission of evidence or any other matter shall be timely made and stated on the record.

10.20(3) Parties in a contested case have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations or associations may be represented by any member, officer, director or duly authorized agent. Any party may be represented by an attorney or as otherwise authorized by law.

10.20(4) Parties in a contested case have the right to introduce evidence on points at issue, to cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, to present evidence in rebuttal and to submit briefs.

10.20(5) The ALJ shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly or disruptive.

10.20(6) Witnesses may be sequestered during the hearing.

10.20(7) The ALJ shall conduct the hearing in the following manner:

a. The ALJ shall give an opening statement briefly describing the nature of the proceeding;

b. The parties shall be given an opportunity to present opening statements;

c. Parties shall present their cases in the sequence determined by the ALJ;

d. Each witness shall be sworn or affirmed by the ALJ or the court reporter, and be subject to examination. The ALJ may limit questioning consistent with Iowa Code section 17A.14;

e. The ALJ has the authority to fully and fairly develop the record and may inquire into the matters at issue and shall receive in evidence the testimony of witnesses and any documents which are relevant and material; and

f. When all parties and witnesses have been heard, parties shall be given the opportunity to present final arguments.

This rule is intended to implement Iowa Code sections 17A.11 to 17A.14.

481—10.21(17A) Evidence.

10.21(1) The ALJ shall rule on admissibility of evidence in accordance with Iowa Code section 17A.14 and may take official notice of facts pursuant to Iowa Code subsection 17A.14(4).

10.21(2) Stipulation of facts is encouraged. The ALJ may make a decision based on stipulated facts.

10.21(3) Evidence shall be confined to the issues on which there has been fair notice prior to the hearing. The ALJ may take testimony on a new issue if the parties waive the right to notice and no other objection is made. If there is objection, the ALJ may refuse to hear the new issue and may make a decision on the original issue in the notice, or may grant a continuance to allow the parties adequate time to amend pleadings and prepare their cases on the additional issue.

10.21(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should be provided to opposing parties.

All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

10.21(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. The party objecting shall briefly state the grounds for the objection. The objection, the ruling on the objection and the reasons for the ruling shall be noted in the record. The ALJ may rule on the objection at the time it is made or may reserve a ruling until the written decision.

10.21(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony. If the evidence excluded consists of a document or exhibits, it shall be marked as part of an offer of proof and inserted in the record.

This rule is intended to implement Iowa Code sections 17A.11 to 17A.14.

481—10.22(17A) Default.

10.22(1) If a party fails to appear in a contested case proceeding after proper service of notice, the ALJ may, if no adjournment is granted, proceed with the hearing and make a decision in the absence of the party.

10.22(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested an evidentiary hearing to contest adverse agency action which has already occurred, but has failed to file a required pleading or has failed to appear after proper service.

10.22(3) Where authorized by law, an ALJ may issue a default order.

481—10.23(17A) Ex parte communication.

10.23(1) Ex parte communication is prohibited as provided in Iowa Code section 17A.17. Parties or their representatives and ALJs shall not communicate directly or indirectly in connection with any issue of fact or law in a contested case except upon notice and an opportunity for all parties to participate. The ALJ may communicate with persons who are not parties as provided in subrule 10.23(2).

10.23(2) However, the ALJ may communicate with members of the agency and may have the aid and advice of persons other than those with a personal interest in, or those prosecuting or advocating in the case under consideration or a factually related case involving the same parties.

10.23(3) Any party or ALJ who receives prohibited communication shall submit the written communication or a summary of the oral communication for inclusion in the record. Copies shall be sent to all parties. There shall be opportunity to respond.

10.23(4) Prohibited communications may result in sanctions as provided in agency rule. In addition, the department, through the ALJ, may censure the person or may prohibit further appearance before the department.

This rule is intended to implement Iowa Code sections 17A.14 and 17A.17.

481—10.24(10A,17A) Decisions.

10.24(1) *Proposed decisions.* The ALJ shall issue a proposed decision which includes findings of fact and conclusions of law stated separately. The decision shall be based on the record of the contested case.

The record in a contested case shall include all materials specified in Iowa Code subsection 17A.12(6). This shall include any request for a contested case hearing and other relevant procedural documents regardless of their form.

A ruling dismissing all of a party's claims or a voluntary dismissal is a proposed decision under Iowa Code section 17A.15.

10.24(2) *Review of proposed decisions.* Request for review of a proposed decision shall be made to the agency in which the contested case originated in the manner and within the time specified by that agency's rules. In contested cases in which the director of DIA has final decision-making authority, request for review shall be made as provided in rule 481—10.25(10A,17A).

10.24(3) *Final decisions.* If there is no appeal from or review of the proposed decision, the ALJ's proposed decision becomes the final decision of the agency.

10.24(4) *Agency reports.* The agency shall send a copy of any request for review of a proposed decision to the division. The agency shall notify the division of the results of the review, the final decision and any judicial decision issued.

481—10.25(10A,17A) DIA appeals.

10.25(1) A request for review of a proposed decision in which DIA is the final decision maker shall be made within 15 days of issuing the proposed decision, unless otherwise provided by statute. Requests shall be mailed or delivered by either party to the Director, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083. Failure to request review will preclude judicial review unless the department reviews on its own motion as follows. The department may review a proposed decision upon its own motion within 15 days of its issuance.

10.25(2) A review shall be based on the record and limited to issues raised in the hearing. The issues shall be specified in the party's request for review.

10.25(3) Each party shall have opportunity to file exceptions and present briefs. The director or a designee may set a deadline for submission of briefs. When the director or designee consents, oral arguments may be presented. A party wishing to make an oral argument shall specifically request it. All parties shall be notified in advance of the scheduled time and place.

10.25(4) The director or designee shall not take any further evidence with respect to issues of fact heard in the hearing except as set forth below. Application may be filed for leave to present evidence in addition to that found in the record of the case. If it is shown to the satisfaction of the director or designee that the additional evidence is material and that there were good reasons for failure to present it in the

hearing, the director or designee may order the additional evidence taken upon conditions determined by the director or designee.

10.25(5) Final decisions shall be issued by the director or the director's designee.

10.25(6) Requests for rehearing shall be made to the director of the department within 20 days of issuing a final decision. A rehearing may be granted when new legal issues are raised, new evidence is available, an obvious mistake is corrected, or when the decision failed to include adequate findings or conclusions on all issues.

A request for rehearing is not necessary to exhaust administrative remedies.

10.25(7) Judicial review of department final decisions may be sought in accordance with Iowa Code section 17A.19.

This rule is intended to implement Iowa Code sections 17A.15 and 17A.19.

481—10.26(10A,17A,272C) Board hearings. In scheduling hearings, boards should consult with the division to determine the availability of an ALJ. The board shall determine the time and place of hearing. At the request of the board, an ALJ shall assist in the conduct of a contested case.

10.26(1) The ALJ may rule on preliminary matters, including motions, and conduct prehearing conferences referred by the board.

10.26(2) The ALJ may conduct the hearing for the board, and may, when delegated by the board, perform duties including, but not limited to, the following:

a. Open the record and receive appearances;
b. Administer oaths and issue subpoenas;
c. Enter the notice of hearing into the record;
d. Enter the statement of charges into the record;
e. Receive testimony and exhibits presented by the parties;
f. Rule on objections and motions;
g. Close the hearing; and
h. Prepare findings of fact, conclusions of law and decision and order.

This rule is intended to implement Iowa Code sections 10A.202, 17A.11 and 272C.6.

[1] **481—10.27(10A) Transportation hearing fees.** Any hearing on an application required by Iowa Code Supplement chapter 325A shall require:

10.27(1) The applicant and any persons objecting to the granting of a certificate to submit a hearing fee of $350 to be shared equally to cover payment of all costs and expenses of the hearing. The department may require additional amounts as necessary and shall provide a written itemized account of all additional expenses to the parties. The hearing fee shall be made by check payable to the Iowa Department of Inspections and Appeals.

10.27(2) The hearing fee to be received no later than 14 days after the notice of hearing, unless otherwise ordered. Failure to timely submit the hearing fee may result in cancellation of the hearing and denial of the application.

10.27(3) If a scheduled hearing is canceled, that the hearing fee, less expenses incurred by the department, be refunded to the payers. This shall not be interpreted to authorize a refund to an applicant who fails to appear at a scheduled hearing.

10.27(4) The applicant and any persons objecting to the granting of a certificate to submit a hearing fee of $150 to be shared equally if the hearing is held by a summary proceeding conducted without a personal appearance before the ALJ and where pleadings, affidavits, records, or other documents are submitted to the division for a decision by an ALJ.

[1] Hearing fees under jurisdiction of Department of Transportation [761] prior to 5/16/90. See IAB 6/26/91 for rescission of 761—525.5(3) and 528.4(3).

481—10.28(10A) Recording costs. The department may provide a copy of the tape-recorded hearing or a printed transcript of the hearing when a record of the hearing is requested. The cost of preparing the tape or transcript shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters shall bear the cost, unless otherwise provided by law.

481—10.29(10A) Code of administrative judicial conduct. The code of administrative judicial conduct is designed to govern the conduct, in relation to their adjudicative functions in contested cases, of all persons who act as presiding officers under the authority of Iowa Code section 17A.11(1). The canons are rules of reason. The canons shall be applied consistent with constitutional requirements, statutes, administrative rules, and decisional law and in the context of all relevant circumstances. The canons must be harmonized with the dictates of the administrative process as established by the legislature. While Canons 1, 2, and 3 are generally applicable to both administrative law judges and agency heads or members of multimember agency heads when these persons act as presiding officers, these canons shall be applied to agency heads and members of multimember agency heads only as expressly mandated by statute and as reasonably practicable when taking into account the fact that agency heads and members of multimember agency heads, unlike administrative law judges, have multiple duties imposed upon them by law. The provisions of Canon 4 concerning the regulation of extrajudicial activities are not applicable to agency heads or members of multimember agency heads. This code is to be construed so as to promote the essential independence of presiding officers in making judicial decisions.

Whether disciplinary action is appropriate, and the degree of discipline to be imposed, shall be determined by the appointing authority through a reasonable and reasoned application of the text and shall depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity, and the effect of improper activity on others or on the administrative system. This code is not designed or intended as a basis for civil liability or criminal prosecution.

10.29(1) *Canon 1.* A presiding officer shall uphold the integrity and independence of the administrative judiciary.

a. An independent and honorable administrative judiciary is indispensable to justice in society.

b. A presiding officer shall participate in establishing, maintaining, and enforcing high standards of conduct and shall personally observe those standards so that the integrity and independence of the administrative judiciary will be preserved.

c. The provisions of this code are to be construed and applied to further that objective.

10.29(2) *Canon 2.* A presiding officer shall avoid impropriety and the appearance of impropriety in all adjudicative functions in contested cases.

a. A presiding officer shall respect and comply with the law and at all times shall act in a manner that promotes public confidence in the integrity and impartiality of the administrative judiciary.

b. A presiding officer shall not allow family, social, political, or other relationships to influence the presiding officer's judicial conduct or judgment. This provision shall not be construed as prohibiting the development of public policy by contested case adjudication. A presiding officer shall not lend the prestige of the office to advance the private interests of the presiding officer or others; nor shall a presiding officer convey or permit others to convey the impression that they are in a special position to influence the presiding officer.

c. A presiding officer shall not hold membership in any organization that the presiding officer knows practices invidious discrimination on the basis of race, sex, religion or national origin.

10.29(3) *Canon 3.* A presiding officer shall perform the duties of the office impartially and diligently.

a. Adjudicative responsibilities. A presiding officer in the performance of adjudicative duties in contested case proceedings shall follow these standards:

(1) A presiding officer shall be faithful to the law, unswayed by partisan interests, public clamor, or fear of criticism.

(2) A presiding officer shall maintain order and decorum in proceedings before the presiding officer.

(3) A presiding officer shall be patient, dignified, and courteous to litigants, witnesses, attorneys, representatives, and others with whom the presiding officer deals in an official capacity, and shall require similar conduct of attorneys, representatives, staff members and others subject to the presiding officer's direction and control.

(4) A presiding officer shall not, in the performance of adjudicative duties by words or conduct, manifest bias or prejudice, including but not limited to bias or prejudice based upon sex, race, national origin or ethnicity and shall not permit staff and others subject to the presiding officer's direction and control to do so.

(5) A presiding officer shall accord to all persons who are legally interested in a proceeding, or their representatives, full right to be heard according to law, and neither initiate nor consider ex parte communications prohibited by Iowa Code section 17A.17.

(6) A presiding officer shall dispose of all adjudicative matters promptly, efficiently and fairly.

(7) A presiding officer shall abstain from public comment about a pending or impending contested case proceeding that might reasonably be expected to affect the outcome or impair the fairness of the proceeding, and shall require similar abstention by agency personnel subject to the presiding officer's direction and control. This subparagraph does not prohibit a presiding officer from making public statements in the course of official duties or from explaining for public information the hearing procedures of agencies.

(8) A presiding officer shall not disclose or use, for any purpose unrelated to adjudicative duties, nonpublic information acquired in an adjudicative capacity except as lawfully permissible in the performance of official duties by an agency head or member of a multimember agency head.

(9) A presiding officer shall report any violation of this code to the appropriate authority for any disciplinary proceedings provided by law.

b. Disqualification. A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

(1) Has a personal bias or prejudice concerning a party or a representative of a party;

(2) Has personally investigated, prosecuted or advocated, in connection with that case, the specific controversy underlying that case, or another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;

(3) Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;

(4) Has acted as counsel to any person who is a private party to that proceeding within the past two years;

(5) Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;

(6) Has a spouse or relative within the third degree of relationship that:

1. Is a party to the case, or an officer, director or trustee of a party;
2. Is an attorney in the case;
3. Is known to have an interest that could be substantially affected by the outcome of the case; or
4. Is likely to be a material witness in the case; or

(7) Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

c. Disclosure on record. In a situation where a presiding officer knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, the presiding officer shall disclose the relevant information on the record and shall state reasons why voluntary withdrawal is unnecessary.

10.29(4) *Canon 4.* An administrative law judge shall regulate extrajudicial activities to minimize the risk of conflict with judicial duties.

In general, an administrative law judge shall conduct all of the administrative law judge's extrajudicial activities so that the administrative law judge does not:

1. Cast reasonable doubt on the administrative law judge's capacity to act impartially as a judge;
2. Create the appearance of impropriety or demean the adjudicative office; or
3. Interfere with the proper performance of adjudicative duties.

These rules are intended to implement Iowa Code sections 10A.104, 10A.202, 17A.10 to 17A.17, 17A.19, 17A.22, 272C.1 and 272C.6.

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[1] Effective date of first unnumbered paragraph of Ch 10, Scope and applicability, delayed 70 days by the Administrative Rules Review Committee at its 6/13/90 meeting; this paragraph rescinded IAB 8/22/90, effective 8/1/90.

LOTTERY AUTHORITY, IOWA[531]

[Created by 2003 Iowa Acts, Senate File 453, section 66]
[Prior to 9/17/03, see Lottery Division[705]]

CHAPTER 1
GENERAL OPERATION OF THE LOTTERY

CHAPTER 2
PURCHASING

CHAPTER 3
PROCEDURE FOR RULE MAKING

CHAPTER 12
LICENSING

CHAPTER 13
LICENSED RETAILERS

CHAPTER 14
MONITOR VENDING MACHINES

CHAPTER 20
COMPUTERIZED GAMES—GENERAL RULES

CHAPTER 21
DRAWINGS AND CONTESTS

CHAPTER 21
DRAWINGS AND CONTESTS

531—21.1(99G) Authorization of drawings and contests. The lottery authority board authorizes drawings and contests that meet the criteria set forth in this chapter.

This rule is intended to implement Iowa Code section 99G.9(3).
[**ARC 9611B**, IAB 7/13/11, effective 6/22/11]

531—21.2(99G) Definitions.

"Contest" means a lottery event that may or may not involve nonwinning tickets in which entries are selected as winners and prizes are valued at a total of $5,000 or less. If an individual prize is greater than $600 or at the lottery's discretion, a player must fill out a claim form and the contest will have written rules informally posted at the event.

"Drawing" or *"second-chance drawing"* means a lottery event involving a random selection of an entry or entries for prize(s) in which entrants may either use a nonwinning Iowa lottery ticket as an entry or, at the lottery's discretion, may enter the drawing using points earned from entering tickets through the Internet or an entry through an alternative method for which a purchase is not necessary.

"Nonwinning ticket" means a ticket that did not win in the original game for which it was printed.

"Presentation" of a drawing or contest entry, for purposes of this chapter and validation of the same, means entering the ticket into a drawing or contest through the U.S. mail or Internet, as permitted by the rules of the drawing or the description of the contest.

This rule is intended to implement Iowa Code sections 99G.9(3) and 99G.21.
[**ARC 9611B**, IAB 7/13/11, effective 6/22/11]

531—21.3(99G) Price for drawings or contests. There shall be no cost to enter a drawing or contest beyond the original ticket price already paid. At its discretion, the lottery may designate certain drawings that may be entered with a designated number of points earned by entry of nonwinning tickets through the VIP club or by some other lottery-approved method.

This rule is intended to implement Iowa Code sections 99G.9(3) and 99G.21.
[**ARC 9611B**, IAB 7/13/11, effective 6/22/11]

531—21.4(99G) Method of play. Contest or drawing winners may be determined from a computer-generated list of all the entries submitted during the eligibility period or by any other method approved by the lottery. The secure drawing system will generate a list of winning entry numbers based on the prize levels. Alternates will be drawn as determined by the lottery. Other methods of choosing a winning entry may be determined by the lottery and, if utilized, shall be set forth in the specific drawing rules or contest description.

This rule is intended to implement Iowa Code sections 99G.9(3) and 99G.21.
[**ARC 9611B**, IAB 7/13/11, effective 6/22/11]

531—21.5(99G) Prizes.

21.5(1) The number and amount of prizes for a drawing or contest shall be determined by the lottery and set forth in the specific drawing rules or contest description.

21.5(2) At the lottery's discretion, a drawing or contest may include a special prize event. The number of prizes, the amount of each prize, the dates and times of the contests or drawings, as well as the procedures for conducting elimination drawings or prize events, shall be determined by the lottery and set forth in the specific drawing rules or contest description. Finalists for prize events shall be selected in the manner stated in the specific drawing rules or contest description.

This rule is intended to implement Iowa Code sections 99G.9(3), 99G.21 and 99G.31.
[**ARC 9611B**, IAB 7/13/11, effective 6/22/11]

531—21.6(99G) Disclosure of odds. Because the odds will vary based on the number of entrants in each contest or drawing, the odds will not be posted.

This rule is intended to implement Iowa Code sections 99G.9(3) and 99G.21.
[**ARC 9611B**, IAB 7/13/11, effective 6/22/11]

531—21.7(99G) Claiming prizes. The specific drawing rules or contest description shall set forth the manner in which prizes won shall be claimed.

This rule is intended to implement Iowa Code sections 99G.9(3), 99G.21 and 99G.31.
[**ARC 9611B**, IAB 7/13/11, effective 6/22/11]

531—21.8(99G) Entry validation requirements. To be a valid entry, the entry must be a legally acquired nonwinning Iowa lottery ticket identified as an entry for the particular promotion. At its discretion, the lottery may include legally obtained winning and nonwinning Iowa lottery online tickets in promotions.

This rule is intended to implement Iowa Code sections 99G.9(3), 99G.21 and 99G.31.
[**ARC 9611B**, IAB 7/13/11, effective 6/22/11]

531—21.9(99G) Owner of a ticket. The lottery and its VIP club vendor, if any, shall pay prizes in an Internet-based drawing or contest only to persons who present the selected tickets by entering them into the drawing through the online entry form or other entry mechanism. Players are encouraged to sign the original ticket to prevent entry of the ticket by another party into the drawings or contests. The signature on the ticket indicates the owner of the ticket. If no signature is present on the ticket, the owner of the ticket is the possessor of the ticket. If there is a question as to the ownership of a ticket, the chief executive officer's determination as to whether and to whom a prize shall be awarded is final.

This rule is intended to implement Iowa Code sections 99G.9(3), 99G.21 and 99G.31.
[**ARC 9611B**, IAB 7/13/11, effective 6/22/11]

531—21.10(99G) Official end of drawing or contest period. The chief executive officer shall announce the end of any drawing or contest period.

This rule is intended to implement Iowa Code sections 99G.9(3) and 99G.21.
[**ARC 9611B**, IAB 7/13/11, effective 6/22/11]

[Filed Emergency ARC 9611B, IAB 7/13/11, effective 6/22/11]

PUBLIC HEALTH DEPARTMENT[641]

Rules of divisions under this department "umbrella" include Substance Abuse[643], Professional Licensure[645], Dental Examiners[650], Medical Examiners[653], Nursing Board[655] and Pharmacy Examiners[657]

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EARLY HEARING DETECTION AND INTERVENTION (EHDI) PROGRAM

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PLUMBING AND MECHANICAL SYSTEMS BOARD—LICENSURE FEES

641—28.1(105) Fees. All fees are nonrefundable.

28.1(1) License fee for:

a. An apprentice license as defined in 641—subrule 29.2(1) is $50.

b. A journey license as defined in 641—subrule 29.2(2) is $50.

c. A master license as defined in 641—subrule 29.2(3) is $125.

d. A medical gas pipe certificate as defined in 641—29.3(105) is $50.

e. An inactive license as defined in 641—subrules 29.2(5) and 29.2(6) is $50.

f. A contractor license as defined in 641—subrule 29.2(4) is $150.

g. A special restricted license as defined in 641—subrules 29.2(8), 29.2(9), 29.2(10), and 29.2(11) is $50.

28.1(2) Reciprocal license fee for:

a. An apprentice license as defined in 641—subrule 29.2(1) is $50.

b. A journey license as defined in 641—subrule 29.2(2) is $50.

c. A master license as defined in 641—subrule 29.2(3) is $125.

28.1(3) Renewal license fee for:

a. An apprentice license as defined in 641—subrule 29.2(1) is $50.

b. A journey license as defined in 641—subrule 29.2(2) is $50.

c. A master license as defined in 641—subrule 29.2(3) is $125.

d. A medical gas pipe certificate as defined in 641—29.3(105) is $50.

e. An inactive license as defined in 641—subrules 29.2(5) and 29.2(6) is $50.

f. A contractor license as defined in 641—subrule 29.2(4) is $150.

g. A special restricted license as defined in 641—subrules 29.2(8), 29.2(9), 29.2(10), and 29.2(11) is $50.

h. The renewal fee shall be waived for all licenses renewed from January 1, 2011, through December 31, 2012. However, if applicable, late fees as set forth in subrule 28.1(5) and paper application fees as set forth in subrule 28.1(10) will be applied.

28.1(4) The examination application fee is $35.

28.1(5) A late fee for failure to renew before expiration is determined as follows:

a. A licensee who allows a license to lapse for 30 days or less may reinstate and renew the license with payment of the appropriate renewal fee and without payment of a late fee.

b. A licensee who allows a license to lapse for more than 30 days but less than 60 days may reinstate and renew the license without examination upon payment of a $60 late fee and the appropriate renewal of license fee.

c. A licensee who allows a license to lapse for more than 60 days is required to retake and pass the applicable licensing examination and pay the appropriate renewal of license fee in order to obtain reinstatement. A licensee whose license has lapsed continues to hold the privilege of licensure in Iowa, but may not work as a plumbing or mechanical professional or contractor in Iowa until the license is renewed. A licensee who works as a plumbing or mechanical professional, including under a special restricted license, works as a geothermal heat pump installer, or operates as a contractor in the state of Iowa with a lapsed license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code chapter 105, criminal sanctions pursuant to Iowa Code chapter 105, and other available legal remedies.

28.1(6) The duplicate or reissued license certificate or wallet card fee is $20.

28.1(7) The fee for written verification of licensee status is $20.

28.1(8) The returned check fee is $25.

28.1(9) The disciplinary hearing fee is a maximum of $75.

28.1(10) The paper application fee is $25 plus the appropriate license fee.

28.1(11) Combined license.

a. For purposes of this subrule, "combined license" shall mean more than one active master or journeyperson license under subrules 28.1(1) through 28.1(3) in one or multiple disciplines.

b. A license fee for a combined license shall be the sum total of each of the separate license fees reduced by 30 percent.

c. In order to be eligible for the combined license fee reduction, all individual licenses must be purchased in a single transaction.

[Editorial change: IAC Supplement 2/25/09; **ARC 8529B**, IAB 2/24/10, effective 1/26/10; **ARC 9603B**, IAB 7/13/11, effective 6/21/11]

641—28.2(105) Annual review of fee schedule. Within 60 days following the end of each fiscal year, the board shall submit a report to the general assembly that includes a balance sheet projection extending no less than three years. If the revenue projection exceeds the expense projections by more than 10 percent, the board shall adjust the fee schedules so that projected revenues are no more than 10 percent higher than projected expenses. Revised fees shall be implemented no later than January 1, 2013, and January 1 of each subsequent year.

[**ARC 9603B**, IAB 7/13/11, effective 6/21/11]

These rules are intended to implement Iowa Code chapter 105 as amended by 2011 Iowa Acts, House File 392, and chapter 272C.

[Filed emergency 12/23/08 after Notice 11/5/08—published 1/14/09, effective 1/1/09]

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[Filed Emergency After Notice ARC 8529B (Notice ARC 8361B, IAB 12/2/09), IAB 2/24/10, effective 1/26/10]

[Filed Emergency ARC 9603B, IAB 7/13/11, effective 6/21/11]

CHAPTER 29
PLUMBING AND MECHANICAL SYSTEMS BOARD—
APPLICATION, LICENSURE, AND EXAMINATION

641—29.1(105) Definitions. For purposes of these rules, the following definitions shall apply:

"Applicable" means having relevance; appropriate.

"Apprentice" means any person, other than a helper, journeyperson, or master, who, as a principal occupation, is engaged in working as an employee of a plumbing, HVAC, refrigeration, or hydronic systems contractor under the supervision of either a master or a journeyperson and is progressing toward completion of an apprenticeship training program registered by the Office of Apprenticeship of the United States Department of Labor while learning and assisting in the design, installation, and repair of plumbing, HVAC, refrigeration, or hydronic systems, as applicable.

"Board" means the plumbing and mechanical systems board.

"Corresponding" means the same discipline.

"Department" means the Iowa department of public health.

"Disconnect/reconnect plumbing technician specialty license" means a sublicense under a plumbing license to perform work from the appliance shutoff valve or fixture shutoff valve to the appliance or fixture and any part or component of the appliance or fixture, including the disconnection and reconnection of the existing appliance or fixture to the water or sewer piping and the installation of a shutoff valve no more than 3 feet from the appliance or fixture.

"Emergency repairs" means the repair of water pipes to prevent imminent damage to property.

"Hearth systems specialty license" means a sublicense under an HVAC license to perform work in the installation of gas burning and solid fuel appliances that offer a decorative view of the flames, from the connector pipe to the shutoff valve located within 3 feet of the appliance. This sublicense is further allowed to perform work in the venting systems, log lighters, gas log sets, fireplace inserts, and freestanding stoves.

"HVAC" means heating, ventilation, air conditioning, ducted systems, or any type of refrigeration used for food processing or preservation. "HVAC" includes all natural, propane, liquid propane, or other gas lines associated with any component of an HVAC system.

"Hydronic" means a heating or cooling system that transfers heating or cooling by circulating fluid through a closed system, including boilers, pressure vessels, refrigerated equipment in connection with chilled water systems, all steam piping, hot or chilled water piping together with all control devices and accessories, installed as part of, or in connection with, any heating or cooling system or appliance using a liquid, water, or steam as the heating or cooling media. "Hydronic" includes all low-pressure and high-pressure systems and all natural, propane, liquid propane, or other gas lines associated with any component of a hydronic system.

"Inactive license" means a license that is available for a plumbing, HVAC, refrigeration, or hydronic professional who is not actively engaged in running a business or working in the business in the corresponding discipline at that license level.

"Journeyperson" means any person, other than a master, who, as a principal occupation, is engaged as an employee of, or otherwise working under the direction of, a master in the design, installation, and repair of plumbing, HVAC, refrigeration, or hydronic systems, as applicable.

"Licensee" means a person or entity licensed to operate as a contractor or work in the plumbing, HVAC, refrigeration, or hydronic disciplines or work as a certified medical gas system installer or work in the specialty license disciplines developed by the board.

"Master" means any person who works in the planning or superintending of the design, installation, or repair of plumbing, HVAC, refrigeration, or hydronic systems and is otherwise lawfully qualified to conduct the business of plumbing, HVAC, refrigeration, or hydronic systems, and who is familiar with the laws and rules governing the same.

"Mechanical systems" means HVAC, refrigeration, and hydronic systems.

"Medical gas system installer" means any person who installs or repairs medical gas piping, components, and vacuum systems, including brazers, who has been issued a valid certification from

the National Inspection Testing Certification (NITC) Corporation, or an equivalent authority approved by the board.

"Plumbing" means all potable water building supply and distribution pipes, all plumbing fixtures and traps, all drainage and vent pipes, and all building drains and building sewers, storm sewers, and storm drains, including their respective joints and connections, devices, receptors, and appurtenances within the property lines of the premises, and including the connection to sanitary sewer, storm sewer, and domestic water mains. "Plumbing" includes potable water piping, potable water treating or using equipment, medical gas piping systems, fuel gas piping, water heaters and vents, including all natural, propane, liquid propane, or other gas lines associated with any component of a plumbing system.

"Refrigeration" means any system of refrigeration regardless of the level of power, if such refrigeration is intended to be used for the purpose of food processing and product preservation and is also intended to be used for comfort systems. "Refrigeration" includes all natural, propane, liquid propane, or other gas lines associated with any component of refrigeration.

"Routine maintenance" means the maintenance, repair, or replacement of existing fixtures or parts of plumbing, HVAC, refrigeration, or hydronic systems in which no changes in original design are made. Fixtures or parts do not include smoke and fire dampers or water, gas or steam piping permanent repairs except for traps or strainers. Routine maintenance shall include emergency repairs. "Routine maintenance" does not include the replacement of furnaces, boilers, cooling appliances, or water heaters more than 100 gallons in size.

"Service technician HVAC specialty license" means a sublicense under an HVAC license to perform work from the appliance shutoff valve to the appliance and any part and component of the appliance, including the disconnection and reconnection of the existing appliance to the gas piping and the installation of a shutoff valve no more than 3 feet away from the appliance.

"Surety bond" means a performance bond written by an entity licensed to do business in this state which guarantees that a contractor will fully perform the contract and which guarantees against breach of that contract.

[**ARC 8530B**, IAB 2/24/10, effective 1/26/10; **ARC 9604B**, IAB 7/13/11, effective 6/21/11]

641—29.2(105) Available licenses and general requirements. Effective January 1, 2011, all licenses issued by the board will be for a three-year period. All licenses issued prior to January 1, 2011, will be for a two-year period. Subject to the general requirements set forth herein and the minimum qualifications for licensure set forth in rule 641—29.4(105), the following licenses are available:

29.2(1) *Apprentice license.* An applicant for an apprentice license shall:

a. File an application and pay application fees in accordance with 641—29.5(105).

b. Be enrolled in an applicable apprentice program which is registered with the United States Department of Labor Office of Apprenticeship.

c. Certify that the applicant will work under the supervision of a licensed journeyperson or master in the applicable discipline by providing the department with the United States Department of Labor Office of Apprenticeship identification number and sponsor identification number.

29.2(2) *Journeyperson license.*

a. An applicant for a journeyperson license shall:

(1) File an application and pay application fees in accordance with rule 641—29.5(105).

(2) Pass the state journeyperson licensing examination in the applicable discipline.

(3) Provide the board with evidence that the applicant has completed at least four years of practical experience as an apprentice. Commencing January 1, 2010, the four years of practical experience required by this paragraph must be an apprenticeship training program registered by the United States Department of Labor Office of Apprenticeship. Documentation must be submitted on a form provided by the board.

b. Notwithstanding the journeyperson licensure requirements set forth in paragraph 29.2(2)*"a,"* an applicant who possesses a master level license and who seeks a journeyperson license in the same discipline shall file an application and pay application fees in accordance with rule 641—29.5(105).

29.2(3) *Master license.* An applicant for a master license shall:

a. File an application and pay application fees in accordance with rule 641—29.5(105).

b. Pass the state master licensing examination for the applicable discipline.

c. Provide the board with evidence that the applicant:

(1) Has previously been licensed as a master in the applicable discipline; or

(2) Has previously been licensed as a journeyperson in the applicable discipline and has at least two years of journeyperson experience in the applicable discipline.

29.2(4) *Contractor license.* An applicant for a contractor license shall:

a. File an application and pay application fees in accordance with rule 641—29.5(105).

b. Provide the applicant's Iowa workforce development contractor registration number.

c. Provide the board with evidence that the applicant maintains a permanent place of business.

d. Provide the board with evidence of a public liability insurance policy issued by an entity licensed to do business in this state with a minimum coverage amount of $500,000 and:

(1) If the applicant operates the contractor business as a sole proprietorship, provide the board with evidence that the applicant personally obtained the policy, or

(2) If the applicant operates the contractor business as an employee or owner of a legal entity, provide the board with evidence that the insurance policy is obtained by the entity and that the insurance covers all plumbing or mechanical work performed by the entity.

e. Provide the board with evidence of a surety bond issued by an entity licensed to do business in this state in a minimum amount of $5,000 and:

(1) If the applicant operates the contractor business as a sole proprietorship, provide the board with evidence that the applicant personally obtained the surety bond, or

(2) If the applicant operates the contractor business as an employee or owner of a legal entity, provide the board with evidence that the surety bond was obtained by the entity and that the surety bond covers all plumbing or mechanical work performed by the entity.

f. Provide a certificate to the board that the public liability insurance policy required under paragraph 29.2(4)*"d"* and the surety bond required under paragraph 29.2(4)*"e"* shall not be canceled without the entity first giving 15 days' written notice to the board.

g. Provide the board with evidence that the applicant holds an active master license or employs at least one person who holds an active master license issued under Iowa Code chapter 105 for each discipline in which the applicant performs chapter 105-covered work.

29.2(5) *Active journeyperson license/inactive master license combination.* An applicant for an active journeyperson license and an inactive master license in the same discipline shall:

a. File an application and pay application fees for both an active journeyperson license and an inactive master license in accordance with rule 641—29.5(105).

b. Provide the board with evidence that the applicant meets the requirements for master licensure under subrule 29.2(3).

c. Provide evidence that the applicant is not performing plumbing, HVAC, refrigeration, or hydronic work for which a master license is required.

d. Acknowledge awareness that the applicant is unable to perform any plumbing, HVAC, refrigeration, or hydronic work for which a master license is required so long as the applicant's master license is held in inactive status.

29.2(6) *Inactive license.* An applicant for an inactive license that does not fall within subrule 29.2(5) shall:

a. File an application and pay application fees in accordance with rule 641—29.5(105).

b. Provide the board with evidence that the applicant meets the requirements for licensure under rule 641—29.2(105) at the applicable licensure level.

c. Provide the board with evidence that the applicant is not actively engaged working in the plumbing, HVAC, refrigeration, or hydronic disciplines for which licensure is required.

d. Acknowledge awareness that the applicant is unable to perform any plumbing, HVAC, refrigeration, or hydronic work for which licensure is required so long as the applicant's license is held in inactive status.

29.2(7) *Service technician HVAC specialty license.* An applicant for a service technician HVAC specialty license shall:

a. File an application and pay application fees in accordance with rule 641—29.5(105).

b. Provide the board with evidence that:

(1) The applicant possesses a valid certification from North American Technician Excellence, Inc. or an equivalent authority approved by the board, or

(2) The applicant completed a Service Technician Associate degree or equivalent educational or similar training approved by the board.

29.2(8) *Disconnect/reconnect plumbing technician specialty license.* An applicant for a disconnect/reconnect plumbing technician specialty license shall:

a. File an application and pay application fees in accordance with rule 641—29.5(105).

b. Provide the board with evidence that:

(1) The applicant is receiving or has previously received industry training to perform work covered under this specialty license, or

(2) The applicant completed a Service Technician Associate degree or equivalent educational or similar training approved by the board.

29.2(9) *Private school or college routine maintenance specialty license.* An applicant for a private school or college routine maintenance specialty license shall:

a. File an application and pay application fees in accordance with rule 641—29.5(105).

b. Provide the board with evidence that the applicant is currently employed by a private school or college.

c. Provide the board with evidence that the applicant is performing routine maintenance within the scope of employment with the private school or college.

29.2(10) *Hearth systems specialty license.* An applicant for a hearth systems specialty license shall:

a. File an application and pay application fees in accordance with rule 641—29.5(105).

b. Provide the board with evidence that the applicant possesses a valid certification issued by the National Fireplace Institute or equivalent authority approved by the board.

[**ARC 8530B**, IAB 2/24/10, effective 1/26/10; **ARC 9604B**, IAB 7/13/11, effective 6/21/11]

641—29.3(105) Medical gas piping certification. The following certification is required for a person who performs work as a medical gas system installer. An applicant for a medical gas certificate shall:

29.3(1) File an application and pay applicable fees.

29.3(2) Possess valid certification from the National Inspection Testing Certification (NITC) Corporation, or an equivalent authority approved by the board. Documentation must be submitted on a form provided by the board.

[**ARC 8530B**, IAB 2/24/10, effective 1/26/10]

641—29.4(105) Minimum qualifications for licensure. The following minimum requirements shall apply to all licenses issued after July 1, 2008.

29.4(1) An applicant for any type of license must be at least 18 years old.

29.4(2) Effective January 1, 2010, all apprentice applicants must have completed a high school education or attained GED equivalent.

29.4(3) An applicant shall have no record of felony conviction relating to the profession as determined by the board.

29.4(4) Rescinded IAB 2/24/10, effective 1/26/10.

[**ARC 8530B**, IAB 2/24/10, effective 1/26/10]

641—29.5(105) General requirements for application for licensure. The following criteria shall apply to application for licensure.

29.5(1) On-line or paper application.

a. An applicant shall complete a board-approved application either on-line or on a paper application according to instructions contained in the application.

b. Applications can be completed on-line or on a paper application. Paper applications are available to download at http://www.idph.state.ia.us/eh/plumbing.asp or from the board office by writing to: Plumbing and Mechanical Systems Board, Iowa Department of Public Health, 312 E. 12th Street, 5th Floor, Des Moines, Iowa 50319-0075, or by calling 1-866-280-1521.

29.5(2) Fees. In order to be processed, each application must be accompanied by the appropriate fees as determined by the board. All fees are nonrefundable.

a. On-line application fees shall be paid by credit card only.

b. A paper application shall be accompanied by the appropriate fees payable by check or money order to the Iowa Plumbing and Mechanical Systems Board.

29.5(3) If the applicant is notified that the application is incomplete, the applicant must contact the board office within 90 days. The board may be contacted at: Plumbing and Mechanical Systems Board, Iowa Department of Public Health, 312 E. 12th Street, 5th Floor, Des Moines, Iowa 50319, or by calling 1-866-280-1521.

29.5(4) No application will be considered by the board without the appropriate verifiable documentation. An applicant must submit the following verifiable documentation:

a. A passing score for a discipline-appropriate examination provided by the testing vendor under contract with the board, when testing is required for a license.

b. Verification that the applicant has met the minimum requirements as defined in 641—29.4(105) and the established employment experience criteria for each type of license.

29.5(5) Complete applications shall be filed with the plumbing and mechanical systems board. Incomplete applications shall be considered invalid and after 90 days shall be destroyed.

[**ARC 8530B**, IAB 2/24/10, effective 1/26/10]

641—29.6(105) Examination.

29.6(1) An applicant for licensure as a plumbing or mechanical system professional that requires a state licensing examination must successfully pass the licensing examination for the discipline.

a. The examination will be administered by the board-approved vendor.

b. The board shall approve the specific examination to be used for each license type.

c. Rescinded IAB 2/24/10, effective 1/26/10.

29.6(2) Examination requirements.

a. The examination will be written and proctored by a nationally recognized testing agency selected by the board through a competitive bid process.

b. The examination will be offered periodically during the year. The time and location will rotate between multiple sites in the state of Iowa, as determined by the department, with approval of the board.

c. The examination will not be subject to review by applicants. The testing vendor shall, upon request from an applicant, provide information about the sections that the applicant failed, but shall not provide an applicant access to actual examination questions or answers. Any fees associated with the review process will be assessed by and payable to the testing vendor. The applicant is responsible for paying all associated examination fees.

d. A score of 75 percent or better will be considered passing.

29.6(3) Examination application requirements.

a. An applicant shall complete and submit a board-approved examination application either on-line or on a paper application a minimum of 15 business days prior to taking an examination. An applicant shall complete the application form according to instructions contained in the application.

b. Examination applications can be completed on-line or on a paper application. Paper applications are available to download at http://www.idph.state.ia.us/eh/plumbing.asp or from the board office by writing to: Plumbing and Mechanical Systems Board, Iowa Department of Public Health, 312 E. 12th Street, 5th Floor, Des Moines, Iowa 50319-0075, or by calling 1-866-280-1521.

c. Fees. In order to be processed, each application must be accompanied by the appropriate fees as determined by the board. All fees are nonrefundable.

(1) On-line examination application fees shall be paid by credit card only.

(2) A paper examination application shall be accompanied by the appropriate fees payable by check or money order to the Iowa Plumbing and Mechanical Systems Board.

d. No application will be considered by the board without the appropriate verifiable documentation.

e. The applicant will be notified and issued an examination entrance letter upon approval of the examination application.

f. If the applicant is notified that the application is incomplete, the applicant must contact the board office within 90 days. The board may be contacted at: Plumbing and Mechanical Systems Board, Iowa Department of Public Health, 312 E. 12th Street, 5th Floor, Des Moines, Iowa 50319, or by calling 1-866-280-1521.

g. Incomplete applications shall be considered invalid and after 90 days shall be destroyed.

h. Examination fees shall be payable directly to the board-approved testing vendor.

(1) All transactions shall be the responsibility of the applicant and testing vendor.

(2) The board shall not be held responsible for refunds from the testing vendor.

i. An applicant shall present current photo identification in order to sit for the examination.

j. An applicant for licensure by examination who does not pass the examination within one year from the original application date will be required to submit a new application.

k. A master examination applicant shall not receive permission to sit for a master examination unless the applicant establishes that the applicant:

(1) Has previously been licensed as a master in the applicable discipline; or

(2) Has previously been licensed as a journeyperson in the applicable discipline and has at least two years of journeyperson experience in the applicable discipline.

l. A journeyperson examination applicant may apply to sit for the examination up to 6 months prior to completion of the 48 months of required apprentice credit, which shall include the granting of advanced standing or credit for previously acquired experience, training, or skills.

29.6(4) Expiration of passing examination score. An applicant who successfully passes an examination must apply for licensure in the applicable discipline at the applicable discipline level within two years of notification that the applicant successfully passed the examination. A passing examination score shall expire if the applicant fails to apply for licensure within the two-year period as set forth herein, and the applicant shall be required to successfully retake said examination to become licensed in the applicable discipline at the applicable discipline level.

[**ARC 8530B**, IAB 2/24/10, effective 1/26/10; **ARC 9604B**, IAB 7/13/11, effective 6/21/11]

641—29.7(105) License renewal.

29.7(1) The period of licensure to operate as a contractor or work as a master, journeyperson or apprentice in the plumbing, HVAC, refrigeration, or hydronic disciplines or work as a certified medical gas system installer or work in the specialty license disciplines developed by the board shall be for a period of three years.

a. The board shall send a renewal notice by regular mail to each licensee at the address on record at least 60 days prior to the expiration of the license.

b. The licensee is responsible for renewing the license prior to its expiration.

c. Failure of the licensee to receive the notice does not relieve the licensee of the responsibility for renewing the license.

29.7(2) Specific renewal requirements.

a. A licensee seeking renewal shall:

(1) Meet the continuing education requirements as set forth in rule 641—30.2(105). A licensee whose license was reactivated during the current renewal compliance period may use continuing education credit earned during the compliance period for the first renewal following reactivation; and

(2) Submit the completed renewal application and renewal fee before the license expiration date.

(3) Provide evidence that the licensee continues to meet the general requirements for licensure under rule 641—29.2(105).

b. Failure to renew a license within two months after the expiration of the license shall not invalidate the license, but a reasonable penalty may be assessed as adopted by rule, in addition to the license renewal fee, to allow reinstatement of the license.

(1) A licensee who allows a license to lapse for 30 days or less may reinstate and renew the license without examination upon payment of the appropriate renewal of license fee as defined in 641—subrule 28.1(5).

(2) A licensee who allows a license to lapse for more than 30 days but less than 60 days may reinstate and renew the license without examination upon payment of a $60 late fee and the appropriate renewal of license fee as defined in 641—subrule 28.1(5).

c. A licensee who allows a license to lapse for more than 60 days is required to retake and pass the applicable licensing examination and pay the appropriate renewal of license fee as defined in 641—subrule 28.1(5) in order to obtain reinstatement and renewal of that person's license.

(1) A licensee who fails to renew the license by the end of the two-month period has a lapsed license.

(2) A licensee whose license is lapsed may not operate as a contractor or work in the plumbing, HVAC, refrigeration, or hydronic disciplines or work as a certified medical gas system installer or work in the specialty license disciplines developed by the board until the license is reinstated and renewed.

(3) A licensee who operates as a contractor or works in the plumbing, HVAC, refrigeration, or hydronic disciplines or works as a certified medical gas system installer or works in the specialty license disciplines developed by the board in the state of Iowa with a lapsed license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code chapter 105, criminal sanctions pursuant to Iowa Code chapter 105, and other available legal remedies.

[**ARC 8530B**, IAB 2/24/10, effective 1/26/10; **ARC 9604B**, IAB 7/13/11, effective 6/21/11]

641—29.8(83GA,HF2531) Master license—exception through September 30, 2010.

29.8(1) Notwithstanding paragraph 29.6(3)*"k,"* through September 30, 2010, the board may grant permission to sit for a master examination in one or more applicable discipline to an applicant who has not previously been licensed as a master or journeyperson in the applicable discipline and who possesses at least 48 months of work experience equivalent to that of a licensed master in the applicable discipline between September 30, 2004, and September 30, 2010. For purposes of this subrule, an applicant shall demonstrate the requisite work experience by providing a notarized employer verification statement on a form provided by the board, notarized client verification statements on a form provided by the board, or tax documents such as a Schedule C, Form 1099, Form W-2, or other tax forms establishing such requisite work experience. Upon board verification of work experience, the board shall return any submitted tax documents to the applicant via certified mail.

29.8(2) Notwithstanding subrule 29.2(3), through November 15, 2010, an applicant for a master license may be eligible to receive a master license if:

a. The applicant files an application and pays all applicable fees in accordance with rule 641—29.5(105); and

b. The applicant passes the state master licensing examination for the applicable discipline.

This rule is intended to implement 2010 Iowa Acts, House File 2531, section 100.

[**ARC 8783B**, IAB 6/2/10, effective 5/10/10]

641—29.9(105) Waiver from examination for military service. The written examination requirements and prior experience requirements set forth in Iowa Code sections 105.18(2)*"b"*(1) and 105.18(2)*"c"* shall be waived for a journeyperson license or master license if the applicant meets all of the following requirements:

29.9(1) Is an active or retired member of the United States military.

29.9(2) Provides documentation that the applicant was deployed on active duty during any portion of the time period of July 1, 2008, through December 31, 2009.

29.9(3) Provides documentation that shows the applicant has previously passed an examination which the board deems substantially similar to the examination for a journeyperson license or a master

license, as applicable, issued by the board, or provides documentation that shows the applicant has previously been licensed by a state or local government jurisdiction in the same trade and trade level.
[**ARC 9604B**, IAB 7/13/11, effective 6/21/11]

These rules are intended to implement Iowa Code chapter 105 as amended by 2011 Iowa Acts, House File 392.

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[Filed Emergency ARC 8783B, IAB 6/2/10, effective 5/10/10]
[Filed Emergency ARC 9604B, IAB 7/13/11, effective 6/21/11]

CHAPTER 30
CONTINUING EDUCATION FOR PLUMBING AND MECHANICAL SYSTEMS PROFESSIONALS

641—30.1(105) Definitions. For the purpose of these rules, the following definitions shall apply:

"Approved program/activity" means a continuing education program/activity meeting the standard set forth in these rules.

"Audit" means the selection of licensees for verification of satisfactory completion of continuing education requirements during a specified time period.

"Board" means the plumbing and mechanical systems board as established pursuant to Iowa Code section 105.3.

"Continuing education" means planned, organized learning acts acquired during licensure designed to maintain, improve, or expand a licensee's knowledge and skills relevant to the enhancement of practice, education, or theory development to improve the safety and welfare of the public.

"Hour of continuing education" means at least 50 minutes spent in one sitting by a licensee in actual attendance at and in completion of an approved continuing education activity.

"License" means a license to work in a specific discipline covered under Iowa Code chapter 105.

"Licensee" means any person licensed to work in a specific discipline covered under Iowa Code chapter 105.

[**ARC 8270B**, IAB 11/4/09, effective 10/16/09; **ARC 8475B**, IAB 1/13/10, effective 2/17/10]

641—30.2(105) Continuing education requirements.

30.2(1) The continuing education compliance period shall begin on the license issue date and end on the license expiration date.

30.2(2) Each continuing education compliance period:

a. All inactive and active master and journey licensees shall be required to complete a minimum of 8 hours of board-approved continuing education, of which 4 hours shall be in the practice discipline in which the licensee holds a license. A minimum of 2 hours of the 8 hours shall be in the content area of the applicable Iowa plumbing or mechanical codes, and 2 hours of the 8 hours shall be in the content area of the Iowa Occupational Safety and Health Act.

b. All inactive and active master and journey licensees holding licenses in multiple mechanical code disciplines (i.e., HVAC, hydronics, or refrigeration) with the same license expiration date shall obtain a minimum of 14 hours of board-approved continuing education, of which 8 hours shall be in any of the practice disciplines in which the licensee holds a license. A minimum of 2 hours of the 14 hours shall be in the content area of the Iowa mechanical code, and 4 hours of the 14 hours shall be in the content area of the Iowa Occupational Safety and Health Act. All inactive and active master and journey licensees holding a plumbing discipline license and at least one mechanical code discipline license (i.e., HVAC, hydronics, or refrigeration) with the same expiration date shall obtain a minimum of 16 hours of board-approved continuing education, of which 8 hours shall be in any of the practice disciplines in which the licensee holds a license. A minimum of 2 hours of the 16 hours shall be in the content area of the Iowa plumbing code, 2 hours of the 16 hours shall be in the content area of the Iowa mechanical code, and 4 hours of the 16 hours shall be in the content area of the Iowa Occupational Safety and Health Act.

c. An individual possessing one special, restricted license issued pursuant to Iowa Code section 105.18(3) shall be required to complete the same number and type of continuing education hours as set forth in paragraph 30.2(2)*"a."* For purposes of paragraph 30.2(2)*"c,"* the prescribed practice discipline for each special, restricted license shall be the discipline under which the special license is a sublicense.

d. An individual possessing two or more special, restricted licenses issued pursuant to Iowa Code section 105.18(3) shall be required to complete the same number and type of continuing education hours as set forth in paragraph 30.2(2)*"b."* For purposes of paragraph 30.2(2)*"d,"* the prescribed practice discipline for each special, restricted license shall be the discipline under which the special license is a sublicense.

30.2(3) Up to 2 hours of board-approved continuing education required by subrule 30.2(2) each continuing education compliance period may be obtained through completion of computer-based continuing education programs/activities approved by the board.

30.2(4) It is the responsibility of each licensee to finance the cost of continuing education.

30.2(5) A licensee who is a presenter of a board-approved continuing education program may receive credit once per continuing education compliance period for the presentation of the program. The licensee may receive the same number of hours granted the attendees.

[**ARC 8270B**, IAB 11/4/09, effective 10/16/09; **ARC 8475B**, IAB 1/13/10, effective 2/17/10; **ARC 9605B**, IAB 7/13/11, effective 6/21/11]

641—30.3(105) Continuing education programs/activities.

30.3(1) *Standards for continuing education programs/activities.* A program/activity is appropriate for continuing education credit if the program/activity meets all of the following criteria:

a. Is board-approved;

b. Constitutes an organized program of learning that contributes directly to the professional competency of the licensee;

c. Pertains to subject matters that integrally relate to the practice of the discipline;

d. Is conducted by individuals who have obtained board approval as required under subrule 30.4(1). This criterion shall not be required for computer-based continuing education programs/activities conducted pursuant to subrule 30.2(3);

e. Fulfills stated program goals, objectives, or both; and

f. Covers product knowledge, methods, and systems of one or more of the following:

(1) The theory and technique for a specific discipline;

(2) The current Iowa plumbing code, Iowa mechanical code, or both;

(3) The standards comprising the current Iowa Occupational Safety and Health Act.

30.3(2) *Board approval.* Board approval for specific programs/activities under paragraph 30.3(1)*"a"* shall be valid for three years.

30.3(3) *Procedure and standards for board approval of continuing education programs/activities.*

a. For non-computer-based continuing education programs/activities, an individual or entity seeking board approval shall:

(1) File an application in the form prescribed by the board without alteration at least 60 days prior to the first scheduled course date;

(2) Attach a copy of the course or activity outline or syllabus which, at a minimum, specifically identifies the course content and a breakdown of the student contact hours; and

(3) Attach a schedule of courses, if known, which indicates the course's or activity's proposed scheduled locations, dates, and times.

b. For computer-based continuing education programs/activities, an individual or entity seeking board approval shall:

(1) File an application in the form prescribed by the board without alteration;

(2) Attach a copy of the course or activity outline or syllabus which, at a minimum, specifically identifies the course content and a breakdown of the student contact hours;

(3) Attach a schedule of courses, if known, which indicates the course's or activity's proposed scheduled locations, dates, and times;

(4) Provide a brief summary of the training product;

(5) Provide a copy of the CD-ROM, DVD, visual aids, or other materials included with the course or activity; and

(6) Provide the names, contact information, and qualifications or résumés of the training designers.

30.3(4) *Board member attendance.* With board approval, board members may attend any board-approved continuing education program/activity for purposes of determining whether the continuing education program/activity complies with these rules. In the event a board member attends a board-approved continuing education program/activity with the purpose of determining whether the

continuing education program/activity complies with these rules, the board member may not receive any continuing education credit for those hours in attendance.
[**ARC 8270B**, IAB 11/4/09, effective 10/16/09; **ARC 8475B**, IAB 1/13/10, effective 2/17/10; **ARC 9605B**, IAB 7/13/11, effective 6/21/11]

641—30.4(105) Course instructor(s).

30.4(1) *Procedure and standards for board approval of instructors.* An individual seeking board approval to instruct continuing education programs/activities shall:

a. File an application in the form prescribed by the board without alteration;

b. Attach copies of documents, licensures, degrees, and other materials demonstrating compliance with the requirements for the type of continuing education program/activity as set forth below.

(1) If seeking approval to instruct in the content area of the Iowa Occupational Safety and Health Act, an individual must either possess and maintain a current Occupational Safety and Health Act 500, 501, 502, or 503 card or completion certificate, or both, or possess a current train-the-trainer or instructor card or other certification or safety-related degree or diploma issued by the American Heart Association, American Red Cross, National Safety Council, Board of Certified Safety Professionals, or board-approved equivalent.

(2) If seeking approval to instruct in the content area of the Iowa plumbing code or Iowa mechanical code, or both, an individual must:

1. Possess a current license issued by the board at the journey or master level in the applicable discipline under that code,

2. Possess a current license as a professional engineer under Iowa Code chapter 542B,

3. Present evidence of having taught at least eight contact hours in the applicable code within the last three years,

4. Possess a current inspector or plans examiner certificate issued by a code body in the discipline, or

5. Demonstrate equivalent specialized education or training.

(3) If seeking approval to instruct in the content area of a practice discipline, an individual must:

1. Possess a current license issued by the board at the journey or master level in the applicable discipline,

2. Possess a current license as a professional engineer under Iowa Code chapter 542B,

3. Provide evidence of employment as a product representative with manufacturer training,

4. Present evidence of having taught at least eight contact hours in the applicable discipline within the last year, or

5. Demonstrate equivalent specialized education or training.

30.4(2) *Board approval.* Board approval for an instructor under subrule 30.4(1) shall be valid for three years.
[**ARC 8270B**, IAB 11/4/09, effective 10/16/09; **ARC 8475B**, IAB 1/13/10, effective 2/17/10; **ARC 9605B**, IAB 7/13/11, effective 6/21/11]

641—30.5(105) Audit of continuing education requirements. The board may conduct an audit of a licensee's license renewal application to review compliance with continuing education requirements.

30.5(1) Upon board request, the licensee must submit to the board an individual certificate of completion issued to the licensee or evidence of successful completion of the course from the course sponsor or course instructor. These documents must contain the course title, date(s), contact hours, sponsor's name, and licensee's name. In some instances, licensees will be requested to provide to the board additional information including, but not limited to, program content, objectives, presenters, location, and schedule. An inclusive brochure may meet this requirement.

30.5(2) Upon board request, a licensee must submit all information set forth in subrule 30.5(1) within 30 calendar days following the board's request. The board may grant extensions on an individual basis.

30.5(3) If the submitted materials are incomplete or unsatisfactory and the board determines that the deficiency was the result of good-faith conduct on the part of the licensee, the licensee may be given the opportunity to submit make-up credit to cover the deficit found through the audit. A licensee

must complete the continuing education hours and submit documentation establishing completion of the required make-up continuing education hours to the board within 120 calendar days from the date of the board's finding of good-faith conduct.

30.5(4) A licensee's failure to provide the board with an accurate mailing address shall not be an excuse for noncompliance with any requirement set forth in this rule.

[**ARC 8270B**, IAB 11/4/09, effective 10/16/09; **ARC 8475B**, IAB 1/13/10, effective 2/17/10]

641—30.6(105) Continuing education exemptions.

30.6(1) *Automatic exemptions.* A licensee shall be exempt from the continuing education requirement during the license biennium when that person:

a. Served honorably on active duty in the military service; or

b. Resided in another state or district having continuing education requirements for the discipline and met all requirements of that state or district for practice therein; or

c. Was a government employee working in the licensee's specialty and assigned to duty outside the United States; or

d. Was absent from the state but engaged in active practice under circumstances which are approved by the board; or

e. Obtained a journeyperson license by examination provided that the licensee maintains the same renewal date as the licensee's apprentice license. This automatic exemption shall only apply to the licensee's first renewal of the journeyperson license.

30.6(2) *Permissive exemptions.* The board may, in cases involving exceptional hardship or extenuating circumstances, grant an exemption from some or all of the continuing education requirements.

a. A licensee seeking a permissive exemption shall apply to the board, in such form as the board may prescribe.

b. A licensee seeking a permissive exemption shall be required to provide all such documentary evidence as the board may request to establish the exceptional hardship or extenuating circumstances.

c. In the event of a claimed physical or mental disability or illness, the board may request information from a licensed health care professional who can attest to the existence of any such disability or illness.

d. A licensee who applies for a permissive exemption shall be notified in writing of the board's decision.

e. In granting an exemption, the board may impose any such additional conditions on the exemption including, but not limited to, the requirement that the licensee make up a portion of the continuing education requirements.

f. In lieu of granting a full or partial exemption, the board may grant the licensee an extension of time in which to complete the continuing education requirements.

g. The granting of an exemption shall not prohibit a licensee from seeking, or the board from granting, an exemption in a subsequent biennial continuing education compliance period(s).

h. Permissive exemptions shall only be granted in the most exceptional and extraordinary of circumstances.

[**ARC 8270B**, IAB 11/4/09, effective 10/16/09; **ARC 8475B**, IAB 1/13/10, effective 2/17/10; **ARC 9605B**, IAB 7/13/11, effective 6/21/11]

641—30.7(105) Continuing education extensions. The board may, in individual cases involving hardship or extenuating circumstances, grant an extension of time within which to fulfill the minimum continuing education requirements.

30.7(1) Hardship or extenuating circumstances include documented circumstances beyond the control of the licensee which prevent attendance at required activities.

30.7(2) All requests for extension must be made prior to the license expiration date.

[**ARC 8270B**, IAB 11/4/09, effective 10/16/09; **ARC 8475B**, IAB 1/13/10, effective 2/17/10]

641—30.8(105) Continuing education reporting requirements.

30.8(1) *Non-computer-based continuing education programs/activities.* For non-computer-based continuing education programs/activities, at the conclusion of each continuing education course, the course instructor shall:

a. Inform each attending licensee that a survey of the course and instructor may be completed and submitted by the licensee to the board through either a board-approved written evaluation form or an Internet-based form.

b. Provide a certificate of completion to each licensee who attends the course. The certificate of completion shall include the following information:

(1) The licensee's full name and board-issued license number;
(2) The course name or title;
(3) The board-approved course identification number;
(4) The date of the course;
(5) The number of program contact hours;
(6) The instructor's full name and board-approved identification number; and
(7) The instructor's signature.

c. Submit to the board a typed or electronic course completion roster within 30 days following the completion of the course. The course completion roster shall contain the following information:

(1) The full name and board-issued license number of each attending licensee;
(2) The course name or title;
(3) The board-approved course identification number;
(4) The date of the course;
(5) The location of the course;
(6) The number of program contact hours;
(7) The instructor's full name and board-approved identification number; and
(8) The instructor's signature.

30.8(2) *Computer-based continuing education programs/activities.* For computer-based continuing education programs/activities under subrule 30.2(3), at the conclusion of each computer-based continuing education course, the person authorized to monitor and verify attendance/course completion shall:

a. Provide a certificate of completion to each licensee who completes the course. The certificate of completion shall include the following information:

(1) The licensee's full name and board-issued license number;
(2) The course name or title;
(3) The board-approved course identification number;
(4) The date the course was completed; and
(5) The number of program contact hours.

b. Submit to the board a typed or electronic course completion roster within 30 days following a licensee's completion of a computer-based continuing education course. The course completion roster shall contain the following information:

(1) The full name and board-issued license number of each attending licensee;
(2) The course name or title;
(3) The board-approved course identification number;
(4) The date of the course;
(5) The location of the course; and
(6) The number of program contact hours.

[**ARC 8270B**, IAB 11/4/09, effective 10/16/09; **ARC 8475B**, IAB 1/13/10, effective 2/17/10]

These rules are intended to implement Iowa Code chapters 105 and 272C.

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PROFESSIONAL LICENSURE DIVISION[645]

Created within the Department of Public Health[641] by 1986 Iowa Acts, chapter 1245.
Prior to 7/29/87, for Chs. 20 to 22 see Health Department[470] Chs. 152 to 154.

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DIETITIANS

CHAPTER 81
LICENSURE OF DIETITIANS

[Prior to 6/26/02, see 645—Ch 80]

645—81.1(152A) Definitions. For purposes of these rules, the following definitions shall apply:

"Active license" means a license that is current and has not expired.

"Board" means the board of dietetics.

"Consultation" means the practice of providing professional advice to another dietitian or other professional in a particular case and for a limited time, in affiliation with, and at the request of, a dietitian licensed in this state.

"Dietetics" means the integration and application of principles derived from the sciences of nutrition, biochemistry, physiology, food management and from behavioral and social sciences to achieve and maintain an individual's health.

"Grace period" means the 30-day period following expiration of a license when the license is still considered to be active. In order to renew a license during the grace period, a licensee is required to pay a late fee.

"Inactive license" means a license that has expired because it was not renewed by the end of the grace period. The category of "inactive license" may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

"Licensee" means any person licensed to practice as a dietitian in the state of Iowa.

"License expiration date" means the fifteenth day of the birth month every two years following initial licensure.

"Licensure by endorsement" means the issuance of an Iowa license to practice dietetics to an applicant who is currently licensed in another state.

"Nutrition assessment" means the evaluation of the nutrition needs of individuals and groups based upon appropriate biochemical, anthropometric, physical, and dietary data to determine nutrient needs and to recommend appropriate nutritional intake, including enteral and parenteral nutrition.

"Nutrition counseling" means advising and assisting individuals or groups, with consideration of cultural background and socioeconomic status, about appropriate nutritional intake by integrating information from the nutrition assessment with information about food and other sources of nutrients and meal preparation.

"Reactivate" or *"reactivation"* means the process as outlined in rule 645—81.15(17A,147,272C) by which an inactive license is restored to active status.

"Reciprocal license" means the issuance of an Iowa license to practice dietetics to an applicant who is currently licensed in another state which has a mutual agreement with the Iowa board of dietetics to license persons who have the same or similar qualifications as those required in Iowa.

"Registered dietitian" means a dietitian who has met the standards and qualifications of the Commission on Dietetic Registration, a member of the National Commission for Health Certifying Agencies.

"Reinstatement" means the process as outlined in 645—11.31(272C) by which a licensee who has had a license suspended or revoked or who has voluntarily surrendered a license may apply to have the license reinstated, with or without conditions. Once the license is reinstated, the licensee may apply for active status.

"Supervision of nonlicensees" means any of the following: delegation of duties, direct oversight, or indirect oversight of employees or other persons not licensed by the board.

[**ARC 9606B**, IAB 7/13/11, effective 8/17/11]

645—81.2(152A) Nutrition care. The primary function of dietetic practice is the provision of nutrition care services that shall include:

1. Assessing the nutrition needs of individuals and groups and determining resources and constraints in the practice setting.
2. Establishing priorities, goals, and objectives that meet nutrition needs and are consistent with available resources and constraints.
3. Providing nutrition counseling concerning health and disease.
4. Developing, implementing, and managing nutrition care systems.
5. Evaluating, making changes in, and maintaining appropriate standards of quality in food and nutrition services.

645—81.3(152A,272C) Principles. Rescinded IAB 7/13/11, effective 8/17/11.

645—81.4(152A) Requirements for licensure. The following criteria shall apply to licensure:

81.4(1) The applicant shall complete a board-approved application packet. Application forms may be obtained from the board's Web site (http://www.idph.state.ia.us/licensure) or directly from the board office. All applications shall be sent to Board of Dietetics, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

81.4(2) The applicant shall complete the application form according to the instructions contained in the application. If the application is not completed according to the instructions, the application will not be reviewed by the board.

81.4(3) Each application shall be accompanied by the appropriate fees payable by check or money order to the Board of Dietetics. The fees are nonrefundable.

81.4(4) No application will be considered by the board until:

a. Official copies of academic transcripts have been sent directly from the school to the board;

b. Official verification statements have been sent to the board from the didactic and internship or preprofessional practice programs or from the Commission on Dietetic Registration (CDR) to verify completion of the academic and preprofessional practice requirements; and

c. The applicant satisfactorily completes the registration examination for dietitians administered by the Commission on Dietetic Registration (CDR). The board will accept the passing score set by CDR. Verification of satisfactory completion may be established by one of the following:

(1) The applicant sends to the board a notarized copy of the CDR registration card;

(2) CDR sends an official letter directly to the board to verify that the applicant holds registration status; or

(3) CDR posts Web-based verification that the applicant holds registration status.

81.4(5) A license is not required for dietitians who are in this state for the purpose of consultation, in accordance with rule 645—81.1(152A), when they are licensed in another state, U.S. territory, or country, or have received at least a baccalaureate degree in human nutrition from a U.S. regionally accredited college or university.

81.4(6) Incomplete applications that have been on file in the board office for more than two years shall be considered invalid and shall be destroyed.

[**ARC 9606B**, IAB 7/13/11, effective 8/17/11]

645—81.5(152A) Educational qualifications.

81.5(1) The applicant shall be issued a license to practice dietetics by the board when the applicant possesses a baccalaureate degree or postbaccalaureate degree from a U.S. regionally accredited college or university with a major course of study in human nutrition, food and nutrition, nutrition education, dietetics, or food systems management, or in an equivalent major course of minimum academic requirements as established by the American Dietetic Association and approved by the board.

81.5(2) A foreign-trained dietitian shall:

a. Provide an official letter sent directly from the Commission on Dietetic Registration (CDR) to the board to verify that the applicant has met the minimum academic and

didactic program requirements of CDR. Foreign degree evaluation agencies and equivalency evaluation requirements of the Commission on Accreditation for Dietetics Education (CADE) of the American Dietetic Association (ADA) are listed on the CADE Web site at: http://www.eatright.org/students/getstarted/international/agencies.aspx; and

b. Provide evidence of meeting all other requirements in these rules.

[**ARC 9606B**, IAB 7/13/11, effective 8/17/11]

645—81.6(152A) Supervised experience. The applicant shall complete a documented supervised practice experience component that meets the requirements established by the Commission on Dietetic Registration (CDR) of the American Dietetic Association (ADA).

[**ARC 9606B**, IAB 7/13/11, effective 8/17/11]

645—81.7(152A) Licensure by endorsement. An applicant who has been a licensed dietitian under the laws of another jurisdiction shall file an application for licensure by endorsement with the board office. The board may receive by endorsement any applicant from the District of Columbia or another state, territory, province or foreign country who:

1. Submits to the board a completed application;
2. Pays the licensure fee;
3. Shows evidence of licensure requirements that are similar to those required in Iowa;
4. Provides official copies of the academic transcripts;
5. Provides a notarized copy of the Commission on Dietetic Registration (CDR) registration card or an alternate form of verification of passing the registration examination, as stated in 81.4(4)*"c"*; and
6. Provides verification of license(s) from every jurisdiction in which the applicant has been licensed, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification direct from the jurisdiction's board office if the verification provides:

- Licensee's name;
- Date of initial licensure;
- Current licensure status; and
- Any disciplinary action taken against the license.

[**ARC 9606B**, IAB 7/13/11, effective 8/17/11]

645—81.8(152A) Licensure by reciprocal agreement. Rescinded IAB 1/14/09, effective 2/18/09.

645—81.9(152A) License renewal.

81.9(1) The biennial license renewal period for a license to practice dietetics shall begin on the sixteenth day of the licensee's birth month and end on the fifteenth day of the licensee's birth month two years later. The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive notice from the board does not relieve the licensee of the responsibility for renewing the license.

81.9(2) An initial license issued by the board may be valid for an 18- to 29-month period. When an initial license is renewed, it will be placed on a two-year renewal period identified in subrule 81.9(1).

81.9(3) A licensee seeking renewal shall:

a. Meet the continuing education requirements of rule 645—82.2(152A) and the mandatory reporting requirements of subrule 81.9(4). A licensee whose license was reactivated during the current renewal compliance period may use continuing education credit earned during the compliance period for the first renewal following reactivation; and

b. Submit the completed renewal application and renewal fee before the license expiration date.

81.9(4) Mandatory reporter training requirements.

a. A licensee who, in the scope of professional practice or in the licensee's employment responsibilities, examines, attends, counsels or treats children in Iowa shall indicate on the renewal application completion of two hours of training in child abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph *"e."*

b. A licensee who, in the course of employment, examines, attends, counsels or treats adults in Iowa shall indicate on the renewal application completion of two hours of training in dependent adult abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph *"e."*

c. A licensee who, in the scope of professional practice or in the course of employment, examines, attends, counsels or treats both adults and children in Iowa shall indicate on the renewal application completion of training in abuse identification and reporting for dependent adults and children in the previous five years or condition(s) for waiver of this requirement as identified in paragraph *"e."*

Training may be completed through separate courses as identified in paragraphs *"a"* and *"b"* or in one combined two-hour course that includes curricula for identifying and reporting child abuse and dependent adult abuse. The course shall be a curriculum approved by the Iowa department of public health abuse education review panel.

d. The licensee shall maintain written documentation for five years after mandatory training as identified in paragraphs *"a"* to *"c,"* including program date(s), content, duration, and proof of participation.

e. The requirement for mandatory training for identifying and reporting child and dependent adult abuse shall be suspended if the board determines that suspension is in the public interest or that a person at the time of license renewal:

(1) Is engaged in active duty in the military service of this state or the United States.

(2) Holds a current waiver by the board based on evidence of significant hardship in complying with training requirements, including an exemption of continuing education requirements or extension of time in which to fulfill requirements due to a physical or mental disability or illness as identified in 645—Chapter 82.

f. The board may select licensees for audit of compliance with the requirements in paragraphs *"a"* to *"e."*

81.9(5) Upon receiving the information required by this rule and the required fee, board staff shall administratively issue a two-year license and shall send the licensee a wallet card by regular mail. In the event the board receives adverse information on the renewal application, the board shall issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

81.9(6) A person licensed to practice dietetics shall keep the license certificate and wallet card(s) displayed in a conspicuous public place at the primary site of practice.

81.9(7) Late renewal. The license shall become late when the license has not been renewed by the expiration date on the wallet card. The licensee shall be assessed a late fee as specified in 645—subrule 84.1(3). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within the grace period.

81.9(8) Inactive license. A licensee who fails to renew the license by the end of the grace period has an inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice as a dietitian in Iowa until the license is reactivated. A licensee who practices as a dietitian in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

81.9(9) Renewal of a reactivated license. A licensee who reactivates the license in accordance with rule 645—81.15(17A,147,272C) will not be required to renew the license until the next renewal two years later if the license is reactivated within six months prior to the license renewal date.

[**ARC 9606B**, IAB 7/13/11, effective 8/17/11]

645—81.10(272C) Exemptions for inactive practitioners. Rescinded IAB 7/6/05, effective 8/10/05.

645—81.11(147) Duplicate certificate or wallet card. Rescinded IAB 1/14/09, effective 2/18/09.

645—81.12(147) Reissued certificate or wallet card. Rescinded IAB 1/14/09, effective 2/18/09.

645—81.13(272C) Lapsed licenses. Rescinded IAB 7/6/05, effective 8/10/05.

645—81.14(17A,147,272C) License denial. Rescinded IAB 1/14/09, effective 2/18/09.

645—81.15(17A,147,272C) License reactivation. To apply for reactivation of an inactive license, a licensee shall:

81.15(1) Submit a reactivation application on a form provided by the board.

81.15(2) Pay the reactivation fee that is due as specified in 645—subrule 84.1(4).

81.15(3) Provide verification of current competence to practice dietetics by satisfying one of the following criteria:

a. If the license has been on inactive status for five years or less, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license.

(2) Verification of completion of 30 hours of continuing education within two years of the application for reactivation.

b. If the license has been on inactive status for more than five years, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license.

(2) Verification of completion of 60 hours of continuing education within two years of application for reactivation.

645—81.16(17A,147,272C) License reinstatement. A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive reinstatement of the license in accordance with 645—11.31(272C) and must apply for and be granted reactivation of the license in accordance with 81.15(17A,147,272C) prior to practicing dietetics in this state.

These rules are intended to implement Iowa Code chapters 17A, 147, 152A and 272C.

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CHAPTER 82
CONTINUING EDUCATION FOR DIETITIANS
[Prior to 6/26/02, see 645—Ch 81]

645—82.1(152A) Definitions. For the purpose of these rules, the following definitions shall apply:

"Active license" means the license is current and has not expired.

"Approved program/activity" means a continuing education program/activity meeting the standards set forth in these rules.

"Audit" means the selection of licensees for verification of satisfactory completion of continuing education requirements during a specified time period.

"Board" means the board of dietetics.

"Continuing education" means planned, organized learning acts acquired during licensure designed to maintain, improve, or expand a licensee's knowledge and skills in order for the licensee to develop new knowledge and skills relevant to the enhancement of practice, education, or theory development to improve the safety and welfare of the public.

"Hour of continuing education" means at least 50 minutes spent by a licensee in actual attendance at and completion of approved continuing education activity.

"Inactive license" means a license that has expired because it was not renewed by the end of the grace period. The category of "inactive license" may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

"Independent study" means a subject/program/activity that a person pursues autonomously that meets standards for approval criteria in the rules and includes a posttest.

"License" means license to practice.

"Licensee" means any person licensed to practice as a dietitian in the state of Iowa.

"Webinar" means a Web-based seminar, presentation, lecture, or workshop that is transmitted over the Web.

[**ARC 9606B**, IAB 7/13/11, effective 8/17/11]

645—82.2(152A) Continuing education requirements.

82.2(1) The biennial continuing education compliance period shall extend for a two-year period beginning on the sixteenth day of the licensee's birth month and ending on the fifteenth day of the birth month two years later. Each biennium, each person who is licensed to practice as a dietitian in this state shall be required to complete a minimum of 30 hours of continuing education approved by the board.

82.2(2) Requirements for new licensees. Those persons licensed for the first time shall not be required to complete continuing education as a prerequisite for the first renewal of their licenses. Continuing education hours acquired anytime from the initial licensing until the second license renewal may be used. The new licensee will be required to complete a minimum of 30 hours of continuing education per biennium for each subsequent license renewal.

82.2(3) Hours of continuing education credit may be obtained in accordance with the definitions and standards in these rules.

82.2(4) No hours of continuing education shall be carried over into the next biennium except as stated for the second renewal. A licensee whose license was reactivated during the current renewal compliance period may use continuing education earned during the compliance period for the first renewal following reactivation.

82.2(5) It is the responsibility of each licensee to finance the cost of continuing education.

[**ARC 9606B**, IAB 7/13/11, effective 8/17/11]

645—82.3(152A,272C) Standards.

82.3(1) *General criteria.* A continuing education activity which meets all of the following criteria is appropriate for continuing education credit if the continuing education activity:

a. Constitutes an organized program of learning which contributes directly to the professional competency of the licensee;

b. Pertains to subject matters which integrally relate to the practice of the profession;

c. Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program. At the time of audit, the board may request the qualifications of the presenters;

d. Fulfills stated program goals, objectives, or both; and

e. Provides proof of attendance to licensees in attendance including:

(1) Date(s), location, course title, presenter(s);

(2) Number of program contact hours; and

(3) Certificate of completion or evidence of successful completion of the course provided by the course sponsor.

82.3(2) *Specific criteria.*

a. Continuing education hours of credit may be obtained by completing programs/activities that reflect the educational needs of the dietitian and the nutritional needs of the consumer. Continuing education programs/activities that are scientifically founded and offered at a level beyond entry-level dietetics for professional growth shall be accepted for continuing education.

b. The licensee may engage in other types of activities identified in the individual licensee's professional development portfolio for Commission on Dietetic Registration (CDR) certification.

c. The licensee may engage in programs/activities via webinars and independent study, in accordance with the definitions and standards in these rules.

d. The licensee may submit completed training to comply with mandatory reporter training requirements, as specified in 645—subrule 81.9(4). Hours reported for credit shall not exceed the hours required to maintain compliance with required training.

e. The following areas are appropriate for continuing education credit:

(1) Sciences related to dietetic practice, education, or research including biological sciences, food and resource management and behavioral and social sciences to achieve and maintain people's health.

(2) Dietetic practice related to assessment, counseling, teaching, or care of clients in any setting.

(3) Management or quality assurance of nutritional care delivery systems.

(4) Dietetic practice related to community health needs.

f. Criteria for hours of credit are as follows:

(1) Academic coursework. Coursework for credit must be completed at a regionally accredited U.S. college or university. In order for the licensee to receive continuing education credit, the coursework must be beyond entry-level dietetics.

1 academic semester hour = 15 continuing education hours

1 academic quarter hour = 10 continuing education hours

(2) Scholarly publications. Publication may be approved if submitted in published form in the continuing education documentation file of the licensee. All publications must appear in refereed professional journals. Material related to work responsibilities, such as diet and staff manuals, and publications for the lay public are unacceptable. Continuing education credit hours may be reported using the following guidelines:

1. Senior author: first of two or more authors listed.
2. Coauthor: second of two authors listed.
3. Contributing author: all but senior of the three or more authors.
4. Research papers:

- Single author 10 hours
- Senior author 8 hours
- Coauthor 5 hours
- Contributing author 3 hours

5. Technical articles:

- Single author 5 hours

● Senior author	4 hours
● Coauthor	3 hours
● Contributing author	2 hours
6. Information-sharing articles:	1 hour
7. Abstracts:	
● Senior author	2 hours
● Coauthor	1 hour

(3) Poster sessions. Continuing education credit may be obtained for attending juried poster sessions at national meetings that meet the criteria for appropriate subject matter as required in these rules. One hour of continuing education credit is allowed for each 12 posters reviewed not to exceed six hours in a continuing education biennium.

(4) Presenters. Presenters may receive continuing education credit. Presentations to the lay public shall not receive credit for continuing education. For each 50-minute hour of presentation, two hours of credit for continuing education shall be earned. Presenters of poster sessions at national professional meetings shall receive a maximum of two hours of credit per topic. A copy of the abstract or manuscript and documentation of the peer review process must be included in the licensee's documentation list.

(5) Staff development training. Staff development training that meets the criteria in this subrule shall be credited on the basis of the defined hour of continuing education stated in these rules.

[**ARC 9606B**, IAB 7/13/11, effective 8/17/11]

645—82.4(152A,272C) Audit of continuing education report. Rescinded IAB 1/14/09, effective 2/18/09.

645—82.5(152A,272C) Automatic exemption. Rescinded IAB 1/14/09, effective 2/18/09.

645—82.6(152A,272C) Grounds for disciplinary action. Rescinded IAB 1/14/09, effective 2/18/09.

645—82.7(152A,272C) Continuing education waiver for active practitioners. Rescinded IAB 7/6/05, effective 8/10/05.

645—82.8(152A,272C) Continuing education exemption for inactive practitioners. Rescinded IAB 7/6/05, effective 8/10/05.

645—82.9(152A,272C) Continuing education exemption for disability or illness. Rescinded IAB 1/14/09, effective 2/18/09.

645—82.10(152A,272C) Reinstatement of inactive practitioners. Rescinded IAB 7/6/05, effective 8/10/05.

645—82.11(272C) Hearings. Rescinded IAB 7/6/05, effective 8/10/05.

These rules are intended to implement Iowa Code section 272C.2 and chapter 152A.

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CHAPTER 83
DISCIPLINE FOR DIETITIANS

[Prior to 9/19/01, see 645—80.100(152A,272C)]
[Prior to 6/26/02, see 645—Ch 82]

645—83.1(152A) Definitions.

"Board" means the board of dietetics.

"Discipline" means any sanction the board may impose upon licensees.

"Licensee" means a person licensed to practice as a dietitian in Iowa.

645—83.2(152A,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in rule 645—83.3(152A,272C) when the board determines that the licensee is guilty of any of the following acts or offenses:

83.2(1) Failure to comply with the American Dietetic Association/Commission on Dietetic Registration, Code of Ethics for the Profession of Dietetics and Process for Consideration of Ethics Issues, as revised January 1, 2010, hereby adopted by reference. Copies may be obtained from the American Dietetic Association/Commission on Dietetic Registration Web site at http://www.cdrnet.org.

83.2(2) Fraud in procuring a license. Fraud in procuring a license includes, but is not limited to:

a. An intentional perversion of the truth in making application for a license to practice in this state;

b. False representations of a material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state; or

c. Attempting to file or filing with the board or the department of public health any false or forged diploma or certificate or affidavit or identification or qualification in making an application for a license in this state.

83.2(3) Professional incompetence. Professional incompetence includes, but is not limited to:

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

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

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

d. Failure to conform to the minimal standard of acceptable and prevailing practice of licensed dietitians in this state.

83.2(4) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of dietetics or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

83.2(5) Practice outside the scope of the profession.

83.2(6) Use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a licensee in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation.

83.2(7) Habitual intoxication or addiction to the use of drugs.

a. The inability of a licensee to practice with reasonable skill and safety by reason of the excessive use of alcohol on a continuing basis.

b. The excessive use of drugs which may impair a licensee's ability to practice with reasonable skill or safety.

83.2(8) Obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority.

83.2(9) Falsification of client or patient records.

83.2(10) Acceptance of any fee by fraud or misrepresentation.

83.2(11) Negligence by the licensee in the practice of the profession. Negligence by the licensee in the practice of the profession includes a failure to exercise due care, including negligent delegation of

duties or supervision of employees or other individuals, whether or not injury results; or any conduct, practice or conditions which impair the licensee's ability to safely and skillfully practice the profession.

83.2(12) Conviction of a crime related to the profession or occupation of the licensee or the conviction of any crime that would affect the licensee's ability to practice dietetics. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

83.2(13) Violation of a regulation, rule, or law of this state, another state, or the United States, which relates to the practice of dietetics.

83.2(14) Revocation, suspension, or other disciplinary action taken by a licensing authority of this state, another state, territory, or country; or failure to report such action within 30 days of the final action by such licensing authority. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, such report shall be expunged from the records of the board.

83.2(15) Failure of a licensee or an applicant for licensure in this state to report any voluntary agreements restricting the individual's practice of dietetics in another state, district, territory or country.

83.2(16) Failure to notify the board of a criminal conviction within 30 days of the action, regardless of the jurisdiction where it occurred.

83.2(17) Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice claim or action.

83.2(18) Engaging in any conduct that subverts or attempts to subvert a board investigation.

83.2(19) Failure to respond within 30 days to a communication of the board which was sent by registered or certified mail.

83.2(20) Failure to comply with a subpoena issued by the board or failure to cooperate with an investigation of the board.

83.2(21) Failure to comply with the terms of a board order or the terms of a settlement agreement or consent order.

83.2(22) Failure to pay costs assessed in any disciplinary action.

83.2(23) Submission of a false report of continuing education or failure to submit the biennial report of continuing education.

83.2(24) Failure to report another licensee to the board for any violations listed in these rules, pursuant to Iowa Code section 272C.9.

83.2(25) Knowingly aiding, assisting, or advising a person to unlawfully practice dietetics.

83.2(26) Failure to report a change of name or address within 30 days after it occurs. Name and address changes may be reported on the form provided by the board at: www.idph.state.ia.us/licensure.

83.2(27) Representing oneself as a licensed dietitian when one's license has been suspended or revoked, or when one's license is on inactive status.

83.2(28) Permitting another person to use the licensee's license for any purpose.

83.2(29) Permitting an unlicensed employee or person under the licensee's control to perform activities that require a license.

83.2(30) Unethical conduct. In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes unethical conduct may include, but is not limited to, the following:

a. Verbally or physically abusing a patient or client.

b. Improper sexual contact with or making suggestive, lewd, lascivious or improper remarks or advances to a patient, client or coworker.

c. Betrayal of a professional confidence.

d. Engaging in a professional conflict of interest.

e. Mental or physical inability reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner.

f. Being adjudged mentally incompetent by a court of competent jurisdiction.

83.2(31) Failure to comply with universal precautions for preventing transmission of infectious diseases as issued by the Centers for Disease Control of the United States Department of Health and Human Services.

83.2(32) Violation of the terms of an initial agreement with the impaired practitioner review committee or violation of the terms of an impaired practitioner recovery contract with the impaired practitioner review committee.
[**ARC 9606B**, IAB 7/13/11, effective 8/17/11]

645—83.3(152A,272C) Method of discipline. The board has the authority to impose the following disciplinary sanctions:

1. Revocation of license.
2. Suspension of license until further order of the board or for a specific period.
3. Prohibit permanently, until further order of the board, or for a specific period the licensee's engaging in specified procedures, methods, or acts.
4. Probation.
5. Require additional education or training.
6. Require a reexamination.
7. Order a physical or mental evaluation, or order alcohol and drug screening within a time specified by the board.
8. Impose civil penalties not to exceed $1000.
9. Issue a citation and warning.
10. Such other sanctions allowed by law as may be appropriate.

645—83.4(272C) Discretion of board. The following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

1. The relative serious nature of the violation as it relates to ensuring a high standard of professional care for the citizens of this state;
2. The facts of the particular violation;
3. Any extenuating facts or other countervailing considerations;
4. The number of prior violations or complaints;
5. The seriousness of prior violations or complaints;
6. Whether remedial action has been taken; and
7. Such other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee.

645—83.5(152A) Order for mental, physical, or clinical competency examination or alcohol or drug screening. Rescinded IAB 1/14/09, effective 2/18/09.

These rules are intended to implement Iowa Code chapters 147, 152A and 272C.

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MEDICINE BOARD[653]

[Prior to 5/4/88, see Health Department[470], Chs 135 and 136, renamed Medical Examiners Board[653] under the "umbrella" of Public Health Department[641] by 1986 Iowa Acts, ch 1245]
[Prior to 7/4/07, see Medical Examiners Board[653]; renamed by 2007 Iowa Acts, Senate File 74]

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[Prior to 5/4/88, see 470—135.101 to 470—135.110 and 135.501 to 135.512]

653—11.1(272C) Definitions.

"ABMS" means the American Board of Medical Specialties, which is an umbrella organization for at least 24 medical specialty boards in the United States that assists the specialty boards in developing and implementing educational and professional standards to evaluate and certify physician specialists in the United States. The board recognizes specialty board certification by ABMS.

"Accredited provider" means an organization approved as a provider of category 1 activity by one of the following board-approved accrediting bodies: Accreditation Council for Continuing Medical Education, Iowa Medical Society, or the Council on Continuing Medical Education of the AOA.

"Active licensee" means any person licensed to practice medicine and surgery or osteopathic medicine and surgery in Iowa who has met all conditions of licensure and maintains a current license to practice in Iowa.

"AMA" means the American Medical Association, a professional organization of physicians and surgeons.

"AOA" means the American Osteopathic Association, which is the representative organization for osteopathic physicians (D.O.s) in the United States. The board approves osteopathic medical education programs with AOA accreditation; the board approves AOA-accredited resident training programs in osteopathic medicine and surgery at hospitals for graduates of accredited osteopathic medical schools. The board recognizes specialty board certification by AOA. The board recognizes continuing medical education accredited by the Council on Continuing Medical Education of AOA.

"Approved abuse education training program" means a training program using a curriculum approved by the abuse education review panel of the department of public health or a training program offered by a hospital, a professional organization for physicians, or the department of human services, the department of education, an area education agency, a school district, the Iowa law enforcement academy, an Iowa college or university, or a similar state agency.

"Approved program or activity" means any category 1 activity offered by an accredited provider or any other program or activity meeting the standards set forth in these rules.

"Board" means the Iowa board of medicine.

"Carryover" means hours of category 1 activity earned in excess of the required hours in a license period that may be applied to the continuing education requirement in the subsequent license period; carryover may not exceed 20 hours of category 1 activity per renewal cycle.

"Category 1 activity" means any formal education program which is sponsored or jointly sponsored by an organization accredited for continuing medical education by the Accreditation Council for Continuing Medical Education, the Iowa Medical Society, or the Council on Continuing Medical Education of the AOA that is of sufficient scope and depth of coverage of a subject area or theme to form an educational unit and is planned, administered and evaluated in terms of educational objectives that define a level of knowledge or a specific performance skill to be attained by the physician completing the program. Activities designated as formal cognates by the American College of Obstetricians and Gynecologists or as prescribed credit by the American Academy of Family Physicians are accepted as equivalent to category 1 activities.

"Committee" means the licensure and examination committee of the board.

"COMVEX-USA" means the Comprehensive Osteopathic Medical Variable-Purpose Examination for the United States of America. The National Board of Osteopathic Medical Examiners prepares the examination and determines its passing score. A licensing authority in any jurisdiction administers the examination. COMVEX-USA is the current evaluative instrument offered to osteopathic physicians who need to demonstrate current osteopathic medical knowledge.

"Continuing education" means education that is acquired by a licensee in order to maintain, improve, or expand skills and knowledge present at initial licensure or to develop new and relevant skills and knowledge.

"Hour of continuing education" means a clock hour spent by a licensee in actual attendance at or completion of an approved category 1 activity.

"Inactive license" means any license that is not a current, active license. Inactive license may include licenses formerly known as delinquent, lapsed, or retired. A physician whose license is inactive continues to hold the privilege of licensure in Iowa but may not practice medicine under an Iowa license until the license is reinstated.

"Licensee" means any person licensed to practice medicine and surgery or osteopathic medicine and surgery in the state of Iowa.

"Service charge" means the amount charged for making a service available on line and is in addition to the actual fee for a service itself. For example, one who renews a license on line will pay the license renewal fee and a service charge.

"SPEX" means Special Licensure Examination prepared by the Federation of State Medical Boards and administered by a licensing authority in any jurisdiction. The passing score on SPEX is 75.

"Training for identifying and reporting abuse" means training on identifying and reporting child abuse or dependent adult abuse required of physicians who regularly provide primary health care to children or adults, respectively. The full requirements on reporting of child abuse and the training requirements are in Iowa Code section 232.69; the full requirements on reporting of dependent adult abuse and the training requirements are in Iowa Code section 235B.16.

[**ARC 9601B**, IAB 7/13/11, effective 8/17/11]

653—11.2(272C) Continuing education credit and alternatives.

11.2(1) Continuing education credit may be obtained by attending category 1 activities as defined in this chapter.

11.2(2) The board shall accept the following as equivalent to 50 hours of category 1 activity: participation in an approved resident training program or board certification or recertification by an ABMS or AOA specialty board within the licensing period.

653—11.3(272C) Accreditation of providers. The board approves the Accreditation Council for Continuing Medical Education, the Iowa Medical Society, and the Council on Continuing Medical Education of the AOA as organizations acceptable to accredit providers of category 1 activity.

653—11.4(272C) Continuing education and training requirements for renewal or reinstatement. A licensee shall meet the requirements in this rule to qualify for renewal of a permanent or special license or reinstatement of a permanent license.

11.4(1) *Continuing education and training requirements.*

a. Continuing education for permanent license renewal. Except as provided in these rules, a total of 40 hours of category 1 activity or board-approved equivalent shall be required for biennial renewal of a permanent license. This may include up to 20 hours of credit carried over from the previous license period and category 1 activity acquired within the current license period.

(1) To facilitate license renewal according to birth month, a licensee's first license may be issued for less than 24 months. The number of hours of category 1 activity required of a licensee whose license has been issued for less than 24 months shall be reduced on a pro-rata basis.

(2) A licensee desiring to obtain credit for carryover hours shall report the carryover, not to exceed 20 hours of category 1 activity, on the renewal application.

(3) Category 1 CME activity. A licensee shall complete the training as part of a category 1 CME activity or an approved training program. A licensee may apply the category 1 CME activity credit received for the training during the license period in which the training occurred toward the 40 hours of continuing education required for biennial renewal.

b. Continuing education for special license renewal. A total of 20 hours of category 1 activity shall be required for annual renewal of a special license. No carryover hours are allowed.

c. Training for identifying and reporting child and dependent adult abuse for permanent or special license renewal.

(1) Training to identify child abuse. A licensee who regularly provides primary health care to children must complete at least two hours of training in child abuse identification and reporting every five years. "A licensee who regularly provides primary health care to children" means all emergency physicians, family physicians, general practice physicians, pediatricians, and psychiatrists, and any other physician who regularly provides primary health care to children.

(2) Training to identify dependent adult abuse. A licensee who regularly provides primary health care to adults must complete at least two hours of training in dependent adult abuse identification and reporting every five years. "A licensee who regularly provides primary health care to adults" means all emergency physicians, family physicians, general practice physicians, internists, obstetricians, gynecologists, and psychiatrists, and any other physician who regularly provides primary health care to adults.

(3) Combined training to identify child and dependent adult abuse. A licensee who regularly provides primary health care to adults and children must complete at least two hours of training in the identification and reporting of abuse in dependent adults and children every five years. The training may be completed through separate courses as identified in subparagraphs 11.4(1)*"c"*(1) and (2) or in one combined two-hour course that includes curricula for identifying and reporting child abuse and dependent adult abuse. "A licensee who regularly provides primary health care to children and adults" means all emergency physicians, family physicians, general practice physicians, internists, and psychiatrists, and any other physician who regularly provides primary health care to children and adults.

d. Training for chronic pain management for permanent or special license renewal. A licensee who regularly provides primary health care to patients must complete at least two hours of training for chronic pain management every five years. "A licensee who regularly provides primary health care to patients" means all emergency physicians, family physicians, general practice physicians, internists, neurologists, pain medicine specialists, psychiatrists, and any other physician who regularly provides primary health care to patients.

e. Training for end-of-life care for permanent or special license renewal. A licensee who regularly provides primary health care to patients must complete at least two hours of training for end-of-life care every five years. "A licensee who regularly provides primary health care to patients" means all emergency physicians, family physicians, general practice physicians, internists, neurologists, pain medicine specialists, psychiatrists, and any other physician who regularly provides primary health care to patients.

11.4(2) *Exemptions from renewal requirements.*

a. A licensee shall be exempt from the continuing education requirements in subrule 11.4(1) when, upon license renewal, the licensee provides evidence for:

(1) Periods that the licensee served honorably on active duty in the military;

(2) Periods that the licensee resided in another state or district having continuing education requirements for the profession and the licensee met all requirements of that state or district for practice therein;

(3) Periods that the licensee was a government employee working in the licensee's specialty and assigned to duty outside the United States; or

(4) Other periods of active practice and absence from the state approved by the board.

b. The requirements for training on identifying and reporting abuse for license renewal shall be suspended for a licensee who provides evidence for:

(1) Periods described in paragraph 11.4(2)*"a,"* subparagraph (1), (2), (3), or (4); or

(2) Periods that the licensee resided outside of Iowa and did not practice in Iowa.

11.4(3) *Extension for completion of or exemption from renewal requirements.* The board may, in individual cases involving physical disability or illness, grant an extension of time for completion of, or an exemption from, the renewal requirements in subrule 11.4(1).

a. A licensee requesting an extension or exemption shall complete and submit a request form to the board that sets forth the reasons for the request and has been signed by the licensee and attending physician.

b. The board may grant an extension of time to fulfill the requirements in subrule 11.4(1).

c. The board may grant an exemption from the educational requirements for any period of time not to exceed one calendar year.

d. If the physical disability or illness for which an extension or exemption was granted continues beyond the period of waiver, the licensee must reapply for a continuance of the extension or exemption.

e. The board may, as a condition of any extension or exemption granted, require the applicant to make up a portion of the continuing education requirement by methods it prescribes.

11.4(4) *Reinstatement requirement.* An applicant for license reinstatement shall provide proof of successful completion of 80 hours of category 1 activity completed within 24 months prior to submission of the application for reinstatement or proof of successful completion of SPEX or COMVEX-USA within one year immediately prior to the submission of the application for reinstatement.

11.4(5) *Cost of continuing education and training for renewal or reinstatement.* Each licensee is responsible for all costs of continuing education and training required in 653—Chapter 11.

11.4(6) *Documentation.* A licensee shall maintain documentation of the continuing education and training requirements in 653—Chapter 11, including dates, subjects, duration of programs, and proof of participation, for five years after the date of the continuing education and training.

11.4(7) *Audits.* The board may audit continuing education and training documentation at any time within the five-year period. If the board conducts an audit of continuing education and training, a licensee shall respond to the board and provide all materials requested, within 30 days of a request made by board staff or within the extension of time if one has been granted.

11.4(8) *Grounds for discipline.* A licensee may be subject to disciplinary action for failure to comply with continuing education and training requirements in 653—Chapter 11.

[**ARC 9601B**, IAB 7/13/11, effective 8/17/11]

653—11.5(272C) Failure to fulfill requirements for continuing education and training for identifying and reporting abuse.

11.5(1) Disagreement over whether material submitted fulfills the requirements specified in rule 653—11.4(272C).

a. Staff will attempt to work with a licensee or applicant to resolve any discrepancy concerning credit for renewal or reinstatement.

b. When resolution is not possible, staff shall refer the matter to the committee.

(1) In the matter of a licensee seeking license renewal, staff shall renew the license if all other matters are in order and inform the licensee that the matter is being referred to the committee.

(2) In the matter of an applicant seeking reinstatement, staff shall reinstate the license if all other matters are in order and inform the applicant that the matter is being referred to the committee.

c. The committee shall consider the staff's recommendation for denial of credit for continuing education or training for identifying and reporting abuse.

(1) If the committee approves the credit, it shall authorize the staff to inform the licensee or applicant that the matter is resolved.

(2) If the committee disapproves the credit, it shall refer the matter to the board with a recommendation for resolution.

d. The board shall consider the committee's recommendations.

(1) If the board approves the credit, it shall authorize the staff to notify the licensee or applicant for reinstatement if all other matters are in order.

(2) If the board denies the credit, it shall:

1. Close the case;

2. Send the licensee or applicant an informal, nonpublic letter of warning, which may include recommended terms for complying with the requirements for continuing education or training; or

3. File a statement of charges for noncompliance with the board's rules on continuing education or training and for any other violations which may exist.

11.5(2) Informal appearance for failure to complete requirements for continuing education or training.

a. The licensee or applicant may, within ten days after the date that the notification of the denial was sent by certified mail, request an informal appearance before the board.

b. At the informal appearance, the licensee or applicant will have the opportunity to present information, and the board will issue a written decision.

[**ARC 9601B**, IAB 7/13/11, effective 8/17/11]

653—11.6(17A,147,148E,272C) Waiver or variance requests. Waiver or variance requests shall be submitted in conformance with 653—Chapter 3.

These rules are intended to implement Iowa Code chapters 147 and 272C and sections 232.69 and 235B.16.

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CHAPTER 13
STANDARDS OF PRACTICE AND PRINCIPLES OF MEDICAL ETHICS

[Prior to 5/4/88, see 470—135.251 to 470—135.402]

653—13.1(148,272C) Standards of practice—packaging, labeling and records of prescription drugs dispensed by a physician.

13.1(1) A physician shall dispense a prescription drug only in a container which meets the requirements of the Poison Prevention Packaging Act of 1970, 15 U.S.C. ss. 1471-1476 (2001), unless otherwise requested by the patient, and of Section 502G of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. ss. 301 et seq. (2001).

13.1(2) A label shall be affixed to a container in which a prescription drug is dispensed by a physician which shall include:

1. The name and address of the physician.
2. The name of the patient.
3. The date dispensed.
4. The directions for administering the prescription drug and any cautionary statement deemed appropriate by the physician.
5. The name and strength of the prescription drug in the container.

13.1(3) The provisions of subrules 13.1(1) and 13.1(2) shall not apply to packaged drug samples.

13.1(4) A physician shall keep a record of all prescription drugs dispensed by the physician to a patient which shall contain the information required by subrule 13.1(2) to be included on the label. Noting such information on the patient's chart or record maintained by the physician is sufficient.

This rule is intended to implement Iowa Code sections 147.55, 148.6, 272C.3 and 272C.4.

653—13.2(148,272C) Standards of practice—appropriate pain management. This rule establishes standards of practice for the management of acute and chronic pain. The board encourages the use of adjunct therapies such as acupuncture, physical therapy and massage in the treatment of acute and chronic pain. This rule focuses on prescribing and administering controlled substances to provide relief and eliminate suffering for patients with acute or chronic pain.

1. This rule is intended to encourage appropriate pain management, including the use of controlled substances for the treatment of pain, while stressing the need to establish safeguards to minimize the potential for substance abuse and drug diversion.
2. The goal of pain management is to treat each patient's pain in relation to the patient's overall health, including physical function and psychological, social and work-related factors. At the end of life, the goals may shift to palliative care.
3. The board recognizes that pain management, including the use of controlled substances, is an important part of general medical practice. Unmanaged or inappropriately treated pain impacts patients' quality of life, reduces patients' ability to be productive members of society, and increases patients' use of health care services.
4. Physicians should not fear board action for treating pain with controlled substances as long as the physicians' prescribing is consistent with appropriate pain management practices. Dosage alone is not the sole measure of determining whether a physician has complied with appropriate pain management practices. The board recognizes the complexity of treating patients with chronic pain or a substance abuse history. Generally, the board is concerned about a pattern of improper pain management or a single occurrence of willful or gross overtreatment or undertreatment of pain.
5. The board recognizes that the undertreatment of pain is a serious public health problem that results in decreases in patients' functional status and quality of life, and that adequate access by patients to proper pain treatment is an important objective of any pain management policy.
6. Inappropriate pain management may include nontreatment, undertreatment, overtreatment, and the continued use of ineffective treatments. Inappropriate pain management is a departure from the acceptable standard of practice in Iowa and may be grounds for disciplinary action.

13.2(1) *Definitions.* For the purposes of this rule, the following terms are defined as follows:

"Acute pain" means the normal, predicted physiological response to a noxious chemical, thermal or mechanical stimulus and typically is associated with invasive procedures, trauma and disease. Generally, acute pain is self-limited, lasting no more than a few weeks following the initial stimulus.

"Addiction" means a primary, chronic, neurobiologic disease, with genetic, psychosocial, and environmental factors influencing its development and manifestations. It is characterized by behaviors that include the following: impaired control over drug use, craving, compulsive use, and continued use despite harm. Physical dependence and tolerance are normal physiological consequences of extended opioid therapy for pain and are not the same as addiction.

"Chronic pain" means persistent or episodic pain of a duration or intensity that adversely affects the functioning or well-being of a patient when (1) no relief or cure for the cause of pain is possible; (2) no relief or cure for the cause of pain has been found; or (3) relief or cure for the cause of pain through other medical procedures would adversely affect the well-being of the patient. If pain persists beyond the anticipated healing period of a few weeks, patients should be thoroughly evaluated for the presence of chronic pain.

"Pain" means an unpleasant sensory and emotional experience associated with actual or potential tissue damage or described in terms of such damage. Pain is an individual, multifactorial experience influenced by culture, previous pain events, beliefs, mood and ability to cope.

"Physical dependence" means a state of adaptation that is manifested by drug class-specific signs and symptoms that can be produced by abrupt cessation, rapid dose reduction, decreasing blood level of the drug, or administration of an antagonist. Physical dependence, by itself, does not equate with addiction.

"Pseudoaddiction" means an iatrogenic syndrome resulting from the misinterpretation of relief-seeking behaviors as though they are drug-seeking behaviors that are commonly seen with addiction. The relief-seeking behaviors resolve upon institution of effective analgesic therapy.

"Substance abuse" means the use of a drug, including alcohol, by the patient in an inappropriate manner that may cause harm to the patient or others, or the use of a drug for an indication other than that intended by the prescribing clinician. An abuser may or may not be physically dependent on or addicted to the drug.

"Tolerance" means a physiological state resulting from regular use of a drug in which an increased dosage is needed to produce a specific effect, or a reduced effect is observed with a constant dose over time. Tolerance may or may not be evident during opioid treatment and does not equate with addiction.

"Undertreatment of pain" means the failure to properly assess, treat and manage pain or the failure to appropriately document a sound rationale for not treating pain.

13.2(2) *Laws and regulations governing controlled substances.* Nothing in this rule relieves a physician from fully complying with applicable federal and state laws and regulations governing controlled substances.

13.2(3) *Undertreatment of pain.* The undertreatment of pain is a departure from the acceptable standard of practice in Iowa. Undertreatment may include a failure to recognize symptoms and signs of pain, a failure to treat pain within a reasonable amount of time, a failure to allow interventions, e.g., analgesia, to become effective before invasive steps are taken, a failure to address pain needs in patients with reduced cognitive status, a failure to use controlled substances for terminal pain due to the physician's concern with addicting the patient, or a failure to use an adequate level of pain management.

13.2(4) *Assessment and treatment of acute pain.* Appropriate assessment of the etiology of the pain is essential to the appropriate treatment of acute pain. Acute pain is not a diagnosis; it is a symptom. Prescribing controlled substances for the treatment of acute pain should be based on clearly diagnosed and documented pain. Appropriate management of acute pain should include an assessment of the mechanism, type and intensity of pain. The patient's medical record should clearly document a medical history, a pain history, a clinical examination, a medical diagnosis and a treatment plan.

13.2(5) *Effective management of chronic pain.* Prescribing controlled substances for the treatment of chronic pain should only be accomplished within an established physician-patient relationship and should be based on clearly diagnosed and documented unrelieved pain. To ensure that chronic pain is properly assessed and treated, a physician who prescribes or administers controlled substances to a

patient for the treatment of chronic pain shall exercise sound clinical judgment and establish an effective pain management plan in accordance with the following:

a. Patient evaluation. A patient evaluation that includes a physical examination and a comprehensive medical history shall be conducted prior to the initiation of treatment. The evaluation shall also include an assessment of the pain, physical and psychological function, diagnostic studies, previous interventions, including medication history, substance abuse history and any underlying or coexisting conditions. Consultation/referral to a physician with expertise in pain medicine, addiction medicine or substance abuse counseling or a physician who specializes in the treatment of the area, system, or organ perceived to be the source of the pain may be warranted depending upon the expertise of the physician and the complexity of the presenting patient. Interdisciplinary evaluation is strongly encouraged.

b. Treatment plan. The physician shall establish a comprehensive treatment plan that tailors drug therapy to the individual needs of the patient. To ensure proper evaluation of the success of the treatment, the plan shall clearly state the objectives of the treatment, for example, pain relief or improved physical or psychosocial functioning. The treatment plan shall also indicate if any further diagnostic evaluations or treatments are planned and their purposes. The treatment plan shall also identify any other treatment modalities and rehabilitation programs utilized. The patient's short- and long-term needs for pain relief shall be considered when drug therapy is prescribed. The patient's ability to request pain relief as well as the patient setting shall be considered. For example, nursing home patients are unlikely to have their pain control needs assessed on a regular basis, making prn (on an as-needed basis) drugs less effective than drug therapy prescribed for routine administration that can be supplemented if pain is found to be worse. The patient should receive prescriptions for controlled substances from a single physician and a single pharmacy whenever possible.

c. Informed consent. The physician shall document discussion of the risks and benefits of controlled substances with the patient or person representing the patient.

d. Periodic review. The physician shall periodically review the course of drug treatment of the patient and the etiology of the pain. The physician should adjust drug therapy to the individual needs of each patient. Modification or continuation of drug therapy by the physician shall be dependent upon evaluation of the patient's progress toward the objectives established in the treatment plan. The physician shall consider the appropriateness of continuing drug therapy and the use of other treatment modalities if periodic reviews indicate that the objectives of the treatment plan are not being met or that there is evidence of diversion or a pattern of substance abuse. Long-term opioid treatment is associated with the development of tolerance to its analgesic effects. There is also evidence that opioid treatment may paradoxically induce abnormal pain sensitivity, including hyperalgesia and allodynia. Thus, increasing opioid doses may not improve pain control and function.

e. Consultation/referral. A specialty consultation may be considered at any time if there is evidence of significant adverse effects or lack of response to the medication. Pain, physical medicine, rehabilitation, general surgery, orthopedics, anesthesiology, psychiatry, neurology, rheumatology, oncology, addiction medicine, or other consultation may be appropriate. The physician should also consider consultation with, or referral to, a physician with expertise in addiction medicine or substance abuse counseling, if there is evidence of diversion or a pattern of substance abuse. The board encourages a multidisciplinary approach to chronic pain management, including the use of adjunct therapies such as acupuncture, physical therapy and massage.

f. Documentation. The physician shall keep accurate, timely, and complete records that detail compliance with this subrule, including patient evaluation, diagnostic studies, treatment modalities, treatment plan, informed consent, periodic review, consultation, and any other relevant information about the patient's condition and treatment.

g. Pain management agreements. A physician who treats patients for chronic pain with controlled substances shall consider using a pain management agreement with each patient being treated that specifies the rules for medication use and the consequences for misuse. In determining whether to use a pain management agreement, a physician shall evaluate each patient, taking into account the risks to the patient and the potential benefits of long-term treatment with controlled substances. A physician who

prescribes controlled substances to a patient for more than 90 days for treatment of chronic pain shall utilize a pain management agreement if the physician has reason to believe a patient is at risk of drug abuse or diversion. If a physician prescribes controlled substances to a patient for more than 90 days for treatment of chronic pain and chooses not to use a pain management agreement, then the physician shall document in the patient's medical records the reason(s) why a pain management agreement was not used. Use of pain management agreements is not necessary for hospice or nursing home patients. A sample pain management agreement and prescription drug risk assessment tools may be found on the board's Web site at www.medicalboard.iowa.gov.

h. Substance abuse history or comorbid psychiatric disorder. A patient's prior history of substance abuse does not necessarily contraindicate appropriate pain management. However, treatment of patients with a history of substance abuse or with a comorbid psychiatric disorder may require extra care and communication with the patient, monitoring, documentation, and consultation with or referral to an expert in the management of such patients. The board strongly encourages a multidisciplinary approach for pain management of such patients that incorporates the expertise of other health care professionals.

i. Drug testing. A physician who prescribes controlled substances to a patient for more than 90 days for the treatment of chronic pain shall consider utilizing drug testing to ensure that the patient is receiving appropriate therapeutic levels of prescribed medications or if the physician has reason to believe that the patient is at risk of drug abuse or diversion.

j. Termination of care. The physician shall consider termination of patient care if there is evidence of noncompliance with the rules for medication use, drug diversion, or a repeated pattern of substance abuse.

13.2(6) *Pain management for terminal illness.* The provisions of this subrule apply to patients who are at the stage in the progression of cancer or other terminal illness when the goal of pain management is comfort care. When the goal of treatment shifts to comfort care rather than cure of the underlying condition, the board recognizes that the dosage level of opiates or controlled substances to control pain may exceed dosages recommended for chronic pain and may come at the expense of patient function. The determination of such pain management should involve the patient, if possible, and others the patient has designated for assisting in end-of-life care.

13.2(7) *Prescription monitoring program.* The Iowa board of pharmacy has established a prescription monitoring program pursuant to Iowa Code sections 124.551 to 124.558 to assist prescribers and pharmacists in monitoring the prescription of controlled substances to patients. The board recommends that physicians utilize the prescription monitoring program when prescribing controlled substances to patients if the physician has reason to believe that a patient is at risk of drug abuse or diversion. A link to the prescription monitoring program may be found at the board's Web site at www.medicalboard.iowa.gov.

13.2(8) *Pain management resources.* The board strongly recommends that physicians consult the following resources regarding the proper treatment of chronic pain. This list is provided for the convenience of licensees, and the publications included are not intended to be incorporated in the rule by reference.

a. American Academy of Hospice and Palliative Medicine or AAHPM is the American Medical Association-recognized specialty society of physicians who practice in hospice and palliative medicine in the United States. The mission of the AAHPM is to enhance the treatment of pain at the end of life.

b. American Academy of Pain Medicine or AAPM is the American Medical Association-recognized specialty society of physicians who practice pain medicine in the United States. The mission of the AAPM is to enhance pain medicine practice by promoting a climate conducive to the effective and efficient practice of pain medicine.

c. American Pain Society or APS is the national chapter of the International Association for the Study of Pain, an organization composed of physicians, nurses, psychologists, scientists and other professionals who have an interest in the study and treatment of pain. The mission of the APS is to serve people in pain by advancing research, education, treatment and professional practice.

d. DEA Policy Statement: Dispensing Controlled Substances for the Treatment of Pain. On August 28, 2006, the Drug Enforcement Agency (DEA) issued a policy statement establishing

guidelines for practitioners who dispense controlled substances for the treatment of pain. This policy statement may be helpful to practitioners who treat pain with controlled substances.

e. Interagency Guideline on Opioid Dosing for Chronic Non-cancer Pain. In March 2007, the Washington State Agency Medical Directors' Group published an educational pilot to improve care and safety of patients with chronic, noncancer pain who are treated with opioids. The guidelines include opioid dosing recommendations.

f. Responsible Opioid Prescribing: A Physician's Guide. In 2007, in collaboration with author Scott Fishman, M.D., the Federation of State Medical Boards' (FSMB) Research and Education Foundation published a book on responsible opioid prescribing based on the FSMB Model Policy for the Use of Controlled Substances for the Treatment of Pain.

g. World Health Organization: Pain Relief Ladder. Cancer pain relief and palliative care. Technical report series 804. Geneva: World Health Organization.

[**ARC 9599B**, IAB 7/13/11, effective 8/17/11]

653—13.3(147) Supervision of pharmacists who administer adult immunizations. A physician may prescribe adult immunizations via written protocol for influenza and pneumococcal vaccines for administration by an authorized pharmacist if the physician meets these requirements for supervising the pharmacist.

13.3(1) *Definitions.*

a. "Authorized pharmacist" means an Iowa-licensed pharmacist who has documented that the pharmacist has successfully completed an Accreditation Council for Pharmacy Education (ACPE)-approved continuing pharmaceutical education program on vaccine administration that:

(1) Requires documentation by the pharmacist of current certification in the American Heart Association or the Red Cross Basic Cardiac Life Support Protocol for health care providers;

(2) Is an evidence-based course that includes study material and hands-on training and techniques for administering vaccines, requires testing with a passing score, complies with current Centers for Disease Control and Prevention guidelines, and provides instruction and experiential training in the following content areas:

1. Standards for immunization practices;
2. Basic immunology and vaccine protection;
3. Vaccine-preventable diseases;
4. Recommended immunization schedules;
5. Vaccine storage and management;
6. Informed consent;
7. Physiology and techniques for vaccine administration;
8. Pre- and post-vaccine assessment and counseling;
9. Immunization record management; and
10. Management of adverse events, including identification, appropriate response, documentation, and reporting.

b. "Vaccine" means a specially prepared antigen which, upon administration to a person, will result in immunity and, specifically for the purposes of this rule, shall mean influenza and pneumococcal vaccines.

c. "Written protocol" means a physician's order for one or more patients that contains, at a minimum, the following:

(1) A statement identifying the individual physician authorized to prescribe drugs and responsible for the delegation of administration of adult immunizations for influenza and pneumococcus;

(2) A statement identifying the individual authorized pharmacist;

(3) A statement that forbids an authorized pharmacist from delegating the administration of adult immunizations to anyone other than another authorized pharmacist, a registered pharmacist-intern under the direct personal supervision of the authorized pharmacist, or a registered nurse;

(4) A statement identifying the vaccines that may be administered by an authorized pharmacist, the dosages, and the route of administration;

(5) A statement identifying the activities an authorized pharmacist shall follow in the course of administering adult immunizations, including:

1. Procedures for determining if a patient is eligible to receive the vaccine;
2. Procedures for determining the appropriate scheduling and frequency of drug administration in accordance with applicable guidelines;
3. Procedures for record keeping and long-term record storage including batch or identification numbers;
4. Procedures to follow in case of life-threatening reactions; and
5. Procedures for the pharmacist and patient to follow in case of reactions following administration;

(6) A statement that describes how the authorized pharmacist shall report the administration of adult immunizations, within 30 days, to the physician issuing the written protocols and to the patient's primary care physician, if one has been designated by the patient. In case of serious complications, the authorized pharmacist shall notify the physicians within 24 hours and submit a VAERS report to the bureau of immunizations, Iowa department of public health. (VAERS is the Vaccine Advisory Event Reporting System.) A serious complication is one that requires further medical or therapeutic intervention to effectively protect the patient from further risk, morbidity, or mortality.

13.3(2) *Supervision.* A physician who prescribes adult immunizations to an authorized pharmacist for administration shall adequately supervise that pharmacist. Physician supervision shall be considered adequate if the delegating physician:

a. Ensures that the authorized pharmacist is prepared as described in subrule 13.3(1), paragraph *"a"*;

b. Provides a written protocol that is updated at least annually;

c. Is available through direct telecommunication for consultation, assistance, and direction, or provides physician backup to provide these services when the physician supervisor is not available;

d. Is an Iowa-licensed physician who has a working relationship with an authorized pharmacist within the physician's local provider service area.

13.3(3) *Administration of other adult immunizations by pharmacists.* A physician may prescribe, for an individual patient by prescription or medication order, other adult immunizations to be administered by an authorized pharmacist.

This rule is intended to implement Iowa Code sections 147.76 and 272C.3.

653—13.4(148) Supervision of pharmacists engaged in collaborative drug therapy management. A supervising physician may only delegate aspects of drug therapy management to an authorized pharmacist pursuant to a written protocol with a pharmacist pursuant to the requirements of this rule. The physician is considered the supervisor and retains the ultimate responsibility for the care of the patient. The authorized pharmacist retains full responsibility for proper execution of pharmacy practice.

13.4(1) *Definitions.*

"Authorized pharmacist" means an Iowa-licensed pharmacist who meets the training requirements of the Iowa board of pharmacy (IBP) as specified in the drug therapy management criteria in 657—8.34(155A).

"Board" means the board of medicine of the state of Iowa.

"Collaborative drug therapy management" means participation by a physician and an authorized pharmacist in the management of drug therapy pursuant to a written community practice protocol or a written hospital practice protocol.

"Collaborative practice" means that a physician may delegate aspects of drug therapy management for the physician's patients to an authorized pharmacist through a written community practice protocol. "Collaborative practice" also means that a P&T committee may authorize hospital pharmacists to perform drug therapy management for inpatients and the hospital's clinic patients through a hospital practice protocol when the clinic and the pharmacist are under the direct authority of the hospital's P&T committee.

"Community practice protocol" means a written, executed agreement entered into voluntarily between a physician and an authorized pharmacist establishing drug therapy management for one or more of the physician's patients residing in a community setting. A community practice protocol shall comply with the requirements of subrule 13.4(2).

"Community setting" means a location outside a hospital inpatient, acute care setting or a hospital clinic setting. A community setting may include, but is not limited to, a home, group home, assisted living facility, correctional facility, hospice, or long-term care facility.

"Hospital clinic" means an outpatient care clinic operated and affiliated with a hospital and under the direct authority of the hospital's P&T committee.

"Hospital pharmacist" means an Iowa-licensed pharmacist who meets the requirements for participating in a hospital practice protocol as determined by the hospital's P&T committee.

"Hospital practice protocol" means a written plan, policy, procedure, or agreement that authorizes drug therapy management between physicians and hospital pharmacists within a hospital and its clinics as developed and determined by its P&T committee. Such a protocol may apply to all physicians and hospital pharmacists at a hospital or the hospital's clinics under the direct authority of the hospital's P&T committee or only to those physicians and pharmacists who are specifically recognized. A hospital practice protocol shall comply with the requirements of subrule 13.4(3).

"IBP" means the Iowa board of pharmacy.

"P&T committee" means a committee of the hospital composed of physicians, pharmacists, and other health professionals that evaluates the clinical use of drugs within the hospital, develops policies for managing drug use and administration in the hospital, and manages the hospital drug formulary system.

"Physician" means a person who is currently licensed in Iowa to practice medicine and surgery or osteopathic medicine and surgery. A physician who executes a written protocol with an authorized pharmacist shall supervise the pharmacist's activities involved in the overall management of patients receiving medications or disease management services under the protocol. The physician may delegate only drug therapies that are in areas common to the physician's practice.

"Therapeutic interchange" means an authorized exchange of therapeutic alternate drug products in accordance with a previously established and approved written protocol.

13.4(2) *Community practice protocol.*

a. A physician shall engage in collaborative drug therapy management with a pharmacist only under a written protocol that is identified by topic and has been submitted to the IBP or a committee authorized by the IBP. A protocol executed after July 1, 2008, will no longer be required to be submitted to the IBP; however, written protocols executed or renewed after July 1, 2008, shall be made available upon request of the board or the IBP.

b. The community practice protocol shall include:

(1) The name, signature, date and contact information for each authorized pharmacist who is a party to the protocol and is eligible to manage the drug therapy of a particular patient. If more than one authorized pharmacist is a party to the agreement, the pharmacists shall work for a single licensed pharmacy and a principal pharmacist shall be designated in the protocol.

(2) The name, signature, date and contact information for each physician who may prescribe drugs and is responsible for supervising a patient's drug therapy management. The physician who initiates a protocol shall be considered the main caregiver for the patient respective to that protocol and shall be noted in the protocol as the principal physician.

(3) The name and contact information of the principal physician and the principal authorized pharmacist who are responsible for development, training, administration, and quality assurance of the protocol.

(4) A detailed written protocol pursuant to which the authorized pharmacist will base drug therapy management decisions for patients. The protocol shall authorize one or more of the following:

1. Prescription drug orders. The protocol may authorize therapeutic interchange or modification of drug dosages based on symptoms or laboratory or physical findings defined in the protocol. The protocol shall include information specific to the dosage, frequency, duration and route of administration of the

drug authorized by the patient's physician. The protocol shall not authorize the pharmacist to change a Schedule II drug or initiate a drug not included in the established protocol.

2. Laboratory tests. The protocol may authorize the pharmacist to obtain or conduct specific laboratory tests as long as the tests relate directly to the drug therapy management.

3. Physical findings. The protocol may authorize the pharmacist to check certain physical findings, e.g., vital signs, oximetry, or peak flows, that enable the pharmacist to assess and adjust the drug therapy, detect adverse drug reactions or determine if the patient should be referred back to the patient's physician for follow-up.

4. Patient activities. The protocol may authorize the pharmacist to monitor specific patient activities.

(5) Procedures for the physician to secure the patient's written consent. If the physician does not secure the patient's written consent, the pharmacist shall secure such and notify the patient's physician within 24 hours.

(6) Circumstances that shall cause the pharmacist to initiate communication with the physician, including but not limited to the need for new prescription orders and reports of the patient's therapeutic response or adverse reaction.

(7) A detailed statement identifying the specific drugs, laboratory tests and physical findings upon which the pharmacist shall base drug therapy management decisions.

(8) A provision for the collaborative drug therapy protocol to be reviewed, updated and reexecuted or discontinued at least every two years.

(9) A description of the method the pharmacist shall use to document the pharmacist's decisions or recommendations for the physician.

(10) A description of the types of reports the physician requires the pharmacist to provide and the schedule by which the pharmacist is to submit these reports. The schedule shall include a time frame in which a pharmacist shall report any adverse reaction to the physician.

(11) A statement of the medication categories and the type of initiation and modification of drug therapy that the physician authorizes the pharmacist to perform.

(12) A description of the procedures or plan that the pharmacist shall follow if the pharmacist modifies a drug therapy.

(13) Procedures for record keeping, record sharing and long-term record storage.

(14) Procedures to follow in emergency situations.

(15) A statement that prohibits the pharmacist from delegating drug therapy management to anyone other than another authorized pharmacist who has signed the applicable protocol.

(16) A statement that prohibits a physician from delegating collaborative drug therapy management to any unlicensed or licensed person other than another physician or authorized pharmacist.

(17) A description of the mechanism for the pharmacist and physician to communicate with each other and for documentation by the pharmacist of the implementation of collaborative drug therapy.

c. Collaborative drug therapy management is valid only when initiated by a written protocol executed by at least the patient's physician and one authorized pharmacist.

d. A collaborative drug therapy management protocol must be filed with the IBP, kept on file in the pharmacy and made available to the board or IBP upon request. A protocol executed after July 1, 2008, will no longer be required to be submitted to the IBP; however, written protocols executed or renewed after July 1, 2008, shall be made available upon request of the board or the IBP.

e. A physician may terminate or amend the collaborative drug therapy management protocol with an authorized pharmacist if the physician notifies, in writing, the pharmacist and the IBP. Notification shall include the name of the authorized pharmacist, the desired change, and the proposed effective date of the change. After July 1, 2008, the physician shall no longer be required to notify the IBP of changes in the protocol.

f. Patient consent for community practice protocols. The physician or pharmacist who initiates a protocol with a patient is responsible for securing a patient's written consent to participate in drug therapy management and for transmitting a copy of the consent to the other party within 24 hours. The consent shall indicate which protocol is involved. Any variation in the protocol for a specific patient

needs to be communicated to the other party at the time of securing the patient's consent. The patient's physician shall maintain the patient consent in the patient's medical record.

13.4(3) *Hospital practice protocol.*

a. A hospital's P&T committee shall determine the scope and extent of collaborative drug therapy management practices that may be conducted by its hospital pharmacists in the hospital and its clinics. Hospital clinics are restricted to outpatient care clinics operated and affiliated with a hospital and under the direct authority of the hospital's P&T committee.

b. Collaborative drug therapy management within a hospital setting or the hospital's clinic setting is valid only when approved by the hospital's P&T committee.

c. The hospital practice protocol shall include:

(1) The names or groups of physicians and pharmacists who are authorized by the P&T committee to participate in collaborative drug therapy management.

(2) A plan for development, training, administration, and quality assurance of the protocol.

(3) A detailed written protocol pursuant to which the hospital pharmacist shall base drug therapy management decisions for patients. The protocol shall authorize one or more of the following:

1. Medication orders and prescription drug orders. The protocol may authorize therapeutic interchange or modification of drug dosages based on symptoms or laboratory or physical findings defined in the protocol. The protocol shall include information specific to the dosage, frequency, duration and route of administration of the drug authorized by the physician. The protocol shall not authorize the hospital pharmacist to change a Schedule II drug or initiate a drug not included in the established protocol.

2. Laboratory tests. The protocol may authorize the hospital pharmacist to obtain or conduct specific laboratory tests as long as the tests relate directly to the drug therapy management.

3. Physical findings. The protocol may authorize the hospital pharmacist to check certain physical findings, e.g., vital signs, oximetry, or peak flows, that enable the pharmacist to assess and adjust the drug therapy, detect adverse drug reactions or determine if the patient should be referred back to the physician for follow-up.

(4) Circumstances that shall cause the hospital pharmacist to initiate communication with the patient's physician, including but not limited to the need for new medication orders and prescription drug orders and reports of a patient's therapeutic response or adverse reaction.

(5) A statement of the medication categories and the type of initiation and modification of drug therapy that the protocol authorizes the hospital pharmacist to perform.

(6) A description of the procedures or plan that the hospital pharmacist shall follow if the hospital pharmacist modifies a drug therapy.

(7) A description of the mechanism for the hospital pharmacist and the patient's physician to communicate and for the hospital pharmacist to document implementation of the collaborative drug therapy.

This rule is intended to implement Iowa Code chapter 148.

653—13.5(147,148) Standards of practice—chelation therapy. Chelation therapy or disodium ethylene diamine tetra acetic acid (EDTA) may only be used for the treatment of heavy metal poisoning or in the clinical setting when a licensee experienced in clinical investigations conducts a carefully controlled clinical investigation of its effectiveness in treating other diseases or medical conditions under a research protocol that has been approved by an institutional review board of the University of Iowa or Des Moines University—Osteopathic Medical Center.

This rule is intended to implement Iowa Code chapters 147 and 148.

653—13.6(79GA,HF726) Standards of practice—automated dispensing systems. A physician who dispenses prescription drugs via an automated dispensing system or a dispensing system that employs technology may delegate nonjudgmental dispensing functions to staff assistants in the absence of a pharmacist or physician provided that the physician utilizes an internal quality control assurance plan that ensures that the medication dispensed is the medication that was prescribed. The physician shall be

physically present to determine the accuracy and completeness of any medication that is reconstituted prior to dispensing.

13.6(1) An internal quality control assurance plan shall include the following elements:

a. The name of the physician responsible for the internal quality assurance plan and testing;

b. Methods that the dispensing system employs, e.g., bar coding, to ensure the accuracy of the patient's name and medication, dosage, directions and amount of medication prescribed;

c. Standards that the physician expects to be met to ensure the accuracy of the dispensing system and the training and qualifications of staff members assigned to dispense via the dispensing system;

d. The procedures utilized to ensure that the physician(s) dispensing via the automated system provide(s) patients counseling regarding the prescription drugs being dispensed;

e. Staff training and qualifications for dispensing via the dispensing system;

f. A list of staff members who meet the qualifications and who are assigned to dispense via the dispensing system;

g. A plan for testing the dispensing system and each staff member assigned to dispense via the dispensing system;

h. The results of testing that show compliance with the standards prior to implementation of the dispensing system and prior to approval of each staff member to dispense via the dispensing system;

i. A plan for interval testing of the accuracy of dispensing, at least annually; and

j. A plan for addressing inaccuracies, including discontinuing dispensing until the accuracy level can be reattained.

13.6(2) Those dispensing systems already in place shall show evidence of a plan and testing within two months of August 31, 2001.

13.6(3) The internal quality control assurance plan shall be submitted to the board of medicine upon request.

This rule is intended to implement Iowa Code section 147.107 and 2001 Iowa Acts, House File 726, section 5(10), paragraph *"i."*

653—13.7(147,148,272C) Standards of practice—office practices.

13.7(1) *Termination of the physician-patient relationship.* A physician may choose whom to serve. Having undertaken the care of a patient, the physician may not neglect the patient. A physician shall provide a patient written notice of the termination of the physician-patient relationship. A physician shall ensure that emergency medical care is available to the patient during the 30-day period following notice of the termination of the physician-patient relationship.

13.7(2) *Patient referrals.* A physician shall not pay or receive compensation for patient referrals.

13.7(3) *Confidentiality.* A physician shall maintain the confidentiality of all patient information obtained in the practice of medicine. Information shall be divulged by the physician when authorized by law or the patient or when required for patient care.

13.7(4) *Sexual conduct.* It is unprofessional and unethical conduct, and is grounds for disciplinary action, for a physician to engage in conduct which violates the following prohibitions:

a. In the course of providing medical care, a physician shall not engage in contact, touching, or comments of a sexual nature with a patient, or with the patient's parent or guardian if the patient is a minor.

b. A physician shall not engage in any sexual conduct with a patient when that conduct occurs concurrent with the physician-patient relationship, regardless of whether the patient consents to that conduct.

c. A physician shall not engage in any sexual conduct with a former patient unless the physician-patient relationship was completely terminated before the sexual conduct occurred. In considering whether that relationship was completely terminated, the board will consider the duration of the physician-patient relationship, the nature of the medical services provided, the lapse of time since the physician-patient relationship ended, the degree of dependence in the physician-patient relationship, and the extent to which the physician used or exploited the trust, knowledge, emotions, or influence derived from the physician-patient relationship.

d. A psychiatrist, or a physician who provides mental health counseling to a patient, shall never engage in any sexual conduct with a current or former patient, or with that patient's parent or guardian if the patient was a minor, regardless of whether the patient consents to that conduct.

13.7(5) *Disruptive behavior.* A physician shall not engage in disruptive behavior. Disruptive behavior is defined as a pattern of contentious, threatening, or intractable behavior that interferes with, or has the potential to interfere with, patient care or the effective functioning of health care staff.

13.7(6) *Sexual harassment.* A physician shall not engage in sexual harassment. Sexual harassment is defined as verbal or physical conduct of a sexual nature which interferes with another health care worker's performance or creates an intimidating, hostile or offensive work environment.

13.7(7) *Transfer of medical records.* A physician must provide a copy of all medical records generated by the physician in a timely manner to the patient or another physician designated by the patient, upon written request when legally requested to do so by the subject patient or by a legally designated representative of the subject patient, except as otherwise required or permitted by law.

13.7(8) *Retention of medical records.* The following paragraphs become effective on January 1, 2004.

a. A physician shall retain all medical records, not appropriately transferred to another physician or entity, for at least seven years from the last date of service for each patient, except as otherwise required by law.

b. A physician must retain all medical records of minor patients, not appropriately transferred to another physician or entity, for a period consistent with that established by Iowa Code section 614.8.

c. Upon a physician's death or retirement, the sale of a medical practice or a physician's departure from the physician's medical practice:

(1) The physician or the physician's representative must ensure that all medical records are transferred to another physician or entity that is held to the same standards of confidentiality and agrees to act as custodian of the records.

(2) The physician shall notify all active patients that their records will be transferred to another physician or entity that will retain custody of their records and that, at their written request, the records will be sent to the physician or entity of the patient's choice.

653—13.8(148,272C) Standards of practice—medical directors at medical spas—delegation and supervision of medical aesthetic services performed by qualified licensed or certified nonphysician persons. This rule establishes standards of practice for a physician or surgeon or osteopathic physician or surgeon who serves as a medical director at a medical spa.

13.8(1) *Definitions.* As used in this rule:

"Alter" means to change the cellular structure of living tissue.

"Capable of" means any means, method, device or instrument which, if used as intended or otherwise to its greatest strength, has the potential to alter or damage living tissue below the superficial epidermal cells.

"Damage" means to cause a harmful change in the cellular structure of living tissue.

"Delegate" means to entrust or transfer the performance of a medical aesthetic service to qualified licensed or certified nonphysician persons.

"Medical aesthetic service" means the diagnosis, treatment, or correction of human conditions, ailments, diseases, injuries, or infirmities of the skin, hair, nails and mucous membranes by any means, methods, devices, or instruments including the use of a biological or synthetic material, chemical application, mechanical device, or displaced energy form of any kind if it alters or damages or is capable of altering or damaging living tissue below the superficial epidermal cells, with the exception of hair removal. Medical aesthetic service includes, but is not limited to, the following services: ablative laser therapy; vaporizing laser therapy; nonsuperficial light device therapy; injectables; tissue alteration services; nonsuperficial light-emitting diode therapy; nonsuperficial intense pulse light therapy; nonsuperficial radiofrequency therapy; nonsuperficial ultrasonic therapy; nonsuperficial exfoliation; nonsuperficial microdermabrasion; nonsuperficial dermaplane exfoliation; nonsuperficial lymphatic drainage; botox injections; collagen injections; and tattoo removal.

"Medical director" means a physician who assumes the role of, or holds oneself out as, medical director or a physician who serves as a medical advisor for a medical spa. The medical director is responsible for implementing policies and procedures to ensure quality patient care and for the delegation and supervision of medical aesthetic services to qualified licensed or certified nonphysician persons.

"Medical spa" means any entity, however organized, which is advertised, announced, established, or maintained for the purpose of providing medical aesthetic services. Medical spa shall not include a dermatology practice which is wholly owned and controlled by one or more Iowa-licensed physicians if at least one of the owners is actively practicing at each location.

"Nonsuperficial" means that the therapy alters or damages or is capable of altering or damaging living tissue below the superficial epidermal cells.

"Qualified licensed or certified nonphysician person" means any person who is not licensed to practice medicine and surgery or osteopathic medicine and surgery but who is licensed or certified by another licensing board in Iowa and qualified to perform medical aesthetic services under the supervision of a qualified physician.

"Supervision" means the oversight of qualified licensed or certified nonphysician persons who perform medical aesthetic services delegated by a medical director.

13.8(2) *Practice of medicine.* The performance of medical aesthetic services is the practice of medicine. A medical aesthetic service shall only be performed by qualified licensed or certified nonphysician persons if the service has been delegated by the medical director who is responsible for supervision of the services performed. A medical director shall not delegate medical aesthetic services to nonphysician persons who are not appropriately licensed or certified in Iowa.

13.8(3) *Medical director.* A physician who serves as medical director at a medical spa shall:

a. Hold an active unrestricted Iowa medical license to supervise each delegated medical aesthetic service;

b. Possess the appropriate education, training, experience and competence to safely supervise each delegated medical aesthetic service;

c. Retain responsibility for the supervision of each medical aesthetic service performed by qualified licensed or certified nonphysician persons;

d. Ensure that advertising activities do not include false, misleading, or deceptive representations; and

e. Be clearly identified as the medical director in all advertising activities, Internet Web sites and signage related to the medical spa.

13.8(4) *Delegated medical aesthetic service.* When a medical director delegates a medical aesthetic service to qualified licensed or certified nonphysician persons, the service shall be:

a. Within the medical director's scope of practice and medical competence to supervise;

b. Of the type that a reasonable and prudent physician would conclude is within the scope of sound medical judgment to delegate; and

c. A routine and technical service, the performance of which does not require the skill of a licensed physician.

13.8(5) *Supervision.* A medical director who delegates performance of a medical aesthetic service to qualified licensed or certified nonphysician persons is responsible for providing appropriate supervision. The medical director shall:

a. Ensure that all licensed or certified nonphysician persons are qualified and competent to safely perform each medical aesthetic service by personally assessing the person's education, training, experience and ability;

b. Ensure that a qualified licensed or certified nonphysician person does not perform any medical aesthetic services which are beyond the scope of that person's license or certification unless the person is supervised by a qualified supervising physician;

c. Ensure that all qualified licensed or certified nonphysician persons receive direct, in-person, on-site supervision from the medical director or other qualified licensed physician at least four hours each week and that the regular supervision is documented;

d. Provide on-site review of medical aesthetic services performed by qualified licensed or certified nonphysician persons each week and review at least 10 percent of patient charts for medical aesthetic services performed by qualified licensed or certified nonphysician persons;

e. Be physically located, at all times, within 60 miles of the location where qualified licensed or certified nonphysician persons perform medical aesthetic services;

f. Be available, in person or electronically, at all times, to consult with qualified licensed or certified nonphysician persons who perform medical aesthetic services, particularly in case of injury or an emergency;

g. Assess the legitimacy and safety of all equipment or other technologies being used by qualified licensed or certified nonphysician persons who perform medical aesthetic services;

h. Develop and implement protocols for responding to emergencies or other injuries suffered by persons receiving medical aesthetic services performed by qualified licensed or certified nonphysician persons;

i. Ensure that all qualified licensed or certified nonphysician persons maintain accurate and timely medical records for the medical aesthetic services they perform;

j. Ensure that each patient provides appropriate informed consent for medical aesthetic services performed by the medical director or other qualified licensed physician and all qualified licensed or certified nonphysician persons and that such informed consent is timely documented in the patient's medical record;

k. Ensure that the identity and licensure and certification of the medical director, other qualified licensed physicians and all licensed or certified nonphysician persons are visibly displayed at each medical spa and provided in writing to each patient receiving medical aesthetic services at a medical spa; and

l. Ensure that the board receives written verification of the education and training of all qualified licensed or certified nonphysician persons who perform medical aesthetic services at a medical spa, within 14 days of a request by the board.

13.8(6) *Exceptions.* This rule is not intended to apply to physicians who serve as medical directors of licensed medical facilities, clinics or practices that provide medical aesthetic services as part of or incident to their other medical services.

13.8(7) *Physician assistants.* Nothing in these rules shall be interpreted to contradict or supersede the rules established in 645—Chapters 326 and 327.

[**ARC 9088B**, IAB 9/22/10, effective 10/27/10]

653—13.9(147,148,272C) Standards of practice—interventional chronic pain management. This rule establishes standards of practice for the practice of interventional chronic pain management. The purpose of this rule is to assist physicians who consider interventional techniques to treat patients with chronic pain.

13.9(1) *Definition.* As used in this rule:

"Interventional chronic pain management" means the diagnosis and treatment of pain-related disorders with the application of interventional techniques in managing subacute, chronic, persistent, and intractable pain. Interventional techniques include percutaneous (through the skin) needle placement to inject drugs in targeted areas. Interventional techniques also include nerve ablation (excision or amputation) and certain surgical procedures. Interventional techniques often involve injection of steroids, analgesics, and anesthetics and include: lumbar, thoracic, and cervical spine injections, intra-articular injections, intrathecal injections, epidural injections (both regular and transforaminal), facet injections, discography, nerve destruction, occipital nerve blocks, lumbar sympathetic blocks and vertebroplasty, and kyphoplasty. Interventional chronic pain management includes the use of fluoroscopy when it is used to assess the cause of a patient's chronic pain or when it is used to identify anatomic landmarks during interventional techniques. Specific interventional techniques include: SI joint injections; spinal punctures; epidural blood patches; epidural injections; epidural/spinal injections; lumbar injections; epidural/subarachnoid catheters; occipital nerve blocks; axillary nerve blocks; intercostals nerve blocks; multiple intercostals nerve blocks; ilioinguinal nerve blocks; peripheral nerve

blocks; facet joint injections; cervical/thoracic facet joint injections; lumbar facet injections; multiple lumbar facet injections; transforaminal epidural steroid injections; transforaminal cervical steroid injections; sphenopalatine ganglion blocks; paravertebral sympathetic blocks; neurolysis of the lumbar facet nerve; neurolysis of the cervical facet nerve; and destruction of the peripheral nerve.

13.9(2) *Interventional chronic pain management.* The practice of interventional chronic pain management shall include the following:

a. Comprehensive assessment of the patient;
b. Diagnosis of the cause of the patient's pain;
c. Evaluation of alternative treatment options;
d. Selection of appropriate treatment options;
e. Termination of prescribed treatment options when appropriate;
f. Follow-up care; and
g. Collaboration with other health care providers.

13.9(3) *Practice of medicine.* Interventional chronic pain management is the practice of medicine.
[**ARC 8918B**, IAB 6/30/10, effective 8/4/10]

653—13.10(17A,147,148,272C) Waiver or variance prohibited. Renumbered as 653—13.21(17A,147,148,272C), IAB 12/24/03, effective 1/28/04.

653—13.11 to **13.19** Reserved.

653—13.20(147,148) Principles of medical ethics. The Code of Medical Ethics (2002-2003) prepared and approved by the American Medical Association and the Code of Ethics (2002-2003) prepared and approved by the American Osteopathic Association shall be utilized by the board as guiding principles in the practice of medicine and surgery and osteopathic medicine and surgery in this state.

13.20(1) *Conflict of interest.* A physician should not provide medical services under terms or conditions which tend to interfere with or impair the free and complete exercise of the physician's medical judgment and skill or tend to cause a deterioration of the quality of medical care.

13.20(2) *Fees.* Any fee charged by a physician shall be reasonable.

653—13.21(17A,147,148,272C) Waiver or variance prohibited. Rules in this chapter are not subject to waiver or variance pursuant to 653—Chapter 3 or any other provision of law.

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CHAPTER 23
GROUNDS FOR DISCIPLINE
[Prior to 7/19/06, see 653—Chapter 12]

653—23.1(272C) Grounds for discipline. The board has authority to impose discipline for any violation of Iowa Code chapter 147, 148, 148E, 252J, 261, or 272C or 2008 Iowa Acts, Senate File 2428, division II, or the rules promulgated thereunder. The grounds for discipline apply to physicians and acupuncturists. This rule is not subject to waiver or variance pursuant to 653—Chapter 3 or any other provision of law. The board may impose any of the disciplinary sanctions set forth in 653—subrule 25.25(1), including civil penalties in an amount not to exceed $10,000, when the board determines that the licensee is guilty of any of the following acts or offenses:

23.1(1) Violating any of the grounds for the revocation or suspension of a license as listed in Iowa Code section 147.55, 148.6, 148E.8 or 272C.10.

23.1(2) Professional incompetency. Professional incompetency includes, but is not limited to, any of the following:

a. Willful or repeated gross malpractice;

b. Willful or gross negligence;

c. A substantial lack of knowledge or ability to discharge professional obligations within the scope of the physician's or surgeon's practice;

d. A substantial deviation by the physician from the standards of learning or skill ordinarily possessed and applied by other physicians or surgeons in the state of Iowa acting in the same or similar circumstances;

e. A failure by a physician or surgeon to exercise in a substantial respect that degree of care which is ordinarily exercised by the average physician or surgeon in the state of Iowa acting in the same or similar circumstances;

f. A willful or repeated departure from or the failure to conform to the minimal standard of acceptable and prevailing practice of medicine and surgery or osteopathic medicine and surgery in the state of Iowa;

g. Failure to meet the acceptable and prevailing standard of care when delegating or supervising medical services provided by another physician, health care practitioner, or other individual who is collaborating with or acting as an agent, associate, or employee of the physician responsible for the patient's care, whether or not injury results.

23.1(3) Practice harmful or detrimental to the public. Practice harmful or detrimental to the public includes, but is not limited to, the failure of a physician to possess and exercise that degree of skill, learning and care expected of a reasonable, prudent physician acting in the same or similar circumstances in this state, or when a physician is unable to practice medicine with reasonable skill and safety as a result of a mental or physical impairment or chemical abuse.

23.1(4) Unprofessional conduct. Engaging in unethical or unprofessional conduct includes, but is not limited to, the committing by a licensee of an act contrary to honesty, justice or good morals, whether the same is committed in the course of the licensee's practice or otherwise, and whether committed within this state or elsewhere; or a violation of the standards and principles of medical ethics or 653—13.7(147,148,272C) or 653—13.20(147,148) as interpreted by the board.

23.1(5) Sexual misconduct. Engaging in sexual misconduct includes, but is not limited to, engaging in conduct set out at 653—subrule 13.7(4) or 13.7(6) as interpreted by the board.

23.1(6) Substance abuse. Substance abuse includes, but is not limited to, excessive use of alcohol, drugs, narcotics, chemicals or other substances in a manner which may impair a licensee's ability to practice the profession with reasonable skill and safety.

23.1(7) Indiscriminately or promiscuously prescribing, administering or dispensing any drug for other than lawful purpose includes, but is not limited to:

a. Self-prescribing or self-dispensing controlled substances.

b. Prescribing or dispensing controlled substances to members of the licensee's immediate family.

(1) Prescribing or dispensing controlled substances to members of the licensee's immediate family is allowable for an acute condition or on an emergency basis when the licensee conducts an examination, establishes a medical record, and maintains proper documentation.

(2) Immediate family includes the physician's spouse or domestic partner and either of the physician's, spouse's, or domestic partner's parents, stepparents or grandparents; the physician's natural or adopted children or stepchildren and any child's spouse, domestic partner or children; the siblings of the physician or the physician's spouse or domestic partner and the sibling's spouse or domestic partner; or anyone else living with the physician.

23.1(8) Physical or mental impairment. Physical or mental impairment includes, but is not limited to, any physical, neurological or mental condition which may impair a physician's ability to practice the profession with reasonable skill and safety. Being adjudged mentally incompetent by a court of competent jurisdiction shall automatically suspend a license for the duration of the license unless the board orders otherwise.

23.1(9) Felony criminal conviction. Being convicted of a felony in the courts of this state, another state, the United States, or any country, territory or other jurisdiction, as defined in Iowa Code section 148.6(2)*"b."*

23.1(10) Violation of the laws or rules governing the practice of medicine or acupuncture of this state, another state, the United States, or any country, territory or other jurisdiction. Violation of the laws or rules governing the practice of medicine includes, but is not limited to, willful or repeated violation of the provisions of these rules or the provisions of Iowa Code chapter 147, 148, 148E or 272C or other state or federal laws or rules governing the practice of medicine.

23.1(11) Violation of a lawful order of the board, previously entered by the board in a disciplinary or licensure hearing, or violation of the terms and provisions of a consent agreement or settlement agreement entered into between a licensee and the board.

23.1(12) Violation of an initial agreement or health contract entered into with the Iowa physician health program (IPHP).

23.1(13) Failure to comply with an evaluation order. Failure to comply with an order of the board requiring a licensee to submit to evaluation under Iowa Code section 148.6(2)*"h"* or 272C.9(1).

23.1(14) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession includes, but is not limited to, an intentional perversion of the truth, either orally or in writing, by a physician in the practice of medicine and surgery or osteopathic medicine and surgery or by an acupuncturist.

23.1(15) Fraud in procuring a license. Fraud in procuring a license includes, but is not limited to, an intentional perversion of the truth in making application for a license to practice acupuncture, medicine and surgery, or osteopathic medicine and surgery in this state, and includes false representations of material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state, or attempting to file or filing with the board any false or forged document submitted with an application for a license in this state.

23.1(16) Fraud in representations as to skill or ability. Fraud in representations as to skill or ability includes, but is not limited to, a licensee's having made misleading, deceptive or untrue representations as to the acupuncturist's or physician's competency to perform professional services for which the licensee is not qualified to perform by education, training or experience.

23.1(17) Use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a licensee in making known to the public information or intention which is false, deceptive, misleading or promoted through fraud or misrepresentation and includes statements which may consist of, but are not limited to:

a. Inflated or unjustified claims which lead to expectations of favorable results;

b. Self-laudatory claims that imply that the licensee is skilled in a field or specialty of practice for which the licensee is not qualified;

c. Representations that are likely to cause the average person to misunderstand; or

d. Extravagant claims or claims of extraordinary skills not recognized by the medical profession.

23.1(18) Obtaining any fee by fraud or misrepresentation.

23.1(19) Acceptance of remuneration for referral of a patient to other health professionals in violation of the law or medical ethics.

23.1(20) Knowingly submitting a false report of continuing education or failure to submit the required reports of continuing education.

23.1(21) Knowingly aiding, assisting, procuring, or advising a person in the unlawful practice of acupuncture, medicine and surgery, or osteopathic medicine and surgery.

23.1(22) Failure to report disciplinary action. Failure to report a license revocation, suspension or other disciplinary action taken against the licensee by a professional licensing authority of another state, an agency of the United States government, or any country, territory or other jurisdiction within 30 days of the final action by such licensing authority. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, such report shall be expunged from the records of the board.

23.1(23) Failure to report voluntary agreements. Failure to report any voluntary agreement to restrict the practice of acupuncture, medicine and surgery, or osteopathic medicine and surgery entered into with this state, another state, the United States, an agency of the federal government, or any country, territory or other jurisdiction.

23.1(24) Failure to notify the board within 30 days after occurrence of any settlement or adverse judgment of a malpractice claim or action.

23.1(25) Failure to file the reports required by 653—22.2(272C) within 30 days concerning wrongful acts or omissions committed by another licensee.

23.1(26) Failure to comply with a valid subpoena issued by the board pursuant to Iowa Code sections 17A.13 and 272C.6 and 653—subrule 24.2(6) and rule 653—25.12(17A).

23.1(27) Failure to submit to a board-ordered mental, physical, clinical competency, or substance abuse evaluation or drug or alcohol screening.

23.1(28) The inappropriate use of a rubber stamp to affix a signature to a prescription. A person who is unable, due to a disability, to make a written signature or mark, however, may substitute in lieu of a signature a rubber stamp which is adopted by the disabled person for all purposes requiring a signature and which is affixed by the disabled person or affixed by another person upon the request of the disabled person and in the presence of the disabled person.

23.1(29) Maintaining any presigned prescription which is intended to be completed and issued at a later time.

23.1(30) Failure to comply with the recommendations issued by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services for preventing transmission of human immunodeficiency virus and hepatitis B virus to patients during exposure-prone invasive procedures, or with the protocols established pursuant to Iowa Code chapter 139A.

23.1(31) Failure by a physician with HIV or HBV who practices in a hospital setting, and who performs exposure-prone procedures, to report the physician's HIV or HBV status to an expert review panel established by a hospital under Iowa Code section 139A.22(1) or to an expert review panel established by the department of public health under Iowa Code section 139A.22(3).

23.1(32) Failure by a physician with HIV or HBV who practices outside a hospital setting, and who performs exposure-prone procedures, to report the physician's HIV or HBV status to an expert review panel established by the department of public health under Iowa Code section 139A.22(3).

23.1(33) Failure by a physician subject to the reporting requirements of 23.1(31) and 23.1(32) to comply with the recommendations of an expert review panel established by the department of public health pursuant to Iowa Code section 139A.22(3), with hospital protocols established pursuant to Iowa Code section 139A.22(1), or with health care facility procedures established pursuant to Iowa Code section 139A.22(2).

23.1(34) Noncompliance with a support order or with a written agreement for payment of support as evidenced by a certificate of noncompliance issued pursuant to Iowa Code chapter 252J. Disciplinary

proceedings initiated under this rule shall follow the procedures set forth in Iowa Code chapter 252J and 653—Chapter 15.

23.1(35) Student loan default or noncompliance with an agreement for payment of a student loan obligation as evidenced by a certificate of noncompliance issued pursuant to Iowa Code chapter 261 and 653—16.2(261).

23.1(36) Improper management of medical records. Improper management of medical records includes, but is not limited to, failure to maintain timely, accurate, and complete medical records.

23.1(37) Failure to transfer medical records to another physician in a timely fashion when legally requested to do so by the subject patient or by a legally designated representative of the subject patient.

23.1(38) Failure to respond to or comply with a board investigation initiated pursuant to Iowa Code section 272C.3 and 653—24.2(17A,147,148,272C).

23.1(39) Failure to comply with the direct billing requirements for anatomic pathology services established in Iowa Code Supplement section 147.106.

23.1(40) Failure to submit an additional completed fingerprint card and applicable fee, within 30 days of a request made by board staff, when a previous fingerprint submission has been determined to be unacceptable.

23.1(41) Failure to respond to the board or submit continuing education materials during a board audit, within 30 days of a request made by board staff or within the extension of time if one had been granted.

23.1(42) Failure to respond to the board or submit requested mandatory training for identifying and reporting abuse materials during a board audit, within 30 days of a request made by board staff or within the extension of time if one had been granted.

23.1(43) Nonpayment of state debt as evidenced by a certificate of noncompliance issued pursuant to 2008 Iowa Acts, Senate File 2428, division II, and 653—Chapter 12.

23.1(44) Voluntary agreements. The board may take disciplinary action against a physician if that physician has entered into a voluntary agreement to restrict the practice of medicine in another state, district, territory, or country.

a. The board will use the following criteria to determine if a physician has entered into a voluntary agreement within the meaning of Iowa Code section 148.12 and this rule.

(1) The voluntary agreement was signed during or at the conclusion of a disciplinary investigation, or to prevent a matter from proceeding to a disciplinary investigation.

(2) The agreement includes any or all of the following:

1. Education or testing that is beyond the jurisdiction's usual requirement for a license or license renewal.

2. An assignment beyond what is required for license renewal or regular practice, e.g., adoption of a protocol, use of a chaperone, completion of specified continuing education, or completion of a writing assignment.

3. A prohibition or limitation on practice privileges, e.g., a restriction on prescribing or administering controlled substances.

4. Compliance with an educational plan.

5. A requirement that surveys or reviews of patients or patient records be conducted.

6. A practice monitoring requirement.

7. A special notification requirement for a change of address.

8. Payment that is not routinely required of all physicians in that jurisdiction, such as a civil penalty, fine, or reimbursement of any expenses.

9. Any other activity or requirements imposed by the board that are beyond the usual licensure requirements for obtaining, renewing, or reinstating a license in that jurisdiction.

b. A certified copy of the voluntary agreement shall be considered prima facie evidence.

23.1(45) Performing or attempting to perform any surgical or invasive procedure on the wrong patient or at the wrong anatomical site or performing the wrong surgical procedure on a patient.

23.1(46) Violation of the standards of practice for medical directors who delegate and supervise medical aesthetic services performed by nonphysician persons at a medical spa as set out at rule 653—13.8(148,272C).

23.1(47) Failure to provide the board, within 14 days of a request by the board as set out at 653—paragraph 13.8(5)*"l,"* written verification of the education and training of all nonphysician persons who perform medical aesthetic services at a medical spa.

This rule is intended to implement Iowa Code chapters 17A, 147, 148 and 272C and 2008 Iowa Acts, Senate File 2428, division II.

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◊ Two or more ARCs

1 Effective date of subrule 135.204(10) [renumbered 12/4(10), IAC 5/4/88] delayed by the Administrative Rules Review Committee 70 days from November 2, 1983.

[2] Effective date of rules 135.206, 135.207 and 135.208 [renumbered 12.6, 12.7 and 12.8, IAC 5/4/88] delayed by the Administrative Rules Review Committee 70 days from December 12, 1984. Delay lifted by committee on January 9, 1985.

CHAPTER 1
DESCRIPTION OF ORGANIZATION

751—1.1(17A,8D) Purpose. The Iowa telecommunications and technology commission and the Iowa communications network were established by Iowa Code chapter 8D to coordinate communications of state government, effect maximum practical consolidation and joint use of communications services and manage, develop, operate and ensure compatibility of the fiberoptic network.

751—1.2(17A,8D) Organization. The commission's structure consists of five commissioners and the state auditor as an ex officio member of the commission. The commission has the sole authority to manage, develop, operate and ensure compatibility of the state communications network. The network is supervised by the commission and operated by the executive director of the network or the commission's designee. The commission has rule-making authority.

751—1.3(17A,8D) Advisory committees. The commission may establish or dissolve committees and advisory groups from time to time as necessary.
[**ARC 9600B**, IAB 7/13/11, effective 8/17/11]

751—1.4(17A,8D) Education telecommunications council. The education telecommunications council establishes scheduling and site usage policies for educational users of the network, coordinates the activities of the regional telecommunications councils and develops proposed rules and changes to rules for recommendations to the commission. The council also may recommend long-range plans for enhancements needed for educational applications.

The regional telecommunications councils advise the education telecommunications council on the assessment of local educational needs and the coordination of program activities including scheduling.

751—1.5(17A,8D) Administrative elements of the commission.

1.5(1) *Executive director.* The executive director or the commission's designee administers the programs and services of the commission in compliance with the Iowa Code and the rules adopted by the commission.

1.5(2) *Administrative elements.* In order to carry out the functions of the commission, the following divisions have been established:

a. The business and governmental services division coordinates the activities between the engineers, individual sites, and authorized users. The division is responsible for providing cost estimates for services; tracking service requests; executing installation services; assisting authorized users in finding the best structure to meet the users' needs; developing new products and services; maintaining price tables; and providing customer service and assistance. The division is responsible for providing legislative liaison and public information functions as well as providing administrative support to the commission. The division provides information and education to the public about the commission and the fiberoptic network and maintains the commission's Web site.

b. The finance division is responsible for maintaining the financial books and records of the commission, accounting, billing, asset inventory and management, personnel transactions, travel vouchers, claims for payments of goods and services, processing cash receipts, purchasing, and contracting activities, as well as coordination with the attorney general's office for legal counsel.

c. The network operations and engineering division is responsible for provisioning of video services, data/Internet services, and voice services for authorized users. The division is responsible for all operational aspects of the fiberoptic network. The division is responsible for the technical operation of the fiberoptic network, including research and development; network systems; agency information systems functions; and maintenance of a circuit database.
[**ARC 9148B**, IAB 10/6/10, effective 11/10/10; **ARC 9600B**, IAB 7/13/11, effective 8/17/11]

751—1.6(17A,8D) Location of offices.

1.6(1) *Main office.* The main office is located in the Grimes State Office Building, 400 E. 14th Street, Des Moines, Iowa 50319. The telephone number is (515)725-4692. The toll-free number is 1-877-426-4692. The fax number is (515)725-4727. The E-mail address is ICN.info@iowa.gov. The home page address on the World Wide Web is http://www.icn.state.ia.us.

1.6(2) *Network.* The hub for the network is located in the Joint Forces Headquarters (JFHQ) Armory, 6100 N.W. 78th Avenue, Johnston, Iowa 50131.

751—1.7(8D) Business hours.

1.7(1) *Normal business hours.* The normal business hours of the main office are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. The Network Operations Center (NOC) operates on a 24-hour, seven-day-a-week basis at the network hub in the JFHQ Armory in Johnston, Iowa.

1.7(2) *Emergency incident reports.* The 24-hour emergency telephone number for reporting cable cuts, system failures or other incidents is 1-800-572-3940, or (515)323-4400.

These rules are intended to implement Iowa Code sections 17A.3(1)*"a,"* 8D.1, 8D.3(3)*"b,"* 8D.5 and 8D.6.

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