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

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

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

# INSTRUCTIONS

## FOR UPDATING THE

# IOWA ADMINISTRATIVE CODE

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

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

### **Banking Division[187]**

- Replace Analysis
- Replace Chapter 15
- Replace Chapter 19

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

- Replace Analysis
- Replace Chapter 216
- Remove Reserved Chapters 216 to 310
- Insert Reserved Chapters 216 to 219, Chapters 220 and 221, and Reserved Chapters 222 to 310

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

- Replace Chapter 1

### **Natural Resources Department[561]**

- Replace Chapter 7

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

- Replace Chapter 131

### **Pharmacy Board[657]**

- Replace Chapter 10

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

- Replace Analysis
- Replace Chapter 226
- Replace Chapter 230

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

- Replace Chapters 72 and 73



## **BANKING DIVISION[187]**

Created within the Department of Commerce by 1986 Iowa Acts, chapter 1245. Prior to 4/22/87, for Chs 1 to 15 see Banking Department[140] Chs 1 to 4, 8, 9 and 21; for Ch 16 see Auditor of State[130], Ch 1.  
Note: Iowa Code chapter 453 renumbered as chapter 12C in 1993 Iowa Code.

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CHAPTER 15  
REGULATED LOANS

[Appeared as Ch 1, 1973 IDR]

[Prior to 4/22/87, see Banking Department [140] Ch 21]

**187—15.1(17A,536) Definitions.** For the purposes of this chapter, the definitions in Iowa Code chapter 536 shall apply. In addition, unless the context otherwise requires:

*“Business of making regulated loans”* means making ten or more loans of money or other forms of credit in a calendar year for which a license is required under Iowa Code section 536.1, advertising the availability of such loans, or directly undertaking the collection of payments due on such loans or otherwise enforcing rights against borrowers who have entered into regulated loans.

*“Nationwide multistate licensing system”* or *“NMLS”* means a multistate licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of nondepository financial institutions.

*“Regulated loan”* means a loan made by a licensee acting under the terms of the Iowa regulated loan Act. A regulated loan qualifies as a consumer loan subject to the Iowa Consumer Credit Code if the borrower is a person other than an organization; the debt is incurred for personal, family, or household use; and the amount financed is below the statutory threshold.

[ARC 3078C, IAB 5/24/17, effective 7/1/17]

**187—15.2(17A,536) Utilization of NMLS.**

**15.2(1)** All application and licensing information shall be submitted through the NMLS including but not limited to the following: original application information; changes in application information; license renewal information; changes in name, location, and control; and notices of significant events.

**15.2(2)** The applicant or licensee shall pay any fees required by NMLS including but not limited to the following: initial set-up fee and annual processing fees, background check fees, and credit background check fees.

[ARC 3078C, IAB 5/24/17, effective 7/1/17]

**187—15.3(17A,536) Application for license.**

**15.3(1)** An application for a license to operate a regulated loan business in Iowa shall be submitted to the superintendent, on the form provided and with the information requested, through the NMLS. The superintendent may consider an application withdrawn if it does not contain all of the information required and the missing information is not submitted to the superintendent within 30 days after the superintendent requests the missing information. The applicant may also request that the application be withdrawn at any time before the superintendent has decided to grant or deny the application.

**15.3(2)** Each officer, director, and individual who has control of an applicant must provide fingerprints, authorize a fingerprint background check through NMLS, and pay the appropriate fees for the purpose of conducting a national criminal history background check through the Federal Bureau of Investigation.

**15.3(3)** The applicant must submit the application fee and the initial license fee specified in Iowa Code section 536.2. The superintendent shall refund the initial license fee if the application is denied, but the application fee is not subject to refund. The applicant shall also pay any additional fees required by the NMLS including but not limited to the following: system processing fees, background check fees, and credit background check fees.

**15.3(4)** If any information material to the application changes after the applicant files the initial application, the applicant shall provide updated information to the superintendent within 10 days of the change. When such a material change in information has occurred, the superintendent may deny an application if the applicant fails to provide updated information within the prescribed time frame.

**15.3(5)** An applicant for a regulated loan company license must file with the superintendent a bond complying with the provisions of Iowa Code section 536.3. For applicants or licensees who do not make, arrange, broker, process, or underwrite any residential mortgage loans, as defined in Iowa Code section

535D.3(13), the bond shall be in the amount of \$25,000. For applicants or licensees who make, broker, process, or underwrite residential mortgage loans, as defined in Iowa Code section 535D.3(13), the bond amount required to be filed and maintained shall be set and adjusted annually by March 31 using the following scale, based on the volume of residential mortgage loans made, originated, arranged, brokered, processed, and underwritten, as the case may be, by the applicant or licensee during the preceding calendar year:

<u>Loans</u>	<u>Bond Amount</u>
\$0 – \$5,000,000	\$25,000
\$5,000,001 – \$20,000,000	\$50,000
\$20,000,001 – \$50,000,000	\$75,000
\$50,000,001 – \$100,000,000	\$100,000
Over \$100,000,000	\$150,000

**15.3(6)** Licenses expire on the next December 31 after they are issued, but licenses granted on or after November 1 but before January 1 will not expire until December 31 of the following year. For example, a license granted on November 17, 2017, would not expire until December 31, 2018.

[ARC 3078C, IAB 5/24/17, effective 7/1/17]

#### **187—15.4(17A,536) Grounds for approval or denial.**

**15.4(1)** The superintendent shall approve or deny a license application in accordance with the provisions of Iowa Code section 536.4.

**15.4(2)** The following may be considered evidence that the business of the applicant may not be operated lawfully and honestly within the purposes of Iowa Code chapter 536 and may therefore be considered grounds for denial of an application:

- a. An applicant, or an officer, director, or individual who has control of an applicant, has had a mortgage loan originator license or any lending license revoked in any governmental jurisdiction.
- b. An applicant, or an officer, director, or individual who has control of an applicant, has been convicted of, or has pleaded guilty or no contest to, a felony in a domestic, foreign, or military court if such felony involved an act of fraud, dishonesty, or breach of trust, or money laundering.

[ARC 3078C, IAB 5/24/17, effective 7/1/17]

#### **187—15.5(17A,536) Renewal of license.**

**15.5(1)** A licensee must renew a license before the expiration date of the license. A licensee who fails to renew a license before the expiration date is not authorized to make regulated loans in Iowa after the expiration date.

**15.5(2)** An application to renew a license shall be submitted to the superintendent, on the form provided and with the information requested, through the NMLS by December 1 of the year of expiration. For example, for a license that will expire on December 31, 2017, an application for renewal shall be submitted by December 1, 2017. All requested information, including any material change to information contained in the original application, shall be provided to the superintendent.

**15.5(3)** The superintendent shall grant an application to renew a license if:

- a. The licensee submits the application and the appropriate renewal fee by December 1 or the licensee submits the application after December 1 but before January 1 and pays the appropriate renewal fee and the appropriate late fee;
- b. The application is fully completed and includes all necessary information; and
- c. The application does not reveal grounds to deny a license.

**15.5(4)** It is within the discretion of the superintendent to reject for processing a renewal application submitted after December 31 or to treat such an application as an application for a new license. A licensee who fails to renew a license before the expiration date is not authorized to make regulated loans in Iowa after the expiration date.

[ARC 3078C, IAB 5/24/17, effective 7/1/17]

**187—15.6(17A,536) Changes in the licensee's name, location, or control; fees.**

**15.6(1)** A licensee wishing to change the name or location of a regulated loan business shall notify the superintendent through the NMLS at least 30 days prior to the effective date of the requested change. The notice shall include proof that the licensee has either obtained a new bond or amended the existing mandatory bond to reflect the new name or location. The licensee shall submit the appropriate fee in conjunction with the notice.

**15.6(2)** When a change of control of a licensee is proposed, the party that will assume control of the licensee shall give notice to the superintendent through the NMLS, at least 60 days before the proposed change will take effect. Change of control is defined in Iowa Code section 536.7A. The party that will assume control of the licensee shall furnish the superintendent through the NMLS with the same information required of initial applicants for a license, along with the appropriate fee. The party that will assume control may be required to provide fingerprints, authorize a fingerprint background check through NMLS, and pay the appropriate fees for the purpose of conducting a national criminal history background check through the Federal Bureau of Investigation. The superintendent shall approve or deny the request in accordance with the provisions of Iowa Code section 536.4 and rule 187—15.4(17A,536).

**15.6(3)** Failure to notify the administrator within the prescribed time as required by this rule may subject the licensee to disciplinary action.

[ARC 3078C, IAB 5/24/17, effective 7/1/17]

**187—15.7(17A,536) Notice of significant events.** A licensee shall notify the administrator immediately and in writing within 10 days of the occurrence of any of the following events.

**15.7(1)** The licensee or any of the licensee's officers, directors, principal stockholders, or affiliates file for bankruptcy protection or commence reorganization proceedings.

**15.7(2)** A prosecuting authority files criminal charges against the licensee or any of a licensee's officers, directors, principal stockholders, or affiliates.

**15.7(3)** Another state or jurisdiction institutes license denial, cease and desist, suspension or revocation procedures, or other formal or informal regulatory action against the licensee or any of the licensee's officers, directors, principal stockholders, or affiliates.

**15.7(4)** The attorney general of Iowa, the Federal Trade Commission, or the enforcer of the consumer protection laws of any other jurisdiction initiates an action to enforce the consumer protection laws against the licensee or any of the licensee's officers, directors, principal stockholders, or affiliates.

[ARC 3078C, IAB 5/24/17, effective 7/1/17]

**187—15.8(17A,536) Administrative fees.**

**15.8(1)** *Examination or investigation fees.* A licensee shall pay an investigation or examination fee as determined by the superintendent based on the actual cost of the operation of the finance bureau of the banking division, as described in Iowa Code section 536.10(3).

**15.8(2)** *Late fees for failing to respond.* In the process of administering Iowa Code chapter 536, the superintendent may require a person to provide responses to formal orders, examinations, or complaint inquiries. If a person fails to respond within 30 days of the request, the superintendent may assess a penalty of \$10 per day after the initial 30 days.

**15.8(3)** *NMLS system processing fees.* In addition to the fees set forth in this chapter, the applicant or licensee shall pay any fee assessed by the NMLS attributed to the licensee's record in the NMLS including but not limited to the initial set-up fee, an annual processing fee, and a loan sponsorship transfer fee.

[ARC 3078C, IAB 5/24/17, effective 7/1/17]

**187—15.9(17A,536) Licensee records.**

**15.9(1)** *General records requirements.* A licensee must keep records that allow the superintendent to determine the licensee's compliance with relevant statutes and regulations.

a. The licensee may keep the records as a hard copy or in an electronic equivalent.

b. The licensee shall keep all records for at least 24 months from the date of the final transaction with the borrower.

c. The licensee shall maintain all books and records in good order and shall produce books and records for the superintendent upon request. Failure to produce such books and records within 30 days of the superintendent's request may be grounds for disciplinary action against the licensee.

d. The obligation to maintain records continues even after the licensee ceases business operations in Iowa and turns in or surrenders its license. The owners and directors of the licensee are responsible for ensuring that this requirement is met.

**15.9(2) Required records.** A licensee shall keep, at its principal place of business, a loan register, an account ledger, an account ledger control, a loan file, an index, and a disbursement voucher.

**15.9(3) Loan register.** The loan register shall include the following information for every loan that is made: the account number, the date of the transaction, the name of the borrower, and the amount financed. The register shall be kept chronologically in the order the loans closed.

**15.9(4) Account ledger.**

a. An individual account ledger shall be kept for each account and shall show at least the loan number, name and address of the borrower, date of loan, date of first payment, date of final payment, terms of repayment including maturity date, amount financed, total of payments, face amount of note if different from amount financed or total payments, cash advanced to borrower, cash advanced to pay balance of previous regulated loan, interest or discount charge, service charge, attorney fee, fee paid or to be paid to a public official for recording or filing a mortgage or for satisfying a judgment or lien on any real or personal property securing the loan, nature of security, type and cost of each credit insurance policy and any other insurance policy with each premium stated separately, and name of each endorser, comaker or surety.

b. All payments shall be posted on the account ledger as of the date received. No erasures whatsoever may be made in the payment section of any account ledger. In case of error, corrections to the transaction history in the account ledger shall be made by corrective entry and not by erasure. The entries on the account ledger shall correspond with the receipts given to the borrower.

c. If payment is made in any way other than in the ordinary course of business, the method of payment shall be so designated on the account ledger; for example, payment by sale of security, insurance claim or endorser. When a death claim is filed, the exact date of death is to be recorded on the account ledger.

d. The account ledger for an interest-bearing loan shall show the amount of the loan if different from the amount financed, the amount and date of each payment received, the allocation of the payment to principal and interest, and the remaining principal balance. If a portion of the interest earned is not paid at the time payment is made, the account ledger for an interest-bearing loan must show either the date to which interest is paid or the amount of interest then due but unpaid.

e. The account ledger for a precomputed loan shall show the actual amount of the loan excluding the precomputed interest, the amount of the precomputed interest and the face amount of the note including interest, the amount and date of each payment applied to the note, the unpaid balance of the note after application of such payment and the type and amount of any additional charges collected or assessed. If a deferment charge is collected in whole or in part, the account ledger shall indicate any uncollected portion of the deferment charge, the particular installment deferred, the number of times deferred, plus the date of the final installment.

f. When any loan is prepaid in full, either by cash or renewal, the account ledger must show the date of prepayment, the amount paid to discharge the loan, the amount of the interest rebate, and any deduction from the rebate for previously earned but uncollected charges, and refunds of the unearned premiums of each credit insurance policy or other insurance policy. Each insurance refund shall be separately recorded on the account ledger.

g. Account ledgers relating to each type of business operation must be filed in separate groups. Paid-in-full and renewed account ledgers must also be filed in a similar manner and must be retained

from one banking division examination to the next. After the examination, the account ledgers may be filed in a permanent file.

**15.9(5) *Account ledger control.*** A record showing the total number of accounts and total amount receivable for each type of business shall be maintained in the licensed office. This record shall be posted either daily or weekly.

**15.9(6) *Loan file.*** A separate file shall be maintained for each borrower in the office where the loan is outstanding. Such file shall contain the note, security agreement, wage assignment, and all other evidence of indebtedness or security pertaining to the loan except when the note is kept in a separate promissory note file or when said papers are in custody of a court or an agent for collection or are hypothecated. When a borrower is also a comaker, guarantor or endorser on another loan, the file of such borrower shall be cross-referenced to the other, unless such cross-referencing is included on the alphabetical record required by subrule 15.9(7) or on the individual account ledger required by subrule 15.9(4). All instruments taken in connection with a loan and signed by a borrower must bear the loan number.

**15.9(7) *Index.*** An alphabetical record shall be maintained and show the name of each borrower, endorser, comaker, or surety who is currently indebted to the licensee, together with sufficient information to locate the account ledger.

**15.9(8) *Disbursement voucher.*** Licensees shall use, in conjunction with each loan, a disbursement voucher or equivalent document showing a detailed itemization of the distribution of the loan proceeds.

**15.9(9) *Denial file.*** For each application the licensee denies, the licensee shall retain a copy of the application and a copy of the adverse action notice. The licensee may maintain this information in one file in either alphabetical or chronological order.

**15.9(10) *General business records.*** A licensee must keep the following general business records for at least 36 months:

*a.* All checkbooks, check registers, bank statements, deposit slips, withdrawal slips, and canceled checks (or copies thereof) relating to the regulated loan business of the licensee.

*b.* Complete records (including invoices and supporting documentation) for all expenses and fees paid on behalf of each loan applicant, including a record of the date and amount of all such payments actually made by each loan applicant.

*c.* Copies of all federal tax withholding forms, reports of income for federal taxation, and evidence of payments to all employees, independent contractors, and others compensated by a licensee in connection with the conduct of the regulated loan business.

*d.* All correspondence and other records relating to the maintenance of any surety bond required by Iowa Code chapter 536.

*e.* Copies of all reports of audits, examinations, inspections, reviews, investigations, or other similar functions performed by any third party, including but not limited to the superintendent or any other regulatory or supervisory authority.

*f.* Copies of all advertisements and solicitations concerning regulated loans directed at Iowa residents, including advertisements and solicitations on the Internet or by other electronic means, in the format (e.g., recorded sound, video, print) in which the advertisements and solicitations were published or distributed. An advertisement shall clearly show the licensee's unique NMLS identification number.

**15.9(11) *Disposal of records.*** If a licensee or former licensee disposes of records at the end of the retention period, the licensee or former licensee shall dispose of the records in a reasonable manner that safeguards any identification information, as defined in Iowa Code section 715A.8(1) "a." The owners and directors of licensees and former licensees are responsible for ensuring that this requirement is met. [ARC 3078C, IAB 5/24/17, effective 7/1/17]

## **187—15.10(17A,536) Complaints and investigations.**

**15.10(1)** The superintendent may, at any time and as often as the superintendent deems necessary, investigate a licensee and examine the licensee's books, accounts, records, and files.

**15.10(2)** The superintendent may investigate complaints about, or alleged violations by, any licensee.

**15.10(3)** The following shall constitute a complaint or alleged violation:

- a. A written complaint received from a consumer, member of the public, employee, business affiliate, or other governmental agency.
- b. Notice to the superintendent from any source that the licensee has been the subject of disciplinary proceedings in another jurisdiction.
- c. Notice to the superintendent from any source that an individual with control of the licensee has been convicted of forgery, embezzlement, obtaining money under false pretenses, extortion, conspiracy to defraud, or other similar offense, in a court of competent jurisdiction in this state or in any other state, territory, or district of the United States, or in any foreign jurisdiction.

[ARC 3078C, IAB 5/24/17, effective 7/1/17]

**187—15.11(17A,536) Disciplinary action.**

**15.11(1)** The superintendent has authority pursuant to Iowa Code chapters 536 and 17A to impose discipline for violations of Iowa Code chapter 536 and the rules promulgated thereunder.

**15.11(2)** Grounds for discipline. The superintendent may impose any of the disciplinary sanctions set out in Iowa Code section 536.9(2) when the superintendent makes any of the findings in Iowa Code section 536.9(1) or when the superintendent finds any of the following:

- a. The licensee has abandoned its place of business for 60 or more days.
- b. The licensee fails to fully cooperate with an examination or investigation, including failing to respond to an inquiry from the superintendent within 30 days of the date the superintendent mails a written communication directed to the licensee's last-known address on file with the superintendent.
- c. The licensee has engaged in any conduct that subverts or attempts to subvert an examination or investigation by the superintendent.
- d. The licensee continues to operate a regulated loan business without an active and current license.
- e. The licensee fails to notify the superintendent within 10 days of the occurrence of one of the significant events set forth in rule 187—15.7(17A,536).
- f. The licensee fails to notify the superintendent of a change in control, name, or principal place of business.
- g. The licensee operates a regulated loan business in the same location as another business without the superintendent's written approval.
- h. Another state or jurisdiction has denied, suspended, revoked, or refused to renew the licensee's license, registration, or authorization to engage in the business of making loans under the other state's or jurisdiction's law.
- i. The licensee fails to create and maintain complete and accurate records as required by state or federal law, regulation, or rule.

**15.11(3)** The superintendent shall not refund the license fee, in whole or in part, of a license that has been suspended, revoked, or surrendered.

[ARC 3078C, IAB 5/24/17, effective 7/1/17]

**187—15.12(17A,536) Annual report.** Licensees must file with the superintendent an annual report, on forms prescribed by the superintendent, on or before April 15. The information contained in the annual report shall be confidential, and the superintendent may publish the information only in composite form. The superintendent may assess a late fee of \$10 for each day the annual report is delinquent.

[ARC 3078C, IAB 5/24/17, effective 7/1/17]

**187—15.13(17A,536) Restrictions on making regulated loans.** A licensee shall adhere to the following restrictions related to making regulated loans.

**15.13(1) Jurisdiction.** A licensee shall have authority to make and complete loans by mail, or by comparable electronic means, from the lender's licensed office. However, all loans made to Iowa residents pursuant to Iowa Code chapters 536 and 537 must comply with all applicable Iowa laws.

**15.13(2) Default charge.** Default charges are not to be collected if payment is made by a credit accident and health insurance claim.

**15.13(3) Interest rate.** Pursuant to the power granted to the superintendent under Iowa Code sections 536.13(1) “b” and 536.13(2), the maximum rate of interest that may be charged beginning September 1, 2020, and until such time as a different rate is fixed by the superintendent, is 36 percent per annum on any part of the unpaid balance not exceeding \$3,000 and 24 percent per annum on any part of the unpaid balance in excess of \$3,000, but not exceeding \$8,400 and 18 percent per annum on any part of the unpaid balance in excess of \$8,400, but not exceeding \$30,000.

**15.13(4) Branch locations.** Licensees may not establish branch locations outside of the United States.

[ARC 3078C, IAB 5/24/17, effective 7/1/17; ARC 5090C, IAB 7/15/20, effective 9/1/20]

These rules are intended to implement Iowa Code chapters 17A and 536.

[Filed 3/13/68; amended 10/14/69; renumbered from Chapter 1, 7/1/75]

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CHAPTER 19  
MORTGAGE LOAN ORIGINATORS

**187—19.1(17A,535D) Definitions.** For the purposes of this chapter, the definitions in Iowa Code section 535D.3 shall apply. In addition, unless the context otherwise requires, the following definitions shall apply to this chapter and to Iowa Code chapter 535D:

“*Licensee*” means a person who has a license to operate as a mortgage loan originator in accordance with the provisions of Iowa Code section 535D.4.

“*Nationwide multistate licensing system*” or “*NMLS*” means a multistate licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage loan originators, mortgage providers, mortgage lenders, mortgage brokers, and mortgage servicers.

“*SAFE mortgage loan originator test*” means the licensing test approved by the NMLS in accordance with the provisions of Iowa Code section 535D.8.

“*Servicer*” means a person that collects or receives payments, including principal, interest and trust items such as hazard insurance, property taxes and other amounts due, on behalf of a note holder or investor in accordance with the terms of a residential mortgage loan.

“*Superintendent*” means the superintendent of banking appointed pursuant to Iowa Code section 524.201.

“*Takes a residential mortgage loan application,*” with respect to Iowa Code section 535D.3(8), means:

1. Any communication, regardless of form, from a mortgage loan originator to a borrower soliciting a loan application or requesting information typically required in an application for the purpose of deciding whether or not to extend the requested offer of a loan to a borrower; or

2. Any communication, regardless of form, from a borrower to a mortgage loan originator for an offer or responding to a solicitation for an offer of residential mortgage loan terms or providing information typically required in an application for the purpose of deciding whether or not to extend the requested offer of a loan to a borrower.

[ARC 8239B, IAB 10/21/09, effective 11/25/09; ARC 3081C, IAB 5/24/17, effective 7/1/17]

**187—19.2(17A,535D) Mortgage loan originator requirements.**

**19.2(1)** A natural person who applies for a license pursuant to Iowa Code section 535D.4 to act as a mortgage loan originator in this state shall apply with the superintendent through the NMLS. The superintendent may consider an application withdrawn if it does not contain all of the information required and the information is not submitted to the superintendent within 30 days after the superintendent requests the information.

**19.2(2)** Prior to applying for a mortgage loan originator license, the applicant must complete the preclicensing education requirements pursuant to Iowa Code section 535D.7.

**19.2(3)** Prior to applying for a mortgage loan originator license, the applicant must pass the SAFE mortgage loan originator test, which is comprised of two components: a national component and a state component. Applicants must pass each component with a score of 75 percent or higher.

**19.2(4)** The fee for an initial mortgage loan originator application is \$50. This fee is nonrefundable. This fee is in addition to any fees established and charged by the NMLS, any approved education course provider, any approved education testing provider, any law enforcement agency for fingerprints and background checks, or by any credit reporting agency used by the NMLS.

**19.2(5)** An applicant must provide fingerprints, authorize a fingerprint background check through NMLS, and pay the appropriate fees for the purpose of conducting a national criminal history background check through the Federal Bureau of Investigation. This requirement applies to all individuals, regardless of whether the applicant was previously registered under Iowa Code chapter 535B or if the applicant has previously submitted fingerprint cards for licensure.

**19.2(6)** Each applicant must provide authorization to obtain a credit report through NMLS.

**19.2(7)** To engage in activities requiring a license, a mortgage loan originator must be covered under a surety bond that reflects the dollar amount of loans originated, processed, or underwritten, as the case may be, on an annual basis. The bond must be on a form provided by the superintendent. Satisfaction of this requirement shall be met by one of the following:

*a.* A mortgage loan originator who is an employee or exclusive agent of a company subject to Iowa Code chapter 535B, 536, or 536A may be covered by the company's bond.

*b.* A mortgage loan originator who is not covered by a company bond pursuant to paragraph 19.2(7) "a" must provide an individual surety bond meeting the requirements of paragraph 19.2(7) "c."

*c.* The surety bond amount required to be filed and maintained by or on behalf of a mortgage loan originator who is not an employee or exclusive agent of a company subject to Iowa Code chapter 535B, 536, or 536A shall be set and adjusted annually as necessary in accordance with the following scale, based on the volume of residential mortgage loans originated, processed, and underwritten, as the case may be, by the licensee during the preceding calendar year:

<u>Loans</u>	<u>Bond Amount</u>
\$0 – \$5,000,000	\$25,000
\$5,000,001 – \$20,000,000	\$50,000
\$20,000,001 – \$50,000,000	\$75,000
\$50,000,001 – \$100,000,000	\$100,000
Over \$100,000,000	\$150,000

**19.2(8)** To engage in activities requiring a license, a mortgage loan originator must be employed by, under contract with, or an exclusive agent of a licensed company or a company that is exempt from licensing requirements. However, the superintendent may consider an application for mortgage loan originator from a person not currently employed by, under contract with, or an exclusive agent of a licensee. If the superintendent determines that the applicant is otherwise eligible for a mortgage loan originator license, the superintendent shall approve the license in "active-inactive" status or similar status type indicating that the applicant has met the individual requirements for licensure but is not authorized to conduct business.

**19.2(9)** A mortgage loan originator license expires on the next December 31 after issuance; however, mortgage loan originator licenses issued on or after November 1 but before January 1 will not expire until December 31 of the following year. For example, a mortgage loan originator license issued on November 17, 2009, would not expire until December 31, 2010.

**19.2(10)** An individual who has completed 20 hours of prelicensure education pursuant to 12 U.S.C. 5104(c) must retake 20 hours of prelicensure education in order to be eligible for mortgage loan originator licensure if the individual:

*a.* Fails to acquire a valid state license or federal registration as a mortgage loan originator within three years from the date of federal compliance with 12 U.S.C. 5104(c); or

*b.* Fails to acquire a valid state license or federal registration as a mortgage loan originator within three years from the last date of licensure or registration as a mortgage loan originator.

[ARC 8239B, IAB 10/21/09, effective 11/25/09; ARC 3081C, IAB 5/24/17, effective 7/1/17]

### **187—19.3(17A,535D) Grounds for denial of license.**

**19.3(1)** The superintendent shall deny an application for a mortgage loan originator license if the applicant does not meet the qualifications outlined in Iowa Code section 535D.6. For the purpose of applying Iowa Code section 535D.6(2), "dishonesty or breach of trust" includes, but is not limited to, forgery, embezzlement, obtaining money under false pretenses, theft, extortion, fraud, conspiracy to defraud, tax evasion, or another similar offense.

**19.3(2)** The superintendent may deny an application for a mortgage loan originator license for any of the following reasons:

*a.* This state or another state or jurisdiction has denied, suspended, or refused to renew the applicant's license to act as a mortgage loan originator or has denied, suspended, or refused to renew a

similar license or registration under this state's or the other state's or jurisdiction's law. An agreement made between a person and this state or another state or jurisdiction not to operate as a mortgage loan originator shall be considered a denial of that person's license to act as a mortgage loan originator in that state.

*b.* The applicant has been barred, removed, or prohibited from serving in any capacity in a financial institution by any state or federal regulatory agency, including but not limited to the Office of Comptroller of the Currency, the Federal Deposit Insurance Corporation (FDIC), the Board of Governors of the Federal Reserve System, or the U.S. Department of Housing and Urban Development.

*c.* The applicant has been convicted of forgery, embezzlement, obtaining money under false pretenses, theft, extortion, conspiracy to defraud, tax evasion, or another similar offense, in a court of competent jurisdiction in this state or in any other state, territory or district of the United States, or in any foreign jurisdiction. For the purposes of this paragraph, "convicted of" includes a guilty plea, deferred judgment, deferred sentence, or other similar finding of guilt by a court of competent jurisdiction.

*d.* The applicant has had a professional license of any kind revoked in any state or jurisdiction. An agreement to surrender a license and not to operate in an occupation in which a professional license is required shall be considered a revocation for the purposes of this rule.

*e.* The applicant is under 18 years of age.

*f.* The applicant has made a false statement of material fact on an application for a license or has been otherwise implicated in the submission of a false application.

*g.* The applicant has demonstrated a lack of moral character in a manner that the superintendent reasonably believes will impair the applicant's ability to act as a mortgage loan originator in full compliance with the public interest and state policies described in Iowa Code chapters 535B and 535D.

*h.* The applicant has failed to pay child support and is identified in a certificate of noncompliance from the child support recovery unit of the department of human services according to the procedures in Iowa Code chapter 252J.

*i.* The applicant has failed to pay state debt and is identified in a certificate of noncompliance from the department of revenue according to the procedures set forth in Iowa Code chapter 272D.

[ARC 8239B, IAB 10/21/09, effective 11/25/09; ARC 3081C, IAB 5/24/17, effective 7/1/17; ARC 5091C, IAB 7/15/20, effective 8/19/20]

#### **187—19.4(17A,535D) Renewal of mortgage loan originator license.**

**19.4(1)** A mortgage loan originator license must be renewed before expiration. An individual who fails to renew a mortgage loan originator license before expiration is not authorized to act as a mortgage loan originator in Iowa after the expiration date.

**19.4(2)** By December 1 of the year of expiration, a mortgage loan originator license shall be renewed through the NMLS, with all requested information provided as directed by the NMLS, and must be accompanied by a fee of \$50. This fee is nonrefundable. This fee is in addition to any fees established and charged by the NMLS, any approved education course provider, any approved education testing provider, any law enforcement agency for fingerprints and background checks, or by any credit reporting agency used by the NMLS. The superintendent may assess a late fee of \$5 per day not to exceed \$100 for a mortgage loan originator license renewal accepted for processing after December 1.

**19.4(3)** The superintendent may reject a mortgage loan originator license renewal if the license renewal is not complete or if all required fees, including late fees, are not remitted.

**19.4(4)** The superintendent shall grant an application to renew a mortgage loan originator license if the licensee meets the standards for renewal in Iowa Code section 535D.9 and:

*a.* The superintendent receives the renewal application by December 1, accompanied by the \$50 renewal fee, or the superintendent receives the license renewal after December 1 but before January 1 and it is accompanied by the renewal fee and the appropriate late fee;

*b.* The renewal application is fully completed with all necessary information, including proper disclosure of completion of required continuing education; and

*c.* The renewal application does not reveal grounds to deny the mortgage loan originator license.

[ARC 8239B, IAB 10/21/09, effective 11/25/09; ARC 3081C, IAB 5/24/17, effective 7/1/17]

**187—19.5(17A,535D) Reinstatement of license.**

**19.5(1)** The license of a mortgage loan originator that expires for failure to satisfy the minimum standards for renewal may be reinstated if the licensee meets the following requirements:

*a.* The application for reinstatement is submitted between January 1 and February 28 of the year immediately following the year the license expired.

*b.* All continuing education courses and any other minimum requirements for license renewal for the year in which the license expired are completed prior to submission of the application for reinstatement.

*c.* The licensee pays a reinstatement fee of \$50, in addition to the renewal fee, and any late charges.

**19.5(2)** A mortgage loan originator whose license has expired and who fails to meet the requirements for reinstatement specified in this rule must apply for a new license and meet the requirements in effect at that time.

[ARC 8239B, IAB 10/21/09, effective 11/25/09; ARC 3081C, IAB 5/24/17, effective 7/1/17]

**187—19.6(17A,535D) Notice of significant events.** A licensee shall notify the superintendent through the NMLS within ten days of the occurrence of any of the following events.

**19.6(1)** The licensee files for bankruptcy protection.

**19.6(2)** A prosecuting authority files criminal charges against the licensee.

**19.6(3)** Another state or jurisdiction institutes license denial, cease and desist, suspension or revocation procedures, or other formal or informal regulatory action against the licensee.

**19.6(4)** The attorney general of Iowa, the Federal Trade Commission, or the enforcer of the consumer protection laws of any other jurisdiction initiates an action to enforce consumer protection laws against the licensee.

**19.6(5)** The Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration, or Government National Mortgage Association suspends or terminates the licensee's status as an approved loan originator.

**19.6(6)** The licensee ceases engaging in activities requiring a license and wishes to surrender the licensee's license. Although the licensee has surrendered the licensee's license, the superintendent retains jurisdiction over the licensee's activities during the time the individual was licensed.

**19.6(7)** A change is made in the licensee's name.

[ARC 8239B, IAB 10/21/09, effective 11/25/09; ARC 3081C, IAB 5/24/17, effective 7/1/17]

**187—19.7(17A,535D) Annual report.** On or before March 31 of each year, each mortgage loan originator who as of the preceding December 31 was not employed by or an exclusive agent of a company licensed under Iowa Code chapter 535B, 536, or 536A shall file an annual report with the superintendent stating the amount of residential mortgage loans originated, processed, or underwritten, as the case may be, during the preceding calendar year.

[ARC 8239B, IAB 10/21/09, effective 11/25/09; ARC 3081C, IAB 5/24/17, effective 7/1/17]

**187—19.8(17A,535D) Administrative fees.**

**19.8(1)** *Investigation or examination fees.* A licensee shall pay an investigation or examination fee as determined by the superintendent based on the actual cost of the operation of the finance bureau of the banking division as described in Iowa Code section 535D.11(2).

**19.8(2)** *Investigation or examination late fees.* A licensee shall pay the superintendent the total charge for an investigation or examination within 30 days after the superintendent has requested payment. If a licensee fails to pay an investigation or examination fee by the due date, the superintendent may assess an additional penalty of 5 percent of the amount of the fee for each day after the due date.

**19.8(3)** *Late fees for failing to respond.* In the process of administering this chapter, the superintendent may require a person to provide responses to formal orders, examinations, or complaint inquiries. If a person fails to respond within 30 days of the request, the superintendent may assess a penalty of \$10 per day after the initial 30 days.

**19.8(4)** *Required annual report.* A licensee who fails to file with the superintendent the annual report required under rule 187—19.7(17A,535D) by March 31 of each year shall be subject to a late penalty

of \$10 for each day the annual report is delinquent, but in no event shall the aggregate of late penalties exceed \$300. The superintendent may relieve any licensee from the payment of any penalty, in whole or in part, for good cause.

**19.8(5) NMLS system processing fees.** In addition to the fees set forth in this chapter, the applicant or licensee shall pay any fee assessed by the NMLS attributed to the licensee's record in the NMLS, including but not limited to the initial set-up fee, an annual processing fee, and a loan sponsorship transfer fee.

[ARC 8239B, IAB 10/21/09, effective 11/25/09; ARC 3081C, IAB 5/24/17, effective 7/1/17]

#### **187—19.9(17A,535D) Continuing education.**

**19.9(1)** A licensee applying to renew a mortgage loan originator license shall, during the license term preceding renewal, complete at least eight hours of continuing education or prelicensing education.

**19.9(2)** Each continuing education course shall first be approved by the NMLS before the superintendent grants continuing education credit.

**19.9(3)** Continuing education courses shall focus on issues of the mortgage business or related industry topics.

**19.9(4)** The entity providing the continuing education course shall submit to the NMLS evidence of the licensee's satisfactory completion of approved continuing education.

**19.9(5)** Continuing education hours shall not be carried forward from one year to the next.

**19.9(6)** Each mortgage loan originator shall ultimately be responsible for maintaining verification records in the form of completion certificates or other documents providing evidence of satisfactory completion of approved continuing education courses. The mortgage loan originator shall retain documentation for a period of three years after the effective date of the mortgage loan originator license renewal. The superintendent may conduct random audits to verify the continuing education submitted to the NMLS.

**19.9(7)** Failure to provide requested evidence of completion of claimed continuing education within 30 days of the written notice from the superintendent shall result in the mortgage loan originator license being placed in inactive status. Prior to the superintendent's activating a mortgage loan originator license that has been placed on inactive status pursuant to this rule, the mortgage loan originator must submit to the superintendent satisfactory evidence that all required continuing education has been completed.

**19.9(8)** The requirement for completion of continuing education may be waived or the deadline for completion may be extended by the superintendent under either of the following circumstances:

a. The mortgage loan originator is called to active duty in the armed forces of the United States for a period of time exceeding 120 consecutive days in any continuing education year.

b. The mortgage loan originator experiences physical disability, illness, or any extenuating circumstances that prevent successful completion of continuing education.

[ARC 8239B, IAB 10/21/09, effective 11/25/09; ARC 3081C, IAB 5/24/17, effective 7/1/17]

#### **187—19.10(17A,535D) Independent contractor—loan processor or underwriter.**

**19.10(1)** For the purpose of Iowa Code section 535D.4, "a loan processor or underwriter who is an independent contractor" means any person who processes or underwrites residential mortgage loans and is not a W-2 employee of a company licensed under Iowa Code chapter 535B, 536, or 536A.

**19.10(2)** An independent contractor must meet all the licensure requirements found in rule 187—19.2(17A,535D) with the exception of subrule 19.2(8).

**19.10(3)** An independent contractor must meet the surety bond requirements found in subrule 19.2(7) prior to the issuance of a license.

[ARC 8239B, IAB 10/21/09, effective 11/25/09; ARC 3081C, IAB 5/24/17, effective 7/1/17]

**187—19.11(17A,535D) NMLS information challenge process.** A mortgage loan originator may challenge information entered into the NMLS by the superintendent by filing a dispute with the superintendent outlining the grounds for the dispute. The grounds for the dispute shall be limited to a review of the factual accuracy of the information regarding the mortgage loan originator's own license record submitted to the NMLS by the superintendent. A mortgage loan originator may not file a

dispute in order to protest a disciplinary action taken by the superintendent or to appeal the underlying reasons for the disciplinary action. The superintendent shall conduct a paper review of the dispute and determine whether the information submitted to the NMLS was factually correct. The superintendent shall notify the mortgage loan originator of the determination within 60 days of the receipt of the dispute. If the superintendent determines the information submitted to the NMLS is factually incorrect, the superintendent shall take prompt steps to correct the information submitted.

[ARC 8239B, IAB 10/21/09, effective 11/25/09; ARC 3081C, IAB 5/24/17, effective 7/1/17]

**187—19.12(17A,535D) Disciplinary action.**

**19.12(1)** The superintendent has authority, pursuant to Iowa Code chapters 535D and 17A, to impose discipline for violations of Iowa Code chapter 535D and the rules promulgated thereunder.

**19.12(2)** Grounds for discipline. The superintendent may impose any of the disciplinary sanctions set out in Iowa Code section 535D.13 when the superintendent finds any of the following:

*a.* The licensee has violated a provision of Iowa Code chapter 535D or a rule adopted thereunder or any other state or federal law applicable to the conduct of mortgage loan originators, including but not limited to Iowa Code chapters 535 and 535A.

*b.* A fact or condition exists which, had it existed at the time of the original application for the license, would have warranted the superintendent to refuse to issue the original license.

*c.* The licensee fails at any time to meet the requirements of Iowa Code section 535D.6 or 535D.9 or withholds information or makes a material misstatement in an application for a license or the renewal of a license.

*d.* The licensee has violated an order of the superintendent.

*e.* The licensee fails to fully cooperate with an examination or investigation, including failure to respond to a superintendent inquiry within 30 days of the date of mailing a written communication directed to the licensee's last-known address on file with the superintendent.

*f.* The licensee has engaged in any conduct that subverts or attempts to subvert an examination or investigation by the superintendent.

*g.* The licensee continues to operate as a mortgage loan originator without an active and current license.

*h.* The licensee continues to act as a mortgage loan originator without first satisfying the required continuing education, absent an express waiver granted by the superintendent.

*i.* The licensee has submitted a false report of continuing education.

*j.* The licensee fails to notify the superintendent within ten days of the occurrence of one of the significant events set forth in rule 187—19.6(17A,535D).

*k.* Another state or jurisdiction has denied, suspended, revoked, or refused to renew the licensee's license, registration, or authorization to act as a mortgage loan originator under the other state's or jurisdiction's law.

*l.* The licensee fails to create and maintain complete and accurate records as required by state or federal law, regulation, or rule.

**19.12(3)** A licensee may surrender a license by delivering to the superintendent a written notice of surrender.

[ARC 8239B, IAB 10/21/09, effective 11/25/09; ARC 3081C, IAB 5/24/17, effective 7/1/17]

Rules 187—19.1(17A,535D) to 187—19.12(17A,535D) are intended to implement Iowa Code chapters 17A and 535D.

**187—19.13(17A,252J) Nonpayment of child support.** The superintendent shall deny the issuance or renewal of a mortgage loan originator license upon the receipt of a certificate of noncompliance from the child support recovery unit of the department of human services according to the procedures in Iowa Code chapter 252J. In addition to the procedures set forth in Iowa Code chapter 252J, this rule shall apply.

**19.13(1)** The notice required by Iowa Code section 252J.8 shall be served upon the mortgage loan originator or applicant by restricted certified mail, return receipt requested, or personal service in

accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the mortgage loan originator or applicant may accept service personally or through authorized counsel.

**19.13(2)** The effective date of the denial of the issuance or renewal of a mortgage loan originator license, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice upon the mortgage loan originator or applicant.

**19.13(3)** The superintendent is authorized to prepare and serve the notice required by Iowa Code section 252J.8 upon the mortgage loan originator or applicant.

**19.13(4)** Mortgage loan originators and applicants shall keep the superintendent informed of all court actions and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J and shall provide the superintendent copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

**19.13(5)** All superintendent fees for application or license renewal or reinstatement must be paid by mortgage loan originators or applicants, and all continuing education requirements must be met before a mortgage loan originator license will be issued, renewed or reinstated after the superintendent has denied the issuance or renewal of a mortgage loan originator license pursuant to Iowa Code chapter 252J.

**19.13(6)** In the event an applicant or a mortgage loan originator timely files a district court action following service of a superintendent notice pursuant to Iowa Code sections 252J.8 and 252J.9, the superintendent shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the superintendent to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a mortgage loan originator license, the superintendent shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

**19.13(7)** The superintendent shall notify the mortgage loan originator or applicant in writing through regular first-class mail, or such other means as the superintendent deems appropriate in the circumstances, within ten days of the effective date of the denial of the issuance or renewal of a mortgage loan originator license, and shall similarly notify the mortgage loan originator or applicant when the license is issued or renewed following the superintendent's receipt of a withdrawal of the certificate of noncompliance.

This rule is intended to implement Iowa Code chapters 252J and 17A.  
[ARC 8239B, IAB 10/21/09, effective 11/25/09]

**187—19.14(17A,261) Nonpayment of student loan.** Rescinded ARC 5091C, IAB 7/15/20, effective 8/19/20.

[ARC 8239B, IAB 10/21/09, effective 11/25/09]

**187—19.15(17A,272D) Nonpayment of state debt.** The superintendent shall deny the issuance or renewal of a mortgage loan originator license upon the receipt of a certificate of noncompliance from the centralized collection unit of the department of revenue according to the procedures in Iowa Code chapter 272D. In addition to the procedures set forth in Iowa Code chapter 272D, this rule shall apply.

**19.15(1)** The notice required by Iowa Code section 272D.8 shall be served on the mortgage loan originator or applicant by restricted certified mail, return receipt requested, or personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the mortgage loan originator or applicant may accept service personally or through authorized counsel.

**19.15(2)** The effective date of the denial of issuance or renewal of a license, as specified in the notice required by Iowa Code section 272D.8, shall be 60 days following service of the notice upon the mortgage loan originator or applicant.

**19.15(3)** The superintendent is authorized to prepare and serve the notice required by Iowa Code section 272D.8 upon the mortgage loan originator or applicant.

**19.15(4)** Mortgage loan originators and applicants shall keep the superintendent informed of all court actions and all centralized collection unit actions taken under or in connection with Iowa Code chapter 272D and shall provide the superintendent copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 272D.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the centralized collection unit.

**19.15(5)** All fees for applications, license renewals or reinstatements must be paid by mortgage loan originators or applicants, and all continuing education requirements must be met before a mortgage loan originator license will be issued, renewed or reinstated after the superintendent has denied the issuance or renewal of a mortgage loan originator license pursuant to Iowa Code chapter 272D.

This rule is intended to implement Iowa Code chapters 272D and 17A.

[ARC 8239B, IAB 10/21/09, effective 11/25/09]

[Filed ARC 8239B (Notice ARC 8065B, IAB 8/26/09), IAB 10/21/09, effective 11/25/09]

[Filed ARC 3081C (Notice ARC 2991C, IAB 3/29/17), IAB 5/24/17, effective 7/1/17]

[Filed ARC 5091C (Notice ARC 4941C, IAB 2/26/20), IAB 7/15/20, effective 8/19/20]

## ECONOMIC DEVELOPMENT AUTHORITY[261]

[Created by 1986 Iowa Acts, chapter 1245]

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

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

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RURAL HOUSING NEEDS ASSESSMENT GRANT PROGRAM

**261—220.1(88GA,SF608) Purpose.** Pursuant to 2019 Iowa Acts, Senate File 608, the authority is directed to establish a rural housing needs assessment grant program to support the interpretation and implementation of hard data and housing-related information specific to the communities applying for financial assistance under this program. This grant program is intended to support the use of publicly available information and support community efforts to interpret hard data with supplemental information and to help communities implement changes to development codes, local ordinances, and housing incentives according to the community's needs.

[ARC 5092C, IAB 7/15/20, effective 8/19/20]

**261—220.2(88GA,SF608) Definitions.** For purposes of this chapter, unless the context otherwise requires:

“*Agreement*” means a contract for financial assistance under the program describing the terms on which financial assistance is to be provided.

“*Applicant*” means an Iowa city applying for financial assistance under the program. The terms “applicant” and “community” may be used interchangeably in this chapter.

“*Authority*” means the economic development authority created in Iowa Code section 15.105.

“*Director*” means the director of the authority.

“*Financial assistance*” means a grant made by the authority to an applicant approved for funding under the program.

“*Program*” means the procedures, agreement, terms, and assistance established and provided pursuant to this chapter.

[ARC 5092C, IAB 7/15/20, effective 8/19/20]

**261—220.3(88GA,SF608) Program description.**

**220.3(1) Amount, form, and timing of assistance.** This program provides financial assistance to applicants to support the interpretation and implementation of hard data and housing-related information specific to the communities applying for a grant under this program. The amount of assistance awarded will be determined by the authority and will be based on the total amount of funds available to the authority for the program and the costs specified in the application. Each award shall not be less than \$1,000.

**220.3(2) Application.**

*a. Forms.* All applications and other filings related to the program shall be on such forms and in accordance with such instructions as may be established by the authority. Information about the program, the application, and application instructions may be obtained by contacting the authority or by visiting the authority's website: Iowa Economic Development Authority, Community Development Division, 200 East Grand Avenue, Des Moines, Iowa 50309, (515)328-3000, [iowaeconomicdevelopment.com](http://iowaeconomicdevelopment.com).

*b. Application period.* Each fiscal year during which funding is available, applications for financial assistance will only be accepted during the established application period, or periods, as identified by the authority on its website.

*c. Complete application required.* An application shall not be considered submitted for review until the application is completed and all required supporting documentation and information are provided to the authority.

**220.3(3) Approval of assistance.** Authority staff will review applications for financial assistance under the program, and a grant committee will score and recommend applications to the director in accordance with subrule 220.4(2). A project that does not receive funding may reapply.

**220.3(4) Agreement required.** The authority shall enter into an agreement with each applicant for the receipt of a grant under this chapter. The agreement must state the terms on which financial assistance is to be provided. The authority may negotiate the terms of the agreement. The applicant shall execute the agreement before funds are disbursed under the program.

**220.3(5) *Form of financial assistance.*** The authority will provide financial assistance in the form of a grant to the applicant. The amount of the grant and any other terms shall be included in the agreement required pursuant to this chapter.

**220.3(6) *Use of funds.***

*a.* An applicant shall use funds only for reimbursement of the costs directly related to the project. The authority may require documentation or other information establishing the actual costs incurred for a project. Failure to use the funds for reimbursement of the costs directly related to a project shall be grounds for default under the agreement required pursuant to this chapter.

*b.* For purposes of this subrule, “costs directly related” does not include any expenses specified as ineligible in the agreement required pursuant to this chapter.

[ARC 5092C, IAB 7/15/20, effective 8/19/20]

**261—220.4(88GA,SF608) Program eligibility, application scoring, and funding decisions.**

**220.4(1) *Program eligibility.*** An applicant must meet the following eligibility criteria to qualify for financial assistance under this program:

- a.* The applicant must be an Iowa city.
- b.* The applicant must have a population of 20,000 or fewer and shall not be contiguous to a city with a population of 40,000 or greater.
- c.* An eligible applicant will be allowed to submit only one application per application period.
- d.* The applicant must demonstrate the capacity for administering a grant.
- e.* The applicant must demonstrate the feasibility of the project’s proposed scope and timeline with the funds requested.
- f.* The applicant must identify and describe other sources of funding for the proposed assessment and related activities.
- g.* The applicant must identify any partner organizations that will be utilized in interpreting and implementing the data collected through the assessment.
- h.* The applicant must provide a cash match of at least 50 cents for every dollar awarded as a grant under this program.

**220.4(2) *Application scoring criteria.*** All completed applications will be reviewed and scored. Each application will be scored using criteria set forth by the authority.

**220.4(3) *Funding decisions.*** Funding decisions will be made using the following process:

*a. Staff review.* Each application will be reviewed by staff for eligibility and completeness. Complete applications meeting all eligibility requirements will be sent to a grant committee.

*b. Grant committee review and recommendation.* Following staff review, a grant committee will review and score applications using the criteria set forth by the authority pursuant to subrule 220.4(2) and will make funding recommendations. The committee may utilize an outside technical panel if the committee determines additional expertise is necessary to review and score the application. The application and score will be referred to the director with a recommendation as to whether to fund the project and, if funding is recommended, a recommendation as to the amount of the grant.

*c. Director’s decision.* The director will make the final funding decision on each application, taking into consideration the amount of available funding and the grant committee’s recommendation. The director may approve, deny, or defer funding for any application.

*d. Notification.* Each applicant will be notified in writing of the funding decision within 15 days of the director’s decision.

[ARC 5092C, IAB 7/15/20, effective 8/19/20]

**261—220.5(88GA,SF608) Agreement required.**

**220.5(1)** Each applicant that is approved for financial assistance under the program shall enter into an agreement with the authority for the provision of such financial assistance. The agreement will establish the terms on which the financial assistance is to be provided and may include any other terms reasonably necessary for the efficient administration of the program.

**220.5(2)** The authority and the applicant may amend the agreement at any time upon the mutual agreement of both the authority and the applicant.

**220.5(3)** The agreement may require an applicant that has been approved for financial assistance under the program to submit information reasonably required by the authority to make reports to the authority's board, the governor's office, or the general assembly.

[ARC 5092C, IAB 7/15/20, effective 8/19/20]

These rules are intended to implement 2019 Iowa Acts, Senate File 608.

[Filed ARC 5092C (Notice ARC 4774C, IAB 11/20/19), IAB 7/15/20, effective 8/19/20]



CHAPTER 221  
RURAL INNOVATION GRANT PROGRAM

**261—221.1(88GA,SF608) Purpose.** Pursuant to 2019 Iowa Acts, Senate File 608, the authority is directed to establish a rural innovation grant program to support creative, nontraditional ideas that focus on current issues and challenges faced by rural communities associated with the themes of community investment, growth, and connection.  
[ARC 5093C, IAB 7/15/20, effective 8/19/20]

**261—221.2(88GA,SF608) Definitions.** For purposes of this chapter, unless the context otherwise requires:

“*Agreement*” means a contract for financial assistance under the program describing the terms on which financial assistance is to be provided.

“*Applicant*” means an Iowa business, college, university, city, county, council of governments organization established by Iowa Code chapter 28H, K-12 educational institution, or private nonprofit agency or foundation applying for financial assistance under the program. A business will be considered an Iowa business if the business is incorporated in the state of Iowa or authorized to do business in the state of Iowa.

“*Authority*” means the economic development authority created in Iowa Code section 15.105.

“*Director*” means the director of the authority.

“*Financial assistance*” means a grant made by the authority to an applicant approved for funding under the program.

“*Program*” means the procedures, agreement, terms, and assistance established and provided pursuant to this chapter.

“*Project*” means a program or activity undertaken in and for the benefit of a community in Iowa with a population of 20,000 or fewer and not contiguous to a city with a population of 40,000 or greater.  
[ARC 5093C, IAB 7/15/20, effective 8/19/20]

**261—221.3(88GA,SF608) Program description.**

**221.3(1) Amount, form, and timing of assistance.** The program provides financial assistance to applicants to support creative, nontraditional ideas that focus on current challenges facing rural communities. The amount of assistance awarded will be determined by the authority based on the total amount of funds available to the authority for the program and based on the project details. Each award shall not be less than \$1,000.

**221.3(2) Application.**

*a. Forms.* All applications and other filings related to the program shall be on such forms and in accordance with such instructions as may be established by the authority. Information about the program, the application, and application instructions may be obtained by contacting the authority or by visiting the authority’s website: Iowa Economic Development Authority, Community Development Division, 200 East Grand Avenue, Des Moines, Iowa 50309, (515)328-3000, [iowaeconomicdevelopment.com](http://iowaeconomicdevelopment.com).

*b. Application period.* Each fiscal year during which funding is available, applications for financial assistance will only be accepted during the established application period, or periods, as identified by the authority on its website.

*c. Frequency of application.* An eligible applicant may only be named as the primary entity on one application per application period. However, an applicant who has applied as the primary entity for an application may also be named as a partner on additional applications submitted.

*d. Complete application required.* An application shall not be considered submitted for review until the application is completed and all required supporting documentation and information are provided.

**221.3(3) Approval of assistance.** Authority staff will review applications for financial assistance under the program, and a grant committee will score and recommend applications to the director in accordance with subrule 221.4(2). A project that does not receive funding may reapply.

**221.3(4) Agreement required.** The authority shall enter into an agreement with each applicant for the receipt of a grant under this chapter. The agreement must state the terms on which the financial assistance is to be provided. The authority may negotiate the terms of the agreement. The applicant shall execute the agreement before funds are disbursed under the program.

**221.3(5) Form of financial assistance.** The authority will provide financial assistance in the form of a grant to the applicant. The amount of the grant and any other terms shall be included in the agreement required pursuant to this chapter.

**221.3(6) Use of funds.**

*a.* An applicant shall use funds only for reimbursement of the costs directly related to the project. The authority may require documentation or other information establishing the actual costs incurred for a project. Failure to use the funds for reimbursement of the costs directly related to a project shall be grounds for default under the agreement required pursuant to this chapter.

*b.* For purposes of this subrule, “costs directly related” does not include ineligible expenses such as international travel, domestic travel outside the state of Iowa, insurance, training or professional development courses, and any other expenses specified as ineligible in the agreement required pursuant to this chapter.

[ARC 5093C, IAB 7/15/20, effective 8/19/20]

**261—221.4(88GA,SF608) Program eligibility, application scoring, and funding decisions.**

**221.4(1) Program eligibility.** An applicant must meet the following eligibility criteria to qualify for financial assistance under this program:

- a.* The applicant must meet the definition of “applicant” in rule 261—221.2(88GA,SF608).
- b.* If the applicant is not a local government entity, the applicant must demonstrate support from the local government entity as evidenced by a letter of support.
- c.* The applicant must serve a city that has a population of 20,000 or fewer and that is not contiguous to a city with a population of 40,000 or greater.
- d.* The applicant must demonstrate the capacity for administering a grant.
- e.* The applicant must provide a cash match of at least 50 cents for every dollar awarded as a grant under this program.
- f.* The applicant must demonstrate that the project does not consist of ongoing expenses for existing projects or programs.

**221.4(2) Application scoring criteria.** All completed applications will be reviewed and scored. Each application will be scored using criteria set forth by the authority, which may include the following:

- a.* Alignment with program purpose. The application should demonstrate that the project aligns with the program purpose by developing a nontraditional, concrete solution to increase rural community vibrancy.
- b.* Solution-oriented. The application should demonstrate that the project will address rural challenges through exceptional and creative solutions.
- c.* Replicability. The application should demonstrate a clear opportunity for successful replication in rural communities across the state.
- d.* Roles defined. The application should identify and describe the roles of all partners involved in the project.
- e.* Project goals and timeline. The application should demonstrate clearly defined, measurable goals and a timeline for execution of the project.
- f.* Project budget and financing. The application should include a complete budget that provides clear justification for all costs. The application should also demonstrate secured financing and that the cash match requirement has been met.

**221.4(3) Funding decisions.** Funding decisions will be made using the following process:

- a.* Staff review. Each application will be reviewed by staff for eligibility and completeness. Complete applications meeting all eligibility requirements will be sent to a grant committee.
- b.* Grant committee review and recommendation. Following staff review, a grant committee will review and score applications using the criteria set forth by the authority pursuant to subrule 221.4(2)

and will make funding recommendations. The committee may utilize an outside technical panel if the committee determines additional expertise is necessary to review and score the application. The application and score will be referred to the director with a recommendation as to whether to fund the project and, if funding is recommended, a recommendation as to the amount of the grant.

*c.* Director's decision. The director will make the final funding decision on each application, taking into consideration the amount of available funding and the grant committee's recommendation. The director may approve, deny, or defer funding for any application.

*d.* Notification. Each applicant will be notified in writing of the funding decision within 15 days of the director's decision.

[ARC 5093C, IAB 7/15/20, effective 8/19/20]

**261—221.5(88GA,SF608) Agreement required.**

**221.5(1)** Each applicant that is approved for financial assistance under the program shall enter into an agreement with the authority for the provision of such financial assistance. The agreement will establish the terms on which financial assistance is to be provided and may include any other terms reasonably necessary for the efficient administration of the program.

**221.5(2)** The authority and the applicant may amend the agreement at any time upon the mutual agreement of both the authority and the applicant.

**221.5(3)** The agreement may require an applicant that has been approved for financial assistance under the program to submit information reasonably required by the authority to make reports to the authority's board, the governor's office, or the general assembly.

[ARC 5093C, IAB 7/15/20, effective 8/19/20]

These rules are intended to implement 2019 Iowa Acts, Senate File 608.

[Filed ARC 5093C (Notice ARC 4775C, IAB 11/20/19), IAB 7/15/20, effective 8/19/20]



CHAPTERS 222 to 310  
Reserved

PART XI  
*RENEWABLE FUEL INFRASTRUCTURE BOARD*



CHAPTER 1  
GENERAL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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CHAPTER 7  
RULES OF PRACTICE IN CONTESTED CASES

**561—7.1(17A,455A) Scope and applicability.** This chapter applies to contested case proceedings conducted by the department of natural resources, as defined in rule 561—7.2(17A,455A). Nothing in this chapter shall be construed to grant a right to a contested case proceeding when the Iowa Code does not specifically provide for a contested case, except that vendor appeal contested case proceedings may be conducted according to the provisions of 561—Chapter 8.

**561—7.2(17A,455A) Definitions.** When used in this chapter:

“*Agency*” means the commission or the director, as appropriate, having statutory jurisdiction over a particular contested case.

“*Commission*” means the natural resource commission or the environmental protection commission, as designated in Iowa Code chapter 455A as having appellate jurisdiction over a particular matter.

“*Contested case*” means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under Iowa Code section 17A.10A.

“*Department*” means the department of natural resources.

“*Director*” means the director of the department or an authorized representative.

“*Party*” means a person named and admitted as a party.

“*Presiding officer*” means an administrative law judge employed by the department of inspections and appeals or the agency, as provided in rule 561—7.7(17A,455A).

“*Proposed decision*” means the presiding officer’s recommended findings of fact, conclusions of law, decision, and order in a contested case in which the agency did not preside.

**561—7.3(17A,455A) Time requirements.**

**7.3(1) Computation.** In computing any period of time prescribed or allowed by this chapter or by an applicable statute, the day of the act, event or default from which the designated period begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday or legal holiday; otherwise Saturdays, Sundays and legal holidays shall be included in computing the period.

**7.3(2) Change.** Except for good cause stated in the record, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments before extending or shortening the time to take any action. When by these rules, or by notice given under them, an act is required or allowed to be done within a specified period of time, the presiding officer may, at any time, exercise discretion and may:

a. With or without motion or notice, for good cause, order the period extended if a request is made before the expiration of the period originally prescribed or as extended by a previous order, or

b. Upon motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect, except as provided in rule 561—7.13(17A,455A).

**7.3(3) Mail.** Any documents filed with the department by mail pursuant to these rules shall be deemed filed on the date of postmark.

**561—7.4(17A,455A) Appeal.**

**7.4(1) Time.**

a. Any order issued by the director of the department shall comply with the requirements established in Iowa Code section 455B.110 and may be appealed. The written notice of appeal of the order must be received by the director within 60 days of proper issuance of the order.

b. Any person appealing any other action by the department that is subject to appeal shall file a written notice of appeal within 60 days of the action, unless a shorter time period is specified by a particular statute or rule governing the subject matter of the action.

c. Unless otherwise stated in the order or notice provided, any written notice of appeal shall be filed with the director of the department, and a copy shall be sent to the legal services bureau chief.

**7.4(2) Content.** Each appeal shall contain:

a. The name and address of the appellant,

b. A description of the specific portion or portions of the agency action that are being appealed, and

c. A short and plain statement of the reasons the specific agency action is being appealed.  
[ARC 5095C, IAB 7/15/20, effective 8/19/20]

**561—7.5(17A,455A) Commencement of contested case—notice of hearing.**

**7.5(1) *Transmittal of appeal.*** Except as provided in subrule 7.5(2), the department shall transmit the appeal and request for a contested case proceeding to the department of inspections and appeals, or shall otherwise transmit the appeal to the presiding officer, when it determines that the appeal was timely filed and the requester is entitled to a contested case proceeding. When the appeal is from an administrative order, the order shall be transmitted with the appeal.

**7.5(2) *Petition from the department.*** After the department seeks to suspend or revoke a permit or license, institute licensee disciplinary proceedings, or otherwise commence a contested case, it shall file a petition as described in subrule 7.12(1).

**7.5(3) *Notice of hearing issued.*** A contested case commences when a notice of hearing is delivered to a party. A notice of hearing will be prepared and issued by the presiding officer when:

- a. The department receives a notice of appeal from a person other than the department, or
- b. A petition from the department is filed, as provided in subrule 7.5(2).

**7.5(4) *Delivery of notice of hearing.*** Delivery of the notice of hearing may occur by personal service or publication as provided in the Iowa Rules of Civil Procedure; by certified mail, return receipt requested; or as otherwise required by statute.

**7.5(5) *Contents of notice of hearing.*** The notice of hearing shall contain the following information:

- a. Identification of the parties, including the name, address and telephone number of the person who will act as advocate for the agency or the state and identification of all the parties' counsel where known;
- b. A statement of the time, place and nature of the hearing;
- c. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- d. A reference to the particular section of the statutes and rules involved;
- e. A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, then initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;
- f. Reference to the procedural rules governing informal settlement;
- g. Identification of the presiding officer, if known, or if not known, then a description of who will serve as presiding officer (e.g., agency head, members of multimembered agency head, or administrative law judge from the department of inspections and appeals);
- h. The time within which a petition or answer must be filed; and
- i. In those cases where the department files the petition pursuant to the provisions of subrule 7.5(2), the notice shall include a copy of the petition and a statement that, in the event an answer is not timely filed in accordance with these rules, judgment may be entered for the relief requested in the petition.

**7.5(6) *Time for response to notice of hearing.*** A person served with a notice of hearing shall file a petition or answer as required by subrule 7.12(1) or 7.12(2) within 20 days of receipt of the notice of hearing. Failure to file shall, upon motion, result in the presiding officer's entering a default against the person failing to file.

**561—7.6(17A,455A) Informal settlement negotiations.**

**7.6(1) *Informal settlement encouraged.*** Unless precluded by statute, informal settlement of controversies is encouraged when those controversies may culminate in contested case proceedings according to the provisions of Iowa Code chapter 17A and these rules. However, this rule shall not be construed to require any party other than the department to utilize informal procedures or to settle the controversy pursuant to informal procedures.

**7.6(2) Opportunity to pursue informal settlement.** A party to a contested case may request an opportunity to pursue informal settlement. The request shall be in writing and shall be delivered to the director with a copy to the Bureau Chief, Legal Services Bureau, Department of Natural Resources, 502 East 9th Street, Des Moines, Iowa 50319. Upon receipt of the request, further proceedings shall be delayed and no contested case hearing date shall be set, except in the case of emergency orders as provided in rule 561—7.18(17A,455A). Informal settlement negotiations may include verbal or written communications between or among parties. At the request of any party, the appeal shall be transmitted to the department of inspections and appeals. Settlement negotiations may continue following transmittal.

**561—7.7(17A,455A) Presiding officer.** Except as otherwise provided in this rule, an administrative law judge employed by the department of inspections and appeals shall preside at contested case hearings.

**7.7(1)** On motion of a party or on its own motion, the agency may order that the hearing be conducted before the agency or one or more members thereof. Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 10 days after service of a notice of hearing which identifies or describes the presiding officer as the agency head or members of the agency. The agency may deny the request only upon a finding that one or more of the following reasons apply:

*a.* Neither the agency nor any officer of the agency under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding (i.e., there is no conflict of interest because the agency would not act as both party and adjudicator in the contested case proceeding).

*b.* There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

*c.* The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

*d.* The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.

*e.* Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal.

*f.* The request was not timely filed.

*g.* The request is not consistent with a specified statute.

**7.7(2)** The agency shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed.

**7.7(3)** In a hazardous waste facility site licensing proceeding pursuant to Iowa Code section 455B.446, the hearing shall be before the environmental protection commission, with at least a quorum present, and with an administrative law judge present to assist the commission in ensuring that the requirements of Iowa Code chapter 17A are met.

**561—7.8(17A,455A) Disqualification of presiding officer.**

**7.8(1) Grounds for disqualification.**

*a.* A presiding officer shall not participate in the making of a proposed or final decision if the individual has investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, or another pending factually related controversy that may culminate in a case involving the same parties.

*b.* A presiding officer shall not be subject to the authority, direction or discretion of any person who has investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case or a pending factually related case or controversy involving the same parties.

*c.* A member of an agency having jurisdiction of a case shall not participate in the making of a final decision or order if the member is employed by, receives directly or indirectly personal income from, or has other substantial connection with a person subject to permit or enforcement action pending before the agency if that person would be substantially affected by the outcome of the case.

*d.* A presiding officer shall not be biased for or against any party.

**7.8(2) Affidavit asserting disqualification.**

*a.* A party may file an affidavit asserting disqualification of a presiding officer under this subrule at any time, except that an affidavit against a member of the commission on appeal or review of the proposed decision shall be filed prior to any hearing on appeal or review of the proposed decision. A determination as to whether that individual should participate shall be made by the agency before further participation by that individual.

*b.* Any party to a contested case proceeding may file an affidavit alleging a violation of subrule 7.8(1), and the agency shall determine the matter as part of the record in the contested case. When an agency makes such a determination with respect to any agency member, that determination shall be subject to de novo judicial review in any appeal of the contested case decision.

**561—7.9(17A,455A) Separation of functions and ex parte communications.**

**7.9(1) *Separation of functions.*** A staff attorney for the department shall perform the investigative and prosecuting functions for the department. Additional employees of the department may be designated by the director to perform these functions as necessary during the course of the case. No person performing these functions shall participate or advise in any decision arising out of that case except as witness or counsel in public proceedings.

**7.9(2) *Communications initiated by administrative law judge or agency member.***

*a.* Except as provided in paragraphs 7.9(2) “*b*” and “*c*,” or unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, the presiding officer and members of the agency having jurisdiction of the case shall not communicate, directly or indirectly, in connection with any issue of fact or law in that case with any person or party or representative of any party, or any other person with a direct or indirect interest in such case. Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate to the extent permitted or allowed by Iowa Code chapter 21, “Official Meetings Open to Public (Open Meetings).”

*b.* The presiding officer having jurisdiction of a case may communicate in connection with issues of fact or law in the case, upon notice and opportunity for all parties to participate. Where members of the agency are acting as the presiding officer(s), they may communicate in connection with issues of fact or law in the case, upon notice and opportunity for all parties to participate and to the extent permitted by Iowa Code chapter 21, “Official Meetings Open to Public (Open Meetings).” Notice of the time and place of the discussion and the issues of fact or law to be discussed shall be delivered by first-class mail to the parties. The discussion shall not extend to issues of fact or law not specified in the notice unless all parties participate in the discussion. The time of the discussion shall not be sooner than ten days after receipt of the notice.

*c.* The presiding officer or members of the agency having jurisdiction of the case may communicate with members of the department and may have the aid and advice of persons other than those with a personal interest in, or those engaged in personally investigating, prosecuting or advocating in, either the case under consideration or a pending factually related case involving the same parties, as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record. All employees of the department other than those performing the investigative and prosecuting functions in the case shall be available to advise the agency and presiding officer on any of those employees’ functions relating to the case and any appeal, provided communications with those employees meet the above specifications.

**7.9(3) *Communications initiated by parties.***

*a.* Unless required for the disposition of ex parte matters specifically authorized by statute, parties, including the department, or their representatives in a case, and persons with a direct or indirect interest in such a case, shall not communicate directly or indirectly in connection with any issue of fact or law in that case with the presiding officer or members of the agency having jurisdiction of the case, except upon notice and opportunity for all parties to participate, as provided in paragraph 7.9(2) “*b*.”

*b.* Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through

ex parte communication prior to such assignment, unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

c. The presiding officer or members of the agency shall refuse to discuss issues of fact or law with parties unless notice and opportunity for hearing has been given to all parties. A copy of any written ex parte communication or summary of oral ex parte communication received from a party, which directly or indirectly relates to any issue of fact or law in the case, shall be transmitted by the presiding officer to the other parties, and the presiding officer shall include the written communication or summary in the record.

d. Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines.

e. The presiding officer may require the recipient of a prohibited communication to submit the communication if written or a summary of the communication if oral for inclusion in the record of the proceedings.

f. The presiding officer may render a proposed or final decision imposing appropriate sanctions, including default, for violations of rule 561—7.9(17A,455A); make a decision against the offending party; or censure, suspend or revoke the privilege to practice before the agency.

#### **561—7.10(17A,455A) Consolidation and severance.**

**7.10(1) Consolidation.** The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where:

- a. The matters at issue involve common parties or common questions of fact or law;
- b. Consolidation would expedite and simplify consideration of the issues involved; and
- c. Consolidation would not adversely affect the rights of any of the parties to those proceedings.

**7.10(2) Severance.** The presiding officer may, for good cause shown, order any contested case proceeding or a portion thereof severed.

#### **561—7.11(17A,455A) Intervention.**

**7.11(1) Motion to intervene.** A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervener, 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 20 days of receipt of the motion to intervene unless the time period is extended or shortened by the presiding officer.

**7.11(2) When filed.** Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless the result would be inequitable or unjust, an intervener shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely interveners for continuances which would delay the proceeding will ordinarily be denied.

**7.11(3) Grounds for intervention.** The movant shall demonstrate that:

- a. Intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties;
- b. The movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and
- c. The interests of the movant are not adequately represented by existing parties.

**7.11(4) Effect of intervention.** If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceeding. A person granted leave to intervene

is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervener or otherwise condition the intervener’s participation in the proceeding.

**561—7.12(17A,455A) Pleadings.** Pleadings are the parties’ written statements of their respective claims or defenses. Pleadings do not include motions. The only allowable pleadings shall be the petition and the answer.

**7.12(1) Petition.**

*a. Who must file.* In all cases where an action of the department is appealed, the party aggrieved by the action shall file the petition. In those cases where the department seeks to suspend or revoke a license or permit, the department shall file the petition.

*b. Time for filing.* Any petition required to be filed by a party other than the department shall be filed within 20 days of receipt of the notice of hearing, unless the presiding officer allows additional time.

*c. Content.* The petition shall include all of the following items, in separately numbered paragraphs:

- (1) The basis for the agency’s jurisdiction over the matter;
- (2) A detailed discussion of the relief demanded and the supporting facts, including any supporting documentation relied upon for relief;
- (3) The particular provisions of the statutes and rules involved;
- (4) The name(s) of the party or parties on whose behalf the petition is filed; and
- (5) The name, address and telephone number of the petitioner and the petitioner’s attorney, if any.

**7.12(2) Answer.**

*a. Who must file.* In all cases where an action of the department is appealed, the department shall file the answer. In those cases where the department seeks to suspend or revoke a license or permit, the holder of the license or permit shall file the answer.

*b. Time for filing.* The answer shall be filed within 20 days of receipt of the petition.

*c. Content of answer.* The answer shall state on whose behalf it is filed and shall specifically admit or deny each allegation or paragraph of the petition. It shall state any facts deemed to show a defense; it may raise points of law appearing on the face of the petition; and it may contain as many defenses, legal or equitable, as the pleader may claim, which defenses may be inconsistent. The answer also shall state the name, address and telephone number of the person filing the answer and the person’s attorney, if any.

*d. Matters admitted and defenses waived.* Any allegation in the petition not denied in the answer shall be deemed admitted. Any defense not raised in the answer which could have been raised at that time on the basis of facts then known shall be deemed waived, except for subject matter jurisdiction.

*e. Failure to answer.* If the party required by this subrule to file an answer fails to file an answer within 20 days of receipt of the notice of hearing or petition, a default shall, upon motion, be entered by the presiding officer.

**7.12(3) Amendment.** Any notice of hearing, petition, or other charging document (document asserting a party’s position) may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

**7.12(4) Form.** All pleadings shall:

*a.* Contain a caption in the following form:

BEFORE THE IOWA DEPARTMENT OF NATURAL RESOURCES, DES MOINES, IOWA	
IN THE MATTER OF (NAME OF PARTY OTHER THAN THE DEPARTMENT)	(NAME OF PLEADING) NO. _____

*b.* Be legibly printed or typewritten on white paper. The impression shall be on one side of the paper only and the lines shall be double-spaced, except quotations of two or more lines, which shall be single-spaced and indented. Standard letter-size paper (8½" × 11") shall be used.

*c.* Be signed by the person filing the pleading.

**7.12(5) *Filing and service of pleadings.*** The original of all pleadings shall be filed with the presiding officer, and a copy of all pleadings shall be contemporaneously served upon the other parties. Filing and service of pleadings shall be by first-class mail or personal service. No return of service shall be required.

**7.12(6) *Docketing.*** Upon receipt of a pleading, the presiding officer shall docket the pleading in a docket kept for that purpose and shall assign a number to the case which shall be placed on all subsequent pleadings filed in the case.

**561—7.13(17A,455A) Defaults.**

**7.13(1) *Defaults defined.*** A party shall be in default when the party:

- a. Fails to file a pleading within the time prescribed for filing of the pleading;
- b. Withdraws a pleading without permission to replead;
- c. Fails to comply with any order of the presiding officer; or
- d. Fails to appear for a contested case proceeding after proper service of notice. If a party fails to appear and participate in a contested case proceeding after proper service of notice, then the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision on the merits in the absence of the party. If a decision on the merits is rendered, the sole remedy to set aside the judgment is a motion to vacate made consistent with the provisions of subrule 7.17(7).

**7.13(2) *How entered.*** If a party is in default, the presiding officer on motion of the adverse party shall enter the default against the party.

**7.13(3) *Contents of decision.*** A default decision shall contain the presiding officer's reasons for the decision. A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues. Unless the defaulting party has appeared before the presiding officer, the relief shall not exceed the demand for relief. A default decision may provide either that the default decision is to be stayed pending a timely motion to set aside or that the default decision is to take effect immediately.

**7.13(4) *Setting aside default.***

a. For good cause shown, the presiding officer may set aside a default or order thereon due to mistake, inadvertence, surprise, excusable neglect or unavoidable casualty. The exclusive remedy for an order based on default shall be a timely motion to set aside the default.

b. A motion to set aside a default must be filed promptly after the discovery of the grounds, but in no case shall the motion be filed more than ten days after receipt of the order. Default decisions shall become final agency action unless a motion to set aside the default is timely filed.

(1) Contents of motion. A motion to set aside a default shall state all facts relied upon by the moving party and shall establish that good cause existed for that party's default status. If the party is in default due to failure to appear for a contested case proceeding, then each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

(2) Further appeal stayed. The time for further appeal of a decision for which a motion to set aside the default has been filed is stayed pending a decision on the motion to set aside the default.

(3) When granted. The burden of proof to show good cause to set aside the default due to mistake, inadvertence, surprise, excusable neglect or unavoidable casualty is on the moving party. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's timely filed response to the motion.

**7.13(5) *Appeal of denial of motion to set aside default.***

a. If a timely motion to set aside a default is denied, it may be followed by an appeal to the agency having jurisdiction of the matter. The issues on appeal are limited to the grounds for denial of the motion to set aside default. Review is limited to whether the denial of the motion was arbitrary or capricious and whether there is a showing of good cause to set aside default due to mistake, inadvertence, surprise, excusable neglect or unavoidable casualty.

b. Upon a finding by the agency of good cause, the default shall be set aside. The hearing shall be completed, with proper notice, before appeal on the subject matter of the case shall be permitted.

**561—7.14(17A,455A) Prehearing procedures.**

**7.14(1) *No factual dispute contested cases.*** If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such dispute or fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, then as soon as practicable the parties shall jointly submit to the presiding officer a schedule detailing the method and timetable for submission of the record, briefs, and oral argument. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to paragraph 7.14(2) “e.”

**7.14(2) *Motions.***

a. *Form of motion.* No technical form for motions is required. However, prehearing motions must be in writing, must state the grounds for relief, and must state the relief sought.

b. *Time for response to motions.* Any party may file a written response to a motion within 10 days after service of the motion, unless the time period is extended or shortened by rules of the agency or the presiding officer. Failure to respond within the required time period may be deemed a waiver of objection to the granting of the motion.

c. *Oral argument on motions.* The presiding officer may schedule oral argument on any motion.

d. *Time for filing.* Motions pertaining to the hearing, except motions for summary judgment, must be filed and served prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by the presiding officer.

e. *Motions for summary judgment.* Motions for summary judgment shall comply with the requirements of Iowa Rules of Civil Procedure 1.981 through 1.983 and shall be subject to disposition according to the requirements of those rules to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases. Motions for summary judgment must be filed and served either at least 30 days prior to the scheduled hearing date, or during another time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 15 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to subrule 7.17(6) and appeal pursuant to subrule 7.17(5).

**7.14(3) *Discovery.***

a. *In general.* The discovery procedures available to parties in civil actions are available to parties to a contested case. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

b. *Motions relating to discovery.* Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 7.3(2). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

c. *Evidence obtained in discovery.* Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

d. *Prior statements or reports of witnesses.* When a party relies on a witness who has made prior statements or reports with respect to the subject matter of the witness’s testimony, the party shall, upon request, make the statements or reports available to a party for use on cross-examination unless the statement is confidential under 561—Chapter 2. If the statement or report is confidential under 561—Chapter 2, it may be made available, but it may be made subject to a protective order.

e. *Disclosure of evidence and witnesses.* At a prehearing conference or within some reasonable time set by the presiding officer prior to the hearing, each party shall make available, upon request, to the other parties the names of expert and other witnesses the party expects to call, together with a brief narrative summary of their expected testimony and a list of all documents and exhibits which the

party expects to introduce into evidence. Amendments and additions to these materials may be made no later than ten days prior to the date of the hearing. However, following a prehearing conference held in accordance with subrule 7.14(5), witnesses, documents or exhibits may be added only if the moving party can show that they were not readily identifiable with reasonable diligence prior to the prehearing conference and that the addition is necessary to prevent manifest injustice.

**7.14(4) Subpoenas.**

*a. Issuance.* A subpoena shall be issued to a party upon request to the presiding officer. Such a request may be oral or in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

*b. Service and expenses.* Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

*c. Motion to quash or modify.* The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

**7.14(5) Prehearing conference.**

*a. Matters considered.* After filing of the pleadings, the presiding officer may, and shall upon the request of one of the parties, direct the parties to appear at a specified time and place before the presiding officer for a prehearing conference to consider, so far as is applicable to the particular hearing:

(1) The possibility or desirability of waiving any provisions of this chapter by written stipulation representing an informed mutual consent;

(2) The necessity or desirability of amending pleadings;

(3) Agreeing to the admission of facts, documents or records not controverted, to avoid unnecessary introduction of evidence;

(4) Limiting the number of witnesses;

(5) Settling on facts of which the presiding officer is to be asked to take official notice;

(6) Stating and simplifying the factual and legal issues to be decided in the contested case;

(7) The procedure at the hearing;

(8) Rescheduling the time and place of the hearing set forth in the notice of hearing to a date that will allow the parties and witnesses to prepare for and participate in the hearing;

(9) Other matters which may aid, expedite or simplify the disposition of the proceeding.

*b. Stipulations.* Since stipulations are encouraged, it is expected and anticipated that the parties proceeding to a hearing will stipulate to evidence to the fullest extent to which complete or qualified agreement can be reached, including all material facts that are not or should not fairly be in dispute.

*c. Order or statement of agreement.* Any action taken at the prehearing conference shall be recorded in an appropriate order, unless the parties enter into a written stipulation as to the matters or agree to the statement thereof made on the record by the presiding officer.

*d. Objections.* When an order is issued at the termination of the prehearing conference, a reasonable time shall be allowed to the parties to present objections on the ground that the order does not fully or correctly embody the agreement at the conference. Thereafter, the terms of the order or modification shall determine the subsequent course of the proceedings relative to matters it includes, unless modified to prevent manifest injustice.

**7.14(6) Continuance.** Unless otherwise provided, applications for continuance shall be made to the presiding officer. Applications for continuance may be made orally or in writing, unless otherwise specified by the presiding officer. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible.

**7.14(7) Prehearing telephone proceedings.** The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate.

**7.14(8) Emergency orders.** Prehearing procedures for emergency orders are set forth in rule 561—7.18(17A,455A).

**561—7.15(17A,455A) Hearing procedures.**

**7.15(1) *Conduct of proceedings.*** A hearing shall be conducted by a presiding officer who shall:

- a. Open the record and receive appearances;
- b. Administer oaths;
- c. Enter the notice of hearing into the record;
- d. Receive testimony and exhibits presented by the parties;
- e. In the presiding officer's discretion, interrogate witnesses;
- f. Rule on objections and motions;
- g. Close the hearing;
- h. Issue an order containing findings of fact and conclusions of law.

Additionally, the presiding officer may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

**7.15(2) *Order of proceedings.*** The presiding officer shall conduct the hearing in the following manner:

- a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;
- b. The parties shall be given an opportunity to present opening statements;
- c. Parties shall present their cases in the sequence determined by the presiding officer;
- d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;
- e. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

**7.15(3) *Failure to appear.*** If a party fails to appear after proper service of notice of hearing, the presiding officer may adjourn, may enter a default against the absent party, or may proceed with the hearing and make a proposed decision in the absence of the party. Adjournment may be granted by the presiding officer on the presiding officer's own motion in the interest of justice.

**7.15(4) *Representation at hearings.*** Parties have the right to participate 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, at its own expense, be represented by an attorney.

**7.15(5) *Appearance pro se.*** If a party other than the department appears on the party's own behalf without counsel, the presiding officer shall explain to the party the rules of practice and procedure and generally conduct the hearing in a less formal manner than that used when a party is represented by counsel.

**7.15(6) *Attendance and participation of the public.*** Every hearing before an agency of the department or an administrative law judge shall be open to the public.

**7.15(7) *Introduction of evidence.*** Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

**7.15(8) *Fees.*** Each party bears all costs and expenses, including fees, for its own witnesses.

**7.15(9) *Objections.*** All objections shall be timely made and stated on the record.

**7.15(10) *Decorum.*** The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly. Contemptuous conduct is grounds for removal from the hearing.

**7.15(11) *Recording of hearing.***

a. ***Method of recording.*** Oral proceedings in connection with a hearing in a case shall be recorded either by mechanized means or by certified shorthand reporters. Parties requesting that the hearing be recorded by certified shorthand reporters shall bear the costs thereof.

b. *Transcription.* Oral proceedings in connection with a hearing in a case or any portion of the oral proceedings shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party.

c. *Tapes.* Copies of mechanized records of oral proceedings may be obtained from the presiding officer at the requester's expense.

**7.15(12) Telephone hearings.** Hearings may be conducted via telephone upon order of the presiding officer and with the consent of all parties.

**561—7.16(17A,455A) Evidence.**

**7.16(1) Ruling on evidence.** The presiding officer shall rule on admissibility of evidence.

**7.16(2) Admissibility in general.** Evidence that is relevant and material shall be admitted unless it is unduly repetitious. Relevant and material evidence may be admitted even though inadmissible in a jury trial.

**7.16(3) Issues restricted.** Evidence in the proceeding shall be confined to the issues that have been expressed in the appealed action, the appeal, the petition and the answer.

**7.16(4) Stipulation.** Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

**7.16(5) Privilege.** The rules of privilege recognized by law shall be given effect.

**7.16(6) Examination of exhibits.** The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties. All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

**7.16(7) Documentary evidence.** Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original, if available.

**7.16(8) Examination and cross-examination.** Witnesses at the hearing shall be examined orally, under oath. Witnesses at the hearing, or persons whose testimony has been submitted in written form, shall be subject to cross-examination by any parties as necessary for a full and true disclosure of facts. The presiding officer may limit the examination or cross-examination or both when necessary for orderly presentation of evidence.

**7.16(9) Sequestration of witnesses.** Witnesses may be sequestered during the hearing.

**7.16(10) Objections to evidence.** Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

**7.16(11) Offer of proof.** Whenever evidence is deemed inadmissible, the party offering the evidence may make an offer of proof which shall be noted in the record. The offer of proof for excluded oral testimony shall consist of a brief statement describing the nature of the evidence excluded. If the evidence excluded consists of a document or exhibits, it shall be inserted in the record. In the event that the agency decides that the presiding officer's ruling in excluding the evidence was erroneous and prejudicial, the hearing may be reopened to permit the taking of the evidence or, where appropriate, the agency may evaluate the evidence and proceed to a final decision.

**7.16(12) Official notice.** Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the agency. Parties shall be notified at the earliest practicable time, either before or during the hearing, or by reference in preliminary reports, preliminary decisions or otherwise, of the facts proposed to be noticed, and their source, including any staff memoranda or data. The parties may contest these facts before a decision is announced.

**7.16(13) Evaluation of evidence.** The agency's experience, technical competence, and specialized knowledge may be utilized in evaluating the evidence.

**561—7.17(17A,455A) Posthearing procedures and orders.**

**7.17(1) Filing by parties of briefs and proposed findings.** Within 30 days after the last evidence is taken, each party may file with the presiding officer proposed findings of fact, conclusions of law, a proposed order or decision complying with subrule 7.17(3), and a supporting brief. Each party may, within the same period, file with the presiding officer a brief concerning any relevant matters at the hearing. Copies of these documents shall be served upon each of the other parties. Within 20 days thereafter, each party may file a brief which takes specific exception to matters contained in an opposing brief or which contains alternative findings of fact, conclusions of law, and proposed order. The briefing schedule, including waiver of briefs, shall be determined at the close of the hearing.

**7.17(2) Final decision or order.**

*a.* When the agency presides at the reception of evidence, the decision of the agency is a final decision.

*b.* When the agency does not preside at the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision or order of the presiding officer becomes the final decision or order of the agency without further proceedings unless there is an appeal to, or review on motion of, the agency within the time provided in paragraph 7.17(5) "a."

**7.17(3) Decisions and orders.**

*a. By whom prepared.* The presiding officer who presided at the reception of evidence shall prepare a proposed or final decision or order in each case. Findings of fact shall be prepared by the officer presiding at the reception of the evidence in a case unless the presiding officer becomes unavailable. If the officer is unavailable, the findings of fact may be prepared by another person qualified to be a presiding officer who has read the record, unless demeanor of witnesses is a substantial factor. If demeanor is a substantial factor and the presiding officer is unavailable, the portions of the hearing involving demeanor shall be heard again or the case shall be dismissed.

*b. Content of decision or order.* The proposed or final decision or order shall:

(1) Be in writing or stated in the record.

(2) Include findings of fact. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of underlying facts supporting the findings. If a party submitted proposed findings of fact in accordance with subrule 7.17(1), the decision or order shall include a ruling upon each proposed finding. The decision shall include an explanation as to why the relevant evidence in the record supports each material finding of fact.

(3) Include conclusions of law, supported by cited authority or reasoned opinion.

*c. Delivery.* A copy of the proposed decision or order shall be delivered to the parties either by personal service or by certified mail, return receipt requested.

**7.17(4) The record.**

*a. Content of record.* The record shall include:

(1) All pleadings, motions and intermediate rulings;

(2) All evidence received or considered and all other submissions;

(3) A statement of all matters officially noticed;

(4) All questions and offers of proof and objections and rulings thereon;

(5) All proposed findings and exceptions;

(6) The decision, opinion or report by the presiding officer.

*b. By whom prepared.* The presiding officer shall prepare the record for each case.

**7.17(5) Appeal and review.** Any adversely affected party may appeal a proposed decision. Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the agency. The agency having jurisdiction shall review the proposed decision.

*a. Time allowed.*

(1) Appeal by party. An appeal by a party shall be made to the agency having jurisdiction of the proceeding and shall be taken within 30 days after receipt of the proposed decision or order.

(2) Agency decision to review. The agency may initiate review of a proposed decision on its own motion at the next meeting of the relevant commission after the appeal period in subparagraph

7.17(5) “a”(1) has concluded. The agency shall preside in the case of review of a proposed decision of the administrative law judge or appeal board on motion of the agency.

*b. Notice.* Appeal is taken and perfected by filing with the director a timely notice of appeal signed by the appellant or the appellant’s attorney. It shall specify the parties taking the appeal and the final decision or order or part thereof appealed. The notice shall set forth, with particularity, the conclusions of law or findings of fact appealed. It shall be the appellant’s responsibility to immediately serve the notice of appeal upon all parties of record other than the appellant.

*c. Request for transcript.* A request for a transcript or a copy of the electronic recording of a hearing on a matter appealed shall be made at the time of the filing of a notice of appeal.

*d. Scheduling.* The director shall issue a schedule for consideration of the appeal.

*e. Briefs and arguments.* Unless otherwise ordered, within 20 days of receipt of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs. The agency may resolve the appeal on the briefs or provide an opportunity for oral argument. The agency may shorten or extend the briefing period as appropriate.

*f. Agency review.* On appeal from or review of the proposed decision, the agency has all the power which it would have in initially making the final decision except as it may limit the issues. If the agency limits the issues, notice of this limitation shall be provided in writing to the parties. The agency may reverse or modify any finding of fact if a preponderance of the evidence will support a determination to reverse or modify such a finding, or the agency may reverse or modify any conclusion of law that the agency finds to be in error. When reviewing a proposed decision upon intra-agency appeal, the agency having jurisdiction shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers, unless otherwise provided by law.

**7.17(6) Applications for rehearing.**

*a. By whom filed.* Any party to a contested case may file an application for rehearing.

*b. Content of application.* The application shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought.

*c. Time of filing.* The application for rehearing shall be filed with the director within 20 days after the receipt of the final decision.

*d. Notice to other parties.* A copy of the application for rehearing shall be immediately mailed by the applicant to all parties of record not joining therein.

*e. Disposition.* Any application for rehearing shall be deemed denied unless the agency grants the application within 20 days after its filing.

**7.17(7) Motion to vacate.**

*a. By whom filed.* A motion to vacate may be filed by any party to a contested case.

*b. Form of motion.* A motion to vacate shall be in writing, shall state on whose behalf it is filed, and shall state the specific grounds for relief.

*c. Time of filing.* A motion to vacate must be filed within 30 days after receipt of the final decision.

*d. Notice to other parties.* A copy of the motion to vacate shall be immediately mailed by the moving party to all parties of record not joining therein.

*e. Granting of motion to vacate.* A motion to vacate may be granted if the presiding officer finds that any of the following grounds exist:

(1) The moving party experienced unavoidable casualty or misfortune preventing the moving party from participating during the contested case process; or

(2) The moving party has material evidence, newly discovered, which could not with reasonable diligence have been discovered and produced at the contested case hearing, and was not discovered within the time for making an application for rehearing under subrule 7.17(6).

**7.17(8) Stays of agency action.**

*a. When available.*

(1) Any person appealing an action of the department, other than an emergency action taken pursuant to the provisions of rule 561—7.18(17A,455A), may petition the presiding officer for a stay of

the department's action or a part thereof pending its review. The petition for stay shall state the reasons justifying a stay. Whenever possible, an appellant should seek a stay upon the filing of an appeal. An appellant who fails to promptly file for a stay does so at that party's risk.

(2) Any party adversely affected by a final decision or order, other than an emergency order which is governed by rule 561—7.18(17A,455A), may petition the agency for a stay of the final decision or order pending judicial review. The petition for stay shall be filed with the director within ten days of receipt of the final decision or order, and shall state the reasons justifying a stay.

*b. When granted.* The presiding officer or agency, as appropriate, shall consider the factors listed in Iowa Code section 17A.19(5)“c” when considering whether to grant a stay.

*c. Vacation.* A stay may be vacated by the issuing authority upon application of the department or any other party.

[ARC 5095C, IAB 7/15/20, effective 8/19/20]

### **561—7.18(17A,455A) Emergency proceedings.**

**7.18(1) Necessity of emergency action.** To the extent necessary to prevent or avoid immediate danger to the public health, safety or welfare, and consistent with the Iowa Constitution and other provisions of law, the agency may issue a written emergency administrative order in compliance with Iowa Code section 17A.18A to suspend a license in whole or in part, order cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the agency. Before issuing an emergency administrative order, the agency shall consider factors including, but not limited to, the following:

*a.* Whether there has been a sufficient factual investigation to ensure that the agency is proceeding on the basis of reliable information;

*b.* Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;

*c.* Whether the person required to comply with the emergency administrative order may continue to engage in alternative activities without posing immediate danger to public health, safety or welfare;

*d.* Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect public health, safety and welfare; and

*e.* Whether the specific action contemplated by the agency is necessary to avoid the immediate danger.

**7.18(2) Contents of order.** An emergency administrative order shall contain the following:

*a.* Findings of fact,

*b.* Conclusions of law, and

*c.* Policy reasons for the decision if it is an exercise of the agency's discretion.

**7.18(3) Delivery of emergency order.** To the degree practicable, the department shall select the procedure for delivery of an emergency administrative order that best ensures prompt, reliable delivery. An emergency order shall be delivered immediately to the person or persons who are required to comply with the order by utilizing one or more of the following procedures:

*a.* Personal delivery;

*b.* Certified mail, return receipt requested, to the last address on file with the agency;

*c.* Certified mail to the last address on file with the agency;

*d.* First-class mail to the last address on file with the agency; or

*e.* Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that agency orders be sent by fax and the person has provided a fax number for that purpose.

**7.18(4) Oral notice.** Unless the emergency order is delivered by personal delivery on the same day that the order is issued, the agency shall make reasonable immediate efforts to contact by telephone the person or persons who are required to comply with the order.

**7.18(5) Stay of order.** A person named in an emergency order may request a stay of the order by contacting the director by telephone or by delivery of a written request for stay to the department.

a. Upon receipt of a request for stay of an emergency order, the director shall schedule a hearing to take place within five days of receipt of the request or a longer time as agreed upon by the appellant. The person requesting the stay shall be notified of the time and place of the hearing.

b. The scope of the hearing on a request for stay shall be limited to, and the decision whether to grant a stay shall be based upon, the following factors:

- (1) Whether the requester will suffer irreparable injury if a stay is not granted,
- (2) Whether the requester is likely to prevail on the merits when the appeal of the order is heard,
- (3) Where lies the public interest, and
- (4) Whether the rule or statute upon which the order is founded is clearly invalid.

c. The hearing procedures in a decision to grant or deny a stay shall conform with rule 561—7.15(17A,455A).

**7.18(6) *Decision on merits.*** Where agreed to by the parties, the appeal of an emergency order may be decided based upon the evidence presented at the hearing for stay. Otherwise, a hearing on the merits shall proceed in accordance with this chapter.

**561—7.19(17A,455A) License suspension or revocation and other licensee disciplinary proceedings.**

**7.19(1) *Notice.*** Except as provided in rule 561—7.18(17A,455A) or in subrule 7.19(3), prior to the suspension or revocation of a license, the department shall give notice of its intent and shall provide an opportunity to be heard at an evidentiary hearing conducted according to the provisions of this chapter. However, according to the provisions of Iowa Code section 455B.219, an evidentiary hearing, and not just the opportunity therefor, must occur prior to revocation or suspension of a license for water treatment.

**7.19(2) *Content of notice.*** The notice shall inform the licensee of the department's intent to suspend or revoke the license and shall include:

- a. A description of the facts or conduct warranting the suspension or revocation;
- b. A statement of jurisdiction and the provision of law which warrants the intended action; and
- c. A statement that the licensee may show at a hearing that the licensee meets all lawful requirements to retain the license.

**7.19(3) *Delivery of notice.*** Delivery of notice in license revocation or suspension proceedings shall be by personal service or by restricted certified mail.

**7.19(4) *Time to request hearing.*** A person entitled to request a hearing according to the provisions of this rule may invoke the right within 30 days of receipt of the notice.

**7.19(5) *Setting hearing.*** Upon receipt of a request for a hearing or upon receipt of a notice of intent to revoke or suspend a license according to the provisions of Iowa Code section 455B.291, the presiding officer shall prepare a notice of hearing. The contested case hearing procedures in this chapter shall apply.

**7.19(6) *Filing of petition and answer.*** Within 10 days of receipt of the notice of hearing, the department shall file a petition which complies with the provisions of paragraph 7.12(1) "c." An answer complying with the provisions of paragraphs 7.12(2) "c" and "d" may be filed within 10 days of receipt of the petition.

**7.19(7) *Emergency suspension.*** A license may be suspended without the department providing to the licensee a prior opportunity to be heard if the agency having jurisdiction:

- a. Finds that the public health, safety or welfare imperatively requires emergency action,
- b. Incorporates a finding to that effect in its order,
- c. Complies with the provisions of rule 561—7.18(17A,455A), and
- d. Promptly thereafter provides the licensee an opportunity to be heard.

**7.19(8) *Effective date of suspension or revocation.*** Except as provided in Iowa Code section 455B.219 and subrule 7.19(7), suspension or revocation pursuant to this rule shall be effective upon:

- a. Failure of the licensee to request a hearing within 30 days of receipt of notice of intent to revoke or suspend; or
- b. Upon the issuance of an order suspending or revoking the license after hearing.

**561—7.20(17A,455A) Waiver of procedures.** Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. The waiver shall be by written stipulation representing an informed, mutual consent. However, the agency, in its discretion, may refuse to give effect to such waiver when it deems the waiver to be inconsistent with the public interest.

These rules are intended to implement Iowa Code section 17A.3 and chapter 455A.

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## MASSAGE THERAPISTS

CHAPTER 131	LICENSURE OF MASSAGE THERAPISTS
CHAPTER 132	MASSAGE THERAPY EDUCATION CURRICULUM
CHAPTER 133	CONTINUING EDUCATION FOR MASSAGE THERAPISTS
CHAPTER 134	DISCIPLINE FOR MASSAGE THERAPISTS

## CHAPTER 131

## LICENSURE OF MASSAGE THERAPISTS

[Prior to 6/26/02, see 645—130.4(152C) and 645—130.6(152C)]

**645—131.1(152C) 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 Iowa board of massage therapy.

“*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 massage therapist in the state of Iowa.

“*License expiration date*” means the fifteenth day of the anniversary month every two years.

“*Licensure by endorsement*” means the issuance of an Iowa license to practice massage therapy to an applicant who is or has been licensed in another state.

“*Massage therapy*” means performance for compensation of massage, myotherapy, massotherapy, bodywork, bodywork therapy, or therapeutic massage including hydrotherapy, superficial hot and cold applications, vibration and topical applications, or other therapy which involves manipulation of the muscle and connective tissue of the body, excluding osseous tissue, to treat the muscle tonus system for the purpose of enhancing health, providing muscle relaxation, increasing range of motion, reducing stress, relieving pain, or improving circulation.

“*Reactivate*” or “*reactivation*” means the process as outlined in rule 645—131.14(17A,147,272C) by which an inactive license is restored to active status.

“*Reciprocal license*” means the issuance of an Iowa license to practice massage therapy to an applicant who is currently licensed in another state that has a mutual agreement with the Iowa board of massage therapy to license persons who have the same or similar qualifications to those required in Iowa.

“*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.

**645—131.2(152C) Requirements for licensure.** All persons acting or serving in the capacity of a massage therapist shall hold a massage therapist’s license issued by the board. The following criteria shall apply to licensure:

**131.2(1)** The applicant shall complete a board-approved application packet. Application forms may be obtained from the board’s website ([www.idph.iowa.gov/licensure](http://www.idph.iowa.gov/licensure)) or directly from the board office. All applications shall be sent to Board of Massage Therapy, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

**131.2(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.

**131.2(3)** Each application shall be accompanied by the appropriate fees payable by check or money order to the Board of Massage Therapy. The fees are nonrefundable.

**131.2(4)** The applicant shall have official copies of academic transcripts sent directly from the board-approved school to the board of massage therapy. If a school has closed and is no longer operational, the board will accept an official transcript provided by the student.

**131.2(5)** The board may consider applications on a case-by-case basis which do not appear on their face to meet requirements if the requirements may be alternatively satisfied by demonstrated equivalency. The burden shall be on the applicant to document that the applicant's education and experience are substantially equivalent to the requirements which may be alternatively satisfied.

**131.2(6)** The applicant shall provide proof of passing any National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) examination or the Massage and Bodywork Licensing Examination (MBLEx). Proof of passing shall be sent directly from the testing service to the board of massage therapy. The applicant may submit a copy of the official notification from the testing service of the applicant's passing a board-approved examination. The copy of the applicant's official notification may be used by the board as proof of passage of a board-approved examination until the official proof of passage is received directly from the testing service. Submission of the applicant's copy of the official notification from the testing service shall not be allowed in lieu of the applicant's arranging for and the board's receiving the official record of proof of passage sent directly from the testing service. The examination score must be received from the testing service within 60 days of issuance of the license. The passing score on the written examination shall be the passing point criterion established by the national testing authority at the time the test was administered.

**131.2(7)** Licensees who were issued their licenses within six months prior to the renewal shall not be required to renew their licenses until the renewal month two years later.

**131.2(8)** Incomplete applications that have been on file in the board office for more than two years shall be considered invalid and shall be destroyed.

**131.2(9)** The applicant shall provide verification of license(s) from every state in which the applicant has been licensed as a massage therapist, sent directly from the state(s) to the board office.

[ARC 2778C, IAB 10/26/16, effective 11/30/16]

#### **645—131.3(152C) Educational qualifications.**

**131.3(1)** The applicant shall have graduated from a board-approved school that has a minimum of 500 hours of massage therapy education.

**131.3(2)** Foreign-trained massage therapists shall:

*a.* Provide an equivalency evaluation of their educational credentials by one of the following: International Educational Research Foundations, Inc., Credentials Evaluation Service, P.O. Box 3665, Culver City, CA 90231-3665, telephone (310)258-9451, website [www.ierf.org](http://www.ierf.org) or email at [info@ierf.org](mailto:info@ierf.org); International Credentialing Associates, Inc., 7245 Bryan Dairy Road, Bryan Dairy Business Park II, Largo, FL 33777, telephone (727)549-8555. The professional curriculum must be equivalent to that stated in these rules. A candidate shall bear the expense of the curriculum evaluation.

*b.* Provide a notarized copy of the certificate or diploma awarded to the applicant from a massage therapy program in the country in which the applicant was educated.

*c.* Receive a final determination from the board regarding the application for licensure.

**645—131.4(152C) Examination requirements.** The examination required by the board shall be the examination required pursuant to subrule 131.2(6).

**131.4(1)** The applicant shall apply to the National Certification Board for Therapeutic Massage and Bodywork.

**131.4(2)** Results of the examination are mailed directly from the examination service to the board of massage therapy after the applicant takes the examination.

[ARC 2778C, IAB 10/26/16, effective 11/30/16]

#### **645—131.5(152C) Temporary licensure of a licensee from another state.**

**131.5(1)** A temporary license may be issued to an applicant who holds a current license from another state with lower licensure requirements than those in Iowa. The applicant shall:

- a. Submit to the board a completed application;
- b. Pay the licensure fee;
- c. Provide proof of passing any NCBTMB examination or the Massage and Bodywork Licensing Examination (MBLEx), to be sent directly from the testing service to the board office, if applicable;
- d. Provide official verification of license(s) from every state in which the applicant has been licensed, to be sent directly from the state(s) to the board office;
- e. Submit a plan for meeting the board's requirements for licensure within one year of the issuance of the temporary permit. Such plan shall include proof of enrollment in a school of massage therapy whose curriculum has been approved by the board, the date of enrollment, and the expected date of graduation.

**131.5(2)** A temporary license shall be valid for a period of up to one year and shall not be renewed.

**131.5(3)** The applicant shall be issued a permanent license upon receipt of a transcript of completion from a board-approved school sent directly from the school, and proof of passing any board-approved examination sent directly from the testing service to the board office.

**131.5(4)** There is no additional fee for converting a temporary license to a permanent license.  
[ARC 2778C, IAB 10/26/16, effective 11/30/16]

**645—131.6(152C) Licensure by endorsement.** An applicant who has been a licensed massage therapist 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 sent directly from the school to the board;
5. Provides proof of passing any National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) examination. Proof of passing shall be sent directly from the testing service to the board of massage therapy. The passing score on the written examination shall be the passing point criterion established by the national testing authority at the time the test was administered; 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.

**645—131.7(152C) Licensure by reciprocal agreement.** Rescinded IAB 10/8/08, effective 11/12/08.

**645—131.8(152C) License renewal.**

**131.8(1)** The biennial license renewal period for a license to practice massage therapy shall begin on the sixteenth day of the anniversary month and end on the fifteenth day of the anniversary 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.

**131.8(2)** An individual who was issued a license within six months of the license renewal date will not be required to renew the license until the subsequent renewal date two years later. 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.

**131.8(3)** A licensee seeking renewal shall:

*a.* Meet the continuing education requirements of rule 645—133.2(152C) and the mandatory reporting requirements of subrule 131.8(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.

**131.8(4) Mandatory reporter training requirements.**

*a.* A licensee shall indicate on the renewal application completion of training in child abuse identification and reporting, as required by Iowa Code section 232.69(3) “*b*,” in the previous three years if:

(1) In the scope of professional practice or in the licensee’s professional employment responsibilities, the licensee examines, attends, counsels, or treats a child; and

(2) The licensee is employed in any of the following settings:

1. A residential care facility;
2. A nursing facility;
3. An intermediate care facility for persons with mental illness;
4. An intermediate care facility for persons with an intellectual disability;
5. A school;
6. A child care center, registered child development home, or head start program;
7. A substance abuse program or facility licensed by the Iowa department of public health;
8. The Glenwood state resource center, Woodward state resource center, mental health institute in Cherokee, mental health institute in Independence, state training school, or Iowa juvenile home;
9. A juvenile detention center or juvenile shelter care facility;
10. A foster care facility; or
11. A mental health center.

*b.* A licensee shall indicate on the renewal application completion of training in dependent adult abuse identification and reporting, as required by Iowa Code section 235B.16(5) “*b*,” in the previous three years if:

(1) In the course of employment, the licensee examines, attends, counsels, or treats a dependent adult; and

(2) The licensee is employed in any of the following settings:

1. A residential care facility;
2. A nursing facility;
3. An intermediate care facility for persons with mental illness;
4. An intermediate care facility for persons with an intellectual disability;
5. A hospital;
6. An elder group home, as defined in Iowa Code section 231B.1(3);
7. An assisted living program certified under Iowa Code section 231C.3;
8. An adult day services program, as defined in Iowa Code section 231D.1(1);
9. A community mental health center; or
10. A supported community living service, sheltered workshop, or work activity center.

*c.* The course(s) shall be the curriculum provided by the Iowa department of human services.

*d.* The licensee shall maintain written documentation for three years after mandatory training as identified in paragraphs 131.8(4) “*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; or

(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 rule 645—4.14(272C).

*f.* The board may select licensees for audit of compliance with the requirements in paragraphs 131.8(4) “a” to “e.”

**131.8(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.

**131.8(6)** A person licensed to practice as a massage therapist shall keep the license certificate displayed in a conspicuous public place at the primary site of practice.

**131.8(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 5.8(4). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within the grace period.

**131.8(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 massage therapist in Iowa until the license is reactivated. A licensee who practices as a massage therapist 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.

[ARC 9430B, IAB 3/23/11, effective 4/27/11; ARC 2778C, IAB 10/26/16, effective 11/30/16; ARC 5097C, IAB 7/15/20, effective 8/19/20]

**645—131.9(272C) Exemptions for inactive practitioners.** Rescinded IAB 7/6/05, effective 8/10/05.

**645—131.10(272C) Lapsed licenses.** Rescinded IAB 7/6/05, effective 8/10/05.

**645—131.11(147) Duplicate certificate or wallet card.** Rescinded IAB 10/8/08, effective 11/12/08.

**645—131.12(147) Reissued certificate or wallet card.** Rescinded IAB 10/8/08, effective 11/12/08.

**645—131.13(17A,147,272C) License denial.** Rescinded IAB 10/8/08, effective 11/12/08.

**645—131.14(17A,147,272C) License reactivation.** To apply for reactivation of an inactive license, a licensee shall:

**131.14(1)** Submit a reactivation application on a form provided by the board.

**131.14(2)** Pay the reactivation fee that is due as specified in 645—Chapter 5.

**131.14(3)** Provide verification of current competence to practice as a massage therapist 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; and

(2) Verification of completion of 16 hours of continuing education within two years of application.

*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; and
- (2) Verification of completion of 16 hours of continuing education within two years of application;

and

(3) Verification of passing one of the following examinations offered by the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) or the Federation of State Massage Therapy Boards (FSMTB) within two years immediately prior to the submission of the completed reactivation application. If the applicant can provide proof of two years of active practice in another state as a licensed massage therapist, the applicant is not required to provide proof of passing one of these examinations. The two years of active practice must have occurred immediately prior to the submission of the completed reactivation application.

1. The National Certification Examination for Therapeutic Massage (NCETM); or
2. The National Certification Examination for Therapeutic Massage and Bodywork (NCETMB);

or

3. The National Examination for States Licensing (NELS) option; or
4. The Massage and Bodywork Licensing Examination (MBLEx).

[ARC 2778C, IAB 10/26/16, effective 11/30/16]

**645—131.15(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 131.14(17A,147,272C) prior to practicing as a massage therapist in this state.

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

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[Filed 6/15/05, Notice 4/27/05—published 7/6/05, effective 8/10/05]<sup>◇</sup>

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[Filed 3/8/06, Notice 1/4/06—published 3/29/06, effective 5/3/06]<sup>◇</sup>

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[Filed ARC 5097C (Amended Notice ARC 4992C, IAB 3/25/20; Notice ARC 4726C, IAB 10/23/19), IAB 7/15/20, effective 8/19/20]

<sup>◇</sup> Two or more ARCs

CHAPTER 10  
CONTROLLED SUBSTANCES  
[Prior to 2/10/88, see Pharmacy Examiners[620] Ch 8]

**657—10.1(124) Purpose and scope.** This chapter establishes the minimum standards for any activity that involves controlled substances. Any person or business that manufactures; distributes; dispenses; prescribes; conducts instructional activities, research, or chemical analysis with; or imports or exports controlled substances listed in Schedules I through V of Iowa Code chapter 124 in or into the state of Iowa, or that proposes to engage in such activities, shall obtain and maintain a registration issued by the board unless exempt from registration pursuant to rule 657—10.8(124). A person or business required to be registered shall not engage in any activity for which registration is required until the application for registration is granted and the board has issued a certificate of registration to such person or business. A registration is not transferable to any person or business.

[ARC 3345C, IAB 9/27/17, effective 11/1/17]

**657—10.2(124) Definitions.** For the purposes of this chapter, the following definitions shall apply:

“*Authorized collection program*” means a program administered by a registrant that has modified its registration with DEA to collect controlled substances for the purpose of disposal. Federal regulations for such programs can be found at [www.deadiversion.usdoj.gov/drug\\_disposal/](http://www.deadiversion.usdoj.gov/drug_disposal/). Modification to the registrant’s Iowa controlled substances Act registration shall not be required.

“*Board*” means the Iowa board of pharmacy.

“*CSA*” means the Iowa uniform controlled substances Act.

“*CSA registration*” or “*registration*” means the registration issued by the board pursuant to the CSA that signifies the registrant’s authorization to engage in registered activities with controlled substances.

“*DEA*” means the United States Department of Justice, Drug Enforcement Administration.

“*Individual practitioner*” means a physician or surgeon (M.D.), osteopathic physician or surgeon (D.O.), dentist (D.D.S. or D.M.D.), doctor of veterinary medicine (D.V.M.), podiatric physician (D.P.M.), optometrist (O.D.), physician assistant (P.A.), resident physician, advanced registered nurse practitioner (A.R.N.P.), or prescribing psychologist.

“*Prescription monitoring program,*” “*PMP,*” or “*program*” means the program established pursuant to 657—Chapter 37 for the collection and maintenance of PMP information and for the provision of PMP information to authorized individuals.

[ARC 3345C, IAB 9/27/17, effective 11/1/17; ARC 4455C, IAB 5/22/19, effective 6/26/19]

**657—10.3(124) Who shall register.** The following persons or businesses shall register on forms provided by the board:

1. Manufacturers, distributors, importers, and exporters located in Iowa. Effective January 1, 2018, nonresident manufacturers, distributors, importers, and exporters distributing controlled substances into Iowa.

2. Reverse distributors located in Iowa. Effective January 1, 2018, nonresident reverse distributors engaging in the transfer of controlled substances with registrants located in Iowa.

3. Individual practitioners located in Iowa who are administering, dispensing, or prescribing controlled substances and individual practitioners located outside of Iowa who are dispensing or prescribing controlled substances via telehealth services to patients located in Iowa.

4. Pharmacies located in Iowa that are dispensing controlled substances. Effective January 1, 2018, pharmacies located outside of Iowa that are delivering controlled substances to patients located in Iowa.

5. Hospitals located in Iowa that are administering or dispensing controlled substances. Effective January 1, 2018, hospitals located outside of Iowa that are administering or dispensing controlled substances to patients located in Iowa.

6. Emergency medical service programs that are administering controlled substances to patients located in Iowa.

7. Care facilities that are located in Iowa.

8. Researchers, analytical laboratories, and teaching institutions that are located in Iowa.

9. Animal shelters and dog training facilities that are located in Iowa.

[ARC 3345C, IAB 9/27/17, effective 11/1/17]

**657—10.4** Reserved.

**657—10.5(124) Application.** Applicants for initial registration, registration renewal pursuant to rule 657—10.6(124), or modifications pursuant to rule 657—10.9(124) shall complete the appropriate application and shall include all required information and attachments.

**10.5(1) Signature requirements.** Each application, attachment, or other document filed as part of an application shall be signed by the applicant as follows:

*a.* If the applicant is an individual practitioner, the practitioner shall sign the application and supporting documents.

*b.* If the applicant is a business, the application and supporting documents shall be signed by the person ultimately responsible for the security and maintenance of controlled substances at the registered location. If the applicant is a pharmacy, the responsible individual shall be the pharmacist in charge, unless the applicant petitions the board for an alternate responsible individual.

**10.5(2) Prescribing practitioner PMP registration required.** A prescribing practitioner, except for a licensed veterinarian, shall register for the PMP at the same time the prescribing practitioner applies for registration.

**10.5(3) Registration fee exemptions.** The registration fee is waived for federal, state, and local law enforcement agencies and for the following federal and state institutions: hospitals, health care or teaching institutions, and analytical laboratories authorized to possess, manufacture, distribute, and dispense controlled substances in the course of official duties. In order to enable law enforcement agency laboratories to obtain and transfer controlled substances for use as standards in chemical analysis, such laboratories shall maintain a registration to conduct chemical analysis (analytical laboratory). Such laboratories shall be exempt from any registration fee. Exemption from payment of any fees as provided in this subrule does not relieve the entity of registration or of any other requirements or duties prescribed by law.

**10.5(4) Fees.** Each application shall include a nonrefundable registration fee, except as provided in subrule 10.5(3), of \$90 per biennium, which may be prorated to the expiration date of the applicant's underlying professional license or other board license if applicable, and may include a nonrefundable surcharge of not more than 25 percent of the registration fee for deposit into the program fund.

[ARC 3345C, IAB 9/27/17, effective 11/1/17; ARC 4455C, IAB 5/22/19, effective 6/26/19]

**657—10.6(124) Registration renewal.** Each registration shall be renewed prior to its expiration. A registrant may renew its registration up to 60 days prior to the registration expiration. The nonrefundable fee for registration renewal shall be \$90 per biennium and may include a nonrefundable surcharge of not more than 25 percent of the registration fee for deposit into the program fund.

**10.6(1) Delinquent registration grace period.** A registration renewal application that is submitted after expiration but within 30 days following expiration shall be considered delinquent and shall require the nonrefundable payment of the application fee plus a nonrefundable late penalty fee of \$90 and may require payment of a surcharge of not more than 25 percent of the applicable fees for deposit into the program fund. A registrant that submits a completed registration renewal application, nonrefundable late application fee, and nonrefundable late penalty fee within 30 days following expiration shall not be subject to disciplinary action for continuing to operate in the 30 days following expiration.

**10.6(2) Delinquent registration reactivation beyond grace period.** If a registration renewal application is not postmarked or hand-delivered to the board office within 30 days following the registration's expiration date, the registrant may not conduct operations that involve controlled substances until the registrant reactivates the registration. A registrant may apply for reactivation by submitting a registration application for reactivation. The nonrefundable fee for reactivation shall be \$360 and may include a nonrefundable surcharge of not more than 25 percent of the applicable fee for deposit into the program fund. As part of the reactivation application, the registrant shall disclose

the activities conducted with respect to controlled substances while the registration was expired. A registrant that continues to conduct activities with respect to controlled substances without an active registration may be subject to disciplinary sanctions.

[ARC 3345C, IAB 9/27/17, effective 11/1/17; ARC 4455C, IAB 5/22/19, effective 6/26/19]

**657—10.7(124) Separate registration for independent activities; coincident activities.** The following activities are deemed to be independent of each other and shall require separate registration. Any person or business engaged in more than one of these activities shall be required to separately register for each independent activity, provided, however, that registration in an independent activity shall authorize the registrant to engage in activities identified coincident with that independent activity.

**10.7(1) Manufacturing controlled substances.** A person or business registered to manufacture controlled substances in Schedules I through V may distribute any substances for which registration to manufacture was issued. A person or business registered to manufacture controlled substances in Schedules II through V may conduct chemical analysis and preclinical research, including quality control analysis, with any substances listed in those schedules for which the person or business is registered to manufacture.

**10.7(2) Distributing controlled substances.** This independent activity includes the delivery, other than by administering or dispensing, of controlled substances listed in Schedules I through V. No coincident activities are authorized.

**10.7(3) Dispensing, administering, prescribing, or instructing with controlled substances.** These independent activities include, but are not limited to, prescribing, administering, and dispensing by individual practitioners; dispensing by pharmacies and hospitals; and conducting instructional activities with controlled substances listed in Schedules II through V. A person or business registered for these independent activities may conduct research and instructional activities with those substances for which the person or business is registered to the extent authorized under state law. If an entity that engages in the distribution, administration, dispensing, or storing of controlled substances maintains multiple licenses, such as a hospital that has both inpatient and outpatient pharmacies, a separate registration shall be maintained for each license.

**10.7(4) Conducting research with controlled substances listed in Schedule I.** A researcher may manufacture or import the substances for which registration was issued provided that such manufacture or import is permitted under the federal DEA registration. A researcher may distribute the substances for which registration was issued to persons or businesses registered or authorized to conduct research with that class of substances or registered or authorized to conduct chemical analysis with controlled substances.

**10.7(5) Conducting research with controlled substances listed in Schedules II through V.** A researcher may conduct chemical analysis with controlled substances in those schedules for which registration was issued, may manufacture such substances if and to the extent such manufacture is permitted under the federal DEA registration, and may import such substances for research purposes. A researcher may distribute controlled substances in those schedules for which registration was issued to persons registered or authorized to conduct chemical analysis, instructional activities, or research with such substances, and to persons exempt from registration pursuant to Iowa Code section 124.302(3), and may conduct instructional activities with controlled substances.

**10.7(6) Conducting chemical analysis with controlled substances.** A person or business registered to conduct chemical analysis with controlled substances listed in Schedules I through V may manufacture and import controlled substances for analytical or instructional activities; may distribute such substances to persons registered or authorized to conduct chemical analysis, instructional activities, or research with such substances and to persons exempt from registration pursuant to Iowa Code section 124.302(3); may export such substances to persons in other countries performing chemical analysis or enforcing laws relating to controlled substances or drugs in those countries; and may conduct instructional activities with controlled substances.

**10.7(7) *Importing or exporting controlled substances.*** A person or business registered to import controlled substances listed in Schedules I through V may distribute any substances for which such registration was issued.

[ARC 3345C, IAB 9/27/17, effective 11/1/17]

**657—10.8(124) Separate registrations for separate locations; exemption from registration.** A separate registration is required for each principal place of business or professional practice location where controlled substances are manufactured, distributed, imported, exported, dispensed, stored, or collected for the purpose of disposal unless the person or business is exempt from registration pursuant to Iowa Code section 124.302(3), this rule, or federal regulations.

**10.8(1) *Warehouse.*** A warehouse where controlled substances are stored by or on behalf of a registered person or business shall be exempt from registration except as follows:

*a.* Registration of the warehouse shall be required if such controlled substances are distributed directly from that warehouse to registered locations other than the registered location from which the substances were delivered to the warehouse.

*b.* Registration of the warehouse shall be required if such controlled substances are distributed directly from that warehouse to persons exempt from registration pursuant to Iowa Code section 124.302(3).

**10.8(2) *Sales office.*** An office used by agents of a registrant where sales of controlled substances are solicited, made, or supervised shall be exempt from registration. Such office shall not contain controlled substances, except substances used for display purposes or for lawful distribution as samples, and shall not serve as a distribution point for filling sales orders.

**10.8(3) *Prescriber's office.*** An office used by a prescriber who is registered at another location and where controlled substances are prescribed but where no supplies of controlled substances are maintained shall be exempt from registration. However, a prescriber who practices at more than one office location where controlled substances are administered or otherwise dispensed as a regular part of the prescriber's practice shall register at each location wherein the prescriber maintains supplies of controlled substances.

**10.8(4) *Prescriber in hospital.*** A prescriber who is registered at another location and who treats patients and may order the administration of controlled substances in a hospital other than the prescriber's registered practice location shall not be required to obtain a separate registration at the location of the hospital.

**10.8(5) *Affiliated interns, residents, or foreign physicians.*** An individual practitioner who is an intern, resident, or foreign physician may dispense and prescribe controlled substances under the registration of the hospital or other institution which is registered and by whom the practitioner is employed provided that:

*a.* The hospital or other institution by which the individual practitioner is employed has determined that the practitioner is permitted to dispense or prescribe drugs by the appropriate licensing board.

*b.* Such individual practitioner is acting only in the scope of employment or practice in the hospital, institution, internship program, or residency program.

*c.* The hospital or other institution authorizes the intern, resident, or foreign physician to dispense or prescribe under the hospital registration and designates a specific internal code number, letters, or combination thereof which shall be appended to the institution's DEA registration number, preceded by a hyphen (e.g., AP1234567-10 or AP1234567-12).

*d.* The hospital or institution maintains a current list of internal code numbers identifying the corresponding individual practitioner, available for the purpose of verifying the authority of the prescribing individual practitioner.

[ARC 3345C, IAB 9/27/17, effective 11/1/17]

**657—10.9(124) Modification or termination of registration.** A registered individual or business shall apply to modify a current registration as provided by this rule. When submission of an application and fee is required, such application and fee shall be timely submitted pursuant to rule 657—10.5(124). A registrant which has timely submitted an application for registration modification and fee may continue to service Iowa patients while the registration modification is pending final approval. A registrant which

has submitted an application for registration modification after the required date of submission pursuant to this rule but within 30 days of the required date of submission shall be assessed a nonrefundable late penalty fee of \$90 in addition to the application fee. A registrant which has submitted an application for registration modification 31 days or later following the required date of submission pursuant to this rule shall be assessed a nonrefundable late penalty fee of \$360.

**10.9(1) *Change of substances authorized.*** Any registrant shall apply to modify the substances authorized by the registration by submitting a written request to the board. The request shall include the registrant's name, address, telephone number, registration number, and the substances or schedules to be added to or removed from the registration and shall be signed by the same person who signed the most recent application for registration or registration renewal. No fee shall be required for the modification.

**10.9(2) *Change of address of registered location.***

*a. Individual practitioner or researcher.* An entity registered as an individual practitioner or researcher shall apply to change the address of the registered location by submitting a written request to the board. The request shall include the registrant's name, current address, new address, telephone number, effective date of the address change, and registration number, and shall be signed by the registered individual practitioner or the same person who signed the most recent application for registration or registration renewal. No fee shall be required for the modification.

*b. Pharmacy, hospital, care facility, service program, manufacturer, distributor, analytical laboratory, teaching institution, importer, or exporter.* An entity registered as a pharmacy, hospital, care facility, service program, manufacturer, distributor, analytical laboratory, teaching institution, importer, or exporter shall apply to change the address of the registered location by submitting a completed application and fee for registration as provided in rule 657—10.5(124). The registrant shall submit a completed application and fee for change in registration simultaneously with any other required application pursuant to the board's rules for the applicable license or registration. In the absence of a simultaneous license or registration application, the registrant shall submit a completed application and fee for change in registration no less than 30 days in advance of the change of address.

**10.9(3) *Change of registrant's name.***

*a. Individual practitioner or researcher.* An entity registered as an individual practitioner or researcher shall apply to change the registrant's name by submitting a written request to the board. The request shall include the registrant's current name, new name, address, telephone number, effective date of the name change, and registration number, and shall be signed by the registered individual practitioner or the same person who signed the most recent application for registration or registration renewal. No fee shall be required for the modification. Change of name, as used in this paragraph, refers to a change of the legal name of the registrant and does not authorize the transfer of a registration issued to an individual practitioner or researcher to another individual practitioner or researcher.

*b. Pharmacy, hospital, care facility, service program, manufacturer, distributor, analytical laboratory, teaching institution, importer, or exporter.* An entity registered as a pharmacy, hospital, care facility, service program, manufacturer, distributor, analytical laboratory, teaching institution, importer, or exporter shall apply to change the registrant name by submitting a completed application and fee for registration as provided in rule 657—10.5(124). The registrant shall submit a completed application and fee for change in registration simultaneously with any other required application pursuant to the board's rules for the applicable license or registration. In the absence of a simultaneous license or registration application, the registrant shall submit a completed application and fee for change in registration no less than 30 days in advance of the change of registrant's name.

**10.9(4) *Change of ownership of registered business entity.*** A change of immediate ownership of a pharmacy, hospital, care facility, service program, manufacturer, distributor, analytical laboratory, teaching institution, importer, or exporter shall require the submission of a completed application and fee for registration as provided in rule 657—10.5(124). The registrant shall submit a completed application and fee for change in registration simultaneously with any other required application pursuant to the board's rules for the applicable license or registration. In the absence of a simultaneous license or registration application, the registrant shall submit a completed application and fee for change in registration no less than 30 days in advance of the change of registrant's ownership.

**10.9(5) *Change of responsible individual.*** Any registrant, except an individual practitioner or researcher or a pharmacy or hospital, shall apply to change the responsible individual authorized by the registration by submitting a written request to the board. The request shall include the registrant's name, address, and telephone number; the name and title of the current responsible individual and of the new responsible individual; the effective date of the change; and the registration number and shall be signed by the new responsible individual. No fee shall be required for the modification.

*a. Individual practitioners and researchers.* Responsibility under a registration issued to an individual practitioner or researcher shall remain with the named individual practitioner or researcher. The responsible individual under such registration may not be changed or transferred.

*b. Pharmacy, hospital, care facility, service program, manufacturer, distributor, analytical laboratory, teaching institution, importer, or exporter.* The registrant shall submit a completed application and fee for change in registration simultaneously with any other required application pursuant to the board's rules for the applicable license or registration. In the absence of a simultaneous license or registration application, the registrant shall submit a completed application and fee for change in registration within ten days of the identification of a new responsible individual.

**10.9(6) *Termination of registration.*** A registration issued to an individual or business shall terminate when the registered individual or business ceases legal existence, discontinues business, or discontinues professional practice. A registration issued to an individual shall terminate upon the death of the individual.

**10.9(7) *Cancellation of registration.*** An individual registrant who no longer needs a registration due to discontinuation of practice in Iowa or discontinuation of possessing, administering, dispensing, or prescribing controlled substances shall contact the board to request cancellation of the registration. An individual registrant may renew the registration upon a return to practice in Iowa or a return to possessing, administering, dispensing, or prescribing controlled substances by submitting an application and a nonrefundable fee for registration renewal of \$90 per biennium and a nonrefundable surcharge of not more than 25 percent of the registration fee for deposit into the program fund.

[ARC 3345C, IAB 9/27/17, effective 11/1/17; ARC 4455C, IAB 5/22/19, effective 6/26/19; ARC 5096C, IAB 7/15/20, effective 8/19/20]

#### **657—10.10(124) Denial of application or discipline of registration.**

**10.10(1) *Grounds for denial or discipline.*** The board may deny any application or discipline any registration upon a finding that the applicant or registrant:

- a.* Has furnished false or fraudulent material information.
- b.* Has had the applicant's or registrant's federal registration to manufacture, distribute, or dispense controlled substances suspended, revoked, or otherwise sanctioned.
- c.* Has been convicted of a public offense under any state or federal law relating to any controlled substance. For the purpose of this rule only, a conviction shall include a plea of guilty, a forfeiture of bail or collateral deposited to secure a defendant's appearance in court which forfeiture has not been vacated, or a finding of guilt in a criminal action even if entry of the judgment or sentence has been withheld and the applicant or registrant has been placed on probation.
- d.* Has committed such acts as would render the applicant's or registrant's registration under Iowa Code section 124.303 inconsistent with the public interest as determined by that section.
- e.* Has been subject to discipline by the applicant's or registrant's respective professional licensing board and the discipline revokes or suspends the applicant's or registrant's professional license or otherwise disciplines the applicant's or registrant's professional license in a way that restricts the applicant's or registrant's authority to handle or prescribe controlled substances. A copy of the record of licensee discipline or a copy of the licensee's surrender of the professional license shall be conclusive evidence.
- f.* Has failed to obtain or maintain active registration while engaged in activities which require registration.

**10.10(2) *Considerations in denial of application or discipline of registration.*** In determining the public interest, the board shall consider all the following factors:

- a. Maintenance of effective controls against diversion of controlled substances into channels other than legitimate medical, scientific, or industrial channels.
- b. Compliance with applicable state and local law.
- c. Any convictions of the applicant or registrant under any federal and state laws relating to any controlled substance.
- d. Past experience in the manufacture or distribution of controlled substances, and the existence in the applicant's or registrant's establishment of effective controls against diversion.
- e. Furnishing by the applicant of false or fraudulent material in any application filed under this chapter.
- f. Suspension or revocation of the applicant's or registrant's federal registration to manufacture, distribute, or dispense controlled substances as authorized by federal law.
- g. Any other factors relevant to and consistent with the public health and safety.
- h. Failure of a prescribing practitioner, except a licensed veterinarian, to register with the PMP pursuant to subrule 10.5(2).

**10.10(3) Proceedings.**

a. Prior to denying an application for registration, the board shall serve upon the applicant a notice of intent to deny the application. An applicant has 30 days to appeal a notice of intent to deny the application. If the notice of intent to deny the application is timely appealed, a notice of hearing shall be issued, initiating a contested case proceeding governed by 657—Chapter 35. Proceedings to refuse renewal of a registration shall not abate the existing registration, which shall remain in effect pending the outcome of the contested case proceeding. A registration may be disciplined in accordance with 657—Chapters 35 and 36.

b. Prior to sanctioning a registration, the board shall serve upon the registrant a notice of hearing and statement of charges. The notice shall contain a statement of the basis therefore and shall call upon the registrant to appear before an administrative law judge or the board at a time and place not less than 30 days after the date of service of the notice. The notice shall also contain a statement of the legal basis for such hearing and for the sanction of registration and a summary of the matters of fact and law asserted. Proceedings to refuse renewal of registration shall not abate the existing registration, which shall remain in effect pending the outcome of the administrative hearing unless the board issues an order of immediate suspension. A registration may be disciplined in accordance with 657—Chapters 35 and 36.

**10.10(4) Disposition of controlled substances.** Upon service of an order of the board suspending or revoking a registration, the registrant shall deliver all affected controlled substances in the registrant's possession to the board or authorized agent of the board. Upon receiving the affected controlled substances from the registrant, the board or its authorized agent shall place all such substances under seal and retain the sealed controlled substances pending final resolution of any appeals or until a court of competent jurisdiction directs otherwise. No disposition may be made of the substances under seal until the time for filing an appeal has elapsed or until all appeals have been concluded unless a court, upon application, orders the sale of perishable substances and the deposit of proceeds of the sale with the court. Upon a revocation order's becoming final, all such controlled substances may be forfeited to the state.

[ARC 4455C, IAB 5/22/19, effective 6/26/19]

**657—10.11(124,147,155A) Registration verification.** The board may require a nonrefundable fee of \$15 for completion of a request for written verification of any registration.

[ARC 4455C, IAB 5/22/19, effective 6/26/19]

**657—10.12(124) Inspection.** The board may inspect, or cause to be inspected, the establishment of an applicant or registrant. The board shall review the application for registration and other information regarding an applicant or registrant in order to determine whether the applicant or registrant has met the applicable standards of Iowa Code chapter 124 and these rules.

[ARC 3345C, IAB 9/27/17, effective 11/1/17]

**657—10.13(124) Security requirements.** All registrants shall provide effective controls and procedures to guard against theft and diversion of controlled substances. In order to determine whether a registrant has provided effective controls against diversion, the board shall use the security requirements set forth in these rules as standards for the physical security controls and operating procedures necessary to prevent diversion.

**10.13(1) Physical security.** Physical security controls shall be commensurate with the schedules and quantity of controlled substances in the possession of the registrant in normal business operation. A registrant shall periodically review and adjust security measures based on rescheduling of substances or changes in the quantity of substances in the possession of the registrant.

*a.* Controlled substances listed in Schedule I shall be stored in a securely locked, substantially constructed cabinet or safe.

*b.* Controlled substances listed in Schedules II through V may be stored in a securely locked, substantially constructed cabinet or safe. However, pharmacies and hospitals may disperse these substances throughout the stock of noncontrolled substances in a manner so as to obstruct the theft or diversion of the controlled substances.

*c.* Controlled substances collected via an authorized collection program for the purpose of disposal shall be stored pursuant to federal regulations, which can be found at [www.deadiversion.usdoj.gov/drug\\_disposal/](http://www.deadiversion.usdoj.gov/drug_disposal/).

**10.13(2) Factors in evaluating physical security systems.** In evaluating the overall security system of a registrant or applicant necessary to maintain effective controls against theft or diversion of controlled substances, the board may consider any of the following factors it deems relevant to the need for strict compliance with the requirements of this rule:

- a.* The type of activity conducted.
- b.* The type, form, and quantity of controlled substances handled.
- c.* The location of the premises and the relationship such location bears to security needs.
- d.* The type of building construction comprising the facility and the general characteristics of the building or buildings.
- e.* The type of vault, safe, and secure enclosures available.
- f.* The type of closures on vaults, safes, and secure enclosures.
- g.* The adequacy of key control systems or combination lock control systems.
- h.* The adequacy of electronic detection and alarm systems, if any.
- i.* The adequacy of supervision over employees having access to controlled substances, to storage areas, or to manufacturing areas.
- j.* The extent of unsupervised public access to the facility, including the presence and characteristics of perimeter fencing, if any.
- k.* The procedures for handling business guests, visitors, maintenance personnel, and nonemployee service personnel.
- l.* The availability of local police protection or of the registrant's or applicant's security personnel.
- m.* The adequacy of the registrant's or applicant's system for monitoring the receipt, manufacture, distribution, and disposition of controlled substances.

**10.13(3) Manufacturing and compounding storage areas.** Raw materials, bulk materials awaiting further processing, and finished products which are controlled substances listed in any schedule shall be stored pursuant to federal laws and regulations.

[ARC 3345C, IAB 9/27/17, effective 11/1/17]

**657—10.14(124) Accountability of controlled substances.** The registrant shall maintain ultimate accountability of controlled substances and records maintained at the registered location.

**10.14(1) Records.** Pursuant to rule 657—10.36(124,155A), records shall be available for inspection and copying by the board or its authorized agents for two years from the date of the record.

**10.14(2) Policies and procedures.** The registrant shall have policies and procedures that identify, at a minimum:

- a. Adequate storage for all controlled substances to ensure security and proper conditions with respect to temperature and humidity.
  - b. Access to controlled substances and records of controlled substances by employees of the registrant.
  - c. Proper disposition of controlled substances.
- [ARC 3345C, IAB 9/27/17, effective 11/1/17]

**657—10.15** Reserved.

**657—10.16(124) Receipt and disbursement of controlled substances.** Each transfer of a controlled substance between two registrants, to include a transfer between two separately registered locations regardless of any common ownership, except as provided in subrule 10.16(2), shall require a record of the transaction. Each registrant shall maintain a copy of the record for at least two years from the date of the transfer. Records of the transfer of Schedule II controlled substances shall be created and maintained separately from records of the transfer of Schedules III through V controlled substances pursuant to rule 657—10.36(124,155A). Upon receipt of a controlled substance, the individual responsible for receiving the controlled substance shall date and sign the receipt record.

**10.16(1) Record.** The record, unless otherwise provided in these rules or pursuant to federal law, shall include the following:

- a. The name of the substance.
- b. The strength and dosage form of the substance.
- c. The number of units or commercial containers acquired from other registrants, including the date of receipt and the name, address, and DEA registration number of the registrant from which the substances were acquired.
- d. The number of units or commercial containers distributed to other registrants, including the date of distribution and the name, address, and DEA registration number of the registrant to which the substances were distributed.
- e. The number of units or commercial containers disposed of in any other manner, including the date and manner of disposal and the name, address, and DEA registration number of the registrant to which the substances were distributed for disposal, if appropriate.

**10.16(2) Distribution of samples and other complimentary packages.** Complimentary packages and samples of controlled substances may be distributed to practitioners pursuant to federal and state law only if the person distributing the items provides to the practitioner a record that contains the information found in this subrule. The individual responsible for receiving the controlled substances shall sign and date the record.

- a. The name, address, and DEA registration number of the supplier.
- b. The name, address, and DEA registration number of the practitioner.
- c. The name, strength, dosage form, and quantity of the specific controlled substances delivered.
- d. The date of delivery.

[ARC 3345C, IAB 9/27/17, effective 11/1/17]

**657—10.17(124) Ordering or distributing Schedule I or II controlled substances.**

**10.17(1) DEA Form 222.** Except as otherwise provided by subrule 10.17(2) and under federal law, a DEA Form 222 is required for each distribution of a Schedule I or II controlled substance. An order form may be executed only on behalf of the registrant named on the order form and only if the registrant's DEA and Iowa registrations for the substances being purchased have not expired or been revoked or suspended by the issuing agency.

- a. Order forms shall be obtained, executed, and filled pursuant to DEA requirements. Each form shall be complete, legible, and properly prepared, executed, and endorsed and shall contain no alteration, erasure, or change of any kind.
- b. The purchaser shall submit Copy 1 and Copy 2 of the order form to the supplier.

c. The purchaser shall maintain Copy 3 of the order form in the files of the registrant. Upon receipt of the substances from the supplier, the purchaser shall record on Copy 3 of the order form the quantity of each substance received and the date of receipt.

d. The supplier shall record on Copy 1 and Copy 2 of the order form the quantity of each substance distributed to the purchaser and the date on which the shipment is made. The supplier shall maintain Copy 1 of the order form in the files of the supplier and shall forward Copy 2 of the order form to the DEA district office.

e. Order forms shall be maintained separately from all other records of the registrant.

f. Each unaccepted, defective, or otherwise void order form and any attached statement or other documents relating to any order form shall be maintained in the files of the registrant.

g. If the registration of any purchaser of Schedule I or II controlled substances is terminated for any reason, or if the name or address of the registrant as shown on the registration is changed, the registrant shall return all unused order forms to the DEA district office.

**10.17(2) *Electronic ordering system.*** A registrant authorized to order or distribute Schedule I or II controlled substances via the DEA Controlled Substances Ordering System (CSOS) shall comply with the requirements of the DEA relating to that system, including the maintenance and security of digital certificates, signatures, and passwords and all record-keeping and reporting requirements.

a. For an electronic order to be valid, the purchaser shall sign the electronic order with a digital signature issued to the purchaser or the purchaser's agent by the DEA.

b. An electronic order may include controlled substances that are not in Schedule I or II and may also include noncontrolled substances.

c. A purchaser shall submit an order to a specific wholesale distributor appropriately licensed to distribute in Iowa.

d. Prior to filling an order, a supplier shall verify the integrity of the signature and the order, verify that the digital certificate has not expired, check the validity of the certificate, and verify the registrant's authority to order the controlled substances.

e. The supplier shall retain an electronic record of every order, including a record of the number of commercial or bulk containers furnished for each item and the date on which the supplier shipped the containers to the purchaser. The shipping record shall be linked to the electronic record of the order. Unless otherwise provided under federal law, a supplier shall ship the controlled substances to the registered location associated with the digital certificate used to sign the order.

f. If an order cannot be filled for any reason, the supplier shall notify the purchaser and provide a statement as to the reason the order cannot be filled. When a purchaser receives such a statement from a supplier, the purchaser shall electronically link the statement of nonacceptance to the original electronic order. Neither a purchaser nor a supplier may correct a defective order; the purchaser must issue a new order for the order to be filled.

g. When a purchaser receives a shipment, the purchaser shall create a record of the quantity of each item received and the date received. The record shall be electronically linked to the original order and shall identify the individual reconciling the order. A purchaser shall, for each order filled, retain the original signed order and all linked records for that order for two years. The purchaser shall also retain all copies of each unfilled or defective order and each linked statement.

h. A supplier shall retain each original order filled and all linked records for two years. A supplier shall, for each electronic order filled, forward to the DEA within two business days either a copy of the electronic order or an electronic report of the order in a format specified by the DEA.

i. Records of CSOS electronic orders and all linked records shall be maintained by a supplier and a purchaser for two years following the date of shipment or receipt, respectively. Records may be maintained electronically or in hard-copy format. Records that are maintained electronically shall be readily retrievable from all other records, shall be easily readable or easily rendered into a readable format, shall be readily retrievable at the registered location, and shall be made available to the board, to the board's agents, or to the DEA upon request. Records maintained in hard-copy format shall be maintained in the same manner as DEA Form 222.

[ARC 3345C, IAB 9/27/17, effective 11/1/17]

**657—10.18(124) Schedule II perpetual inventory.** Each registrant located in Iowa that maintains Schedule II controlled substances shall maintain a perpetual inventory system for all Schedule II controlled substances pursuant to this rule. All records relating to the perpetual inventory shall be maintained at the registered location and shall be available for inspection and copying by the board or its representative for a period of two years from the date of the record.

**10.18(1) Record format.** The perpetual inventory record may be maintained in a manual or an electronic record format. Any electronic record shall provide for hard-copy printout of all transactions recorded in the perpetual inventory record for any specified period of time and shall state the current inventory quantities of each drug at the time the record is printed.

**10.18(2) Information included.** The perpetual inventory record shall identify all receipts for and disbursements of Schedule II controlled substances by drug or by national drug code (NDC) number. The record shall be updated to identify each receipt, disbursement, and current balance of each individual drug or NDC number. The record shall also include incident reports and reconciliation records pursuant to subrules 10.18(3) and 10.18(4).

**10.18(3) Changes to a record.** If a perpetual inventory record is able to be changed, the individual making a change to the record shall complete an incident report documenting the change. The incident report shall identify the specific information that was changed including the information before and after the change, shall identify the individual making the change, and shall include the date and the reason the record was changed. If the electronic record system documents within the perpetual inventory record all of the information that must be included in an incident report, a separate report is not required.

**10.18(4) Reconciliation.** The registrant shall be responsible for reconciling or ensuring the completion of a reconciliation of the perpetual inventory balance with the physical inventory of all Schedule II controlled substances at least annually. In case of any discrepancies between the physical inventory and the perpetual inventory, the registrant shall be notified immediately. The registrant shall determine the need for further investigation, and significant discrepancies shall be reported to the board pursuant to rule 657—10.21(124) and to the DEA pursuant to federal DEA regulations. Periodic reconciliation records shall be maintained and available for review and copying by the board or its authorized agents for a period of two years from the date of the record. The reconciliation process may be completed using either of the following procedures or a combination thereof:

*a.* The individual responsible for a disbursement verifies that the physical inventory matches the perpetual inventory following each disbursement and documents that reconciliation in the perpetual inventory record. If controlled substances are maintained on the patient care unit, the nurse or other responsible licensed health care provider verifies that the physical inventory matches the perpetual inventory following each dispensing and documents that reconciliation in the perpetual inventory record. If any Schedule II controlled substances in the registrant's current inventory have been disbursed and verified in this manner within the year and there are no discrepancies noted, no additional reconciliation action is required. A perpetual inventory record for a drug that has had no activity within the year shall be reconciled pursuant to paragraph 10.18(4) "b."

*b.* A physical count of each Schedule II controlled substance stocked by the registrant shall be completed at least once each year, and that count shall be reconciled with the perpetual inventory record balance. The physical count and reconciliation may be completed over a period of time not to exceed one year in a manner that ensures that the perpetual inventory and the physical inventory of Schedule II controlled substances are annually reconciled. The individual performing the reconciliation shall record the date, the time, the individual's initials or unique identification, and any discrepancies between the physical inventory and the perpetual inventory.

[ARC 3345C, IAB 9/27/17, effective 11/1/17]

**657—10.19(124) Physical count and record of inventory.** Each registrant shall be responsible for taking a complete and accurate inventory of all stocks of controlled substances under the control of the registrant pursuant to this rule. The responsible individual may delegate the actual taking of any inventory.

**10.19(1) *Record and procedure.*** Each inventory record, except the periodic count and reconciliation required pursuant to subrule 10.18(4), shall comply with the requirements of this subrule and shall be maintained for a minimum of two years from the date of the inventory.

*a.* Each inventory shall contain a complete and accurate record of all controlled substances on hand on the date and at the time the inventory is taken.

*b.* Each inventory shall be maintained in a handwritten, typewritten, or electronically printed form at the registered location. An inventory of Schedule II controlled substances shall be maintained separately from an inventory of all other controlled substances.

*c.* Controlled substances shall be deemed to be on hand if they are in the possession of or under the control of the registrant. Controlled substances on hand shall include prescriptions prepared for dispensing to a patient but not yet delivered to the patient, substances maintained in emergency medical service programs, care facility or hospice emergency supplies, outdated or adulterated substances pending destruction, and substances stored in a warehouse on behalf of the registrant. Controlled substances obtained through an authorized collection program for the purpose of disposal shall not be examined, inspected, counted, sorted, inventoried, or otherwise handled.

*d.* A separate inventory shall be made for each registered location and for each independent activity registered except as otherwise provided under federal law.

*e.* The inventory shall be taken either prior to opening or following the close of business on the inventory date, and the inventory record shall identify either opening or close of business.

*f.* The inventory record, unless otherwise provided under federal law, shall include the following information:

(1) The name of the substance.

(2) The strength and dosage form of the substance.

(3) The quantity of the substance.

(4) Information required of authorized collection programs pursuant to federal regulations for such collection programs.

(5) The signature of the person or persons responsible for taking the inventory.

(6) The date and time (opening or closing) of the inventory.

*g.* For all substances listed in Schedule I or II, the quantity shall be an exact count or measure of the substance.

*h.* For all substances listed in Schedule III, IV, or V, the quantity may be an estimated count or measure of the substance unless the container has been opened and originally held more than 100 dosage units. If the opened commercial container originally held more than 100 dosage units, an exact count of the contents shall be made. Products packaged in nonincremented containers may be estimated to the nearest one-fourth container.

**10.19(2) *Initial inventory.*** A new registrant shall take an inventory of all stocks of controlled substances on hand on the date the new registrant first engages in the manufacture, distribution, storage, or dispensing of controlled substances. If the registrant commences business or the registered activity with no controlled substances on hand, the initial inventory shall record that fact.

**10.19(3) *Annual inventory.*** After the initial inventory is taken, a registrant shall take a new inventory of all stocks of controlled substances on hand at least annually. The annual inventory may be taken on any date that is within 372 days after the date of the previous annual inventory.

**10.19(4) *Change of ownership, pharmacist in charge, or registered location.*** When there is a change in ownership, pharmacist in charge, or location for a registration, an inventory shall be taken of all controlled substances in compliance with subrule 10.19(1). The inventory shall be taken following the close of business the last day under terminating ownership, terminating pharmacist in charge's employment, or at the location being vacated. The inventory shall serve as the ending inventory for the terminating owner, terminating pharmacist in charge, or location being vacated, as well as a record of the beginning inventory for the new owner, pharmacist in charge, or location.

**10.19(5) *Discontinuing registered activity.*** A registrant shall take an inventory of controlled substances at the close of business the last day the registrant is engaged in registered activities. If the registrant is selling or transferring the remaining controlled substances to another registrant, this

inventory shall serve as the ending inventory for the registrant discontinuing business as well as a record of additional or starting inventory for the registrant to which the substances are transferred.

**10.19(6) *New or rescheduled controlled substances.*** On the effective date of the addition of a previously noncontrolled substance to any schedule of controlled substances or the rescheduling of a previously controlled substance to another schedule, any registrant who possesses the newly scheduled or rescheduled controlled substance shall take an inventory of all stocks of the substance on hand. That inventory record shall be maintained with the most recent controlled substances inventory record. Thereafter, the controlled substance shall be included in the appropriate schedule of each inventory made by the registrant.

[ARC 3345C, IAB 9/27/17, effective 11/1/17]

**657—10.20** Reserved.

**657—10.21(124) Report of theft or loss.** A registrant shall report to the board and the DEA any theft or significant loss of controlled substances when the loss is attributable to other than inadvertent error. Thefts or other losses of controlled substances shall be reported whether or not the controlled substances are subsequently recovered or the responsible parties are identified and action taken against them.

**10.21(1) *Immediate notice to board.*** If the theft was committed by a registrant or licensee of the board, or if there is reason to believe that the theft was committed by a registrant or licensee of the board, the registrant from which the controlled substances were stolen shall notify the board immediately upon discovery of the theft and shall identify to the board the registrant or licensee suspected of the theft.

**10.21(2) *Immediate notice to DEA.*** A registrant shall deliver notice, immediately upon discovery of a reportable theft or loss of controlled substances, to the Des Moines DEA field office via telephone, facsimile, or a brief written message explaining the circumstances of the theft or loss.

**10.21(3) *Timely report submission.*** Within 14 calendar days of discovery of the theft or loss, a registrant shall submit directly to the DEA a Form 106 or alternate required form via the DEA website at [www.deadiversion.usdoj.gov/](http://www.deadiversion.usdoj.gov/). A copy of the report that was completed and submitted to the DEA shall be immediately submitted to the board via facsimile, email attachment, or personal or commercial delivery.

**10.21(4) *Record maintained.*** A copy of the report shall be maintained in the registrant's files for a minimum of two years following the date the report was completed.

[ARC 3345C, IAB 9/27/17, effective 11/1/17]

**657—10.22(124) Disposal of registrant stock.** A registrant shall dispose of controlled substances pursuant to the requirements of this rule. Disposal records shall be maintained by the registrant for at least two years from the date of the record.

**10.22(1) *Registrant stock supply.*** Controlled substances shall be removed from current inventory and disposed of by one of the following procedures.

*a.* The registrant shall utilize the services of a DEA-registered and Iowa-licensed reverse distributor.

*b.* The board may authorize and instruct the registrant to dispose of the controlled substances in one of the following manners:

(1) By delivery to an agent of the board or to the board office.

(2) By destruction of the drugs in the presence of a board officer, agent, inspector, or other authorized individual.

(3) By such other means as the board may determine to ensure that drugs do not become available to unauthorized persons.

**10.22(2) *Waste resulting from administration or compounding.*** Except as otherwise specifically provided by federal or state law or rules of the board, the unused portion of a controlled substance resulting from administration to a patient from a registrant's stock or emergency supply or resulting from drug compounding operations may be destroyed or otherwise disposed of by the registrant, a certified paramedic, or a pharmacist in witness of one other licensed health care provider or a registered pharmacy technician 18 years of age or older pursuant to this subrule. A written record of the wastage

shall be made and maintained by the registrant for a minimum of two years following the wastage. The record shall include the following:

- a. The controlled substance wasted.
  - b. The date of wastage.
  - c. The quantity or estimated quantity of the wasted controlled substance.
  - d. The source of the controlled substance, including identification of the patient to whom the substance was administered or the drug compounding process utilizing the controlled substance.
  - e. The reason for the waste.
  - f. The signatures of both individuals involved in the wastage.
- [ARC 3345C, IAB 9/27/17, effective 11/1/17; ARC 4455C, IAB 5/22/19, effective 6/26/19]

**657—10.23(124) Disposal of previously dispensed controlled substances.**

**10.23(1) *Registrant disposal.*** Except as provided in 657—Chapter 23 for care facilities, a registrant may not dispose of previously dispensed controlled substances unless the registrant has modified its registration with DEA to administer an authorized collection program. A registrant shall not take possession of a previously dispensed controlled substance except for reuse for the same patient or except as provided in paragraph 10.23(2) “b.”

**10.23(2) *Hospice disposal.***

a. An employee of a hospice program, acting within the scope of employment, may dispose of a controlled substance of a hospice program patient following the death of the patient or the expiration of the controlled substance pursuant to and in compliance with federal law.

b. A physician of a hospice program patient may dispose of a patient’s controlled substance which is no longer required due to a change in the patient’s care plan.

[ARC 3345C, IAB 9/27/17, effective 11/1/17; ARC 4455C, IAB 5/22/19, effective 6/26/19]

**657—10.24(124,126,155A) Prescription requirements.** All prescriptions for controlled substances shall be dated as of, and signed on, the day issued. Controlled substances prescriptions shall be valid for six months following date of issue. A prescription for a Schedule III, IV, or V controlled substance may include authorization to refill the prescription no more than five times within the six months following date of issue. A prescription for a Schedule II controlled substance shall not be refilled. Beginning January 1, 2020, all prescriptions for controlled substances shall be transmitted electronically to a pharmacy pursuant to rule 657—21.6(124,155A), except as provided in rule 657—21.8(124,155A).

**10.24(1) *Form of prescription.*** All prescriptions for controlled substances shall bear the full name and address of the patient; the drug name, strength, dosage form, quantity prescribed, and directions for use; and the name, address, and DEA registration number of the prescriber. All prescriptions for controlled substances issued by individual prescribers shall include the legibly preprinted, typed, or hand-printed name of the prescriber as well as the prescriber’s written or electronic signature. A prescription for a controlled substance issued prior to January 1, 2020, or a prescription for a controlled substance that is exempt from the electronic prescription mandate pursuant to rule 657—21.8(124,155A), may be transmitted via nonelectronic methods as described in this rule.

a. When an oral order is not permitted, or when a prescriber is unable to prepare and transmit an electronic prescription in compliance with DEA requirements for electronic prescriptions, prescriptions shall be written with ink, indelible pencil, or typed print and shall be manually signed by the prescriber. If the prescriber utilizes an electronic prescription application that meets DEA requirements for electronic prescriptions, the prescriber may electronically prepare and transmit a prescription for a controlled substance to a pharmacy that utilizes a pharmacy prescription application that meets DEA requirements for electronic prescriptions.

b. A prescriber’s agent may prepare a prescription for the review, authorization, and manual or electronic signature of the prescriber, but the prescribing practitioner is responsible for the accuracy, completeness, and validity of the prescription.

c. An electronic prescription for a controlled substance shall not be transmitted to a pharmacy except by the prescriber in compliance with DEA regulations.

*d.* A prescriber shall securely maintain the unique authentication credentials issued to the prescriber for utilization of the electronic prescription application and authentication of the prescriber's electronic signature. Unique authentication credentials issued to any individual shall not be shared with or disclosed to any other prescriber, agent, or individual.

*e.* A corresponding liability rests upon the pharmacist who fills a prescription not prepared in the form prescribed by this rule.

**10.24(2)** *Verification by pharmacist.*

*a.* The pharmacist shall verify the authenticity of the prescription with the individual prescriber or the prescriber's agent in each case when a written or oral prescription for a Schedule II controlled substance is presented for filling and neither the prescribing individual practitioner issuing the prescription nor the patient or patient's agent is known to the pharmacist. The pharmacist shall verify the authenticity of the prescription with the individual prescriber or the prescriber's agent in any case when the pharmacist questions the validity of, including the legitimate medical purpose for, the prescription. The pharmacist is required to record the manner by which the prescription was verified and include the pharmacist's name or unique identifier.

*b.* A pharmacist who receives a written, oral, or facsimile prescription shall not be required to verify that the prescription is subject to an exception to the electronic prescription mandate provided in rule 657—21.8(124,155A) and may dispense a prescription drug pursuant to an otherwise valid written, oral, or facsimile prescription pursuant to this rule.

**10.24(3)** *Intern, resident, foreign physician.* An intern, resident, or foreign physician exempt from registration pursuant to subrule 10.8(5) shall include on all prescriptions issued the hospital's registration number and the special internal code number assigned by the hospital in lieu of the prescriber's registration number required by this rule. Each prescription shall include the stamped or legibly printed name of the prescribing intern, resident, or foreign physician as well as the prescriber's signature.

**10.24(4)** *Valid prescriber/patient relationship.* Once the prescriber/patient relationship is broken and the prescriber is no longer available to treat the patient or to oversee the patient's use of the controlled substance, a prescription shall lose its validity. A prescriber/patient relationship shall be deemed broken when the prescriber dies, retires, or moves out of the local service area or when the prescriber's authority to prescribe is suspended, revoked, or otherwise modified to exclude authority for the schedule in which the prescribed substance is listed. The pharmacist, upon becoming aware of the situation, shall cancel the prescription and any remaining refills. However, the pharmacist shall exercise prudent judgment based upon individual circumstances to ensure that the patient is able to obtain a sufficient amount of the drug to continue treatment until the patient can reasonably obtain the service of another prescriber and a new prescription can be issued.

**10.24(5)** *Facsimile transmission of a controlled substance prescription.* With the exception of an authorization for emergency dispensing as provided in rule 657—10.26(124), a prescription for a controlled substance in Schedules II, III, IV and V may be transmitted via facsimile from a prescriber to a pharmacy only as provided in rule 657—21.7(124,155A).

[ARC 3345C, IAB 9/27/17, effective 11/1/17; ARC 4580C, IAB 7/31/19, effective 9/4/19]

**657—10.25(124) Dispensing records.** Each registrant shall create a record of controlled substances dispensed to a patient or research subject.

**10.25(1)** *Record maintained and available.* The record shall be maintained for two years from the date of dispensing and be available for inspection and copying by the board or its authorized agents.

**10.25(2)** *Record contents.* The record shall include the following information:

- a.* The name and address of the person to whom dispensed.
- b.* The date of dispensing.
- c.* The name or NDC number, strength, dosage form, and quantity of the substance dispensed.
- d.* The name of the prescriber, unless dispensed by the prescriber.
- e.* The unique identification of each technician, pharmacist, pharmacist-intern, prescriber, or prescriber's agent involved in dispensing.

*f.* The serial number or unique identification number of the prescription.  
[ARC 3345C, IAB 9/27/17, effective 11/1/17]

**657—10.26(124) Schedule II emergency prescriptions.**

**10.26(1) *Emergency situation defined.*** For the purposes of authorizing an oral or facsimile transmission of a prescription for a Schedule II controlled substance listed in Iowa Code section 124.206, the term “emergency situation” means those situations in which the prescribing practitioner determines that all of the following apply:

*a.* Immediate administration of the controlled substance is necessary for proper treatment of the intended ultimate user.

*b.* No appropriate alternative treatment is available, including administration of a drug that is not a Schedule II controlled substance.

*c.* It is not reasonably possible for the prescribing practitioner to provide a manually signed written prescription to be presented to the pharmacy before the pharmacy dispenses the controlled substance, or the prescribing practitioner is unable to provide a DEA-compliant electronic prescription to the pharmacy before the pharmacy dispenses the controlled substance.

**10.26(2) *Requirements of emergency prescription.*** In the case of an emergency situation as defined in subrule 10.26(1), a pharmacist may dispense a controlled substance listed in Schedule II pursuant to a facsimile transmission or upon receiving oral authorization of a prescribing individual practitioner provided that:

*a.* The quantity prescribed and dispensed is limited to the smallest available quantity to meet the needs of the patient during the emergency period. Dispensing beyond the emergency period requires a written prescription manually signed by the prescribing individual practitioner or a DEA-compliant electronic prescription.

*b.* If the pharmacist does not know the prescribing individual practitioner, the pharmacist shall make a reasonable effort to determine that the authorization came from an authorized prescriber. The pharmacist shall record the manner by which the authorization was verified and include the pharmacist’s name or unique identification.

*c.* The pharmacist shall prepare a temporary written record of the emergency prescription. The temporary written record shall consist of a hard copy of the facsimile transmission or a written record of the oral transmission authorizing the emergency dispensing. A written record is not required to consist of a handwritten record and may be a printed facsimile or a print of a computer-generated record of the prescription if the printed record includes all of the required elements for the prescription. If the emergency prescription is transmitted by the practitioner’s agent, the record shall include the first and last names and title of the individual who transmitted the prescription.

*d.* If the emergency prescription is transmitted via facsimile transmission, the means of transmission shall not obscure or render the prescription information illegible due to security features of the paper utilized by the prescriber to prepare the written prescription, and the hard-copy record of the facsimile transmission shall not be obscured or rendered illegible due to such security features.

*e.* Within seven days after authorizing an emergency prescription, the prescribing individual practitioner shall cause a written prescription for the emergency quantity prescribed to be delivered to the dispensing pharmacist. In addition to conforming to the requirements of rule 657—10.24(124,126,155A), the prescription shall have written on its face “Authorization for Emergency Dispensing” and the date of the emergency order. The written prescription may be delivered to the pharmacist in person or by mail, but if delivered by mail it must be postmarked within the seven-day period. The written prescription shall be attached to and maintained with the temporary written record prepared pursuant to paragraph 10.26(2)“c.”

*f.* The pharmacist shall notify the board and the DEA if the prescribing individual fails to deliver a written prescription. Failure of the pharmacist to so notify the board and the DEA, or failure of the prescribing individual to deliver the required written prescription as herein required, shall void the authority conferred by this subrule.

g. Pursuant to federal law and subrule 10.27(3), the pharmacist may fill a partial quantity of an emergency prescription so long as the total quantity dispensed in all partial fillings does not exceed the total quantity prescribed and that the remaining portions are filled no later than 72 hours after the prescription is issued.

[ARC 3345C, IAB 9/27/17, effective 11/1/17]

**657—10.27(124) Schedule II prescriptions—partial filling.** The partial filling of a prescription for a controlled substance listed in Schedule II is permitted as provided in this rule and federal regulations.

**10.27(1) *Insufficient supply on hand.*** If the pharmacist is unable to supply the full quantity authorized in a prescription and makes a notation of the quantity supplied on the prescription record, a partial fill of the prescription is permitted. The remaining portion of the prescription must be filled within 72 hours of the first partial filling. If the remaining portion is not or cannot be filled within the 72-hour period, the pharmacist shall so notify the prescriber. No further quantity may be supplied beyond 72 hours without a new prescription.

**10.27(2) *Long-term care or terminally ill patient.*** A prescription for a Schedule II controlled substance written for a patient in a long-term care facility (LTCF) or for a patient with a medical diagnosis documenting a terminal illness may be filled in partial quantities to include individual dosage units as provided by this subrule.

a. If there is any question whether a patient may be classified as having a terminal illness, the pharmacist shall contact the practitioner prior to partially filling the prescription. Both the pharmacist and the practitioner have a corresponding responsibility to ensure that the controlled substance is for a terminally ill patient.

b. The pharmacist shall record on the prescription whether the patient is “terminally ill” or an “LTCF patient.” For each partial filling, the dispensing pharmacist shall record on the back of the prescription or on another appropriate uniformly maintained and readily retrievable record, the date of the partial filling, the quantity dispensed, the remaining quantity authorized to be dispensed, and the identification of the dispensing pharmacist.

c. The total quantity of Schedule II controlled substances dispensed in all partial fillings shall not exceed the total quantity prescribed. Schedule II prescriptions for patients in an LTCF or for patients with a medical diagnosis documenting a terminal illness shall be valid for a period not to exceed 60 days from the issue date unless sooner terminated by the discontinuance of the drug.

d. Information pertaining to current Schedule II prescriptions for patients in an LTCF or for patients with a medical diagnosis documenting a terminal illness may be maintained in a computerized system pursuant to rule 657—21.5(124,155A).

**10.27(3) *Patient or prescriber request.*** At the request of the patient or prescriber, a prescription for a Schedule II controlled substance may be partially filled pursuant to this subrule and federal law. The total quantity dispensed in all partial fillings shall not exceed the total quantity prescribed. Except as provided in paragraph 10.26(2) “g,” the remaining portion of a prescription partially filled pursuant to this subrule may be filled within 30 days of the date the prescription was issued.

[ARC 3345C, IAB 9/27/17, effective 11/1/17; ARC 4455C, IAB 5/22/19, effective 6/26/19]

**657—10.28(124) Schedule II medication order.** Schedule II controlled substances may be administered or dispensed to institutionalized patients pursuant to a medication order as provided in 657—subrule 7.13(1) or rule 657—23.9(124,155A), as applicable.

[ARC 3345C, IAB 9/27/17, effective 11/1/17; ARC 3859C, IAB 6/20/18, effective 7/25/18]

**657—10.29(124) Schedule II—issuing multiple prescriptions.** An individual prescriber may issue multiple prescriptions authorizing the patient to receive a total of up to a 90-day supply of a Schedule II controlled substance pursuant to the provisions and limitations of this rule.

**10.29(1) *Refills prohibited.*** The issuance of refills for a Schedule II controlled substance is prohibited. The use of multiple prescriptions for the dispensing of Schedule II controlled substances, pursuant to this rule, ensures that the prescriptions are treated as separate dispensing authorizations and not as refills of an original prescription.

**10.29(2) *Legitimate medical purpose.*** Each separate prescription issued pursuant to this rule shall be issued for a legitimate medical purpose by an individual prescriber acting in the usual course of the prescriber's professional practice.

**10.29(3) *Dates and instructions.*** Each prescription issued pursuant to this rule shall be dated as of and manually or electronically signed by the prescriber on the day the prescription is issued. Each separate prescription, other than the first prescription if that prescription is intended to be filled immediately, shall contain written instructions indicating the earliest date on which a pharmacist may fill each prescription.

**10.29(4) *Authorized fill date unalterable.*** Regardless of the provisions of rule 657—10.30(124), when a prescription contains instructions from the prescriber indicating that the prescription shall not be filled before a certain date, a pharmacist shall not fill the prescription before that date. The pharmacist shall not contact the prescriber for verbal authorization to fill the prescription before the fill date originally indicated by the prescriber pursuant to this rule.

**10.29(5) *Number of prescriptions and authorized quantity.*** An individual prescriber may issue for a patient as many separate prescriptions, to be filled sequentially pursuant to this rule, as the prescriber deems necessary to provide the patient with adequate medical care. The cumulative effect of the filling of each of these separate prescriptions shall result in the receipt by the patient of a quantity of the Schedule II controlled substance not exceeding a 90-day supply.

**10.29(6) *Prescriber's discretion.*** Nothing in this rule shall be construed as requiring or encouraging an individual prescriber to issue multiple prescriptions pursuant to this rule or to see the prescriber's patients once every 90 days when prescribing Schedule II controlled substances. An individual prescriber shall determine, based on sound medical judgment and in accordance with established medical standards, how often to see patients and whether it is appropriate to issue multiple prescriptions pursuant to this rule.

[ARC 3345C, IAB 9/27/17, effective 11/1/17; ARC 4580C, IAB 7/31/19, effective 9/4/19]

**657—10.30(124) Schedule II—changes to a prescription.** With appropriate verification, a pharmacist may add information provided by the patient or patient's agent, such as the patient's address, to a Schedule II controlled substance prescription.

**10.30(1) *Changes prohibited.*** A pharmacist shall never change the patient's name, the controlled substance prescribed except for generic substitution, or the name or signature of the prescriber.

**10.30(2) *Changes authorized.*** After consultation with the prescriber or the prescriber's agent and documentation of such consultation, a pharmacist may change or add the following information on a Schedule II controlled substance prescription:

- a. The drug strength.
- b. The dosage form.
- c. The drug quantity.
- d. The directions for use.
- e. The date the prescription was issued.
- f. The prescriber's address or DEA registration number.
- g. The name of the supervising prescriber if the prescription was issued by a physician assistant.

[ARC 3345C, IAB 9/27/17, effective 11/1/17]

**657—10.31** Reserved.

**657—10.32(124) Schedule III, IV, or V prescription.** No prescription for a controlled substance listed in Schedule III, IV, or V shall be filled or refilled more than six months after the date on which it was issued nor be refilled more than five times. Beginning January 1, 2020, all prescriptions for controlled substances shall be transmitted electronically to a pharmacy pursuant to rule 657—21.6(124,155A), except as provided in rule 657—21.8(124,155A).

**10.32(1) *Record.*** Each filling and refilling of a prescription shall be entered in a uniformly maintained and readily retrievable record in accordance with rule 657—10.25(124). If the pharmacist

merely initials or affixes the pharmacist's unique identifier and dates the back of the prescription, it shall be deemed that the full face amount of the prescription has been dispensed.

**10.32(2) Oral refill authorization.** The prescribing practitioner may authorize additional refills of Schedule III, IV, or V controlled substances on the original prescription through an oral refill authorization transmitted to an authorized individual at the pharmacy provided the following conditions are met:

*a.* The total quantity authorized, including the amount of the original prescription, does not exceed five refills nor extend beyond six months from the date of issuance of the original prescription.

*b.* The pharmacist, pharmacist-intern, or technician who obtains the oral authorization from the prescriber who issued the original prescription documents, on or with the original prescription, the date authorized, the quantity of each refill, the number of additional refills authorized, and the unique identification of the authorized individual.

*c.* The quantity of each additional refill is equal to or less than the quantity authorized for the initial filling of the original prescription.

*d.* The prescribing practitioner must execute a new and separate prescription for any additional quantities beyond the five-refill, six-month limitation.

**10.32(3) Partial fills.** The partial filling of a prescription for a controlled substance listed in Schedule III, IV, or V is permissible provided that each partial fill is recorded in the same manner as a refill pursuant to subrule 10.32(1). The total quantity dispensed in all partial fills shall not exceed the total quantity prescribed.

**10.32(4) Medication order.** A Schedule III, IV, or V controlled substance may be administered or dispensed to institutionalized patients pursuant to a medication order as provided in 657—subrule 7.13(1) or rule 657—23.9(124,155A), as applicable.

[ARC 3345C, IAB 9/27/17, effective 11/1/17; ARC 4580C, IAB 7/31/19, effective 9/4/19]

**657—10.33(124,155A) Dispensing Schedule V controlled substances without a prescription.** A controlled substance listed in Schedule V, which substance is not a prescription drug as determined under the federal Food, Drug, and Cosmetic Act, and excepting products containing ephedrine, pseudoephedrine, or phenylpropanolamine, may be dispensed or administered without a prescription by a pharmacist to a purchaser at retail pursuant to the conditions of this rule.

**10.33(1) Who may dispense.** Dispensing shall be by a licensed Iowa pharmacist or by a registered pharmacist-intern under the direct supervision of a pharmacist preceptor. This subrule does not prohibit, after the pharmacist has fulfilled the professional and legal responsibilities set forth in this rule and has authorized the dispensing of the substance, the completion of the actual cash or credit transaction or the delivery of the substance by a nonpharmacist.

**10.33(2) Frequency and quantity.** Dispensing at retail to the same purchaser in any 48-hour period shall be limited to no more than one of the following quantities of a Schedule V controlled substance:

*a.* 240 cc (8 ounces) of any controlled substance containing opium.

*b.* 120 cc (4 ounces) of any other controlled substance.

*c.* 48 dosage units of any controlled substance containing opium.

*d.* 24 dosage units of any other controlled substance.

**10.33(3) Age of purchaser.** The purchaser shall be at least 18 years of age.

**10.33(4) Identification.** The pharmacist shall require every purchaser under this rule who is not known by the pharmacist to present a government-issued photo identification, including proof of age when appropriate.

**10.33(5) Record.** A bound record book (i.e., with pages sewn or glued to the spine) for dispensing of Schedule V controlled substances pursuant to this rule shall be maintained by the pharmacist. The book shall contain the name and address of each purchaser, the name and quantity of controlled substance purchased, the date of each purchase, and the name or unique identification of the pharmacist or pharmacist-intern who approved the dispensing of the substance to the purchaser.

**10.33(6)** *Prescription not required under other laws.* No other federal or state law or regulation requires a prescription prior to distributing or dispensing the Schedule V controlled substance.  
[ARC 3345C, IAB 9/27/17, effective 11/1/17]

**657—10.34(124) Dispensing products containing ephedrine, pseudoephedrine, or phenylpropanolamine without a prescription.** A product containing ephedrine, pseudoephedrine, or phenylpropanolamine, which substance is a Schedule V controlled substance and is not listed in another controlled substance schedule, may be dispensed or administered without a prescription by an authorized dispenser pursuant to 657—Chapter 100 to a purchaser at retail pursuant to the conditions of this rule.

**10.34(1)** *Who may dispense.* Dispensing shall be by an authorized dispenser pursuant to 657—Chapter 100. This subrule does not prohibit, after the dispenser has fulfilled the professional and legal responsibilities set forth in this rule and has authorized the dispensing of the substance, the completion of the actual cash or credit transaction or the delivery of the substance by another pharmacy employee.

**10.34(2)** *Packaging of nonliquid forms.* A nonliquid form of a product containing ephedrine, pseudoephedrine, or phenylpropanolamine includes gel caps. Nonliquid forms of these products to be sold pursuant to this rule shall be packaged either in blister packaging with each blister containing no more than two dosage units or, if blister packs are technically infeasible, in unit dose packets or pouches.

**10.34(3)** *Frequency and quantity.* Dispensing without a prescription to the same purchaser within any 30-day period shall be limited to products collectively containing no more than 7,500 mg of ephedrine, pseudoephedrine, or phenylpropanolamine; dispensing without a prescription to the same purchaser within a single calendar day shall not exceed 3,600 mg.

**10.34(4)** *Age of purchaser.* The purchaser shall be at least 18 years of age.

**10.34(5)** *Identification.* The dispenser shall require every purchaser under this rule to present a current government-issued photo identification, including proof of age when appropriate. The dispenser shall be responsible for verifying that the name on the identification matches the name provided by the purchaser and that the photo image depicts the purchaser.

**10.34(6)** *Record.* Purchase records shall be recorded in the real-time electronic pseudoephedrine tracking system (PTS) established and administered by the governor's office of drug control policy pursuant to 657—Chapter 100. If the PTS is unavailable for use, the purchase record shall be recorded in an alternate format and submitted to the PTS as provided in 657—subrule 100.3(4).

*a. Alternate record contents.* The alternate record shall contain the following:

- (1) The name, address, and signature of the purchaser.
- (2) The name and quantity of the product purchased, including the total milligrams of ephedrine, pseudoephedrine, or phenylpropanolamine contained in the product.
- (3) The date and time of the purchase.
- (4) The name or unique identification of the dispenser who approved the dispensing of the product.

*b. Alternate record format.* The record shall be maintained using one of the following options:

- (1) A hard-copy record.
- (2) A record in the pharmacy's electronic prescription dispensing record-keeping system that is capable of producing a hard-copy printout of a record.
- (3) A record in an electronic data collection system that captures each of the data elements required by this subrule and that is capable of producing a hard-copy printout of a record.

*c. PTS records retrieval.* Pursuant to 657—subrule 100.4(6), the pharmacy shall be able to produce a hard-copy printout of transactions recorded in the PTS by the pharmacy for one or more specific products for a specified period of time upon request by the board or its representative or to such other persons or governmental agencies authorized by law to receive such information.

**10.34(7)** *Notice required.* The pharmacy shall ensure that the following notice is provided to purchasers of ephedrine, pseudoephedrine, or phenylpropanolamine products and that the notice is displayed with or on the electronic signature device or is displayed in the dispensing area and visible to the public:

“Warning: Section 1001 of Title 18, United States Code, states that whoever, with respect to the logbook, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any materially false, fictitious, or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry, shall be fined not more than \$250,000 if an individual or \$500,000 if an organization, imprisoned not more than five years, or both.”

[ARC 3345C, IAB 9/27/17, effective 11/1/17; ARC 4701C, IAB 10/9/19, effective 11/13/19]

**657—10.35** Reserved.

**657—10.36(124,155A) Records.** Every record required to be kept under this chapter or under Iowa Code chapter 124 shall be kept by the registrant and be available for inspection and copying by the board or its representative for at least two years from the date of such record except as otherwise required in these rules. Controlled substances records shall be maintained in a readily retrievable manner that establishes the receipt and distribution of all controlled substances. Original records more than 12 months old may be maintained in a secure remote storage area unless such remote storage is prohibited under federal law. If the secure storage area is not located within the same physical structure as the registrant, the records must be retrievable within 48 hours of a request by the board or its authorized agent.

**10.36(1) Schedule I and II records.** Records of controlled substances listed in Schedules I and II shall be maintained separately from all other records of the registrant.

**10.36(2) Schedule III, IV, and V records.** Records of controlled substances listed in Schedules III, IV, and V shall be maintained either separately from all other records of the registrant or in such form that the required information is readily retrievable from the ordinary business records of the registrant.

**10.36(3) Date of record.** The date on which a controlled substance is actually received, imported, distributed, exported, disposed of, or otherwise transferred shall be used as the date of receipt, importation, distribution, exportation, disposal, or transfer.

[ARC 3345C, IAB 9/27/17, effective 11/1/17]

**657—10.37** Reserved.

**657—10.38(124) Revision of controlled substances schedules.**

**10.38(1) Designation of new controlled substance.** The board may designate any new substance as a controlled substance to be included in any of the schedules in Iowa Code chapter 124 no sooner than 30 days following publication in the Federal Register of a final order so designating the substance under federal law. Designation of a new controlled substance under this subrule shall be temporary as provided in Iowa Code section 124.201(4).

**10.38(2) Objection to designation of a new controlled substance.** The board may object to the designation of any new substance as a controlled substance within 30 days following publication in the Federal Register of a final order so designating the substance under federal law. The board shall file objection to the designation of a substance as controlled, shall afford all interested parties an opportunity to be heard, and shall issue the board’s decision on the new designation as provided in Iowa Code section 124.201(4).

**10.38(3) Cannabidiol investigational product.** If a cannabidiol investigational product approved as a prescription drug medication by the United States Food and Drug Administration is eliminated from or revised in the federal schedule of controlled substances by the DEA and notice of the elimination or revision is given to the board, the board shall similarly eliminate or revise the prescription drug medication in the schedule of controlled substances. Such action by the board shall be immediately effective upon the date of publication of the final regulation containing the elimination or revision in the Federal Register.

[ARC 3345C, IAB 9/27/17, effective 11/1/17; ARC 3743C, IAB 4/11/18, effective 5/16/18]

**657—10.39(124) Temporary designation of controlled substances.**

**10.39(1)** Amend Iowa Code section 124.206(7) by adding the following new paragraph “c”:

c. Dronabinol [(-)-delta-9-trans-tetrahydrocannabinol] in an oral solution in a drug product approved for marketing by the U.S. Food and Drug Administration.

**10.39(2)** Amend Iowa Code section 124.204(9) by adding the following new paragraphs:

*af.* N-(1-phenethylpiperidin-4-yl)-N-phenylcyclopropanecarboxamide, its isomers, esters, ethers, salts and salts of isomers, esters, and ethers. Other name: cyclopropyl fentanyl.

*ag.* N-(1-phenethylpiperidin-4-yl)-N-phenylpentanamide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers. Other name: valeryl fentanyl.

*ah.* N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)butyramide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers. Other name: para-fluorobutyryl fentanyl.

*ai.* N-(4-methoxyphenyl)-N-(1-phenethylpiperidin-4-yl)butyramide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers. Other name: para-methoxybutyryl fentanyl.

*aj.* N-(4-chlorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers. Other name: para-chloroisobutyryl fentanyl.

*ak.* N-(1-phenethylpiperidin-4-yl)-N-phenylisobutyramide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers. Other name: isobutyryl fentanyl.

*al.* N-(1-phenethylpiperidin-4-yl)-N-phenylcyclopentanecarboxamide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers. Other name: cyclopentyl fentanyl.

*am.* N-(2-fluorophenyl)-2-methoxy-N-(1-phenethylpiperidin-4-yl)acetamide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers. Other name: ocfentanil.

*an.* Any fentanyl-related substance that is not currently listed in any schedule of the Controlled Substances Act (CSA) and its isomers, esters, ethers, salts and salts of isomers, esters, and ethers.

*ao.* Naphthalen-1-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate. Other names: NM2201 or CBL2201.

*ap.* N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide. Other name: 5F-AB-PINACA.

*aq.* 1-(4-cyanobutyl)-N-(2-phenylpropan-2-yl)-1H-indazole-3-carboxamide. Other names: 4-CN-CUMYL-BUTINACA, 4-cyano-CUMYL-BUTINACA, 4-CN-CUMYL BINACA, CUMYL-4CN-BINACA, or SGT-78.

*ar.* Methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3-methylbutanoate. Other names: MMB-CHMICA or AMB-CHMICA.

*as.* 1-(5-fluoropentyl)-N-(2-phenylpropan-2-yl)-1H-pyrrolo[2,3-b]pyridine-3-carboxamide. Other name: 5F-CUMYL-P7AICA.

*at.* Ethyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate, its optical, positional, and geometric isomers, salts and salts of isomers. Other name: 5F-EDMB-PINACA.

*au.* Methyl 2-(1-(5-fluoropentyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate, its optical, positional, and geometric isomers, salts and salts of isomers. Other name: 5F-MDMB-PICA.

*av.* N-(adamantan-1-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts and salts of isomers. Other names: FUB-AKB48, FUB-APINACA, AKB48 N-(4-FLUOROBENZYL).

*aw.* 1-(5-fluoropentyl)-N-(2-phenylpropan-2-yl)-1H-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts and salts of isomers. Other names: 5F-CUMYL-PINACA, SGT-25.

*ax.* (1-(4-fluorobenzyl)-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl) methanone, its optical, positional, and geometric isomers, salts and salts of isomers. Other name: FUB-144.

**10.39(3)** Amend Iowa Code section 124.204(2) by adding the following new paragraph:

*be.* MT-45 (1-cyclohexyl-4-(1,2-diphenylethyl)piperazine).

**10.39(4)** Amend Iowa Code section 124.212 by adding the following new subsection “6”:

6. *Approved cannabidiol drugs.* A drug product in finished dosage formulation that has been approved by the U.S. Food and Drug Administration that contains cannabidiol (2-[1R-3-methyl-6R-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol) derived from cannabis and no more than 0.1 percent (w/w) residual tetrahydrocannabinols.

**10.39(5)** Amend Iowa Code section 124.204(6) “i” by adding the following new subparagraphs:

(27) 1-(1,3-benzodioxol-5-yl)-2-(ethylamino)-pentan-1-one. Other names: N-ethylpentylone or ephylone.

(28) N-Ethylhexedrone, its optical, positional, and geometric isomers, salts and salts of isomers. Other name: 2-(ethylamino)-1-phenylhexan-1-one.

(29) alpha-pyrrolidinohexanophenone, its optical, positional, and geometric isomers, salts and salts of isomers. Other names:  $\alpha$ -PHP; alpha-pyrrolidinohexiophenone; 1-phenyl-2-(pyrrolidin-1-yl)hexan-1-one.

(30) 4-Methyl-alpha-ethylaminopentiophenone, its optical, positional, and geometric isomers, salts and salts of isomers. Other names: 4—MEAP; 2-(ethylamino)-1-(4-methylphenyl)pentan-1-one.

(31) 4'-Methyl-alpha-pyrrolidinohexiophenone, its optical, positional, and geometric isomers, salts and salts of isomers. Other names: MPHP; 4'-methyl-alpha-pyrrolidinohexanophenone; 1-(4-methylphenyl)-2-(pyrrolidin-1-yl)hexan-1-one.

(32) alpha-Pyrrolidinoheptaphenone, its optical, positional, and geometric isomers, salts and salts of isomers. Other names: PV8; 1-phenyl-2-(pyrrolidin-1-yl)heptan-1-one.

(33) 4'-Chloro-alpha-pyrrolidinovalerophenone, its optical, positional, and geometric isomers, salts and salts of isomers. Other names: 4-chloro- $\alpha$ -PVP; 4'-chloro-alpha-pyrrolidinopentiophenone; 1-(4-chlorophenyl)-2-(pyrrolidin-1-yl)pentan-1-one.

**10.39(6)** Amend Iowa Code section 124.210(3) by adding the following new paragraph “*bd*”:

*bd.* Brexanolone.

**10.39(7)** Amend Iowa Code section 124.210(6) by adding the following new paragraph “*m*”:

*m.* Solriamfetol (2-amino-3-phenylpropyl carbamate; benzenepropanol, beta-amino-, carbamate (ester)).

[ARC 3345C, IAB 9/27/17, effective 11/1/17; ARC 3860C, IAB 6/20/18, effective 7/25/18; ARC 3984C, IAB 8/29/18, effective 10/3/18; ARC 4085C, IAB 10/24/18, effective 10/3/18; ARC 4269C, IAB 1/30/19, effective 3/6/19; ARC 4455C, IAB 5/22/19, effective 6/26/19; ARC 4797C, IAB 12/4/19, effective 1/8/20; ARC 4904C, IAB 2/12/20, effective 3/18/20]

**657—10.40(124) Excluded and exempt substances.** The Iowa board of pharmacy hereby excludes from all schedules the current list of “Excluded Nonnarcotic Products” identified in Title 21, CFR Part 1308, Section 22. With the exception of listed butalbital products, the board hereby excludes from all schedules the current list of “Exempted Prescription Products” described in Title 21, CFR Part 1308, Section 32. Copies of such lists may be obtained by written request to the board office at 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688.

[ARC 3345C, IAB 9/27/17, effective 11/1/17; ARC 4455C, IAB 5/22/19, effective 6/26/19]

**657—10.41(124) Anabolic steroid defined.** Anabolic steroid, as defined in Iowa Code section 126.2(2), includes any substance identified as such in Iowa Code section 124.208(6) or 126.2(2).

[ARC 3345C, IAB 9/27/17, effective 11/1/17]

**657—10.42(124B) Additional precursor substances.** Pursuant to Iowa Code section 124B.2(2), the list of precursor substances identified in Iowa Code section 124B.2(1) is amended by adding the following new paragraph:

*ab.* Alpha-phenylacetoacetonitrile and its salts, optical isomers, and salts of optical isomers. Other name: APAAN.

[ARC 3860C, IAB 6/20/18, effective 7/25/18]

**657—10.43(124) Reporting discipline and criminal convictions.** A registrant shall provide written notice to the board of any disciplinary or enforcement action imposed by any licensing or regulatory authority on any license or registration held by the registrant no later than 30 days after the final action. Discipline may include, but is not limited to, fine or civil penalty, citation or reprimand, probationary period, suspension, revocation, and voluntary surrender. A registrant shall provide written notice to the board of any criminal conviction of the registrant or of any owner that is related to the operation of the registered location no later than 30 days after the conviction. The term criminal conviction includes instances when the judgment of conviction or sentence is deferred.

[ARC 3345C, IAB 9/27/17, effective 11/1/17]

**657—10.44(124) Discipline.** Pursuant to 657—Chapter 36, the board may fine, suspend, revoke, or impose other disciplinary sanctions on a registration for any of the following:

1. Any violation of the federal Food, Drug, and Cosmetic Act or federal regulations promulgated under the Act.
2. Any conviction of a crime related to controlled substances committed by the registrant, or if the registrant is an association, joint stock company, partnership, or corporation, by any managing officer.
3. Refusing access to the registered location or registrant records to an agent of the board for the purpose of conducting an inspection or investigation.
4. Failure to maintain registration pursuant to 657—Chapter 10.
5. Any violation of Iowa Code chapter 124, 124B, 126, 155A, or 205, or any rule of the board, including the disciplinary grounds set forth in 657—Chapter 36.

[ARC 3345C, IAB 9/27/17, effective 11/1/17; ARC 3857C, IAB 6/20/18, effective 7/25/18]

These rules are intended to implement Iowa Code sections 124.201, 124.301 to 124.308, 124.402, 124.403, 124.501, 126.2, 126.11, 147.88, 155A.13, 155A.17, 155A.26, 155A.37, and 205.3.

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**REVENUE DEPARTMENT[701]**

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AGRICULTURAL RULES

**701—226.1(423) Sale or rental of farm machinery and equipment and items used in agricultural production that are attached to a self-propelled implement of husbandry.** The sales price from the sale or rental of farm machinery and equipment directly and primarily used in production of agricultural products and certain items used in agricultural production that are attached to or towed by a self-propelled implement of husbandry is exempt from sales and use tax.

**226.1(1) Farm machinery and equipment.**

*a. Exempt.* Under this rule, to be eligible for the exemption from the tax, the farm machinery or equipment must be directly and primarily used in production of agricultural products and must also be one of the following:

- (1) A self-propelled implement; or
- (2) An implement customarily drawn or attached to a self-propelled implement; or
- (3) A grain dryer; or
- (4) An auxiliary attachment which improves the performance, safety, operation, or efficiency of a qualifying implement or grain dryer; or
- (5) A replacement part for any item described in subparagraph (1), (2), (3), or (4).

*b. Taxable.* A vehicle subject to registration as defined in Iowa Code section 423.1, an implement customarily drawn by or attached to a vehicle subject to registration, an auxiliary attachment for a vehicle subject to registration, or any replacement part for a vehicle, implement, or auxiliary attachment for a vehicle subject to registration is not eligible for the exemption allowed under this rule.

**226.1(2) Attachments to self-propelled implements of husbandry.**

*a. Exempt.* Exempt from the tax under this rule are the following items if, and only if, they are used in agricultural production:

- (1) A snow blower that is to be attached to a self-propelled implement of husbandry; or
- (2) A rear-mounted or front-mounted blade that is to be attached to or towed by a self-propelled implement of husbandry; or
- (3) A rotary cutter that is to be attached to a self-propelled implement of husbandry.

*b. Used in agricultural production.* Under this subrule, the items must be used in agricultural production, and not “directly and primarily” used in production of agricultural products as is required under subrule 226.1(1).

EXAMPLE: Farmer Jones purchases a front-mounted blade that will be attached to a self-propelled implement of husbandry (e.g., farming tractor). Farmer Jones primarily uses the blade to prepare previously uncultivated land—a use that is not for agricultural production. See subrule 226.1(3). However, Farmer Jones sporadically uses the front-mounted blade for agricultural production. Even though Farmer Jones does not directly and primarily use the front-mounted blade in agricultural production, the front-mounted blade is exempt from sales or use tax because the blade is occasionally used in agricultural production and it is attached to a self-propelled implement of husbandry.

**226.1(3) Definitions and specific provisions.** For the purposes of this rule, the following definitions and provisions apply.

*a. Production of agricultural products.* The term “production of agricultural products” means the same as the term “agricultural production,” which is defined in rule 701—211.1(423) to mean a farming operation undertaken for profit by the raising of crops or livestock. Nonexclusive examples of items not included within the meaning of the term “agricultural production” are the clearing or preparation of previously uncultivated land, the creation of farm ponds, and the erection of machine sheds, confinement facilities, storage bins, or other farm buildings. See *Trullinger v. Fremont County*, 223 Iowa 677, 273 N.W. 124 (1937). Machinery and equipment used for these purposes would be used for activities which are preparatory to, but not a part of, the production of agricultural products and, therefore, are not exempt.

*b. Farm machinery and equipment.* The term “farm machinery and equipment” means machinery and equipment specifically designed for use in the production of agricultural products and machinery

and equipment that are not specifically designed for use in the production of agricultural products but are directly and primarily used for that purpose.

EXAMPLE: Farmer Jones raises livestock, and his farming operation requires that fences be repaired to confine the livestock. Farmer Jones purchases a posthole digger that is customarily attached to a tractor and uses the digger to repair the fences used to confine the livestock. The posthole digger is not specifically designed for use in the production of agricultural products but is directly and primarily used in the production of agricultural products. Therefore, the exemption would apply.

*c. Self-propelled implement.* The term “self-propelled implement” means an implement which is capable of movement from one place to another under its own power. An implement is not self-propelled merely because it has moving parts. The term “self-propelled implement” includes, but is not limited to, the following items: skid loaders and tractors. The term also includes, but is not limited to, the following machinery if capable of movement under its own power: combines, corn pickers, fertilizer spreaders, hay conditioners and windrowers, sprayers, and bean buggies.

*d. Implements customarily drawn or attached to self-propelled implements.* The following is a nonexclusive, representative list of implements customarily drawn or attached to self-propelled implements: augers, balers, blowers, combines, conveyers, cultivators, disks, drags, dryers (portable), farm wagons, feeder wagons, fertilizer spreaders, front- and rear-end loaders, harrows, hay loaders, hay mowers, hay rakes, husking machines, manure spreaders, planters, plows, rotary hoes, sprayers and tanks, and tillage equipment.

*e. Directly used in agricultural production.*

(1) Property is “directly used” only if it is used to initiate, sustain, or terminate an exempt activity. In determining whether any property is directly used, consideration should be given to the following factors:

1. The physical proximity of the property to other property clearly exempt as directly used in agricultural production. The closer the property is to exempt property, the more likely it is that the property is directly used in agricultural production.

2. The chronological proximity of the use of the property in question to the use of property clearly exempt as directly used in agricultural production. The closer the proximity of the property’s use within the production process to the use of exempt property, the more likely the use is direct rather than remote.

3. The active causal relationship between the use of the property in question and agricultural production. The fewer intervening causes between the use of the property and the production of the product, the more likely it is that the property is directly used in agricultural production.

(2) The fact that particular machinery or equipment is essential to the production of agricultural products because its use is required either by law or practical necessity does not, of itself, mean that the machinery or equipment is directly used in the production of agricultural products. Machinery or equipment that comes into actual physical contact with the soil or crops during the operations of planting, cultivating, harvesting, and soil preparation will be presumed to be machinery or equipment used in agricultural production.

*f. Primarily used in agricultural production.* Property is “primarily used” in agricultural production based on the total time it is used in agricultural production in comparison to the time it is used for other purposes. Any property used in agricultural production more than 50 percent of its total use time is eligible for exemption.

*g. Beginning and end of agricultural production.* Agricultural production begins with the cultivation of land previously cleared for the planting of crops or begins with the purchase or breeding of livestock or domesticated fowl. Agricultural production ceases when an agricultural product has been transported to the point where it will be sold by the producer or processed for further use.

EXAMPLE: Farmer Brown uses a tractor and wagon to haul harvested corn from a field to a grain dryer located on the farm. After the corn is dried, the same tractor and wagon are used to move the grain to a storage bin, also located on the farm. Later, the same tractor and wagon are used to deliver the corn from the farm to the local elevator where the corn is sold. After Farmer Brown deposits the corn there, the local elevator uses its own tractor and wagon to move the corn to a place of relatively permanent storage. Farmer Brown has used the tractor and wagon in the production of agricultural products, and

the exemption would apply to Farmer Brown's tractor and wagon. However, the elevator has not used its tractor and wagon in agricultural production; thus, the exemption would not be allowed for the elevator's tractor and wagon.

*h. Grain dryer.* The term "grain dryer" includes the heater and the blower necessary to force the warmed air into a grain storage bin. The term "grain dryer" does not include equipment, such as augers and spreaders, used in grain storage or movement, nor does it include any other equipment, such as specialized flooring, that is not a grain dryer. Equipment that is not a grain dryer but is used in grain drying may be exempt if the equipment is a self-propelled implement or customarily drawn or attached to a self-propelled implement and is directly and primarily used in agricultural production.

*i. Replacement parts.* The term "replacement parts" means any farm machinery or equipment which is substituted for another part that has broken, worn out or has become obsolete or otherwise unable to perform its intended function. Replacement parts are those parts which materially add to the value of farm machinery or equipment, appreciably prolong its life or keep it in its ordinarily efficient operating condition. Excluded from the meaning of the term "replacement parts" are supplies and computer software. Sales of supplies and computer software are taxable. Nonexclusive examples of supplies include: lubricants, oils, greases, and coolants.

Tangible personal property which has an expected useful life of 12 months or more and is used in the operation of farm machinery or equipment is rebuttably presumed to be a replacement part. Tangible personal property which is used in the same manner but has an expected useful life of less than 12 months is rebuttably presumed to be a supply.

(1) For periods prior to July 1, 2008, the sale or lease of a replacement part is exempt from tax if the replacement part is essential to any repair or reconstruction necessary to the exempt piece of farm machinery or equipment used in the production of agricultural products. The term "replacement parts" does not include attachments and accessories which are not essential to the operation of the farm machinery or equipment. Nonexclusive examples of attachments or accessories that are not essential include: cigarette lighters, radios, portable global positioning devices, and add-on air-conditioning units.

(2) For periods beginning on and after July 1, 2008, the sale or lease of a replacement part is exempt from tax if the replacement part is used in any repair or reconstruction of the exempt piece of farm machinery or equipment used in the production of agricultural products. Nonexclusive examples of replacement parts to machinery and equipment which would be exempt include: air-conditioning parts, computer equipment parts, fire equipment parts, glass parts, mirrors, headlights, communication systems, and global positioning equipment parts.

*j. Implement of husbandry.*

(1) The term "implement of husbandry" means any tool, equipment, or machinery necessary to the carrying on of the business of agricultural production and without which that could not be done. To be an implement of husbandry, the following must both be true:

1. The tool, equipment, or machine must be necessary to the carrying on of the business of agricultural production; and

2. Agricultural production must be impossible without the use of the tool, equipment, or machine.

(2) Whether a given item is an implement of husbandry depends on the facts of each particular case (*Hester v. State*, 108 So.2d 385, 388 (1959)), and in each particular case the person claiming the exemption has the burden of proving that the person is entitled to the exemption. *Dial Corp. v. Iowa Dep't of Revenue*, 634 N.W.2d 643, 646 (Iowa 2001).

*k. Snow blower.* "Snow blower" as used in this rule means an attachment that has the primary purpose of snow removal by the throwing of snow and that is ordinarily thought of as a snow blower.

*l. Rear-mounted or front-mounted blade.* "Rear-mounted or front-mounted blade" as used in this rule means a stationary attachment that has a primary purpose of pushing or leveling, for example, sand, dirt, snow, gravel, or manure. The term "rear-mounted or front-mounted blade" does not include mounted buckets or loaders that have a primary purpose of loading or digging.

*m. Rotary cutter.* "Rotary cutter" as used in this rule means an attachment used for mowing of grassy areas, pastures, and brush, but does not include attachments often referred to as "finishing mowers" and "mid-mount mowers."

**226.1(4) Taxable and nontaxable transactions.** The following are nonexclusive examples of sales and leases of and services for farm machinery or equipment subject to or exempt from tax. Taxable services performed on farm machinery or equipment are subject to tax even when the replacement parts are exempt.

*a.* A lessor's purchase of farm machinery or equipment is not subject to tax if the machinery or equipment is leased to a lessee who uses it directly and primarily in the production of agricultural products and if the lessee's use of the machinery or equipment is otherwise exempt. To claim exemption from tax, the lessor does not need to make an exempt use of the machinery or equipment as long as the lessee uses the machinery or equipment for an exempt purpose. On and after July 1, 2004, the lease of tangible personal property is treated as the sale of that property for the purposes of Iowa sales and use tax law because leases of tangible personal property are taxable retail sales of that property.

*b.* A lessor's purchase of a snow blower, rear-mounted or front-mounted blade, or rotary cutter is not subject to tax if such item is leased to a lessee who uses the item in agricultural production and the item will be attached to an implement of husbandry.

*c.* The owner or lessee of farm machinery or equipment need not be a farmer as long as the machinery or equipment is directly and primarily used in the production of agricultural products and the owner or lessee and the machinery or equipment meet the other requirements of this rule. For example, a person who purchases an airplane designed for use in agricultural aerial spraying and who uses the airplane directly and primarily for agricultural production is entitled to the benefits provided under this rule even though that person is not the owner or occupant of the land where the airplane is used.

*d.* The owner or lessee of a snow blower, rear-mounted or front-mounted blade, or rotary cutter need not be a farmer as long as the snow blower, rear-mounted or front-mounted blade, or rotary cutter is used in agricultural production and the snow blower, rear-mounted or front-mounted blade, or rotary cutter is attached to an implement of husbandry.

*e.* The sale or lease, within Iowa, of any farm machinery, equipment, or replacement part for direct and primary use in agricultural production outside of Iowa is a transaction eligible for the exemption if the transaction is otherwise qualified for an exemption under this rule.

*f.* The sale or lease, within Iowa, of any snow blower, rear-mounted or front-mounted blade, or rotary cutter which is used, outside of Iowa, in agricultural production while attached to an implement of husbandry is a transaction eligible for the exemption, if the transaction is otherwise qualified for an exemption under this rule.

**226.1(5) Auxiliary attachments.** The following is a nonexclusive list of auxiliary attachments for which the sale or use in Iowa is exempt from tax: auxiliary hydraulic valves, cabs, coil tine harrows, corn head pickup reels, dry till shanks, dual tires, extension shanks, fenders, fertilizer attachments and openers, fold kits, grain bin extensions, herbicide and insecticide attachments, kit wraps, no-till coulters, quick couplers, rear-wheel assists, rock boxes, rollover protection systems, rotary shields, stalk choppers, step extensions, trash whips, upper beaters, silage bags, and weights.

This rule is intended to implement Iowa Code subsections 423.3(8) and 423.3(11).  
[ARC 7870B, IAB 6/17/09, effective 7/22/09; ARC 0466C, IAB 11/28/12, effective 1/2/13]

**701—226.2(423) Packaging material used in agricultural production.** The sales price from the sale of property which is a container, label, carton, pallet, packing case, wrapping, baling wire, twine, bag, bottle, shipping case, or other similar article or receptacle sold for use in agricultural, livestock, or dairy production is exempt from sales tax.

This rule is intended to implement Iowa Code subsection 423.3(15).  
[ARC 7870B, IAB 6/17/09, effective 7/22/09]

**701—226.3(423) Irrigation equipment used in agricultural production.** The sales price from the sale or rental of irrigation equipment used in agricultural production is exempt from tax. The term "irrigation equipment" includes, but is not limited to, circle irrigation systems and trickle irrigation systems, whether installed aboveground or belowground, as long as the equipment is sold or rented by a contractor or

farmer and the equipment is directly and primarily used in agricultural production. The term “agricultural production” is defined in rule 701—211.1(423).

This rule is intended to implement Iowa Code subsections 423.3(12) and 423.3(13).  
[ARC 7870B, IAB 6/17/09, effective 7/22/09]

**701—226.4(423) Sale of a draft horse.** The sales price from the sale of draft horses, when they are purchased for use and used as draft horses, is not subject to tax. Draft horses are horses that pull loads, including loads in shows, or transport persons or property. For purposes of this rule, horses commonly known as Clydesdales, Belgians, Shires, and Percherons are draft horses. However, upon proper showing by the person or entity claiming exemption, the sales price exemption will be granted by the director for other breeds. However, the burden of proof lies with the person or entity claiming exemption.

This rule is intended to implement Iowa Code subsection 423.3(14).  
[ARC 7870B, IAB 6/17/09, effective 7/22/09]

**701—226.5(423) Veterinary services.** Veterinary services are not subject to sales tax. Purchases of food, drugs, medicines, bandages, dressings, serums, tonics, and the like which are used in treating livestock raised as part of agricultural production are exempt from tax. Where these same items are used in treating animals maintained as pets or for hobby purposes, sales tax is due. Purchases of equipment and tools used in the veterinary practice are subject to tax. Rule 701—226.17(423) explains the exemption for machinery or equipment used in livestock or dairy production which may be applicable to veterinarians, but should only be claimed with caution. A veterinarian must charge sales tax on any sales of tangible property or enumerated services, such as pet grooming, that are not part of professional veterinarian services.

This rule is intended to implement Iowa Code subsection 423.3(5).  
[ARC 7870B, IAB 6/17/09, effective 7/22/09]

**701—226.6(423) Commercial fertilizer and agricultural limestone.**

**226.6(1) Commercial fertilizer.** Sales of commercial fertilizer are exempt from sales and use tax. Plant hormones are considered to be commercial fertilizer.

**226.6(2) Agricultural limestone.** Sales of agricultural limestone are exempt from sales and use tax only if the purchaser intends to use the limestone for disease control, weed control, insect control, or health promotion of plants or livestock produced for market as part of agricultural production. See rule 701—211.1(423) for definitions of “agricultural production” and “plants.” Sales of agricultural limestone used for other purposes are subject to sales tax. Examples of taxable use include, but are not limited to: sales of agricultural limestone for application on a lawn, golf course, or cemetery.

This rule is intended to implement Iowa Code subsections 423.3(4) and 423.3(5).  
[ARC 7870B, IAB 6/17/09, effective 7/22/09; ARC 4117C, IAB 11/7/18, effective 12/12/18]

**701—226.7(423) Sales of breeding livestock.** The sale of agricultural livestock is exempt from tax only if at the time of purchase the purchaser intends to use the livestock primarily for breeding. The sale of agricultural livestock which is capable of breeding, but will not be used for breeding or primarily for breeding, is not exempt from tax. However, sales of most nonbreeding agricultural livestock to farmers would be a sale for resale and exempt from tax. See rule 701—211.1(423) for a definition of “livestock.”

EXAMPLE 1: A breeding service purchases a prize bull from a farmer. At the time of sale, the intent of the purchaser is to use the bull for breeding other cattle. The sale of the bull is exempt from tax even though three years later the breeding service sells the bull to a meat packer.

EXAMPLE 2: A farmer purchases dairy cows. To ensure production of milk over a sustained period of time, dairy cows must be bred to produce calves. If a farmer purchases dairy cows for the primary purpose of using them to produce milk and incidentally breeds them to ensure that this milk will be produced, the sale of the dairy cows to the farmer is not exempt from tax. If the farmer purchases the dairy cows for the primary purpose of using them to produce calves and, incidental to that purpose, at times sells the milk which the cows produce, the sale of the dairy cows to the farmer is exempt from tax.

This rule is intended to implement Iowa Code subsection 423.3(3).  
[ARC 7870B, IAB 6/17/09, effective 7/22/09]

**701—226.8(423) Domesticated fowl.** The purchase of any domesticated fowl for the purpose of providing eggs or meat is exempt from tax, whether purchased by a person engaged in agricultural production or not. See rule 701—211.1(423) for a definition of the term “domesticated fowl.”

This rule is intended to implement Iowa Code subsection 423.3(3).  
[ARC 7870B, IAB 6/17/09, effective 7/22/09]

**701—226.9(423) Agricultural health promotion items.**

**226.9(1) Definitions.** For purposes of this rule, the following definitions apply:

“*Adjuvant*” means any substance which is added to a herbicide, a pesticide, or an insecticide to increase its potency.

“*Agricultural production*” means the same as defined in rule 701—211.1(423).

“*Food*” includes vitamins, minerals, other nutritional food supplements, and hormones sold to promote the growth of livestock.

“*Herbicide*” means any substance intended to prevent, destroy, or retard the growth of plants including fungi. The term shall include preemergence, postemergence, lay-by, pasture, defoliant, and desiccant herbicides and fungicides.

“*Insecticide*” means any substance used to kill insects. Any substance used merely to repel insects is not an insecticide. Mechanical devices which are used to kill insects are not insecticides.

“*Livestock*” means the same as defined in rule 701—211.1(423). For the purposes of this rule, “livestock” includes domesticated fowl.

“*Medication*” includes antibiotics or other similar drugs administered to livestock.

“*Pesticide*” means any substance which is used to kill rodents or smaller vermin, other than insects, such as nematodes, spiders, or bacteria. For the purposes of this rule, a disinfectant is a pesticide. Excluded from the term “pesticide” is any substance which merely repels pests or any device, such as a rat trap, which kills pests by mechanical action.

“*Plants*” means the same as defined in rule 701—211.1(423).

“*Surfactant*” means a substance which is active on a surface.

**226.9(2) Sales of agricultural health promotion items and adjuvants.** Sales of herbicides, pesticides, insecticides, food, and medication which are to be used in disease, weed, or insect control or health promotion of plants or livestock produced as part of agricultural production for market are exempt from tax. Sales of adjuvants, surfactants, and other products which enhance the effects of herbicides, pesticides, or insecticides used in disease, weed, or insect control or health promotion of plants or livestock produced as part of agricultural production for market are also exempt from tax. Sales of herbicides, pesticides, insecticides, food, medication, and products to any person not engaged in agricultural production for market are exempt if the property sold will be used for an exempt purpose, e.g., in disease control or on the behalf of another person engaged in agricultural production for market.

This rule is intended to implement Iowa Code subsections 423.3(5) and 423.3(16).  
[ARC 7870B, IAB 6/17/09, effective 7/22/09]

**701—226.10(423) Drainage tile.** The sale or installation of drainage tile which is to be used in disease control or weed control or in health promotion of plants or livestock produced as part of agricultural production for market is exempt from tax. In all other cases, drainage tile will be considered a building material and subject to tax under the provisions of Iowa Code section 423.2. Sales of the following materials associated with the installation of agricultural drainage tile are also exempt from tax: tile intakes, outlet pipes and outlet guards, aluminum and gabion structures, erosion control fabric, water control structures, and tile fittings.

This rule is intended to implement Iowa Code section 423.3.  
[ARC 7870B, IAB 6/17/09, effective 7/22/09]

**701—226.11(423) Materials used for seed inoculations.** Materials used for seed inoculations are exempt from sales tax. All forms of inoculation, whether for promotion of better growth and healthier

plants or for the prevention or cure of plant mildew or disease of seeds and bulbs, are intended for the same general purpose and are therefore exempt.

This rule is intended to implement Iowa Code section 423.3.  
 [ARC 7870B, IAB 6/17/09, effective 7/22/09]

**701—226.12(423) Fuel used in agricultural production.**

**226.12(1) Definitions.** For purposes of this rule, the following definitions apply:

“*Aquaculture*” means the cultivation of aquatic animals and plants, including fish, shellfish, and seaweed, in natural or controlled marine or freshwater environments.

“*Fuel*” includes electricity.

“*Implement of husbandry*” means the same as defined in rule 701—211.1(423).

“*Livestock*” means the same as defined in rule 701—211.1(423) and includes domesticated fowl.

“*Plants*” means flowering, ornamental, or vegetable plants intended for sale in the ordinary course of business. The term does not include trees, shrubs, other woody perennials, or fungi.

**226.12(2) Exemptions.**

a. *Fuel used for livestock buildings.* The sale of fuel used to provide heating or cooling for livestock buildings is exempt from tax.

b. *Fuel used for plant production buildings.*

(1) Sales of fuel for heating or cooling greenhouses, buildings, or parts of buildings used for the production of flowering, ornamental, or vegetable plants intended for sale in the ordinary course of business are exempt from tax. See subparagraph (3) for the formula for calculating exempt use if a building is only partially used for growing plants.

(2) Fuel used in a plant production building for purposes other than heating or cooling (e.g., lighting) or for purposes other than direct use in plant production (e.g., heating or cooling office space) is not eligible for this exemption. Examples of nonexempt purposes for which a portion of a greenhouse might be used include, but are not limited to, portions used for office space, loading docks, storage of property other than plants, housing of heating and cooling equipment, and packaging plants for shipment.

(3) Calculating proportional exemption. It may be possible to calculate the amount of total fuel used in plant production by dividing the number of square feet of the greenhouse heated or cooled and used for raising plants by the number of square feet heated or cooled in the entire greenhouse. It may be necessary to alter this formula (by the use of separate metering, for example) if a greenhouse has a walk-in cooler and the cooler is used directly in plant production. See 701—subrule 15.3(3) regarding fuel exemption certificates and subrule 226.18(12) regarding seller’s and purchaser’s liability for sales tax.

EXAMPLE 1: Bill Brown’s herb farming operation has a separate greenhouse used to grow his herbs. All other aspects of his farm operations are conducted in other facilities. Because the greenhouse is used exclusively for raising plants, Bill Brown is able to claim exemption from sales tax on the cost of fuel used to heat and cool the greenhouse.

EXAMPLE 2: Martha Green’s greenhouse has a separate meter to track the electricity used only for heating or cooling. Her greenhouse is used partially for growing plants and partially for a nonexempt purpose. Martha Green is able to claim a proportional exemption from sales tax on the cost of fuel used to heat and cool her growing plants. Martha Green calculates her exempt amount by dividing the number of heated or cooled square feet of her greenhouse that are used for raising plants by the total number of square feet heated or cooled in the entire greenhouse.

Total square footage used for raising plants	=	800
Total square footage	=	1,000
TOTAL:	$800 \div 1,000$	= .80 or 80%

Thus, 80 percent of the cost of the fuel used to heat and cool Martha Green’s greenhouse is exempt from sales tax.

*c. Sales of fuel used for aquaculture.* Sales of fuel used in the raising of agricultural products by aquaculture are exempt from tax.

*d. Sales of fuel, gas, electricity, water, and heat consumed in implements of husbandry.* The sale of fuel used in any implement of husbandry, whether self-propelled or not, is exempt from tax if the fuel is consumed while the implement is engaged in agricultural production. For example, the sale of fuel used not only in tractors or combines, but also used in implements which cannot move under their own power, is exempt from tax. The sale of fuel used in milk coolers and milking machines, grain dryers, and stationary irrigation equipment and in implements used to handle feed, grain, and hay and to provide water for livestock is exempt from tax even though these implements of husbandry would not ordinarily be considered self-propelled.

**226.12(3) Partial use.** If a building is used partially for an exempt agricultural purpose and partially for a nonexempt purpose, a proportional exemption from sales tax may be claimed based upon a percentage obtained by dividing the number of square feet of the building heated or cooled and used for an exempt agricultural purpose by the number of square feet heated or cooled in the entire building.

This rule is intended to implement Iowa Code subsection 423.3(6).  
[ARC 7870B, IAB 6/17/09, effective 7/22/09]

**701—226.13(423) Water used in agricultural production.** Water sold to farmers who are purchasing water for household use, sanitation, swimming pools, or other personal use is subject to sales tax. Water sold to farmers and others and used directly as drinking water for livestock production (including the production of domesticated fowl) is exempt from sales tax. When water is used for exempt purposes, as in livestock production, as well as for taxable purposes, the water may, when practical, be separately metered and separately billed to clearly distinguish the water consumed for exempt purposes from taxable purposes. When it is impractical to separately meter exempt water from taxable water, the purchaser may furnish to the seller a statement enabling the seller to determine the percentage of water subject to exemption. In the absence of proof to the contrary, the retailer of the water shall bill and collect tax on the first 5,000 gallons of water per month. The first 5,000 gallons of water per month will be considered to be for nonexempt use, and the balance will be considered to be used as part of agricultural production.

This rule is intended to implement Iowa Code subsection 423.3(5).  
[ARC 7870B, IAB 6/17/09, effective 7/22/09]

**701—226.14(423) Bedding for agricultural livestock or fowl.** The sales price from the sale of woodchips, sawdust, hay, straw, paper, or any other materials used for bedding in the production of agricultural livestock (including domesticated fowl) is exempt from tax. See rule 701—211.1(423) for definitions applicable to this rule.

This rule is intended to implement Iowa Code subsection 423.3(9).  
[ARC 7870B, IAB 6/17/09, effective 7/22/09]

**701—226.15(423) Sales by farmers.** The sale of grain, livestock, or any other farm or garden product by the producer thereof ordinarily constitutes a sale for resale, processing, or human consumption, and is not subject to tax. Farmers selling tangible personal property not otherwise exempt to ultimate consumers or users shall hold a permit and collect and remit sales tax on the sales price from their sales.

This rule is intended to implement Iowa Code subsections 423.3(2), 423.3(51), and 423.3(57).  
[ARC 7870B, IAB 6/17/09, effective 7/22/09]

**701—226.16(423) Sales of livestock (including domesticated fowl) feeds.** Tax shall not apply to the sale of feed for any form of animal life when the product of the animals constitutes food for human consumption. Tax shall apply on feed sold for consumption by pets. Antibiotics that are administered as an additive to feed or drinking water and vitamins and minerals that are sold for livestock (including domesticated fowl) are exempt from tax.

This rule is intended to implement Iowa Code subsection 423.3(16).  
[ARC 7870B, IAB 6/17/09, effective 7/22/09]

**701—226.17(423) Farm machinery, equipment, and replacement parts used in livestock or dairy production.**

**226.17(1)** Sales or rentals of farm machinery, equipment, and replacement parts used in livestock or dairy production are exempt from sales and use tax.

**226.17(2)** Definitions and special provisions. For purposes of this rule, the following definitions and special provisions apply.

*a. Machinery.* The term “machinery” means major mechanical machines, or major components thereof, which contribute directly and primarily to the livestock or dairy production process. Usually, a machine is a large object with moving parts which performs work through the expenditure of energy, either mechanical (e.g., gasoline or other fuel) or electrical.

*b. Equipment.* The term “equipment” means tangible personal property (other than a machine) that is directly and primarily used in livestock or dairy production. Equipment may be characterized as property which performs a specialized function and which has no moving parts, or if the equipment does possess moving parts, its source of power is external to it. The following nonexclusive examples differentiate between machinery and equipment:

EXAMPLE 1: An auger places feed into a cattle feeder. The auger is a piece of machinery; the cattle feeder is a piece of equipment.

EXAMPLE 2: An electric pump is used to pump milk into a bulk milk tank. The electric pump is a piece of machinery; the bulk milk tank is equipment.

*c. Property used in livestock or dairy production which is neither equipment nor machinery.*

(1) Real property. The ground or the earth is not machinery or equipment. A building is not machinery or equipment. See *Cloverleaf Cold Storage Co. v. Dep’t of Revenue and Fin.*, 2002 WL 31769009 (Iowa Dept. Insp. App. July 26, 2002). Therefore, tangible personal property which is sold for incorporation into the ground or a building in such a manner that the property will become a part of the ground or the building is taxable except for machinery and equipment. Generally, property incorporated into the ground or a building has become a part of the ground or the building if its removal would substantially damage the property, ground, or building or would substantially diminish the value of the property, ground, or building. Fence posts embedded in concrete, electrical wiring, light fixtures, fuse boxes, and switches are examples of property sold for incorporation into the ground or a building, respectively. For the purpose of the following example, assume that property is being sold to a contractor rather than a person engaged in livestock or dairy production. If the property is sold to a contractor, the retailer would be required to consider the property building material and charge the contractor sales tax upon the purchase price of the building material. If the property is building material, sale of the property is not exempt from Iowa sales tax. Rule 701—219.3(423) contains a characterization of building material and a list of specific examples of building material.

(2) Supplies. Supplies are neither machinery nor equipment. Tangible personal property is a farm supply if it is used up or destroyed by virtue of its use in livestock or dairy production or, because of its nature, can only be used once in livestock or dairy production. A light bulb is an example of a farm supply which is not machinery or equipment. See subrule 226.19(4) for examples of farm supplies which could be mistaken for equipment and are not exempt from tax on other grounds.

*d. Hand tools.* The term “hand tools” means tools which can be held in the hand or hands and which are powered by human effort. Hand tools specifically designed for use in livestock or dairy production are exempt from tax as equipment. Mechanical devices that are held in the hand and driven by electricity from some source other than human muscle power are, if they meet all other qualifications, exempt from tax as farm machinery.

*e. “Directly used” in livestock or dairy production.* To determine if machinery or equipment is “directly used” in livestock or dairy production, one must first ensure that the machinery or equipment is used during livestock or dairy production and not before that process has begun or after it has ended. See paragraph “g” of this subrule for an explanation of when livestock or dairy production begins and ends.

(1) Definition. If the machinery or equipment is used in livestock or dairy production, “directly used” means the use is an integral and essential part of production as distinguished from use that is

incidental or merely convenient to production or use that is remote from production. Machinery or equipment may be necessary to livestock or dairy production, but its use is so remote from production that it is not directly used in that production.

(2) Determination. In determining whether machinery or equipment is directly used, consideration should be given to the following factors:

1. The physical proximity of the machinery or equipment to other machinery or equipment clearly exempt as directly used in livestock or dairy production. The closer the machinery or equipment is to exempt machinery or equipment, the more likely it is that the machinery or equipment is directly used in livestock or dairy production.

2. The chronological proximity of the use of machinery or equipment in question to the use of machinery clearly exempt as directly used in livestock or dairy production. The closer the proximity of the machinery's or equipment's use within the production process to the use of exempt machinery or equipment, the more likely the use is direct rather than remote.

3. The active causal relationship between the use of the machinery or equipment in question and livestock or dairy production. The fewer intervening causes between the use of the machinery or equipment and the production of the product, the more likely it is that the machinery or equipment is directly used in production.

*f. "Primarily used" in livestock or dairy production.* Machinery or equipment is "primarily used" in livestock or dairy production based on the total time it is used in livestock or dairy production in comparison to the time it is used for other purposes. Any unit of machinery or equipment directly used in livestock or dairy production more than 50 percent of its total use time is eligible for exemption.

*g. Beginning and end of livestock or dairy production.* Livestock or dairy production begins with the purchase or breeding of livestock or dairy animals. Livestock or dairy production ceases when an animal or the product of an animal's body (e.g., wool) has been transported to the point where it will be sold by the farmer or processed.

*h. Machinery and equipment design.* Farm machinery and equipment used in livestock or dairy production is eligible for exemption if specifically designed for use in livestock or dairy production. Farm machinery and equipment which are not specifically designed for use in livestock or dairy production, but are directly and primarily used in livestock or dairy production, are eligible for exemption with the exception of common or ordinary hand tools.

EXAMPLE: Farmer Jones raises livestock and must use fans to cool the animals. Farmer Jones buys electric fans designed for use in a residence, but uses them directly and primarily to cool the livestock. The fans' use would be considered exempt.

*i. Replacement parts.* The term "replacement parts" means the same as defined in subrule 226.1(2), paragraph "i."

**226.17(3)** Examples of machinery and equipment directly used in livestock or dairy production.

*a.* Machinery and equipment used to transport or limit the movement of livestock or dairy animals (e.g., electric fence equipment, portable fencing, head gates, and loading chutes) are directly used in livestock or dairy production.

*b.* Machinery and equipment used in the conception, birth, feeding, and watering of livestock or dairy animals (e.g., artificial insemination equipment, portable farrowing pens, feed carts, and automatic watering equipment) are directly used in livestock or dairy production.

*c.* Machinery and equipment used to maintain healthful or sanitary conditions in the immediate area where livestock are kept (e.g., manure gutter cleaners, automatic cattle oilers, fans, and heaters if not real property) are directly used in livestock or dairy production.

*d.* Machinery and equipment used to test or inspect livestock during production are directly used in livestock or dairy production.

**226.17(4)** Taxable examples. The following are nonexclusive examples of machinery or equipment which would not be directly used in livestock or dairy production.

*a.* Machinery or equipment used to assemble, maintain, or repair other machinery or equipment directly used in livestock or dairy production (e.g., welders, paint sprayers, and lubricators).

*b.* Machinery or equipment used in farm management, administration, advertising, or selling (e.g., a computer used for record keeping, calculator, office safe, telephone, books, and farm magazines).

*c.* Machinery or equipment used in the exhibit of livestock or dairy animals (e.g., blankets, halters, prods, leads, and harnesses).

*d.* Machinery or equipment used in safety or fire prevention, even though the machinery or equipment is required by law.

*e.* Machinery or equipment for employee or personal use. Machinery or equipment used for the personal comfort, convenience, or use by a farmer, the farmer's family or employees, or persons associated with the farmer is not exempt from tax. Examples of such machinery and equipment include the following: beds, mattresses, blankets, tableware, stoves, refrigerators, and other equipment used in conjunction with the operation of a farm home, or other facilities for farm employees.

*f.* Machinery or equipment used for heating, cooling, ventilation, and lighting of farm buildings generally.

*g.* Vehicles subject to registration.

**226.17(5)** The sales price, not including services, of the following machinery or equipment is exempt from tax regardless of whether the machinery or equipment remains tangible personal property after installation or is incorporated into the realty: auxiliary attachments which improve the performance, safety, operation, or efficiency of the machinery and equipment, including auger systems, curtains and curtain systems, drip systems, fan and fan systems, shutters, inlets, shutter or inlet systems, refrigerators, and replacement parts if all of the following conditions are met:

*a.* The implement, machinery, or equipment is directly and primarily used in livestock or dairy production.

*b.* The implement is not a self-propelled implement or implement customarily drawn or attached to self-propelled implements.

*c.* The replacement part is used in a repair or reconstruction of the exempt piece of farm machinery or equipment used in the production of agricultural products.

**226.17(6)** Auxiliary attachments exemption. Sales of auxiliary attachments which improve the performance, safety, operation, or efficiency of exempt machinery or equipment are exempt from tax. Sales of replacement parts for these auxiliary attachments are also exempt.

**226.17(7)** Seller's and purchaser's liability for sales tax. The seller shall be relieved of sales tax liability if the seller takes from the purchaser an exemption certificate stating that the purchase is of machinery and equipment meeting the requirements of this rule. The exemption certificate must be fully completed. If items purchased tax-free pursuant to an exemption certificate are used or disposed of by the purchaser in a nonexempt manner, the purchaser is solely and directly liable for sales tax and shall remit the tax to the department.

This rule is intended to implement Iowa Code subsections 423.3(11) and 423.3(15).  
[ARC 7870B, IAB 6/17/09, effective 7/22/09]

### **701—226.18(423) Machinery, equipment, and replacement parts used in the production of flowering, ornamental, and vegetable plants.**

**226.18(1)** The sales or rentals of machinery, equipment, and replacement parts used in the production of flowering, ornamental, and vegetable plants are exempt from sales and use tax. The production of flowering, ornamental, or vegetable plants by a grower in a commercial greenhouse or at another location is considered to be a part of agricultural production and exempt from sales tax. The term "plants" does not include trees, shrubs, other woody perennials, or fungi.

**226.18(2)** Definitions and special provisions. For purposes of this rule, the following definitions and special provisions apply.

*a. Machinery.* The term "machinery" means major mechanical machines, or major components thereof, which contribute directly and primarily to the flowering, ornamental, or vegetable plant production process. Usually, a machine is a large object with moving parts which performs work through the expenditure of energy, either mechanical (e.g., gasoline or other fuel) or electrical.

*b. Equipment.* The term “equipment” means tangible personal property (other than a machine) that is directly and primarily used in the flowering, ornamental, or vegetable plant production process. Equipment may be characterized as property which performs a specialized function which, of itself, has no moving parts, or if the equipment does possess moving parts, its source of power is external to it.

*c. Plants.* The term “plants” means flowering, ornamental, or vegetable plants intended for sale in the ordinary course of business. The term does not include trees, shrubs, other woody perennials, or fungi.

*d. Property used in the flowering, ornamental, or vegetable plant production process which is neither equipment nor machinery.*

(1) Real property. The ground or the earth is not machinery or equipment. A building is not machinery or equipment. See *Cloverleaf Cold Storage Co. v. Dep’t of Revenue and Fin.*, 2002 WL 31769009 (Iowa Dept. Insp. App. July 26, 2002). Therefore, tangible personal property which is sold for incorporation into the ground or a building in such a manner that the property will become a part of the ground or the building is taxable except for machinery and equipment. Generally, property incorporated into the ground or a building has become a part of the ground or the building if its removal would substantially damage the property, ground, or building or would substantially diminish the value of the property, ground, or building. Fence posts embedded in concrete, electrical wiring, light fixtures, fuse boxes, and switches are examples of property sold for incorporation into the ground or a building, respectively. For the purpose of this example, assume that the property is being sold to a contractor rather than a person engaged in the flowering, ornamental, or vegetable plant production process. If the property is sold to a contractor, the retailer would be required to consider the property building material and charge the contractor sales tax upon the purchase price of this building material. If the property is building material, sale of the property is not exempt from Iowa sales tax. Rule 701—219.3(423) contains a characterization of building material and a list of specific examples of building material.

(2) Supplies. Supplies are neither machinery nor equipment. Tangible personal property is a supply if it is used up or destroyed by virtue of its use in the flowering, ornamental, or vegetable plant production process or, because of its nature, can only be used once in the flowering, ornamental, or vegetable plant production process. A light bulb is an example of a supply which is not machinery or equipment. See subrule 226.19(4) for examples of supplies which could be mistaken for equipment and are not exempt from tax on other grounds.

*e. Hand tools.* The term “hand tools” means tools which can be held in the hand or hands and which are powered by human effort. Hand tools specifically designed for use in the flowering, ornamental, or vegetable plant production process are exempt from tax as equipment. Mechanical devices that are held in the hand and driven by electricity from some source other than human muscle power are, if they meet all other qualifications, exempt from tax.

*f. “Directly used” in the flowering, ornamental, or vegetable plant production process.* To determine if machinery or equipment is “directly used” in the flowering, ornamental, or vegetable plant production process, one must first ensure that the machinery or equipment is used during the flowering, ornamental, or vegetable plant production process and not before that process has begun or after it has ended. See paragraph “h” of this subrule for an explanation as to when the flowering, ornamental, or vegetable plant production process begins and ends.

(1) Definition. If the machinery or equipment is used in the flowering, ornamental, or vegetable plant production process, “directly used” means the use is an integral and essential part of production as distinguished from use that is incidental or merely convenient to production or use that is remote from production. Machinery or equipment may be necessary to the flowering, ornamental, or vegetable plant production process, but its use is so remote from production that it is not directly used in that production.

(2) Determination. In determining whether machinery or equipment is directly used, consideration should be given to the following factors:

1. The physical proximity of the machinery or equipment to other machinery or equipment clearly exempt as directly used in the flowering, ornamental, or vegetable plant production process. The closer the machinery or equipment is to exempt machinery or equipment, the more likely it is that the machinery or equipment is directly used in the flowering, ornamental, or vegetable plant production process.

2. The chronological proximity of the use of machinery or equipment in question to the use of machinery clearly exempt as directly used in the flowering, ornamental, or vegetable plant production process. The closer the proximity of the machinery's or equipment's use within the production process is to the use of exempt machinery or equipment, the more likely the use is direct rather than remote.

3. The active causal relationship between the use of the machinery or equipment in question and the flowering, ornamental, or vegetable plant production process. The fewer intervening causes between the use of the machinery or equipment and the production of the product, the more likely it is that the machinery or equipment is directly used in production.

*g. "Primarily used" in flowering, ornamental, or vegetable plant production.* Machinery or equipment is "primarily used" in flowering, ornamental, or vegetable plant production based upon the total time it is used in flowering, ornamental, or vegetable plant production in comparison to the time it is used for other purposes. Any unit of machinery or equipment directly used in flowering, ornamental, or vegetable plant production more than 50 percent of its total use time is eligible for exemption.

*h. Beginning and end of flowering, ornamental, or vegetable plant production.* Flowering, ornamental, or vegetable plant production begins with the purchase of seeds or starter plants. Flowering, ornamental, or vegetable plant production ceases when a plant has grown to the size or weight at which it will be prepared for shipment to the destination where it will be marketed.

*i. Machinery and equipment design.* Machinery and equipment used in flowering, ornamental, or vegetable plant production are eligible for exemption if they were specifically designed for use in flowering, ornamental, or vegetable plant production. Machinery and equipment which are not specifically designed for use in flowering, ornamental, or vegetable plant production, but are directly and primarily used in flowering, ornamental, or vegetable plant production, are eligible for exemption with the exception of common or ordinary hand tools.

EXAMPLE: Bob Jones raises tulips and must use a thermometer to monitor the temperature in his greenhouse. Bob Jones buys a thermometer designed for use in a residence, but uses it directly and primarily to monitor the temperature in his greenhouse. The thermometer's use would be considered exempt.

*j. Replacement parts.* The term "replacement parts" means the same as defined in subrule 226.1(2), paragraph "i."

**226.18(3)** Examples of machinery and equipment directly used in flowering, ornamental, or vegetable plant production can be found in subrule 226.19(3).

**226.18(4)** Taxable examples. The following are nonexclusive examples of machinery or equipment which would not be directly used in flowering, ornamental, or vegetable plant production.

*a.* Machinery or equipment used to assemble, maintain, or repair other machinery or equipment directly used in flowering, ornamental, or vegetable plant production.

*b.* Machinery or equipment used in the growing operation's management, administration, advertising, or selling (e.g., calculators, office safes, telephones, books, and plant magazines).

*c.* Machinery or equipment used in the exhibit of flowering, ornamental, or vegetable plants.

*d.* Machinery or equipment used in safety or fire prevention, even though the machinery or equipment is required by law.

*e.* Machinery or equipment for employee or personal use. Machinery or equipment used for the personal comfort, convenience, or use by a grower, the grower's family or employees, or persons associated with the grower is not exempt from tax. Examples of such machinery and equipment include the following: beds, mattresses, blankets, tableware, stoves, refrigerators, and other equipment used in conjunction with the operation of a grower's home, or other facilities for the grower's employees.

*f.* Machinery or equipment used for heating, cooling, ventilation, and lighting of office, retail, or display buildings where production does not occur.

*g.* Vehicles subject to registration.

**226.18(5)** Packing material used in flowering, ornamental, or vegetable plant production. The sales price for the sale of property which is a container, label, carton, pallet, packing case, wrapping, baling wire, twine, bag, bottle, shipping case, or other similar article or receptacle sold for use in the production of flowering, ornamental, or vegetable plants in commercial greenhouses or other places which sell such

items in the ordinary course of business is not subject to sales tax. Containers and packaging materials include but are not limited to boxes, trays, labels, sleeves, tape, and staples.

**226.18(6)** Sales of self-propelled implements. Sales of self-propelled implements or implements customarily drawn or attached to self-propelled implements and replacement parts for the same are exempt from tax if the implements are used directly and primarily in the production of plants in commercial greenhouses or elsewhere. Exempt implements include, but are not limited to, forklifts used to transport pallets of plants, wagons containing sterilized soil, and tractors used to pull these items.

**226.18(7)** Sales of machinery and equipment used in plant production which are not self-propelled or attached to self-propelled machinery and equipment are exempt from tax. Rule 701—226.19(423) includes nonexclusive examples of machinery and equipment which are not self-propelled or attached to self-propelled machinery and equipment and which are directly and primarily used in plant production.

**226.18(8)** Fuel used in plant production. See subrule 226.12(2), paragraph “b.”

**226.18(9)** Sales of water used in the production of plants are exempt from tax. If water is not separately metered, the plants’ grower must determine by use of a percentage the portion of water used for a taxable purpose and the portion used for an exempt purpose. Nonexclusive examples of taxable usage include rest rooms, sanitation, lawns, and vehicle wash.

**226.18(10)** Agricultural health promotion items. Sales to a commercial greenhouse of fertilizer, limestone, herbicides, pesticides, insecticides, plant food, and medication for use in disease, weed, and insect control or in other health promotion of flowering, ornamental, or vegetable plants are exempt from tax. For the purposes of this rule, a virus, bacteria, fungus, or insect which is purchased for use in killing insects or other pests is an insecticide or pesticide. Refer to rule 701—226.9(423) for more information regarding these exemptions.

**226.18(11)** Miscellaneous exempt and taxable plant sales.

*a.* Sales of pots, soil, seeds, bulbs, and starter plants for use in plant production are not the sale of machinery or equipment, but can be sales for resale and exempt from tax if the pots and soil are sold with the final product or become the finished product.

*b.* Sales of portable buildings which will be used to display plants for retail sales are taxable.

*c.* Sales of whitewash which will be painted on greenhouses to control the amount of sunlight entering those greenhouses are taxable sales of a supply rather than exempt sales of equipment.

**226.18(12)** Seller’s and purchaser’s liability for sales tax. The seller shall be relieved of sales tax liability if the seller receives from the purchaser an exemption certificate stating that the purchase is of machinery and equipment meeting the requirements of this rule. The exemption certificate must be fully completed. If items purchased tax-free pursuant to an exemption certificate are used or disposed of by the purchaser in a nonexempt manner, the purchaser is solely and directly liable for the sales tax and shall remit the tax to the department.

This rule is intended to implement Iowa Code subsections 423.3(11) and 423.3(15).

[ARC 7870B, IAB 6/17/09, effective 7/22/09]

**701—226.19(423) Nonexclusive lists.** The following tables list items that are taxable or exempt.

**226.19(1) Exempt for agricultural production.**

adjuvants	irrigation equipment
alternators and generators*	kill cones
augers*	limestone, agricultural
balers	manure spreaders
bale transportation equipment	mowers, hay
baling wire and binding twine	oil filters
batteries for exempt machinery	oil pumps
blowers, grain dryer	packing materials
brush hogs*	pesticides

combines, cornheads, platforms	pickers
conveyors, temporary or portable*	plants (seeds)
corn pickers	planters
crawlers, tractor	plows
cultipackers	piston rings
cultivators	pruning and picking equipment*
discs	replacement parts
draft horses	rock pickers
drags	rollers*
drainage pipe and tile	rotary blade mowers; not lawn mowers
dusters*	rotary hoes
ensilage cutters	seeders
ensilage forks and trucks (a pickup does not qualify)	seed cleaners*
farm wagons and accessories	seed planters
fertilizer, agricultural	seeds
fertilizer spreaders	self-propelled implements
filters	shellers*
forage harvesters, boxes	silo blowers, unloaders*
fuel for grain drying or other agricultural production	sowers
gaskets	spark plugs for exempt machinery
grain augers, portable*	sprayers*
grain drills	spreaders
grain dryer, heater and blower only	sprinklers
grain planters	subsoilers
harrows	surfactants
hay conditioners	tillers
hay hooks	tires for exempt machinery
hay loaders	tractor chains
herbicides	tractors, farm
implements customarily drawn or attached to a self-propelled implement	tractor weights
insecticides	vegetable harvesters
	weeders*

\*Exempt if drawn or attached to a self-propelled farm implement and directly and primarily used in agricultural production or, if portable, used directly and primarily in agricultural production.

**226.19(2)** *Exempt for dairy and livestock production.*

adjuvants	heaters, portable
alternators and generators <sup>1</sup>	hog feeders, portable
artificial insemination equipment	hog ringers <sup>3</sup>
auger systems	hoof trimmers, portable <sup>3</sup>
automatic feeding systems, portable	hypodermic syringes and needles, nondisposable
batteries for exempt machinery	implements customarily drawn or attached to a self-propelled implement
barn ventilators	incubators, portable
bedding materials <sup>2</sup>	inlets and inlet systems
breeding stock, agricultural	inoculation materials
bulk feeding tanks, portable	insecticides
bulk milk coolers and tanks, portable	kill cones
calf weaners and feeders, portable	livestock feeding, watering and handling equipment, portable
cattle feeders, portable	loading chutes, portable
chain and rope hoists, portable <sup>1</sup>	manure brooms, portable <sup>3</sup>
chicken pickers, plucking equipment	manure handling equipment, includes front-end and rear-end loaders, portable <sup>3</sup>
chick guards	manure scoops, portable <sup>1</sup>
clipping machines, portable <sup>3</sup>	medications
conveyors, temporary or portable <sup>1</sup>	milk coolers, portable
cow stalls, portable	milking equipment, includes cans, etc. <sup>3</sup>
cow ties, portable	milking machines
cow watering and feeding bowls, portable	milk strainers and strainer disks, if not disposable
crawlers, tractor	milk tanks, portable
currying and oiling machines, portable	pesticides
curtains and curtain systems	poultry feeders, portable
dehorner	poultry founts, portable
domestic fowl	poultry litters, portable
draft horses	poultry nests, portable
drip systems	refrigerators
electric fence equipment, portable	replacement parts
fans and fan systems	sawdust <sup>2</sup>
farm wagons and accessories	self-propelled implements
farrowing houses, crates, stalls, portable	shutters and shutter systems
feed	space heaters, portable
feed bins, portable	specialized flooring, portable
feed carts, portable	sprayers <sup>1</sup>
feed elevators, portable	squeeze chutes, stalls, portable
feed grinders, portable	stanchions, portable
feed scoops <sup>3</sup>	surfactants
feed tanks, portable	tires for exempt machinery
feeder chutes, portable	thermometers <sup>3</sup>
feeders, portable	tractor chains

fence and fencing supplies, temporary or portable	tractors, farm
foggers	tractor weights
fuel to heat or cool livestock buildings	vacuum coolers
gaskets	ventilators
gates, portable	water filters, heaters, pumps, softeners, portable
gestation stalls, portable	waterers/watering tanks, portable
grooming equipment, portable <sup>3</sup>	weaners
head gates, portable	wood chips <sup>2</sup>

<sup>1</sup>Exempt if drawn or attached to a self-propelled farm implement and directly and primarily used in dairy or livestock production or, if portable, used directly and primarily in dairy or livestock production.

<sup>2</sup>Exempt when used as livestock and poultry bedding.

<sup>3</sup>Designed for farm use.

**226.19(3)** *Exempt for flowering, ornamental, or vegetable plant production.*

air-conditioning pads	greenhouse monorail systems*
airflow control tubes	greenhouse thermometers
atmospheric CO <sub>2</sub> control and monitoring equipment	handcarts used to move plants
backup generators	lighting which provides artificial sunlight
bins holding sterilized soil	overhead heating, lighting, and watering systems*
control panels for heating and cooling systems*	overhead tracks for holding potted plants*
coolers used to chill plants*	plant tables*
cooling walls* or membranes	plant watering systems*
equipment used to control water levels for subirrigation	portable buildings used to grow plants*
fans used for cooling and ventilating*	seeding and transplanting machines
floor mesh for controlling weeds	soil pot and soil flat filling machines
germination chambers	steam generators for soil sterilization*
greenhouse boilers*	warning devices which monitor excess heat or cold
greenhouse netting or mesh when used for light and heat control	watering booms

\*Exempt if not real property. "Real property" is defined in Iowa Code subsection 4.1(13) as "lands, tenements, hereditaments, and all rights thereto and interests therein, equitable as well as legal." See 701—Chapter 219.

**226.19(4)** *Taxable even if used in agricultural production.*

additives	lubricants and fluids
air compressors	lumber*
air conditioners, unless a replacement part for exempt machinery	marking chalk
air tanks	mops
antifreeze	motor oils
axes	nails
barn cleaner, permanent	office supplies
baskets	oxygen
belt dressing	packing room supplies

bins, permanent <sup>^</sup>	paint and paint sprayers
brooms	pliers
buckets	posthole diggers, hand tool
building materials* and supplies	poultry brooders, permanent
burlap cleaners	poultry feeders, permanent
cattle feeders, permanent	poultry nests, permanent
cement <sup>#</sup>	pruning tools
chain saws	pumps for household or lawn use
cleaning brushes	radios, unless a replacement part for exempt machinery
cleansing agents and materials	refrigerators for home use
computers (including laptop), for personal use	repair tools
computer software	road maintenance equipment
construction tools	road scraper
concrete <sup>#</sup>	roofing
conveyors, permanent	sanders
cow ties, permanent	scrapers
ear tags	screwdrivers
fence, posts, wire, permanent	shingles
field toilets	shovels
fire prevention equipment	silos
freon	snow fence unless portable and used directly in dairy and livestock production
fuel additives	snow plows and snow equipment
fuel tanks and pumps	space heaters, permanent
garden hoses and rakes	specialized flooring, permanent
glass	sprinklers, permanent
grain tanks, permanent <sup>*^</sup>	stalls, permanent
grease	staples
grease guns	stanchions, permanent
hammers	storage tanks
hog rings	tarps
hydraulic fluids	tiling machinery and equipment
hypodermic syringes, disposable	tractors, garden
lamps	welders
lanterns	wheel barrows
light bulbs (for household use)	wrenches

\* Contractors and sponsors that purchase building materials, other than grain bin materials, are responsible for paying sales tax to the vendor or supplier or accruing and remitting use tax on those materials.

<sup>^</sup> Does not include grain bins used to hold loose grain for drying or storage.

<sup>#</sup> Does not include cement or concrete used in pads or foundations under grain bins.

This rule is intended to implement Iowa Code subsections 423.3(6), 423.3(8) and 423.3(11).  
[ARC 7870B, IAB 6/17/09, effective 7/22/09; ARC 0466C, IAB 11/28/12, effective 1/2/13; ARC 5098C, IAB 7/15/20, effective 8/19/20]

**701—226.20(423) Grain bins.** The Iowa Code exempts from sales and use tax the sales price from the sale of a grain bin, including material or replacement parts used to construct or repair a grain bin. “Grain bin” is defined by Iowa Code section 423.3(16A). Grain bins are real property, and grain bin materials are building materials as that term is used in rule 701—219.3(423).

**226.20(1) Property considered to be a grain bin or material used to construct a grain bin.** In general, materials that are permanently attached to a grain bin and are required to hold loose grain for drying or storage are used to construct a grain bin and thus exempt from sales and use tax. This generally does not include equipment used to move loose grain into or out of a grain bin. The following lists of exempt or taxable property are not exhaustive.

- a.* Exempt property:
- (1) Grain bins, including hopper bins.
  - (2) Corrugated metal or other similar material for the sides or roof of a grain bin.
  - (3) Steps, ladders, or staircases permanently attached to a grain bin.
  - (4) Structural support towers for a grain bin or for steps, ladders, or staircases providing access to a grain bin.
  - (5) Catwalks.
  - (6) Roof vents permanently attached to a grain bin.
  - (7) Grain bin flooring and floor supports.
  - (8) Concrete pad or foundation under a grain bin.
  - (9) Stirring equipment permanently attached in a grain bin.
  - (10) Fans permanently attached to a grain bin.
  - (11) Temperature sensors or temperature cables permanently attached in a grain bin.
  - (12) Spreaders permanently attached in a grain bin.
  - (13) Sweeps or augers permanently attached in a grain bin.
  - (14) Bolts and other builders’ hardware permanently attached to a grain bin.
  - (15) Controls and devices to operate the above-listed property.
  - (16) Motors for the above-listed property.
  - (17) Replacement parts for the above-listed property.
- b.* Taxable property:
- (1) Bucket elevators.
  - (2) Distributors.
  - (3) Receiving stations, including drag conveyors and dump pits.
  - (4) Pneumatic or air systems.
  - (5) Conveyors, including chain conveyors, belt conveyors, and drag conveyors.
  - (6) Anchors, bin jacks, or other construction equipment used to assemble, construct, repair, or replace a grain bin or part of a grain bin.
  - (7) Samplers.
  - (8) Scales or weighers.
  - (9) Other items that remain tangible personal property and are not permanently attached to a grain bin.

**226.20(2) Primarily used to hold loose grain for drying or storage.** Property is deemed to be “primarily used to hold loose grain for drying or storage” if it is used more than 50 percent of the time to hold loose grain for drying or storage.

**226.20(3) Claiming the exemption.**

*a.* A contractor must provide an exemption certificate to its supplier when purchasing grain bins, grain bin materials, or grain bin replacement parts in order to purchase them free from sales tax. The contractor entering into a construction contract with a sponsor to erect a grain bin or entering into a contract to repair a grain bin must also obtain an exemption certificate from the sponsor of the construction/repair contract to avoid accruing and remitting use tax on the grain bins, grain bin materials, and the grain bin replacement parts that were purchased tax-free from the contractor’s supplier.

*b.* The contractor must accrue consumer’s use tax on the purchase price of the grain bins, grain bin materials, and grain bin replacement parts unless the contractor obtains an exemption certificate from the

sponsor of the construction or repair contract. If the grain bin materials or replacement parts are not used in an exempt manner or if an exemption certificate is not obtained, it is the contractor's responsibility to accrue and remit use tax. The contractor must not charge sales tax to the sponsor of a construction or repair contract because those materials and replacement parts remain building materials used in the performance of a construction contract.

EXAMPLE 1: Company A is in the business of constructing and repairing grain bins. Company A regularly purchases grain bin materials and replacement parts from its supplier. Company A may provide to its supplier an exemption certificate pursuant to Iowa Code section 423.3(16A) so that the materials and replacement parts are purchased tax-free.

A person, also known as a sponsor, enters into a construction contract with Company A to construct a grain bin on the sponsor's property. The sponsor provides an exemption certificate to Company A also pursuant to Iowa Code section 423.3(16A). Company A may now fulfill the construction contract without accruing and remitting use tax on the grain bin materials purchased from its supplier tax-free.

EXAMPLE 2: Assume the same facts as in Example 1, except that Company A does not provide an exemption certificate to its supplier when it purchases grain bin materials and replacement parts. The supplier must charge and collect from Company A sales tax on the full sales price of the grain bin materials and replacement parts.

The sponsor enters into a construction contract with Company A to erect a grain bin. Whether or not the sponsor provides an exemption certificate to Company A pursuant to Iowa Code section 423.3(16A), Company A may now fulfill the construction contract without accruing and remitting use tax on the grain bin materials because Company A paid sales tax on the sale price of the grain bin materials when it purchased them from its supplier.

EXAMPLE 3: Assume the same facts as in Example 2. The sponsor enters into a construction contract with Company A to erect a grain bin and provides an exemption certificate to Company A pursuant to Iowa Code section 423.3(16A). Company A may now file a refund claim with the department requesting that the department refund the sales tax that Company A paid to its supplier when it purchased the grain bin materials used in fulfilling the construction contract with the sponsor. Alternatively, Company A may claim a credit on its sales tax return(s) equal to the amount of sales tax paid to its supplier when it purchased the grain bin materials used in fulfilling the construction contract with the sponsor. The burden is on Company A to prove that the building materials for which the credit or refund is claimed were used in erecting a grain bin.

EXAMPLE 4: Assume the same facts as in Example 1, except that the sponsor does not provide an exemption certificate to Company A. Company A must now accrue and remit use tax on the cost of the materials used in fulfilling this construction contract.

EXAMPLE 5: Assume the same facts as in Example 1, except that the sponsor enters into a construction contract with Company A for the construction of a structure that is not a grain bin. Company A uses the materials that it had purchased tax-free from its supplier to fulfill this contract. Company A must now accrue and remit use tax on the cost of the materials used in fulfilling this construction contract.

EXAMPLE 6: Assume the same facts as in Example 1, except that the sponsor enters into a contract with Company A for the repair of a structure that is not a grain bin. Company A uses the materials that it had purchased tax-free from its supplier to fulfill this contract. When invoicing the sponsor, Company A must separately itemize the materials and the labor charges incurred in fulfilling this repair contract, and the sales price of the materials included on the invoice must include any mark-up. Company A is obligated to charge and collect sales tax on the materials and labor charges listed on the invoice.

EXAMPLE 7: Assume the same facts as in Example 1 except that, in addition to constructing the grain bin, the contractor provides and installs property, such as portable equipment, that remains tangible personal property after installation. As with the grain bin, grain bin materials, and grain bin replacement parts, the contractor purchases the portable equipment tax-free, not because it is exempt under this subrule, but because it is a purchase for resale. Unless the portable equipment qualifies for another exemption (such as in rule 701—226.1(423)), even if the contractor obtains an exemption certificate from the sponsor for the grain bin, grain bin materials, and replacement parts, the contractor must charge sales

tax to the sponsor because the portable equipment remains tangible personal property and the contractor sells that equipment to the sponsor at retail.

This rule is intended to implement Iowa Code section 423.3.

[ARC 5098C, IAB 7/15/20, effective 8/19/20]

[Filed ARC 7870B (Notice ARC 7725B, IAB 4/22/09), IAB 6/17/09, effective 7/22/09]

[Filed ARC 0466C (Notice ARC 0379C, IAB 10/3/12), IAB 11/28/12, effective 1/2/13]

[Filed ARC 4117C (Notice ARC 3886C, IAB 7/18/18; Amended Notice ARC 4003C, IAB 9/12/18),  
IAB 11/7/18, effective 12/12/18]

[Filed ARC 5098C (Notice ARC 4915C, IAB 2/12/20), IAB 7/15/20, effective 8/19/20]



CHAPTER 230  
EXEMPTIONS PRIMARILY BENEFITING MANUFACTURERS AND  
OTHER PERSONS ENGAGED IN PROCESSING

Rules in this chapter include cross references to provisions in 701—Chapters 15, 18 and 26 that were applicable prior to July 1, 2004.

**701—230.1** Reserved.

**701—230.2(423) Carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, and taxable services used in processing.** An expanded definition of “processing” is allowed to manufacturers of food products for human consumption using carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, and taxable services. For the purposes of this rule, the rental or leasing of tangible personal property is treated as the furnishing of a taxable service and not as the sale of tangible personal property.

**230.2(1)** Rescinded IAB 1/2/19, effective 2/6/19.

**230.2(2)** The following activities constitute processing when performed by a manufacturer to create food products for human consumption. Any carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, or other taxable services primarily used in the performance of these activities is exempt from tax.

*a.* Treatment of material that changes its form, context, or condition in order to produce a marketable food product for human consumption. “Special treatment” of the material to change its form, context, or condition is not necessary to lawfully claim the exemption. Examples of “treatment” which would not be “special” are the following: the washing, sorting and grading of fruits or vegetables; the washing, sorting, and grading of eggs; and the mixing or agitation of liquids. By way of contrast, sterilization would be “special treatment.”

*b.* Maintenance of the quality or integrity of the food product and the maintenance or the changing of temperature levels necessary to avoid spoilage or to hold the food in marketable condition. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or other taxable service used in freezers, heaters, coolers, refrigerators, or evaporators used in cooling or heating which holds the food product at a temperature necessary to maintain quality or integrity or to avoid spoilage of the food or to hold the food product in marketable condition is exempt from tax. It is not necessary that the taxable service be used to raise or lower the temperature of the food. Also, processing of food products for human consumption does not cease when the food product is in marketable form. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or taxable service used to maintain or to change a temperature necessary to keep the product marketable is exempt from tax.

*c.* Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or other taxable service primarily used in the maintenance of environmental conditions necessary for the safe or efficient use of machinery or material used to produce the food product is exempt from tax. For example, electricity used to air-condition a room in which meat is stored is exempt from tax if the purpose of the air conditioning is to maintain the meat in a condition in which it is easy to slice rather than for the comfort of the employees who work in the room.

*d.* Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or taxable service primarily used in sanitation and quality control activities is exempt from tax. Nonexclusive examples exempt from tax include taxable services used in pH meters, microbiology counters and incubators used to test the purity or sanitary nature of a food product. For example, electricity used in egg-candling lights would be exempt from tax. Also, electricity, steam, or any taxable service used to power equipment which cleans and sterilizes food production equipment would be exempt from tax. Electricity used to power refrigerators used to store food samples for testing would be exempt from tax. Finally, electricity used to power “bug lights” or other insect-killing equipment used in areas where food products are manufactured or stored would be exempt from tax.

*e.* Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or taxable service used in the formation of packaging for marketable food products for human consumption is exempt from tax. For example, electricity used in plastic bottle-forming machines by a food manufacturer is exempt from

tax if the plastic bottles will be used to hold a marketable food product, such as milk. Any electricity, steam, or other taxable service used in the heating, compounding, liquefying and forming of plastic pellets into these plastic bottles is exempt.

*f.* Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or taxable service used in placement of the food product into shipping containers is exempt from tax. For example, electricity used by a food manufacturer to place food products into packing cases, pallets, crates, shipping cases, or other similar receptacles is exempt.

*g.* Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or taxable service used to move material which will become a marketable food product or used to move the marketable food product itself until shipment from the building of manufacture is exempt from tax. This includes, but is not limited to, taxable services used in pumps, conveyors, forklifts, and freight elevators moving the material or food product and taxable services used in door openers which open doors for forklifts or other devices moving the material or product. Any loading dock which is attached to a building of manufacture is a part of that building. Any electricity, steam, or taxable service used to move any food products to a loading dock is exempt from tax. If a food product is carried outside its building of manufacture by any conveyor belt system, electricity used by any portion of the system located outside the building is taxable.

This rule is intended to implement 2005 Iowa Code Supplement subsection 423.3(49).  
[ARC 4218C, IAB 1/2/19, effective 2/6/19]

**701—230.3(423) Services used in processing.** Electricity, steam, or any taxable service is used in processing only if the service is used in any operation which subjects raw material to some special treatment which changes, by artificial or natural means, the form, context, or condition of the raw material and results in a change of the raw material into marketable tangible personal property intended to be sold ultimately at retail. The following are nonexclusive examples of what would and would not be considered electricity, steam, or taxable services used in processing:

**230.3(1)** The sales price from the sale of electricity or steam consumed as power or used in the actual processing of tangible personal property intended to be sold ultimately at retail would be exempt from tax. The sales price is to be distinguished from that of electricity or steam consumed for the purpose of lighting, ventilating, or heating manufacturing plants, warehouses, or offices. The latter sales price would be taxable.

**230.3(2)** The sales price from electricity used in the freezing of tangible personal property, ultimately to be sold at retail, to make the property marketable would be exempt from sales tax. See *Fischer Artificial Ice & Cold Storage Co. v. Iowa State Tax Commission*, 81 N.W.2d 437 (Iowa 1957).

**230.3(3)** Electricity used merely in the refrigeration or the holding of tangible personal property for the purpose of preventing spoilage or to preserve the property in its present state would not be “used in processing” and, therefore, its sales price would be subject to tax. See *Fischer Artificial Ice, supra*.

Measurement of taxable and nontaxable use of electricity and steam. The exemption provided in the case of electricity or steam applies only upon the sales price from the sale of electricity or steam when the energy is consumed as power or is used in the processing of food products or other tangible personal property intended to be sold ultimately at retail, as distinguished from electricity or steam which is consumed for taxable purposes. When practical, electricity or steam consumed as power or used directly in processing must be separately metered and separately billed by the supplier thereof to clearly distinguish energy so consumed from electricity or steam which is consumed for purposes or under conditions in which the exemption would not apply. If it is impractical to separately meter electricity or steam which is exempt from that electricity or steam upon which tax will apply, the purchaser must furnish an exemption certificate to the supplier with respect to what percentage of electricity or steam in the case of each purchaser is subject to the exemption. Reference 701—subrule 15.3(2). The exemption certificate must be supported by a study showing how the percentage was developed. When a certificate and study are accepted by the supplier as a basis for determining exemption, any changes in the processing method, changes in equipment or alterations in plant size or capacity affecting the percentage of exemption will necessitate the filing of a new and revised statement by the purchaser.

When the electric or steam energy is separately metered, enabling the supplier to accurately apply the exemption in the case of processing energy, the purchaser need only file an exemption certificate since the supplier, under such conditions, will separately record and compute the consumption of energy which is exempt from tax apart from that energy which is subject to tax.

This rule is intended to implement Iowa Code section 423.3(49).

**701—230.4(423) Chemicals, solvents, sorbents, or reagents used in processing.** Chemicals, solvents, sorbents, and reagents directly used and consumed, dissipated, or depleted in processing tangible personal property intended to be sold ultimately at retail shall be exempt from sales and use tax. For the purpose of this processing exemption rule, free newspapers and shoppers' guides are considered to be retail sales. See 701—Chapter 211 for definition of the words “chemicals,” “solvents,” “sorbents,” and “reagents.”

For the purpose of this rule, a catalyst is considered to be a chemical, solvent, sorbent, or reagent. A catalyst is a substance which promotes or initiates a chemical reaction and, as such, is exempt from tax if consumed, dissipated, or depleted during processing of tangible personal property intended to be ultimately sold at retail.

To qualify for this exemption, all of the following conditions must be met:

1. The item must be a chemical, solvent, sorbent, or reagent.
2. The chemical, solvent, sorbent, or reagent must be directly used and consumed, dissipated, or depleted during processing as defined in referenced rule 701—18.29(422,423).
3. The processing must be performed on tangible personal property intended to be sold ultimately at retail.
4. The chemical, solvent, sorbent, or reagent need not become an integral or component part of the processed tangible personal property.

This rule is intended to implement Iowa Code section 423.3(50).

**701—230.5(423) Exempt sales of gases used in the manufacturing process.** Sales of argon and other similar gases to be used in the manufacturing process are exempt from tax. For the purposes of this rule, only inert gases are gases that are similar to argon. An “inert gas” is any gas that is normally chemically inactive. It will not support combustion and cannot be used as either a fuel or as an oxidizer. Argon, helium, neon, krypton, radon, and xenon are inert gases. Oxygen, hydrogen, and methane are nonexclusive examples of gases that are not inert. These sales are exempt only if the gas is purchased by a “manufacturer,” for use in “processing,” as those terms are defined in subrules 230.15(3) and 230.15(4).

This rule is intended to implement Iowa Code section 423.3(51).

[ARC 2349C, IAB 1/6/16, effective 2/10/16; see Rescission note at end of chapter; ARC 2768C, IAB 10/12/16, effective 11/16/16]

**701—230.6(423) Sale of electricity to water companies.** The sales price from the sale of electricity to water companies assessed for property tax pursuant to Iowa Code sections 428.24, 428.26, and 428.28, which is used solely for the purpose of pumping water from a river or well is exempt from sales tax. For the purposes of this rule, “river” means a natural body of water or waterway that is commonly known as a river. “Well,” for the purposes of this rule, means an issue of water from the earth; a mineral spring; a pit or hole sunk into the earth to reach a water supply; a shaft or hole sunk to obtain oil, water, gas, etc.; or a shaft or excavation in the earth, in mining, from which run branches. *Pacific Gas and Electric Company v. Hufford*, 319 P.2d 1033, 1040 (Calif. 1957), citing Webster's New International Dictionary, 2nd ed., unabridged.

This rule is intended to implement Iowa Code section 423.3(52).

**701—230.7(423) Wind energy conversion property.** The sales price from the sale of property used to convert wind energy to electrical energy or the sales price from the sale of materials used to manufacture, install, or construct property used to convert wind energy to electrical energy is exempt from tax.

For the purposes of this rule, “property used to convert wind energy to electrical energy” means any device which converts wind energy to usable electrical energy including, but not limited to, wind

chargers, windmills, wind turbines, pad mount transformers, substations, power lines, and tower equipment.

This rule is intended to implement Iowa Code section 423.3(53).

**701—230.8(423) Exempt sales or rentals of core making and mold making equipment, and sand handling equipment.** This rule is applicable to the period beginning on or after July 1, 2004.

**230.8(1) Exempt sales and rentals of machinery and equipment.** The sales price from sales or rentals of core making, mold making, and sand handling machinery and equipment directly and primarily used by a foundry in the mold making process is exempt from tax. For the purposes of this rule, a “foundry” is an establishment where metal, but not plastic, is melted and poured into molds. A nonexclusive list of equipment which may be exempt under this rule includes sand storage tanks, conveyers, patterns, mullor controllers, and sand mixers. A nonexclusive list of items which would not be exempted by this rule includes sand and other materials (as opposed to equipment) used to build molds or cores, and supplies. Services used in the mold making process are not exempted from tax by this rule. For the purposes of this rule, core making, mold making, and sand handling equipment also include replacement parts necessary for the operation of the equipment which is used directly and primarily by a foundry in the mold making process. Reference 701—subrule 18.58(1) for definitions of “directly used,” “equipment,” “machinery,” “replacement part” and “supplies.”

**230.8(2) Exempt sales of fuel and electricity.** The sales price from sales of fuel used in creating heat, power, or steam for, or used for generating electric current for, or electric current sold for use in machinery or equipment the sale or rental of which is exempt under subrule 230.8(1) is exempt from tax.

**230.8(3) Exempt design and installation services.** The sales price from furnishing design and installation services, including electrical and electronic installation, of machinery and equipment the sale or rental of which is exempt under subrule 230.8(1) is exempt from tax. Reference rule 701—26.16(422) for characterizations of the words “installation” and “electronic installation.”

This rule is intended to implement Iowa Code section 423.3(82).

**701—230.9(423) Chemical compounds used to treat water.** Chemical compounds placed in water which is ultimately sold at retail should be purchased exempt from the tax. The chemical compounds become an integral part of property sold at retail. Chemical compounds placed in water which is directly used in processing are exempt from the tax, even if the water is consumed by the processor and not sold at retail.

Chemical compounds which are used to treat water that is not sold at retail or which are not used directly in processing shall be subject to tax. An example would be chlorine or other chemicals used to treat water for a swimming pool.

Special boiler compounds used by processors when live steam is injected into the mash or substance, whereby the steam liquefies and becomes an integral part of the product intended to be sold at retail and also becomes a part of the finished product, shall be exempt from tax.

This rule is intended to implement Iowa Code section 423.3(50).

**701—230.10(423) Exclusive web search portal business and its exemption.** Effective on or after July 1, 2007, a business that qualifies as a web search portal business that has a physical location in Iowa and that meets specific criteria may obtain an exemption from sales and use tax on specific purchases that are used in the operation and maintenance of the web search portal business. This exemption from sales and use tax also applies to the affiliates of a qualifying web search portal business.

**230.10(1) Definitions.** For the purpose of this exemption, the following definitions apply:

a. “Affiliate” means an entity that directly or indirectly controls, is controlled with or by, or is under common control with another entity.

b. “Control” means any of the following:

(1) In the case of a United States corporation, the ownership, directly or indirectly, of 50 percent or more of the voting power to elect directors.

(2) In the case of a foreign corporation, if the voting power to elect the directors is less than 50 percent, the maximum amount allowed by applicable law.

(3) In the case of an entity other than a corporation, 50 percent or more ownership interest in the entity, or the power to direct the management of the entity.

c. “Web search portal business” means an entity among whose primary businesses is to provide a search portal to organize information; to access, search, and navigate the internet, including research and development to support capabilities to organize information; and to provide internet access, navigation, and search functionalities.

**230.10(2) Criteria to claim exemption.** The following govern whether a business qualifies for an exemption from sales and use tax on purchases made or leases executed by a web search portal business:

a. All of the following requirements must be met by a web search portal business for the purpose of this exemption:

(1) The business of the purchaser or lessee shall be as a provider of a web search portal.

(2) The web search portal business shall have a physical location in Iowa that is used for the operations and maintenance of the web search portal site on the internet, including but not limited to research and development to support capabilities to organize information and to provide internet access, navigation, and search.

(3) The web search portal business shall make a minimum investment in an Iowa physical location of \$200 million within the first six years of operation in Iowa beginning with the date the web search portal business initiates site preparation activities. The minimum investment includes the initial investment, including land and subsequent acquisition of additional adjacent land and subsequent investment at the Iowa location.

(4) The web search portal business shall purchase, option, or lease Iowa land not later than December 31, 2008, for any initial investment. However, the December 31, 2008, date shall not affect the future purchases of adjacent land and additional investment in the initial or adjacent land to qualify as part of the minimum investment for purposes of this exemption.

b. Aggregation to meet requirements. A web search portal business that is seeking an exemption from sales and use tax under this exemption may meet the requirements found in subparagraphs 230.10(2)“a”(1) to (4) above, by aggregating various Iowa investments and other requirements with its business affiliates.

c. Failure to meet investment qualifications. If a web search portal business claiming exemption from sales and use tax under this exemption fails to meet at least 80 percent of the minimum investment amount required within the first six years of operation beginning with the initiation of the site preparation activities by the web search portal business, the web search portal business will lose the right to claim this exemption from sales and use tax. Immediately following the loss of the right to claim this exemption from sales and use tax, the web search portal business is required to pay all sales or use taxes that would have been due on the purchase or rental of all purchases previously claimed exempt from sales and use tax, plus any and all applicable statutory penalty and interest due on the tax.

**230.10(3) Exempt purchases.** Sales and leases of the following are exempt from sales and use tax when sold or leased to a qualifying web search portal business:

a. Computers and equipment that are necessary for the maintenance and operation of the web search portal business;

b. All equipment used for the operation and maintenance of the cooling system for the computers and equipment used in the operation of the web search portal;

c. All equipment used for the operation and maintenance of the cooling towers for the cooling system referenced in paragraph “b” above;

d. All equipment used for the operation and maintenance of the temperature control infrastructure for the computers and equipment used in the operation of the web search portal;

e. All equipment used for the operation and maintenance of the power infrastructure that is used for the transformation, distribution, or management of electricity used for the operation and maintenance of the web search portal. This equipment includes, but is not limited to, exterior dedicated business-owned power substations, backup power generation systems, battery systems, and related infrastructure;

- f. All equipment used in the racking system, including cabling and trays;
- g. Fuel purchased by the web search portal business that is used in the backup power generation system and in all items listed in paragraphs “a” to “f.” This provision includes the fuel used in backup generators that may be located outside of the building that are used if power is interrupted to ensure the web search portal continues operation; and
- h. Electricity purchased for use in operating the web search portal.

**230.10(4) Limitation of exemption.** The purchases or leases of the items listed in subrule 230.10(3) are only exempt if the items being purchased or leased are being used in the operation or maintenance of the web search portal business. Such purchases or leases will not be exempt from sales or use tax if the item is to be used in the business for another purpose not related to operations or maintenance. Examples of items included in this limitation include but are not limited to:

- a. Electricity not used for operation or maintenance, such as in the office or employee break room;
- b. Tangible personal property used in areas of the web search portal facility that is not used for operation or maintenance, such as cleaning equipment and supplies;
- c. Building materials that become part of real property, such as concrete, steel or roofing; and
- d. Tangible personal property that becomes part of real property, such as a dishwasher.

**230.10(5) Initial date of exemption.** The exemption from sales and use tax begins on and after the date of the initial investment in or the initiation of site preparation activities for the facility that will contain the qualifying web search portal business.

This rule is intended to implement 2007 Iowa Code Supplement section 423.3(92).

**701—230.11(423) Web search portal business and its exemption.** Effective on or after July 1, 2008, a business that qualifies as a web search portal business that has a physical location in Iowa and that meets specific criteria may obtain an exemption from sales and use tax on specific purchases that are used in the operation and maintenance of the web search portal business. This exemption from sales and use tax also applies to the affiliates of a qualifying web search portal business.

**230.11(1) Definitions.** For the purpose of this exemption, the following definitions apply:

“*Affiliate*” means an entity that directly or indirectly controls, is controlled with or by, or is under common control with another entity.

“*Control*” means any of the following:

1. In the case of a United States corporation, the ownership, directly or indirectly, of 50 percent or more of the voting power to elect directors.
2. In the case of a foreign corporation, if the voting power to elect the directors is less than 50 percent, the maximum amount allowed by applicable law.
3. In the case of an entity other than a corporation, 50 percent or more ownership interest in the entity, or the power to direct the management of the entity.

“*Web search portal business*” means an entity whose business among other businesses is to provide a search portal to organize information; to access, search, and navigate the Internet, including research and development to support capabilities to organize information; or to provide Internet access, navigation, or search functionalities.

**230.11(2) Criteria to claim exemption.** The following governs whether a business qualifies for an exemption from sales and use tax on purchases made or leases executed by a web search portal business:

a. *Requirements.* All of the following requirements must be met by a web search portal business for the purpose of this exemption:

(1) The business, among other businesses, of the purchaser or lessee shall be as a provider of a web search portal.

(2) The web search portal business shall have a physical location in Iowa that is used for the operations and maintenance of the web search portal site on the Internet, including but not limited to research and development to support capabilities to organize information and to provide Internet access, navigation, and search functionality.

(3) The web search portal business shall make a minimum investment in an Iowa physical location of \$200 million within the first six years of operation in Iowa beginning with the date the

web search portal business initiates site preparation activities. The minimum investment includes the initial investment, including land and subsequent acquisition of additional adjacent land and subsequent investment at the Iowa location.

(4) The web search portal business shall purchase, option, or lease Iowa land not later than December 31, 2008, for any initial investment. However, the December 31, 2008, date shall not affect the future purchases of adjacent land and additional investment in the initial or adjacent land to qualify as part of the minimum investment for purposes of this exemption.

*b. Aggregation to meet requirements.* A web search portal business that is seeking an exemption from sales and use tax under this exemption may meet the requirements found in subparagraphs 230.11(2)“a”(1) to (4) by aggregating various Iowa investments and other requirements with its business affiliates.

*c. Failure to meet investment qualifications.* If a web search portal business claiming exemption from sales and use tax under this exemption fails to meet at least 80 percent of the minimum investment amount required within the first six years of operation beginning with the initiation of the site preparation activities by the web search portal business, the web search portal business will lose the right to claim this exemption from sales and use tax. Immediately following the loss of the right to claim this exemption from sales and use tax, the web search portal business is required to pay all sales or use taxes that would have been due on the purchase or rental of all purchases previously claimed exempt from sales and use tax, plus any and all applicable statutory penalty and interest due on the tax.

**230.11(3) Exempt purchases.** Sales and leases of the following are exempt from sales and use tax when sold or leased to a qualifying web search portal business:

*a.* Computers and equipment that are necessary for the maintenance and operation of the web search portal business;

*b.* All equipment used for the operation and maintenance of the cooling system for the computers and equipment used in the operation of the web search portal business;

*c.* All equipment used for the operation and maintenance of the cooling towers for the cooling system referenced in paragraph “b”;

*d.* All equipment used for the operation and maintenance of the temperature control infrastructure for the computers and equipment used in the operation of the web search portal business;

*e.* All equipment used for the operation and maintenance of the power infrastructure that is used for the transformation, distribution, or management of electricity used for the operation and maintenance of the web search portal business. This equipment includes, but is not limited to, exterior dedicated business-owned power substations; and back-up power generation systems, battery systems, and related infrastructure;

*f.* All equipment used in the racking system, including cabling and trays;

*g.* Fuel purchased by the web search portal business that is used in the back-up power generation system and in all items listed in paragraphs “a” to “f.” This includes the fuel used in the back-up generators that may be located outside the building and that are used if power is interrupted to ensure the web search portal business continues operation; and

*h.* Electricity purchased for use in operating the web search portal business.

**230.11(4) Limitation of exemption.** The purchase or lease of the items listed in subrule 230.11(3) is only exempt if the items being purchased or leased are being used in the operation or maintenance of the web search portal business. Such purchases or leases will not be exempt from sales or use tax if the item is to be used in the business for another purpose. For example, the purchase of electricity for use in the office portion of the web search portal facility would not be exempt. The purchase of building materials that become real property would not be exempt. For example, the purchase of a dishwasher that will be built into a kitchen area in the break room for employees would not be exempt from tax. The purchase of a dishwasher is the purchase of tangible personal property. However, upon installation, the dishwasher becomes part of the building and realty and is not exempt from Iowa sales or use tax.

**230.11(5) Initial date of exemption.** The exemption from sales and use tax begins on and after the date of the initial investment in or the initiation of site preparation activities for the facility that will contain the qualifying web search portal business.

This rule is intended to implement Iowa Code section 423.3 as amended by 2008 Iowa Acts, House File 2233, section 1.

**701—230.12(423) Large data center business exemption.** Effective on or after July 1, 2009, a data center business that has a physical location in Iowa and that meets specific criteria may obtain an exemption from sales and use tax on specific purchases that are used in the operation and maintenance of the data center business.

**230.12(1) Definitions.** For the purpose of this rule, the following definitions apply:

“*Data center*” means a building rehabilitated or constructed to house a group of networked server computers in one physical location in order to centralize the storage, management, and dissemination of data and information pertaining to a particular business, taxonomy, or body of knowledge.

“*Data center business*” means an entity whose business, among other businesses, is to operate a data center.

**230.12(2) Criteria to claim exemption.** The following govern whether a business qualifies for an exemption from sales and use tax on purchases made or leases executed by a data center business:

*a. Requirements.* All of the following requirements must be met by a data center business for the purpose of this exemption:

(1) The business, among other businesses, of the purchaser or lessee shall be as a provider of a data center.

(2) The data center business shall have a physical location in Iowa that is, in the aggregate, at least 5,000 square feet in size used for the operation and maintenance of the data center.

1. A data center facility includes, but is not limited to, the centralization, storage, management and dissemination of data and information.

2. The physical location shall include the mechanical and electrical systems, redundant or backup power supplies, redundant data communications connections, environmental controls, and fire suppression systems for the data center business. The data center business’s physical location may also include a restricted access area employing advanced physical security measures such as video surveillance systems and card-based security or biometric security access systems.

(3) The data center business shall make a minimum investment in an Iowa physical location of \$200 million within the first six years of operation in Iowa beginning with the date the data center business initiates site preparation activities. The minimum investment includes the initial investment, including land and subsequent acquisition of additional adjacent land and subsequent investment at the Iowa location.

(4) The data center business shall comply with the applicable sustainable design and construction standards in Iowa Administrative Code 661—Chapter 310 as established by the state building code commissioner pursuant to Iowa Code section 103A.8B.

*b. Failure to meet investment qualifications.* If a data center business claiming exemption from sales and use tax under this exemption fails to meet at least 80 percent of the minimum investment amount required within the first six years of operation beginning with the initiation of the site preparation activities by the data center business, the data center business will lose the right to claim this exemption from sales and use tax. Immediately following the loss of the right to claim this exemption from sales and use tax, the data center business is required to pay all sales and use taxes that would have been due on the purchase or rental of all purchases previously claimed exempt from sales and use tax, plus any and all applicable statutory penalty and interest due on the tax.

**230.12(3) Exempt purchases.** Sales and leases of the following are exempt from sales and use tax when sold or leased to a qualifying data center business:

*a.* Computers and equipment that are necessary for the maintenance and operation of the data center business;

b. All equipment used for the operation and maintenance of the cooling system for the computers and equipment used in the operation of the data center business;

c. All equipment used for the operation and maintenance of the cooling towers for the cooling system referenced in paragraph “b”;

d. All equipment used for the operation and maintenance of the temperature control infrastructure for the computers and equipment used in the operation of the data center business;

e. All equipment used for the operation and maintenance of the power infrastructure that is used for the transformation, distribution, or management of electricity used for the operation and maintenance of the data center business. This equipment includes, but is not limited to, exterior dedicated business-owned power substations and backup power generation systems, battery systems, and related infrastructure;

f. All equipment used in the racking system, including cabling and trays;

g. Fuel purchased by the data center business that is used in the backup power generation system and in all items listed in paragraphs “a” to “f.” This includes the fuel used in the backup generators that may be located outside the building and that are used if power is interrupted to ensure the data center business continues operation; and

h. Electricity purchased for use in operating the data center business.

**230.12(4) Limitation of exemption.** The purchase or lease of the items listed in subrule 230.12(3) is only exempt if the items being purchased or leased are being used in the operation or maintenance of the data center business. Such purchases or leases will not be exempt from sales or use tax if the item is to be used in the business for another purpose. For example:

a. The purchase of electricity for use in the office portion of the data center business facility would not be exempt.

b. The purchase of building materials that become real property would not be exempt. For example, the purchase of a dishwasher that will be built into a kitchen area in the break room for employees would not be exempt from tax. Although the purchase of a dishwasher is the purchase of tangible personal property, upon installation, the dishwasher becomes part of the building and realty and, therefore, is not exempt from Iowa sales and use tax.

**230.12(5) Initial date of exemption.** The exemption from sales and use tax begins on and after the date of the initial investment in or the initiation of site preparation activities for the facility that will contain the qualifying data center business.

This rule is intended to implement Iowa Code section 423.3 as amended by 2009 Iowa Acts, Senate File 478, sections 197 through 202.  
[ARC 8602B, IAB 3/10/10, effective 4/14/10]

**701—230.13(423) Data center business sales and use tax refunds.** Effective on or after July 1, 2009, data center businesses in Iowa meeting certain criteria may make an annual application to the department for a refund of 50 percent of the sales and use tax paid on the sales price of certain computers, equipment, fuel, and electricity used in the operation of the data center business.

**230.13(1) Definitions.** For the purpose of this rule, the following definitions apply:

“Data center” means a building rehabilitated or constructed to house a group of networked server computers in one physical location in order to centralize the storage, management, and dissemination of data and information pertaining to a particular business, taxonomy, or body of knowledge.

“Data center business” means an entity whose business, among other businesses, is to operate a data center.

“Refund year” means the year beginning with the date of initial site preparation of the data center facility.

“Rehabilitation” means a process of substantial repair, remodeling, or alteration, which may include but is not limited to upgrading mechanical systems, plumbing, roofing, wiring, windows, and heating and cooling systems, and performing significant interior or exterior structural modification. Although they may be included as part of an overall rehabilitation project, singular actions such as the installation

of a new information system or cosmetic changes to the interior or exterior appearance of a building do not, in and of themselves, constitute a rehabilitated building.

**230.13(2) Basis and criteria for refunds.** The amount, type, and length of refunds available to data center businesses depend upon the dollar amount of investment made, the type of construction undertaken, and the size in square feet of the facility.

*a. Investment of \$136 million to \$200 million.* Data center businesses which make investments in an Iowa facility of \$136 million to \$200 million in the first six years of operations and which facility contains at least 5,000 square feet are eligible for a refund of 50 percent of the sales and use tax paid on qualifying computers and equipment, backup fuel, and electricity for the first seven years of operation.

*b. Investment of \$10 million to \$136 million—new construction.* Data center businesses which make investments of \$10 million to \$136 million in the first six years of operations in the new construction of an Iowa facility that is at least 5,000 square feet are eligible for a refund of 50 percent of the sales and use tax paid on qualifying computers and equipment, backup fuel, and electricity for the first ten years of operation.

*c. Investment of \$5 million to \$136 million—rehabilitation.* Data center businesses which make investments of \$5 million to \$136 million in the first six years of operations in the rehabilitation of an Iowa facility that is at least 5,000 square feet are eligible for a refund of 50 percent of the sales and use tax paid on qualifying computers and equipment, backup fuel, and electricity for the first ten years of operation.

*d. Investment of \$1 million to \$10 million—new construction.* Data center businesses which make investments of \$1 million to \$10 million in the first three years of operations in the new construction of an Iowa facility of any size are eligible for a refund of 50 percent of the sales and use tax paid on fuel and electricity for the first five years of operation.

*e. Investment of \$1 million to \$5 million—rehabilitation.* Data center businesses which make investments of \$1 million to \$5 million in the first three years of operations in the rehabilitation of an Iowa facility of any size are eligible for a refund of 50 percent of the sales and use tax paid on fuel and electricity for the first five years of operation.

**230.13(3) Purchases eligible for refunds.** Sales and leases of the following are eligible for a refund of 50 percent of the sales and use tax paid when sold or leased to a qualifying data center business:

*a.* Computers and equipment that are necessary for the maintenance and operation of the data center business;

*b.* All equipment used for the operation and maintenance of the cooling system for the computers and equipment used in the operation of the data center business;

*c.* All equipment used for the operation and maintenance of the cooling towers for the cooling system referenced in paragraph “*b*”;

*d.* All equipment used for the operation and maintenance of the temperature control infrastructure for the computers and equipment used in the operation of the data center business;

*e.* All equipment used for the operation and maintenance of the power infrastructure that is used for the transformation, distribution, or management of electricity used for the operation and maintenance of the data center business. This equipment includes, but is not limited to, exterior dedicated business-owned power substations and backup power generation systems, battery systems, and related infrastructure;

*f.* All equipment used in the racking system, including cabling and trays;

*g.* Fuel purchased by the data center business that is used in the backup power generation system and in all items listed in paragraphs “*a*” to “*f*.” This includes the fuel used in the backup generators that may be located outside the building and that are used if power is interrupted to ensure the data center business continues operation; and

*h.* Electricity purchased for use in operating the data center business.

**230.13(4) Sustainable design standards.** In order to claim the refunds detailed in subrule 230.13(3), paragraphs “*a*” through “*h*,” data center businesses must comply with the sustainable design and construction standards as required by Iowa Administrative Code 661—Chapter 310 as established by the state building code commissioner pursuant to Iowa Code section 103A.8B.

**230.13(5) Failure to meet investment qualifications.** If a data center business claiming a refund of sales and use tax under this rule fails to meet at least 80 percent of the minimum investment amount required within the first six years of operation beginning with the initiation of the site preparation activities by the data center business, the data center business will lose the right to claim the refund of sales and use tax. Immediately following the loss of the right to claim the refund of sales and use tax, the data center business is required to return the refund of sales and use tax paid on qualifying computers, equipment, fuel, and electricity, plus any and all applicable statutory penalty and interest due on the tax.

**230.13(6) Limitation of refunds.**

*a. Use in operation or maintenance.* The purchase or lease of the items listed in subrule 230.13(3) is only eligible for a refund of sales and use tax if the items being purchased or leased are being used in the operation or maintenance of the data center business. Such purchases or leases will not be eligible for a refund of sales and use tax if the item is to be used in the business for another purpose. For example:

(1) The purchase of electricity for use in the office portion of the data center business facility would not be eligible for a refund.

(2) The purchase of building materials that become real property would not be eligible for a refund. For example, the purchase of a dishwasher that will be built into a kitchen area in the break room for employees would not be eligible for a refund of tax. Although the purchase of a dishwasher is the purchase of tangible personal property, upon installation, the dishwasher becomes part of the building and realty and, therefore, is not eligible for a refund of Iowa sales and use tax.

*b. State sales tax only.* Refunds issued under this rule may not exceed 5 percent of the sales price of computers and equipment listed in subrule 230.13(3) and the fuel used to create heat, power and steam for processing or generating electrical current or from the sales price of electricity consumed by computers, machinery, or other equipment for operation of the data center business facility. The refund will not include any local option sales and services taxes.

*c. Qualifying dates for fuel and electricity refund.* To qualify for the 50 percent refund, the following must be on or after the first day of the first month through the last day of the last month of the refund year:

(1) The dates of the utility billing or meter reading cycle for the sale or furnishing of metered gas and electricity;

(2) The dates of the sale or furnishing of fuel for purposes of commercial energy; and

(3) The delivery of the fuel used for purposes of commercial energy.

**230.13(7) Form and filing requirements.**

*a. Form.* The owner of a data center business seeking a refund of sales and use tax imposed upon the sale or lease of any qualifying computers, equipment, fuel, and electricity must complete and file with the department Form IA 843, Claim for Refund. All of the information on the Claim for Refund must be completed.

*b. Due date.* The refund request form must be filed with the department no later than one year after the purchase of the qualifying computers, equipment, fuel, or electricity and within three months after the end of the refund year. The refund for sales and use tax begins with purchases made on and after July 1, 2009, or on and after the date of the initial investment in or the initiation of site preparation activities for the facility that will contain the qualifying data center business.

*c. Date required.* The refund request must include detailed schedules of the items being claimed including dates of purchase of tangible personal property, amount of purchase, and tax paid. The purchase of fuel and electricity must be computed and documented separately from other purchases.

*d. Affidavit.* In addition to completing and filing Form IA 843, Claim for Refund, the owner of a data center business seeking a refund as specified in this rule must also complete and file with the department an affidavit certifying that qualifications for the refund have been met. The affidavit must be filed prior to any refund request and must be approved by the department before a refund claim can be filed. The following format must be used for the affidavit:

Iowa Department of Revenue  
Sales Tax Refund Affidavit

NAME OF AFFIANT  
ADDRESS OF AFFIANT



AFFIDAVIT FOR  
DATA CENTER BUSINESS

The undersigned duly swears that the named data center business complies with criteria to be entitled to refund of sales tax as required in Iowa Code section 423.4 as follows:

1. The facility is a data center business as defined by Iowa Code section 423.4(8) or 423.4(9);
2. The data center business facility will be a minimum of 5,000 square feet, as applicable, located upon Iowa land; and located at \_\_\_\_\_; with total square footage of \_\_\_\_\_;
3. The data center business will make an investment of (check only one):
  - \$136 million to \$200 million within the first six years of operation (refund available for first seven years).
  - \$10 million to \$136 million for new construction within the first six years of operation (refund available for first ten years).
  - \$5 million to \$136 million for rehabilitation of an existing facility within the first six years of operation (refund available for first ten years).
  - \$1 million to \$10 million for new construction within the first three years of operation (refund of tax paid on fuel and electricity only; refund available for first five years).
  - \$1 million to \$5 million for rehabilitation of an existing facility within the first three years of operation (refund of tax paid on fuel and electricity only; refund available for first five years).
4. The data center business facility will be constructed in accordance with the sustainable design and construction standards as required by Iowa Administrative Code 661—Chapter 310 and established by the building code commissioner pursuant to Iowa Code section 103A.8B;
5. Construction of the data center business facility was commenced on or after July 1, 2009; and the date of the initial site preparation or building rehabilitation was \_\_\_\_\_; and
6. Purchases of qualifying computers, equipment, fuel or electricity were made on or after July 1, 2009.

The undersigned duly swears that he or she is the owner of the qualifying data center business or that the undersigned is the authorized representative of the qualifying data center business and has the authority to sign this document. The undersigned swears that he or she has personal knowledge regarding the facts contained in this affidavit and that the statements set forth in this affidavit are true and accurate and that the qualifying data center business has met all of the requirements as contained herein.

\_\_\_\_\_  
Name of Affiant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Position of Affiant

This rule is intended to implement Iowa Code section 423.4 as amended by 2009 Iowa Acts, Senate File 478, sections 198 through 202.  
[ARC 8602B, IAB 3/10/10, effective 4/14/10]

**701—230.14(423) Exemption for the sale of computers, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, machinery, equipment, replacement parts, and supplies used for certain manufacturing purposes if the sale occurs on or after July 1, 2016.** Rules 701—230.14(423) to 701—230.20(423) exempt the sales price of computers, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, machinery, equipment, replacement parts, and supplies when used in an exempt manufacturing purpose. Rule 701—230.21(423) exempts the purchase of fuel used in such computers, machinery, and equipment. Rule 701—230.22(423) exempts the service of designing or installing such machinery and equipment. Rules 701—230.14(423) to 701—230.22(423) apply to sales

of such products occurring on or after July 1, 2016. For sales occurring prior to July 1, 2016, see rule 701—18.58(422,423).

**230.14(1)** *Generally.* The sales price of computers, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, machinery, equipment, replacement parts, and supplies is exempt from sales and use tax if the property is any of the following:

- a. Directly and primarily used in processing by a manufacturer (see rule 701—230.15(423)).
- b. Directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, machinery, and equipment used in processing by a manufacturer, including test equipment used to control quality and specifications of the product (see rule 701—230.16(423)).
- c. Directly and primarily used in research and development of new products or processes of processing (see rule 701—230.17(423)).
- d. Computers used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise (see rule 701—230.18(423)).
- e. Directly and primarily used in recycling or reprocessing of waste products (see rule 701—230.19(423)).
- f. Pollution-control equipment used by a manufacturer, including but not limited to that required or certified by an agency of this state or of the United States government (see rule 701—230.20(423)).
- g. Fuel used in creating heat, power, steam, or for generating electrical current, or from the sale of electricity, consumed by computers, machinery, or equipment used in an exempt manner described in paragraph “a,” “b,” “c,” “e,” or “f” (see rule 701—230.21(423)).

**230.14(2)** *Computers, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, machinery, equipment, replacement parts, and supplies.*

a. *Computers.* “Computer” means stored program processing equipment and all devices fastened to it by means of signal cables or any communication medium that serves the function of a signal cable. Nonexclusive examples of devices fastened by a signal cable or other communication medium are terminals, printers, display units, card readers, tape readers, document sorters, optical readers, and card or tape punchers. Excluded from the definition of “computer” is point-of-sale equipment. For a characterization of “point-of-sale equipment,” see subparagraph 230.14(2) “g”(4). Also included within the meaning of the word “computer” is any software consisting of an operating system or executive program. Such software coordinates, supervises, or monitors the basic operating procedure of a computer. An operating system or executive program is exempt from sales tax under rules 701—230.14(423) to 701—230.20(423) only if purchased as part of the sale of the computer for which it operates. An operating system or executive program priced separately or sold at a later time is subject to the provisions of rule 701—18.34(422,423). Excluded from the meaning of the word “computer” is any software consisting of an application program. For purposes of this paragraph, “operating system or executive program” means a computer program that is fundamental and necessary to the functioning of a computer. The operating system or executive program software controls the operation of a computer by managing the allocation of all system resources, including the central processing unit, main and secondary storage, input/output devices, and the processing of programs. This is in contrast to application software, which is a collection of one or more programs used to develop and implement the specific applications that the computer is to perform and which calls upon the services of the operating system or executive program.

b. *Machinery.* “Machinery” is any mechanical, electrical, or electronic device designed and used to perform some function and to produce a certain effect or result. The term includes not only the basic unit of the machinery, but also any adjunct or attachment necessary for the basic unit to accomplish its intended function. Machinery also includes all devices used or required to control, regulate, or operate a piece of machinery, provided such devices are directly connected with or are an integral part of the machinery and are used primarily for control, regulation, or operation of machinery. Other devices necessary to the operation of or used in conjunction with the operation of what would be ordinarily thought of as machinery are also considered to be machinery.

*c. Equipment.* In general usage, “equipment” refers to devices or tools used to produce a final product or achieve a given result. Exempt “equipment” under these rules includes tables on which property is assembled on an assembly line, if those tables are directly and primarily used in processing by a manufacturer.

*d. Replacement parts.* “Replacement part” means tangible personal property other than computers, machinery, equipment, or supplies, regardless of the cost or useful life of the tangible personal property, that meets all of the following conditions:

(1) The tangible personal property replaces a component of a computer, machinery, or equipment, which component is capable of being separated from the computer, machinery, or equipment;

(2) The tangible personal property performs the same or similar function as the component it replaced; and

(3) The tangible personal property restores the computer, machinery, or equipment to an operational condition, or upgrades or improves the efficiency of the computer, machinery, or equipment.

*e. Supplies.* “Supply” means tangible personal property, other than computers, machinery, equipment, or replacement parts, that meets one of the following conditions:

(1) The tangible personal property is to be connected to a computer, machinery, or equipment and requires regular replacement because the item is consumed or deteriorates during use. Such supplies include, but are not limited to, saw blades, drill bits, filters, and other similar items with a short useful life.

(2) The tangible personal property is used in conjunction with a computer, machinery, or equipment and is specially designed for use in manufacturing specific products and may be used interchangeably and intermittently on a particular computer, machine, or piece of equipment. Such supplies include, but are not limited to, jigs, dies, tools, and other similar items.

(3) The tangible personal property comes into physical contact with other tangible personal property used in processing and is used to assist with or maintain conditions necessary for processing. Such supplies include, but are not limited to, cutting fluids, oils, coolants, lubricants, and other similar items with a short useful life.

(4) The tangible personal property is directly and primarily used in an activity described in rules 701—230.14(423) to 701—230.20(423). Such supplies include, but are not limited to, prototype materials and testing materials.

*f. Materials used to construct or self-construct computers, machinery, equipment, replacement parts, and supplies.* “Materials used to construct or self-construct computers, machinery, equipment, replacement parts, and supplies” means tangible personal property that is incorporated into a computer, machinery, equipment, replacement part, or supply when the computer, machinery, equipment, replacement part, or supply is constructed or assembled.

*g. Exclusions.* Sales of the following property, or materials used to construct or self-construct the following property, are not exempt under rules 701—230.14(423) to 701—230.20(423) regardless of how the property is used.

(1) Land.

(2) Intangible property.

(3) Hand tools. “Hand tool” means a tool that can be held in the hand or hands and is powered by human effort.

(4) Point-of-sale equipment and computers. “Point-of-sale equipment and computers” means input, output, and processing equipment and computers used to consummate a sale and to record or process information pertaining to a sale transaction at the time the sale takes place and is located at the counter, desk, or other specific point where the transaction occurs. Point-of-sale equipment and computers do not include equipment and computers used primarily for depositing or withdrawing funds from financial institution accounts.

(5) Certain centrally assessed industrial machinery, equipment, and computers. Property that is centrally assessed by the department of revenue under Iowa Code sections 428.24 to 428.29 or chapters 433, 434, 437, 437A, 437B, and 438 does not qualify for exemption under rules 701—230.14(423) to 701—230.20(423). Property used but not owned by persons whose property is defined by such provisions

of the Iowa Code, which would be assessed by the department of revenue if the persons owned the property, also does not qualify for exemption under rules 701—230.14(423) to 701—230.20(423).

(6) Vehicles subject to registration. The general sales and use tax does not apply to vehicles subject to registration under Iowa Code chapter 321. Instead, such vehicles are subject to the fee for new registration under Iowa Code section 321.105A. Vehicles subject to registration are not exempt from the fee for new registration under rules 701—230.14(423) to 701—230.20(423), unless the vehicle is directly and primarily used in recycling or reprocessing of waste products (see rule 701—230.19(423)).

*h. Examples.* When used for an exempt purpose under rules 701—230.14(423) to 701—230.20(423), the following items may be exempt computers, machinery, equipment, replacement parts, or supplies. This list is not all-inclusive.

- (1) Coolers, including coolers that do not change the nature of materials stored in them.
- (2) Equipment that eliminates bacteria.
- (3) Palletizers.
- (4) Storage bins.
- (5) Property used to transport raw, semifinished, or finished goods.
- (6) Vehicle-mounted cement mixers.
- (7) Self-constructed machinery and equipment.
- (8) Packaging and bagging equipment, including conveyer systems.
- (9) Equipment that maintains an environment necessary to preserve a product's integrity.
- (10) Equipment that maintains a product's integrity directly.
- (11) Quality control equipment.
- (12) Water used for cooling.

**230.14(3) *Leased and rented property.*** The exemptions under rules 701—230.14(423) to 701—230.22(423) apply to property regardless of how it is sold, including leased or rented property. The lease of computers, machinery, equipment, replacement parts, or supplies may be exempt from sales and use tax if the lessee uses the property in an exempt manner under rules 701—230.14(423) to 701—230.20(423). Additionally, a lessor's purchase of computers, machinery, equipment, replacement parts, or supplies for lease or resale may be an exempt sale for resale under Iowa Code section 423.3(2).

**230.14(4) *Record keeping.*** Individuals claiming an exemption must always be able to prove they qualify for the exemption. To claim the exemptions described in this rule, purchasers must be able to prove that computers, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct the same are used for an exempt purpose under rules 701—230.14(423) to 701—230.20(423). When both exempt and nonexempt machinery and equipment are used in the same facility, replacement parts and supplies used in the machinery and equipment are exempt under these rules only to the extent the purchaser can prove which replacement parts and supplies were used in the exempt machinery and equipment. Detailed, contemporaneous records should be maintained to verify that qualifying property is used for an exempt purpose. The precise records required may vary from purchaser to purchaser. Computers, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct the same are not exempt under rules 701—230.14(423) to 701—230.20(423) if the property is not used for an exempt purpose.

This rule is intended to implement Iowa Code section 423.3(47) as amended by 2016 Iowa Acts, House File 2433.

[ARC 2768C, IAB 10/12/16, effective 11/16/16]

**701—230.15(423) Exemption for the sale of property directly and primarily used in processing by a manufacturer if the sale occurs on or after July 1, 2016.** The sales price of computers, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, machinery, equipment, replacement parts, and supplies is exempt from sales and use tax when the property is directly and primarily used in processing by a manufacturer. For sales occurring prior to July 1, 2016, see rule 701—18.58(422,423).

**230.15(1) *Required elements.*** To qualify for exemption under this rule, the purchaser must prove the property is:

a. Computers, machinery, equipment, replacement parts, supplies, or materials used to construct or self-construct computers, machinery, equipment, replacement parts, or supplies (see subrule 230.14(2));

b. Directly used (see subrule 230.15(2));

c. Primarily used (see subrule 230.15(2));

d. Used in processing (see subrule 230.15(3)); and

e. Used by a manufacturer (see subrule 230.15(4)).

**230.15(2) Directly and primarily used.**

a. *Directly used.*

(1) Generally. Property is “directly used” only if it is used to initiate, sustain, or terminate an exempt activity. In determining whether any property is “directly used,” consideration should be given to the following factors:

1. The physical proximity of the property to the exempt activity;

2. The temporal proximity of the use of the property to the use of other property that is directly used in the exempt activity; and

3. The active causal relationship between the use of the property and the exempt activity. The fact that a particular piece of property may be essential to the conduct of the activity because its use is required either by law or practical necessity does not, of itself, mean that the property is directly used.

(2) Examples. The following property typically is not directly used in an exempt manner:

1. Property used exclusively for the comfort of workers, such as air cooling, air conditioning, or ventilation systems.

2. Property used in support operations, such as a machine shop, where production machinery is assembled, maintained, or repaired.

3. Property used by administrative, accounting, or personnel departments.

4. Property used by security, fire prevention, first aid, or hospital stations.

5. Property used in communications or safety.

b. *Primarily used.* The primary use of property is the activity or activities for which the property is used more than half of the time.

**230.15(3) Processing.**

a. *Generally.* “Processing” means a series of operations in which materials are manufactured, refined, purified, created, combined, transformed, or stored by a manufacturer, ultimately into tangible personal property. Processing encompasses all activities commencing with the receipt or producing of raw materials by the manufacturer and ending at the point products are delivered for shipment or transferred from the manufacturer. Processing includes, but is not limited to, refinement or purification of materials; treatment of materials to change their form, context, or condition; maintenance of the quality or integrity of materials, components, or products; maintenance of environmental conditions necessary for materials, components, or products; quality control activities; construction of packaging and shipping devices; placement into shipping containers or any type of shipping device or medium; and the movement of materials, components, or products until shipment from the processor. “Receipt or producing of raw materials” means activities performed upon tangible personal property only. With respect to raw materials produced from or upon real estate, “production of raw materials” is deemed to occur immediately following the severance of the raw materials from the real estate.

b. *The beginning of processing.* Processing begins with a processor’s receipt or production of raw material. Thus, when a processor produces its own raw material, it is engaged in processing. Processing also begins when a supplier transfers possession of raw materials to a processor.

c. *The completion of processing.* Processing ends when the finished product is transferred from the processor or delivered for shipment by the processor. Therefore, a processor’s packaging, storage, and transport of a finished product after the product is in the form in which it will be sold at retail are part of the processing of the product.

d. *Examples of the beginning, intervening steps, and the ending of processing.* Of the following, Examples A and B illustrate when processing begins under various circumstances; Example C

demonstrates the middle stages of processing; and Example D demonstrates when the end of processing takes place.

EXAMPLE A: Company A manufactures fine furniture. Company A owns a grove of walnut trees that it uses as raw material. Company A's employees cut the trees, transport the logs to Company A's facility, store the logs in a warehouse to begin the curing process, and eventually take the logs to Company A's sawmill. The walnut trees are real property while they are growing. Thus, no "production of raw materials" has occurred with regard to the trees until they have been severed from the soil and transformed into logs. Processing of the logs begins when they are placed on vehicles for transport to Company A's factory. However, if the transport vehicles are "vehicles subject to registration," the vehicles are not exempt from the fee for new registration under this rule (see subparagraph 230.14(2) "g"(6)).

EXAMPLE B: Company A from the previous example also buys mahogany logs from a supplier in Honduras. Company A uses its equipment to offload the logs from railroad cars at its facility. Company A then stores and saws the logs as previously described in Example A. Processing begins when Company A offloads the logs from the railroad cars.

EXAMPLE C: Company C is a microbrewery. It uses a variety of kettles, vats, tanks, tubs, and other containers to mix, cook, ferment, settle, age, and store the beer it brews. Company C also uses a variety of pipes and pumps to move the beer among the various containers involved in the activity of brewing. All stages of this brewing are part of processing, including fermentation or aging (the transformation of the raw materials from one state to another) as well as the storage of hops in a bin and the storage of beer prior to bottling (the holding of materials in an existing state). Any movement of the product between containers is also a part of processing.

EXAMPLE D: After the brewing process is complete, Company C places its beer in various containers, stores the beer, and moves the beer to Company C's customers by a common carrier that picks up the beer at Company C's facility. Company C's activities of placing the beer into bottles, cans, and kegs, storing the beer after packaging, and moving the beer by use of a forklift to the common carrier's pickup site are part of processing.

**230.15(4) Manufacturer.**

a. *Generally.* Iowa Code section 423.3(47) "d"(4) abrogates *The Sherwin-Williams Company v. Iowa Department of Revenue*, 789 N.W.2d 417 (Iowa 2010).

b. *Definitions.*

"Construction contracting" means engaging in or performing a construction contract as defined in rule 701—219.8(423).

"Manufacturer" means the same as defined in Iowa Code section 423.3(47).

"Transporting for hire" means the service of moving persons or property for consideration, including but not limited to the use of a "personal transportation service" as that term is described in Iowa Code section 423.2(6) and rule 701—26.80(422,423).

c. *Primarily engaged in an excluded activity.* A person is not considered a manufacturer if the person is "primarily engaged" in any of the activities listed in Iowa Code section 423.3(47) "d"(4)(c). A person is "primarily engaged" in an activity if the person generates more than 50 percent of the person's gross revenue from its operating business from, or spends more than 50 percent of the person's time engaging in, any combination of those activities during the 12-month period after the date the person engages in one of the listed activities.

EXAMPLE 1: Company A makes widgets and repairs widgets damaged during use by its customers. Company A generates 70 percent of its revenue making widgets, and its employees spend 80 percent of their time making widgets. The remainder of its revenue and time are attributed to widget repair. Company A is not primarily engaged in "repairing tangible personal property or real property" (Iowa Code section 423.3(47) "d"(4)(c)(ii)) or any of the other enumerated activities from Iowa Code section 423.3(47) "d"(4)(c) because only 30 percent of its revenue and 20 percent of employee time are attributed to widget repair.

EXAMPLE 2A: Company B makes concrete and sells it for resale or directly to individual consumers without entering into a construction contract. Company B generates 100 percent of its revenue from such sales of concrete, and its employees spend 95 percent of their time making concrete during the

12-month period after it claims to be a manufacturer. Company B is not excluded from being considered a manufacturer because Company B's production and sale of concrete are not part of construction contracting (Iowa Code section 423.3(47) "d"(4)(c)(i)).

EXAMPLE 2B: Company B begins construction contracting to sell its concrete. After 12 months of construction contracting (Iowa Code section 423.3(47) "d"(4)(c)(i)), Company B generates 55 percent of its revenue from construction contracting and 45 percent from resale sales or sales directly to consumers and spends 40 percent of its time performing construction contracts. Company B is no longer considered a manufacturer starting 12 months from the date it began construction contracting because it generates more than 50 percent of its gross revenue from construction contracting.

**230.15(5) Manufacturing.**

*a. Activities commonly understood to be manufacturing.* "Manufacturing" means the same as defined in Iowa Code section 423.3(47).

*b. Premises primarily used to make retail sales.*

(1) A person engaged in activities on a premises primarily used to make retail sales is not engaged in manufacturing at that premises and cannot claim this exemption for items used at that premises.

(2) The following are "premises primarily used to make retail sales":

1. Restaurants.
2. Mobile food vendors, vehicles, trailers, and other facilities used for retail sales.
3. Retail bakeries.
4. Prepared food retailers establishments.
5. Bars and taverns.
6. Racing and gaming establishments.
7. Racetracks.
8. Casinos.
9. Gas stations.
10. Convenience stores.
11. Hardware and home improvement stores.
12. Grocery stores.
13. Paint or paint supply stores.
14. Floral shops.
15. Other retail stores.

*c. Rebuttable presumption.* In addition to the premises listed in paragraph 230.15(5) "b," a premises shall be presumed to be "primarily used to make retail sales" when more than 50 percent of the gross sales of a business and its affiliates attributable to the premises are retail sales sourced to the premises under Iowa Code section 423.15(1) "a."

(1) For purposes of paragraph 230.15(5) "c":

"Attributable to the premises" means sales of tangible personal property at the premises or shipped from the premises to another location for sale or eventual sale.

"Premises" means any contiguous parcels, as defined in Iowa Code section 426C.1, which are owned, leased, rented, or occupied by a business or its affiliates and are operated by that business or its affiliates for a common business purpose. A "common business purpose" means the participation in any stage of manufacturing, production, or sale of a product. Whether a business is operating for a common business purpose is a fact-based determination that will depend on the individual circumstances at issue.

(2) Calculation. If a business seeking to claim this exemption makes retail sales sourced to a premises under Iowa Code section 423.15(1) "a" and the location is not one of those listed in paragraph 230.15(5) "b," the business shall determine whether a specific premises are primarily used to make retail sales by determining the amount of retail sales sourced to the premises under Iowa Code section 423.15(1) "a" during the 12-month period after the date the tangible personal property claimed to be exempt is used at the premises. The calculation should be done as follows:

Retail sales sourced to the premises

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Gross sales attributable to the premises

If the result is less than or equal to 0.5 (or 50 percent), the premises is not primarily used to make retail sales. If the result is greater than 0.5, the premises is presumed to be primarily used to make retail sales.

(3) Rebutting the presumption. If a premises is presumed to be primarily used to make retail sales under subparagraph 230.15(5)“c”(2), a manufacturer may prove to the department the premises is not primarily used to make retail sales by providing information regarding the following nonexclusive list of factors to support its assertion:

1. The square footage of the premises allocated to the manufacturing process.
2. The number of employees or employee work hours allocated to the manufacturing process.
3. The wages and salaries of employees working at the premises allocated to the manufacturing process.
4. The cost of operating the premises attributable to the manufacturing process.

The department’s determination shall be a fact-based determination based on the information provided by a manufacturer and the individual circumstances at issue.

EXAMPLE 1: Company A owns a centralized facility where it makes widgets and distributes them to several of its own retail stores for retail sale. The retail stores are not contiguous to the centralized facility. Company A purchases a widget maker for its centralized facility and seeks to claim this exemption. Because the widgets sold are sold at the retail stores, the sales of those widgets are sourced to the retail stores where the sales occur. Therefore, none of the sales are retail sales sourced to the centralized facility. Because Company A does not make retail sales sourced to the centralized facility, the centralized facility is not primarily used to make retail sales.

EXAMPLE 2A: Company A makes widgets at its premises in Iowa, known as Location 1. Company A sells its widgets to retailers for resale and also makes some retail sales that are sourced to Location 1.

Twelve months ago, Company A purchased and put into use at Location 1 a new molding machine for making new widgets. Company A paid tax on the sales price of the molding machine at the time of purchase. During the 12-month period after Company A first used the molding machine, 2 percent of the gross sales attributable to Location 1 were from retail sales sourced to Location 1 and 98 percent of the gross sales attributable to Location 1 were from sales of widgets to retailers.

Because less than half of the sales attributable to Location 1 during the 12-month period after the molding machine was first used at Location 1 were generated from retail sales sourced to Location 1, Location 1 is not primarily used to make retail sales. Therefore, if Company A’s use of the molding machine satisfies all other requirements of the exemption, Company A’s activities occurring on the premises constitute manufacturing.

EXAMPLE 2B: Same facts as in Example 2A, except that Company A also owns a second, noncontiguous premises in Iowa, known as Location 2. At Location 2, Company A operates a factory that makes the same types of widgets as Location 1. Company A also makes substantial retail sales that are sourced to Location 2.

Twelve months ago, Company A purchased new molding machines for Location 1 and Location 2. Company A paid tax on the sales price of the molding machines. During this 12-month period, 2 percent of the gross sales attributable to Location 1 were retail sales sourced to Location 1 and 98 percent of the gross sales attributable to Location 1 were from sales of widgets to distributors. Also during this 12-month period, 60 percent of the gross sales attributable to Location 2 were retail sales sourced to Location 2 and 40 percent of the gross sales attributable to Location 2 were from sales of widgets to distributors.

With respect to Location 1, the outcome is the same as in Example 1A. Because less than half of the sales attributable to Location 1 during the 12-month period after the molding machine was used at

Location 1 were generated from retail sales sourced to Location 1, Location 1 is not primarily used to make retail sales.

However, Location 2 is presumed to be primarily used to make retail sales because more than half of the gross sales attributable to Location 2 are from retail sales sourced to Location 2.

EXAMPLE 2C: Same facts as in Example 2B. Company A decides to purchase new molding machines for both Location 1 and Location 2. Relying on the exemption determinations for the prior year, Company A pays sales tax on the purchase price of the molding machine for Location 2 but tenders an exemption certificate for the purchase of the molding machine for Location 1 and does not pay sales tax on that transaction.

Twelve months pass since the new molding machines were used at their respective locations. At Location 1, the gross sales attributable to the premises and retail sales sourced to the premises remained the same. However, at Location 2, Company A experienced a decrease in on-site retail sales and an increase in distribution sales. Because of a shift in sales, 45 percent of the gross sales attributable to Location 2 were retail sales sourced to Location 2, and 55 percent of the gross sales attributable to Location 2 were from sales of widgets to distributors.

Therefore, this year, Location 2 is no longer presumed to be primarily used to make retail sales because in the 12 months after the machine was used at Location 2, less than half of the gross sales attributable to Location 2 were from retail sales sourced to Location 2.

EXAMPLE 3A: Company A owns a premises on which it makes baseball bats. A portion of the premises is leased to Company B, which operates a retail store on the premises that sells clothing and is not commonly understood to be a manufacturer. Company A and Company B are unaffiliated entities.

Company A is seeking to purchase several new lathes to use in its bat production. In the last year, 95 percent of Company A's gross sales attributable to the premises came from selling bats to distributors, and 5 percent of Company A's gross sales attributable to the premises were from retail sales at a small on-site location. Also in the last year, 100 percent of Company B's gross sales attributable to the premises were from on-site retail sales.

Because Company A and Company B are not affiliated in any way, none of Company B's sales are attributable to Company A. Therefore, for purposes of Company A's determining its eligibility to claim the exemption, Company A's premises are not primarily used to make retail sales because less than half of its gross sales attributable to the premises are from retail sales sourced to the premises.

EXAMPLE 3B: Same facts as in Example 3A, except that Company B is an affiliate of Company A.

The result is the same; while Company B is an affiliate of Company A, the premises are not being operated for a common business purpose because Company B is not selling any of the bats manufactured by Company A. Therefore, none of Company B's business is attributable to Company A. For purposes of Company A's determining its eligibility to claim the exemption, Company A's premises are not primarily used to make retail sales because less than half of its gross sales attributable to the premises are from retail sales sourced to the premises.

EXAMPLE 3C: Same facts as in Example 3A, except that Company B is an affiliate of Company A and instead of operating a clothing store, Company B operates a sporting goods store where it sells some of the bats manufactured by Company A.

In this case, Company B's sales are attributable to Company A because both companies use the premises for a common business purpose: the sale of baseball bats manufactured by Company A. Therefore, the gross sales attributable to the premises of both Company A and Company B must be included in Company A's gross sales attributable to the premises. The premises will be presumed to be primarily used to make retail sales if the combined retail sales by Company A and Company B that are sourced to the premises exceed 50 percent of the gross sales attributable to the premises.

EXAMPLE 4: Company A owns a premises not included in the list above at which it makes widgets. Company A sells 15 percent of its widgets by delivery to customers' homes, 30 percent to wholesalers, and the remaining 55 percent directly to customers who pick up widgets at the premises. Company A's premises is presumed to be primarily used to make retail sales.

Company A dedicates 75 percent of the square footage of the premises to the production of widgets, 20 percent to storage, and 5 percent to a loading dock. Company A employs a total of 50 people, 40

of whom work on the production floor making widgets. Company A's production staff accounts for 80 percent of its total wages and salaries paid to all employees. The cost of operating the widget production area accounts for 90 percent of Company A's total expenses. Upon claiming this exemption, Company A provides information satisfactory to the department to demonstrate these facts. Company A qualifies for the exemption.

**230.15(6) Replacement parts and supplies.**

*a. Replacement parts.* To qualify for exemption under this rule, replacement parts must satisfy the definition contained in paragraph 230.14(2) "d." In addition to the other requirements, an exempt replacement part must replace a component of a computer, machinery, or equipment that is directly and primarily used in processing by a manufacturer. Tangible personal property is not an exempt replacement part under this rule if the property exclusively replaces a component of a computer, machinery, or equipment that is not directly and primarily used in processing by a manufacturer.

*b. Supplies.* To qualify for exemption under this rule, supplies must satisfy the definition contained in paragraph 230.14(2) "e." In addition to the other requirements, an exempt supply must be connected to, be used in conjunction with, or come into physical contact with a computer, machinery, or equipment that is directly and primarily used in processing by a manufacturer, or an exempt supply must itself be directly and primarily used in processing by a manufacturer. Tangible personal property is not an exempt supply under this rule if the property exclusively is connected to, is used in conjunction with, or comes into physical contact with a computer, machinery, or equipment that is not directly and primarily used in processing by a manufacturer.

This rule is intended to implement Iowa Code section 423.3(47) "a"(1).

[ARC 2768C, IAB 10/12/16, effective 11/16/16; ARC 4218C, IAB 1/2/19, effective 2/6/19; ARC 5099C, IAB 7/15/20, effective 8/19/20]

**701—230.16(423) Exemption for the sale of property directly and primarily used by a manufacturer to maintain integrity or unique environmental conditions if the sale occurs on or after July 1, 2016.** The sales price of computers, machinery, equipment, replacement parts, supplies and materials used to construct or self-construct computers, machinery, equipment, replacement parts, and supplies is exempt from sales and use tax when the property is directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, machinery, and equipment used in processing by a manufacturer, including test equipment used to control quality and specifications of the product. For sales occurring prior to July 1, 2016, see rule 701—18.58(422,423).

**230.16(1) Required elements.** To qualify for exemption under this rule, the purchaser must prove the property is:

*a.* Computers, machinery, equipment, replacement parts, supplies, or materials used to construct or self-construct computers, machinery, equipment, replacement parts, or supplies (see subrule 230.14(2));

*b.* Directly used (see subrule 230.15(2));

*c.* Primarily used (see subrule 230.15(2));

*d.* Used by a manufacturer (see subrule 230.15(4)); and

*e.* Used to maintain:

(1) A manufactured product's integrity;

(2) Unique environmental conditions required for a manufactured product; or

(3) Unique environmental conditions required for other computers, machinery, equipment, replacement parts, or supplies directly and primarily used in processing by a manufacturer.

**230.16(2) Replacement parts and supplies.**

*a. Replacement parts.* To qualify for exemption under this rule, replacement parts must satisfy the definition contained in paragraph 230.14(2) "d." In addition to the other requirements, an exempt replacement part must replace a component of a computer, machinery, or equipment that is directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, machinery, and equipment used in processing by

a manufacturer. Tangible personal property is not an exempt replacement part under this rule if the property exclusively replaces a component of a computer, machinery, or equipment that is not directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, machinery, and equipment used in processing by a manufacturer.

*b. Supplies.* To qualify for exemption under this rule, supplies must satisfy the definition contained in paragraph 230.14(2)“e.” In addition to the other requirements, an exempt supply must be connected to, be used in conjunction with, or come into physical contact with a computer, machinery, or equipment that is directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, machinery, and equipment used in processing by a manufacturer, or an exempt supply must itself be directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, machinery, and equipment used in processing by a manufacturer. Tangible personal property is not an exempt supply under this rule if the property exclusively is connected to, is used in conjunction with, or comes into physical contact with a computer, machinery, or equipment that is not directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, machinery, and equipment used in processing by a manufacturer.

**230.16(3) Example of property directly and primarily used to maintain integrity or unique environmental conditions.** A manufacturer purchases a cooling system or heating system that qualifies as machinery. The manufacturer uses the system to directly and primarily maintain the proper temperature of other machinery and equipment. The manufacturer uses such machinery and equipment directly and primarily in processing. The system is not used for the comfort of the workers. Because the system directly and primarily maintains the environmental conditions necessary for machinery and equipment directly and primarily used in processing, the system is exempt from sales and use tax under this rule.

This rule is intended to implement Iowa Code section 423.3(47)“a”(2).  
[ARC 2768C, IAB 10/12/16, effective 11/16/16]

**701—230.17(423) Exemption for the sale of property directly and primarily used in research and development of new products or processes of processing if the sale occurs on or after July 1, 2016.** The sales price of computers, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, machinery, equipment, replacement parts, and supplies is exempt from sales and use tax when the property is directly and primarily used in research and development of new products or processes of processing. For sales occurring prior to July 1, 2016, see rule 701—18.58(422,423).

**230.17(1) Required elements.** To qualify for exemption under this rule, the purchaser must prove the property is:

*a.* Computers, machinery, equipment, replacement parts, supplies, or materials used to construct or self-construct computers, machinery, equipment, replacement parts, or supplies (see subrule 230.14(2));

*b.* Directly used (see subrules 230.15(2) and 230.17(3));

*c.* Primarily used (see subrule 230.15(2)); and

*d.* Used in research and development (see subrule 230.17(2)) of:

(1) New products; or

(2) Processes of processing.

**230.17(2)** “Research and development” means experimental or laboratory activity that has as its ultimate goal the development of new products or processes of processing.

**230.17(3)** Property is used “directly” in research and development only if it is used in actual experimental or laboratory activity that qualifies as research and development under this rule.

**230.17(4) Replacement parts and supplies.**

*a. Replacement parts.* To qualify for exemption under this rule, replacement parts must satisfy the definition contained in paragraph 230.14(2)“d.” In addition to the other requirements, an exempt

replacement part must replace a component of a computer, machinery, or equipment that is directly and primarily used in research and development of new products or processes of processing. Tangible personal property is not an exempt replacement part under this rule if the property exclusively replaces a component of a computer, machinery, or equipment that is not directly and primarily used in research and development of new products or processes of processing.

*b. Supplies.* To qualify for exemption under this rule, supplies must satisfy the definition contained in paragraph 230.14(2)“e.” In addition to the other requirements, an exempt supply must be connected to, be used in conjunction with, or come into physical contact with a computer, machinery, or equipment that is directly and primarily used in research and development of new products or processes of processing, or an exempt supply must itself be directly and primarily used in research and development of new products or processes of processing. Tangible personal property is not an exempt supply under this rule if the property exclusively is connected to, is used in conjunction with, or comes into physical contact with a computer, machinery, or equipment that is not directly and primarily used in research and development of new products or processes of processing.

**230.17(5) Examples.**

EXAMPLE A: Company A is a hybrid seed producer. Company A maintains a research and development laboratory for use in developing new varieties of corn seed. Company A purchases the following items for use in its research and development laboratory: a laboratory computer for processing data related to the genetic structure of various corn plants, an electron microscope for examining the structure of corn plant genes, a steam cleaner for cleaning rugs in the laboratory offices, and office furniture for use in the laboratory offices. The laboratory computer and the microscope are “directly” used in the research in which the laboratory is engaged; the steam cleaner and the office furniture are not directly used in research. Therefore, the sales prices of the laboratory computer and the microscope are exempt from sales and use tax. The sales prices of the steam cleaner and the office furniture are not exempt from tax under this rule.

EXAMPLE B: Company B is a manufacturer of agricultural equipment. Company B is researching and developing a new tractor. Company B purchases materials to produce a prototype of its new tractor. The prototype tractor will be tested in various settings, including a laboratory and actual agricultural production. The materials used to produce the prototype tractor are exempt supplies directly and primarily used in research and production of new products. The sales price for the materials is exempt regardless of whether Company B sells the prototype tractor after testing, or if it scraps the prototype tractor after testing.

This rule is intended to implement Iowa Code section 423.3(47)“a”(3).  
[ARC 2768C, IAB 10/12/16, effective 11/16/16]

**701—230.18(423) Exemption for the sale of computers used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise if the sale occurs on or after July 1, 2016.** The sales price of computers is exempt from sales and use tax when the computers are used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise. The sales price of machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, machinery, equipment, replacement parts, and supplies is not exempt under this rule. For sales occurring prior to July 1, 2016, see rule 701—18.58(422,423).

**230.18(1) Required elements.** To qualify for exemption under this rule, the purchaser must prove the property is:

- a.* Computers (see paragraph 230.14(2)“a”);
- b.* Used in processing or storage of data or information (see subrule 230.18(2)); and
- c.* Used by:
  - (1) An insurance company (see subrule 230.18(3));
  - (2) A financial institution (see subrule 230.18(3)); or
  - (3) A commercial enterprise (see subrule 230.18(3)).

**230.18(2)** *Processing or storage of data or information.* All computers store and process information. However, only if the “final output” for a user or consumer is stored or processed data will the computer be eligible for exemption from tax under this rule.

**230.18(3)** *Insurance company, financial institution, or commercial enterprise.*

*a. Insurance company.* An insurance company is an insurer organized or operating under Iowa Code chapter 508, 514, 515, 518, 518A, 519, or 520 or an insurer authorized to do business in Iowa as an insurer or as a licensed insurance producer under Iowa Code chapter 522B. Excluded from the definition of “insurance company” are benevolent associations governed by Iowa Code chapter 512A, fraternal benefit societies governed by Iowa Code chapter 512B, and health maintenance organizations governed by Iowa Code chapter 514B. This list of exclusions is not intended to be exclusive.

*b. Financial institution.* A financial institution is any bank incorporated under the provisions of any state or federal law, any savings and loan association incorporated under the provisions of federal law, any credit union organized under the provisions of any state or federal law, any corporation licensed as an industrial loan company under Iowa Code chapter 536A, and any affiliate of a bank, savings and loan association, credit union, or industrial loan company.

*c. Commercial enterprise.* A commercial enterprise is a business or manufacturer conducted for profit, other than an insurance company or financial institution. “Commercial enterprise” includes centers for data processing services to insurance companies, financial institutions, businesses, and manufacturers, but excludes professions and occupations as well as nonprofit organizations. A hospital that is a not-for-profit organization is not a commercial enterprise. The term “profession” means a vocation or employment requiring specialized knowledge and often long and intensive academic preparation. The term “occupation” means the principal business of an individual, such as the business of farming. A professional entity that carries on any profession or occupation, such as an accounting firm, is not a commercial enterprise.

**230.18(4)** *Exempt property.* To qualify for exemption under this rule, tangible personal property must satisfy the definition of “computers” contained in paragraph 230.14(2)“a.” Other property, including machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, machinery, equipment, replacement parts, and supplies, is not exempt under this rule, even if the property is used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise.

**230.18(5)** *Examples of computers used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise.* A health insurance company has four computers. Computer A is used to monitor the temperature within the insurance company’s building. Computer A transmits messages to the building’s heating and cooling systems, which tell the systems when to raise or lower the level of heating or air conditioning. Computer B is used to store patient records and to recall those records on demand. Computer C is used to tabulate statistics regarding the amount of premiums paid in and the amount of benefits paid out for various classes of insured. Computer D is used to train the insurance company’s employees to perform various additional tasks or to better perform work the employees can already do. Computer D uses various canned programs to accomplish this function. The final output of Computer A is neither stored nor processed information. Therefore, Computer A does not meet the definition of an exempt computer. The final output of Computer B is stored information. The final output of Computer C is processed information. The final output of Computer D is processed information consisting of the training exercises appearing on the computer monitor. The sales prices of Computers B, C, and D are exempt from sales and use tax as computers used in processing or storage of data or information by an insurance company.

This rule is intended to implement Iowa Code section 423.3(47)“a”(4).  
[ARC 2768C, IAB 10/12/16, effective 11/16/16]

**701—230.19(423) Exemption for the sale of property directly and primarily used in recycling or reprocessing of waste products if the sale occurs on or after July 1, 2016.** The sales price of computers, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, machinery, equipment, replacement parts, and supplies is exempt from sales

and use tax when the property is directly and primarily used in recycling or reprocessing of waste products. For sales occurring prior to July 1, 2016, see rule 701—18.58(422,423).

**230.19(1) Required elements.** To qualify for exemption under this rule, the purchaser must prove the property is:

*a.* Computers, machinery, equipment, replacement parts, supplies, or materials used to construct or self-construct computers, machinery, equipment, replacement parts, or supplies (see subrule 230.14(2));

*b.* Directly used (see subrule 230.15(2));

*c.* Primarily used (see subrule 230.15(2)); and

*d.* Used in:

(1) Recycling of waste products (see subrule 230.19(2)); or

(2) Reprocessing of waste products (see subrule 230.19(2)).

**230.19(2) Recycling and reprocessing.**

*a.* “Recycling” is any process by which waste or materials that would otherwise become waste are collected, separated, or processed and revised or returned for use in the form of raw materials or products. Recycling includes, but is not limited to, the composting of yard waste that has been previously separated from other waste. Recycling does not include any form of energy recovery.

*b.* “Reprocessing” is not a subcategory of processing. Reprocessing of waste products is an activity separate and independent from the processing of tangible personal property.

*c.* Recycling or reprocessing generally begins when the waste products are collected or separated. Recycling or reprocessing generally ends when waste products are in the form of raw material or another non-waste product. Activities that occur between these two points and are an integral part of recycling or processing qualify as recycling or reprocessing.

**230.19(3) Replacement parts and supplies.**

*a. Replacement parts.* To qualify for exemption under this rule, replacement parts must satisfy the definition contained in paragraph 230.14(2)“*d.*” In addition to the other requirements, an exempt replacement part must replace a component of a computer, machinery, or equipment that is directly and primarily used in recycling or reprocessing of waste products. Tangible personal property is not an exempt replacement part under this rule if the property exclusively replaces a component of a computer, machinery, or equipment that is not directly and primarily used in recycling or reprocessing of waste products.

*b. Supplies.* To qualify for exemption under this rule, supplies must satisfy the definition contained in paragraph 230.14(2)“*e.*” In addition to the other requirements, an exempt supply must be connected to, be used in conjunction with, or come into physical contact with a computer, machinery, or equipment that is directly and primarily used in recycling or reprocessing of waste products, or an exempt supply must itself be directly and primarily used in recycling or reprocessing of waste products. Tangible personal property is not an exempt supply under this rule if the property exclusively is connected to, is used in conjunction with, or comes into physical contact with a computer, machinery, or equipment that is not directly and primarily used in recycling or reprocessing of waste products.

**230.19(4) Examples.**

*a.* Computers, machinery, and equipment that may be exempt from sales and use tax under this rule include, but are not limited to, compactors, balers, crushers, grinders, cutters, and shears if directly and primarily used in recycling or reprocessing.

*b.* End loaders, forklifts, trucks, conveyor systems, and other moving devices directly and primarily used in the movement of waste products during recycling or reprocessing may be exempt from sales and use tax under this rule.

*c.* A bin or other container used to store waste products before collection for recycling or reprocessing is not directly and primarily used in recycling or reprocessing, and its sales price is not exempt from sales and use tax under this rule.

*d.* A vehicle used directly and primarily for collecting waste products for recycling or reprocessing could be a vehicle used for an exempt purpose under this rule, and such a vehicle could be exempt from the fee for new registration. Thus, a garbage truck could qualify for this exemption if the truck is directly

and primarily used in recycling; however, a garbage truck primarily used to haul garbage to a landfill does not qualify for exemption under this rule.

EXAMPLE A: Company A recycles household waste. Company A uses several machines in its facility to separate waste products into recyclable and nonrecyclable materials and to further separate the recyclable materials into paper, plastic, or glass. The sales prices of all separating machines are exempt from sales and use tax as machines directly and primarily used in recycling of waste products.

EXAMPLE B: Company B uses grinding machines to convert logs, stumps, pallets, crates, and other waste wood into wood chips. Company B then uses its trucks to deliver the wood chips to local purchasers. The sales prices of the grinding machines are exempt from sales and use tax as machines directly and primarily used in recycling or reprocessing of waste products. The trucks used to transport the wood chips are not used in recycling or reprocessing because the wood chips are in their final form when loaded onto the trucks.

This rule is intended to implement Iowa Code sections 321.105A(2) “c”(24) and 423.3(47) “a”(5).  
[ARC 2768C, IAB 10/12/16, effective 11/16/16]

**701—230.20(423) Exemption for the sale of pollution-control equipment used by a manufacturer if the sale occurs on or after July 1, 2016.** The sales price of pollution-control equipment, including but not limited to equipment required or certified by an agency of Iowa or of the United States government, is exempt from sales and use tax when the property is used by a manufacturer. Other equipment, and computers, machinery, replacement parts, supplies, and materials used to construct or self-construct computers, machinery, equipment, replacement parts, and supplies are not exempt from sales and use tax under this rule. For sales occurring prior to July 1, 2016, see rule 701—18.58(422,423).

**230.20(1)** Required elements. To qualify for exemption under this rule, the purchaser must prove the property is:

- a. Pollution-control equipment (see subrule 230.20(2)); and
- b. Used by a manufacturer (see subrule 230.15(4)).

**230.20(2)** “Pollution-control equipment” is any disposal system or apparatus used or placed in operation primarily for the purpose of reducing, controlling, or eliminating air or water pollution. Other property, including replacement parts and supplies, is not exempt under this rule. Pollution-control equipment does not include any apparatus used to eliminate noise pollution. Liquid, solid, and gaseous wastes are included within the meaning of the word “pollution.” Pollution-control equipment specifically includes, but is not limited to, any equipment the use of which is required or certified by an agency of this state or of the United States government. Wastewater treatment equipment, dust mitigation systems, and scrubbers used in smokestacks are examples of pollution-control equipment. However, pollution-control equipment does not include any equipment used only for worker safety, such as a gas mask.

EXAMPLE: A manufacturer constructs a wastewater treatment facility to treat wastewater from its manufacturing facility. The wastewater treatment facility diverts wastewater from the local water treatment plant. The facility then converts wastewater into a biogas, which the manufacturer uses as an energy source in its manufacturing facility. The sales price of the pollution-control equipment used in the wastewater treatment facility is exempt from sales and use tax.

This rule is intended to implement Iowa Code section 423.3(47) “a”(6).  
[ARC 2768C, IAB 10/12/16, effective 11/16/16]

**701—230.21(423) Exemption for the sale of fuel or electricity used in exempt property if the sale occurs on or after July 1, 2016.** The sales price of fuel or electricity consumed by computers, machinery, or equipment that is exempt from sales and use tax under rule 701—230.14(423), 701—230.15(423), 701—230.16(423), 701—230.17(423), 701—230.19(423), or 701—230.20(423) is also exempt from sales and use tax. The sales price of electricity or other fuel consumed by replacement parts, supplies, or computers used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise remains subject to tax even if such property is exempt under rules 701—230.14(423) to 701—230.20(423). For sales occurring prior to July 1, 2016, see rule 701—18.58(422,423).

EXAMPLE: A manufacturer operates a power plant. The manufacturer uses energy from the power plant to operate machinery and equipment used directly and primarily in processing at its manufacturing facility. The fuel consumed in the manufacturer's power plant is exempt from sales and use tax.

This rule is intended to implement Iowa Code section 423.3(47) "b."  
[ARC 2768C, IAB 10/12/16, effective 11/16/16]

**701—230.22(423) Exemption for the sale of services for designing or installing new industrial machinery or equipment if the sale occurs on or after July 1, 2016.** The sales price from the services of designing or installing new industrial machinery or equipment is exempt from sales and use tax. The enumerated services of electrical or electronic installation are included in this exemption.

**230.22(1) Required elements.** To qualify for the exemption, the purchaser must prove the service is:

- a. A design or installation service (see subrule 230.22(2));
- b. Of new (see subrule 230.22(3)); and
- c. Industrial machinery or equipment (see subrule 230.22(4)).

**230.22(2) Design or installation services include electrical and electronic installation.** "Design or installation" services do not include any repair service.

**230.22(3) "New"** means never having been used or consumed by anyone. The exemption does not apply to design or installation services on reconstructed, rebuilt, repaired, or previously owned machinery or equipment.

**230.22(4) Industrial machinery or equipment.**

a. *Generally.* "Industrial machinery or equipment" means machinery or equipment, as defined in subrule 230.14(2). The sale of industrial machinery or equipment must also qualify for exemption under any of the following:

(1) Property used directly and primarily in processing by a manufacturer (see rule 701—230.15(423)).

(2) Property used directly and primarily by a manufacturer to maintain the integrity of the manufacturer's product or to maintain unique environmental conditions for computers, machinery, or equipment (see rule 701—230.16(423)).

(3) Property used directly and primarily in research and development of new products or processes of processing (see rule 701—230.17(423)).

(4) Property used directly and primarily in recycling or reprocessing of waste products (see rule 701—230.19(423)).

(5) Pollution-control equipment used by a manufacturer (see rule 701—230.20(423)).

b. *Exclusions.* The following property is not industrial machinery or equipment regardless of how the purchaser uses it:

(1) Computers (see paragraph 230.14(2) "a").

(2) Replacement parts (see paragraph 230.14(2) "d").

(3) Supplies (see paragraph 230.14(2) "e").

(4) Materials used to construct or self-construct computers, machinery, equipment, replacement parts, or supplies (see paragraph 230.14(2) "f").

**230.22(5) Billing.** The sales price for designing or installing new industrial machinery or equipment must be separately identified, charged separately, and reasonable in amount for the exemption to apply. The exemption applies to new industrial machinery or equipment regardless of how it is purchased, including leased or rented machinery or equipment.

EXAMPLE: Dealer sells and installs two new machines for Manufacturer. Manufacturer uses one machine on its production floor, where the machine is directly and primarily used in processing. Manufacturer uses the other machine in its machine shop, where the machine is not directly and primarily used in processing. Dealer gives an invoice to Manufacturer that separately itemizes the sales prices for each machine and each installation. The machine used on the production floor is new industrial machinery or equipment, and the sales prices of the machine and its installation are exempt

from sales and use tax. The machine used in the machine shop is not new industrial machinery or equipment, and the sales prices of the machine and its installation are taxable.

This rule is intended to implement Iowa Code section 423.3(48).

[ARC 2768C, IAB 10/12/16, effective 11/16/16]

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[Filed ARC 8602B (Notice ARC 8480B, IAB 1/13/10), IAB 3/10/10, effective 4/14/10]

[Filed ARC 2349C (Amended Notice ARC 2239C, IAB 11/11/15; Notice ARC 2178C, IAB 9/30/15),  
IAB 1/6/16, effective 2/10/16]<sup>1,2</sup>

[Filed ARC 2768C (Notice ARC 2636C, IAB 7/20/16), IAB 10/12/16, effective 11/16/16]

[Filed ARC 4218C (Notice ARC 4109C, IAB 11/7/18), IAB 1/2/19, effective 2/6/19]

[Filed ARC 5099C (Notice ARC 4916C, IAB 2/12/20), IAB 7/15/20, effective 8/19/20]

<sup>1</sup> Amendments to 230.5 (ARC 2349C, Item 7) rescinded by 2016 Iowa Acts, House File 2433, section 6, on 3/21/16. Amendments removed and prior language restored IAC Supplement 4/27/16.

<sup>2</sup> 230.14 to 230.22 (ARC 2349C, Items 8 to 16) rescinded by 2016 Iowa Acts, House File 2433, section 7, on 3/21/16. Rules removed IAC Supplement 4/27/16.

CHAPTER 72  
CONVEYANCES INSTALLED ON OR AFTER JANUARY 1, 1975

[Prior to 9/24/86, Labor, Bureau of [530]]

[Prior to 10/21/98, see 347—Ch 72]

**875—72.1(89A) Purpose and scope.** This chapter contains safety standards covering the design, construction, installation, operation, inspection, testing, maintenance, alteration and repair of conveyances installed on or after January 1, 1975. The rules of this chapter also apply to previously dormant conveyances that are being reactivated, and to reinstalled or moved conveyances. As used in this rule, the word “installation” refers to the date on which a conveyance contractor enters into a contractual agreement pertaining to a conveyance.

**72.1(1)** For installations between January 1, 1975, and December 31, 1982, ANSI A17.1 shall mean ANSI A17.1 (1971).

**72.1(2)** For installations between January 1, 1983, and December 31, 1992:

*a.* ANSI A17.1 shall mean ANSI A17.1 (1981); and

*b.* ANSI A117.1 shall mean ANSI A117.1 (1980).

**72.1(3)** For installations between January 1, 1993, and December 31, 2000:

*a.* ASME A17.1 shall mean ASME A17.1 (1990) and in addition shall mean the following:

(1) ASME A17.1b (1992), Rule 110.11h, for electric elevators installed between July 1, 1993, and December 31, 2000, and

(2) ASME A17.1b (1992), Rule 110.11h that is referenced by Rule 300.11, for hydraulic elevators installed between July 1, 1993, and December 31, 2000.

*b.* ANSI/NFPA 70 shall mean ANSI/NFPA 70 (1990); and

*c.* ANSI A117.1 shall mean ANSI A117.1 (1980).

**72.1(4)** For installations between January 1, 2001, and December 31, 2003:

*a.* ASME A17.1 shall mean ASME A17.1 (1996 through the 1999 addenda);

*b.* ASME A18.1 shall mean ASME A18.1 (1999), except Chapters 4, 5, 6, and 7;

*c.* ANSI A117.1 shall mean ANSI A117.1 (1998); and

*d.* ANSI/NFPA 70 shall mean ANSI/NFPA 70 (1999).

**72.1(5)** For installations between January 1, 2004, and April 4, 2006:

*a.* ASME A17.1 shall mean ASME A17.1 (2000 through the 2003 addenda);

*b.* ASME A18.1 shall mean ASME A18.1 (1999 through the 2001 addenda), except Chapters 4, 5, 6, and 7;

*c.* ANSI A117.1 shall mean ANSI A117.1 (1998); and

*d.* ANSI/NFPA 70 shall mean ANSI/NFPA 70 (2002).

**72.1(6)** For installations between April 5, 2006, and July 22, 2008:

*a.* ASME A17.1 shall mean ASME A17.1-2004, A17.1a-2005 and A17.1S-2005;

*b.* ASME A18.1 shall mean ASME A18.1 (2003), except Chapters 4, 5, 6, and 7;

*c.* ANSI A117.1 shall mean ANSI A117.1 (2003), except for Rule 407.4.6.2.2; and

*d.* ANSI/NFPA 70 shall mean ANSI/NFPA 70 (2005).

**72.1(7)** For installations between July 23, 2008, and July 18, 2012:

*a.* ASME A17.1 shall mean ASME A17.1-2007/CSA B44-07;

*b.* ASME A17.7 shall mean ASME A17.7-2007/CSA B44-07;

*c.* ASME A18.1 shall mean ASME A18.1 (2003), except Chapters 4, 5, 6, and 7;

*d.* ANSI A117.1 shall mean ANSI A117.1 (2003), except for Rule 407.4.6.2.2; and

*e.* ANSI/NFPA 70 shall mean ANSI/NFPA 70 (2005).

**72.1(8)** For installations between July 19, 2012, and January 30, 2014:

*a.* ASME A17.1 shall mean ASME A17.1-2010/CSA B44-10, except for Rule 2.27.1.1.6;

*b.* ASME A17.7 shall mean ASME A17.7-2007/CSA B44-07;

*c.* ASME A18.1 shall mean ASME A18.1 (2003), except Chapters 4, 5, 6, and 7;

*d.* ANSI A117.1 shall mean ANSI A117.1 (2003), except for Rule 407.4.6.2.2; and

*e.* ANSI/NFPA 70 shall mean ANSI/NFPA 70 (2008).

**72.1(9)** For installations between January 31, 2014, and January 14, 2015:

- a. ASME A17.1 shall mean ASME A17.1-2010/CSA B44-10, except for Rule 2.27.1.1.6;
- b. ASME A17.7 shall mean ASME A17.7-2007/CSA B44-07;
- c. ASME A18.1 shall mean ASME A18.1 (2011), except Chapters 4, 5, 6, and 7;
- d. ANSI A117.1 shall mean ANSI A117.1 (2003), except for Rule 407.4.6.2.2; and
- e. ANSI/NFPA 70 shall mean ANSI/NFPA 70 (2008).

**72.1(10)** For installations between January 14, 2015, and May 16, 2018:

- a. ASME A17.1 shall mean ASME A17.1-2013/CSA B44-13;
- b. ASME A17.7 shall mean ASME A17.7-2007/CSA B44-07;
- c. ASME A18.1 shall mean ASME A18.1 (2011), except Chapters 4, 5, 6, and 7;
- d. ANSI A117.1 shall mean ANSI A117.1 (2003), except for Rule 407.4.6.2.2; and
- e. ANSI/NFPA 70 shall mean ANSI/NFPA 70 (2011).

**72.1(11)** For installations on or after May 16, 2018:

- a. ASME A17.1 shall mean ASME A17.1-2016/CSA B44-16;
- b. ASME A17.7 shall mean ASME A17.7-2012/CSA B44.7-12;
- c. ASME A17.8 shall mean ASME A17.8-2016/CSA B44.8-16;
- d. ASME A18.1 shall mean ASME A18.1 (2014), except Chapters 4, 5, 6, and 7;
- e. ANSI A117.1 shall mean ANSI A117.1 (2017), except for requirement 407.4.7.1.2; and
- f. ANSI/NFPA 70 shall mean ANSI/NFPA 70 (2017).

[ARC 7840B, IAB 6/17/09, effective 7/22/09; ARC 8759B, IAB 5/19/10, effective 6/23/10; ARC 0168C, IAB 6/13/12, effective 7/18/12; ARC 1232C, IAB 12/11/13, effective 1/31/14; ARC 1766C, IAB 12/10/14, effective 1/14/15; ARC 1971C, IAB 4/29/15, effective 6/3/15; ARC 3742C, IAB 4/11/18, effective 5/16/18; ARC 3856C, IAB 6/20/18, effective 8/1/18]

**875—72.2(89A) Definitions.** The definitions contained in ASME A17.1, ASME A18.1, ANSI A117.1, and any other standard adopted herein by reference shall be applicable as used in this chapter to the extent that the definitions do not conflict with the definitions contained in Iowa Code chapter 89A and these rules. However, the definition of “building code” in ASME A17.1 is modified to exclude the Building Construction and Safety Code (NFPA 5000) and the National Building Code of Canada (NBCC) for any installation after March 1, 2008.

[ARC 7840B, IAB 6/17/09, effective 7/22/09]

**875—72.3(89A) Accommodating the physically disabled.** All passenger elevators installed between January 1, 1975, and December 31, 1982, which are available and intended for public use shall be usable by the physically disabled. All passenger elevators shall have control buttons with identifying features for the benefit of the blind and shall allow for wheelchair traffic. All passenger elevators and wheelchair lifts installed on or after January 1, 1983, which are accessible to the general public shall comply with Accessible and Usable Buildings and Facilities ANSI A117.1, sections 407 and 408.

**875—72.4(89A) Electric elevators.** The provisions contained in ASME A17.1, part 2, are adopted by reference.

**875—72.5(89A) Hydraulic elevators.** The provisions contained in ASME A17.1, part 3, are adopted by reference.

**875—72.6(89A) Power sidewalk elevators.** The provisions contained in ASME A17.1, section 5.5, are adopted by reference.

**875—72.7(89A) Performance-based safety code.** Conveyances may comply with ASME A17.7, in whole or in part, as an alternative to ASME A17.1.

**875—72.8(89A) Hand and power dumbwaiters.** The provisions contained in ASME A17.1, sections 7.1, 7.2, 7.3, and 7.8, are adopted by reference.

**875—72.9(89A) Escalators and moving walks.** The provisions contained in ASME A17.1, part 6, are adopted by reference, except for those portions that allow an operating or safety device to reset automatically.

[ARC 1766C, IAB 12/10/14, effective 1/14/15]

**875—72.10(89A) General requirements.**

**72.10(1)** The provisions contained in ASME A17.1, Part 8, are adopted by reference unless specifically excluded herein.

**72.10(2)** Except as noted in this rule, the American Society of Mechanical Engineers Safety Code for Existing Elevators and Escalators, A17.3 (2011), is adopted by reference with an enforcement date of May 1, 2021.

*a.* If a code provision that is more restrictive than A17.3 (2011) applied to a conveyance when the conveyance was installed, the more restrictive provision shall remain in effect.

*b.* A17.3 (2011) Part X applies to handicapped restricted use elevators without regard to the scope provisions set forth in A17.3 (2011) Part X.

*c.* Provisions of A17.3 (2011) that require installation of a new controller to implement Phase 1 and Phase 2 fire service or car top operation are not adopted by reference and shall not be enforced in Iowa.

*d.* A17.3 (2011), Rule 2.3.2, is intended to prevent the accumulation of sewer gas in an elevator pit and shall not be interpreted to require the addition of a drain pipe in an existing pit. An air gap in an existing drain pipe shall be considered adequate compliance.

*e.* An elevator that was legally installed with guide rails made of materials other than steel shall not be required to replace the guide rails due to the adoption of A17.3 (2011).

**72.10(3)** Permanent lighting shall be installed in the hoistway of an elevator contracted after March 1, 2019. Three-way switches to control the hoistway lighting shall be installed at the pit access door and the top landing access door. The lighting shall be sufficient to provide 10 foot-candles of light to the center of the elevator path measured when the car top lights are off. Engineering calculations that prove 10 foot-candles of light are provided to the center of the elevator path may be substituted for light meter measurements under circumstances such as a glass back car where use of a light meter is not practical.

**72.10(4)** For conveyances contracted after March 1, 2019, all electrical wiring in a machine room, control space, control room, machinery space, and hoistway shall comply with ANSI/NFPA 70 and shall be enclosed in metal conduit, flexible conduit, or metal raceways. However, this subrule shall not apply in applications such as traveling cables and car top work lights where movement is required for proper function, or to operating devices and control equipment where adjustment may be needed.

[ARC 1891C, IAB 3/4/15, effective 4/8/15; ARC 4212C, IAB 1/2/19, effective 3/1/19; ARC 5089C, IAB 7/15/20, effective 6/25/20]

**875—72.11(89A) Acceptance and periodic tests and inspections of elevators, dumbwaiters, escalators and moving walks.** Rescinded IAB 6/17/09, effective 7/22/09.

**875—72.12(89A) Wind tower lifts.** Wind tower lifts authorized by this rule shall not be installed in grain elevators, high-rise buildings, water towers, television towers or any facility other than a wind tower built for the production of electricity. This rule applies to all wind tower lifts, whether installed before or after May 28, 2008; however, this exception shall not apply to a wind tower lift if the contract for its installation is executed after an AECO is accredited.

**72.12(1)** Wind tower lifts that meet the requirements of subrules 72.12(2) through 72.12(10) are exempt from the requirements of ASME A17.1. This temporary exemption shall terminate for a wind tower lift upon the occurrence of at least one of the following events:

*a.* Three weeks have passed since the accreditation of at least one AECO, and the manufacturer of the wind tower lift has not filed with the labor commissioner an affidavit attesting that a request for Certificate of Conformance as described by ASME A17.7 (2007) was submitted to an AECO.

*b.* The AECO has reviewed a request pursuant to ASME A17.7 and refused to issue a Certificate of Conformance for the model or series of lifts.

*c.* The AECO has determined that modifications to the wind tower lift are necessary, and the modifications have not been made with reasonable diligence.

*d.* The AECO has determined that modifications to the wind tower lift are necessary, and the labor commissioner determines the wind tower lift is not safe to operate prior to completion of the modifications.

*e.* The AECO has reviewed an application pursuant to ASME A17.7 and issued a Certificate of Conformance for the model or series of lifts.

**72.12(2)** A wind tower lift placed in operation on or before May 28, 2008, shall be registered by the owner with the labor commissioner no later than July 1, 2008, and shall pass an installation inspection by inspectors employed by the labor commissioner according to the schedule set by the labor commissioner. The wind tower lift shall receive a periodic inspection by the labor commissioner's inspectors annually thereafter.

**72.12(3)** The owner of a wind tower lift installed after May 28, 2008, shall register the wind tower lift with the labor commissioner prior to its installation. A wind tower lift installed after May 28, 2008, shall pass an installation inspection by the labor commissioner's inspectors prior to its being placed into operation. The wind tower lift shall receive a periodic inspection by the labor commissioner's inspectors annually thereafter.

**72.12(4)** Registration pursuant to this rule requires submission of the following information to the labor commissioner:

- a.* The unique identifier of the wind tower.
- b.* The name of the wind tower owner and contact information for the owner's representative.
- c.* The name of the wind tower lift manufacturer and contact information for the manufacturer's representative.
- d.* The location of the wind farm.
- e.* Three copies of the prints and design documents that are certified by a professional engineer duly licensed in the state of Iowa and that bear the professional engineer's P.E. stamp for the lifts.
- f.* The manufacturer's complete test procedures, inspection checklists, operating manual, service manual, and related documents as determined necessary by the labor commissioner.

**72.12(5)** The owner shall notify the labor commissioner within 30 days of any change in the information provided pursuant to 72.12(4) "b" and "c."

**72.12(6)** This subrule establishes reporting requirements in addition to the requirements of rule 875—71.3(89A). The manufacturer of a lift must notify the labor commissioner in writing within one week if one of its wind tower lifts anywhere in the world is involved in a personal injury accident requiring the service of a physician, a personal injury accident causing disability exceeding one day or death, or an incident causing property damage exceeding \$2,000. The notification shall specifically identify the model number, serial number, and owner of the lift, and a description of the incident or accident. The labor commissioner shall determine and require necessary inspections, tests, changes or enhancements to prevent a similar incident or accident in this state.

**72.12(7)** Wind tower lifts must comply with 29 CFR 1910.

**72.12(8)** The manufacturer shall notify the labor commissioner within seven days of notification to the manufacturer that an AECO has:

- a.* Issued a Certificate of Conformance for the model or series of wind tower lifts,
- b.* Refused to issue a Certificate of Conformance for the model or series of wind tower lifts, or
- c.* Determined that modifications to the wind tower lifts are necessary.

**72.12(9)** Wind tower lifts shall pass an inspection covering the following criteria:

- a.* Ascending speed, descending speed, and emergency descending speed shall not exceed the manufacturer's recommendations.
- b.* Stop switch, interior lighting, cage entry door, door contact, operating controls and remote operating controls shall operate according to manufacturer's recommendations.
- c.* Interior floor and cage framework shall appear to be structurally sound.
- d.* Enclosure signage recommended by the manufacturer shall be in place.
- e.* Manufacturer's data plate shall be visible.

- f.* Hoisting mechanism shall appear to be structurally sound and intact from inside and outside the car.
  - g.* Guide shoes shall appear to be structurally sound and undamaged.
  - h.* Suspended power cords and strain relief devices shall reveal no visible damage.
  - i.* Upper and lower normal and final limits shall operate according to the manufacturer's recommendations.
  - j.* Overspeed device shall successfully pass a full-load test.
  - k.* Overload device shall successfully pass an overload test according to the manufacturer's recommendations.
  - l.* Wire rope, safety rope, and guide rope shall show no evidence of wear.
  - m.* Guide rope attachments, suspension attachment beam, beam tower attachments, suspension rope attachment, suspension rope secondary attachment (if present), and guide wire rope attachments shall show no evidence of wear or fatigue.
  - n.* The wind tower lift shall not drift when subjected to a static full load.
  - o.* Maintenance logs, tags, and other necessary documentation shall be available in sufficient detail to establish that maintenance is occurring pursuant to the manufacturer's schedule.
  - p.* Guide rope tension device, safety rope tension device, and suspension rope tension device shall pass a visual test for proper tension.
  - q.* Power cord catch basket shall pass a visual inspection.
  - r.* Safety set distance, overspeed trip speed, overload limit setting, and maximum overload allowed shall not exceed manufacturer's recommendations.
  - s.* A communication device, if installed in the car, shall be operable.
  - t.* Any other items on the manufacturer's recommended inspection checklist shall pass inspection.
- 72.12(10)** The owner or owner's representative shall provide weights as needed to perform necessary tests during inspections.

**875—72.13(89A) Alterations, repairs, replacements and maintenance.**

**72.13(1) General.** Except as set forth in this rule, all maintenance, repairs, replacements, and alterations shall comply with the edition of ASME A17.1 currently adopted for new conveyances at rule 875—72.1(89A) or ASME A17.7-2007/CSA B44-07, as applicable. Rule 875—71.10(89A) describes alterations which require that the entire conveyance be brought into compliance with the most current codes.

**72.13(2) Exemption for button renumbering.** All maintenance, repairs and alterations to devices covered by ANSI A117.1 shall comply with ANSI A117.1 (2017), except for requirement 407.4.7.1.2.

**72.13(3) Sump pump exemption.** The provisions of ASME A17.1 that require a pit sump or drain shall not apply to an elevator alteration when all of the following criteria are met:

- a.* No other code or rule requires that the pit be excavated or lowered.
- b.* The alteration plans do not include the excavation or lowering of the pit floor for any other reason.
- c.* There is evidence that groundwater has not entered the pit previously.
- d.* The location and geology of the building indicate a likelihood that groundwater would enter the pit if the foundation or pit floor were breached to install the pit sump or drain.
- e.* A description of alternative means to maintain the pit in a dry condition is provided to the labor commissioner with the alteration permit application.
- f.* The labor commissioner approves the alternative means to maintain the pit in a dry condition.
- g.* The alternative means to maintain the pit in a dry condition are installed or implemented as described in the alteration permit application.

**72.13(4) Pit excavation exemption.** For elevators altered before August 1, 2018, the full length of the platform guard set forth in ASME A17.1, Rule 2.15.9.2(a), shall not be required if all of the following criteria are met:

- a.* No other code or rule requires that the pit be excavated or lowered.

b. The alteration plans do not include the excavation or lowering of the pit floor for any other reason.

c. A full-length platform guard would strike the pit floor when the elevator is on its fully compressed buffer.

d. The clearance between the bottom of the platform guard and the pit floor is 2.5 centimeters (1 inch) when the elevator is on its fully compressed buffer.

**72.13(5) Sprinkler retrofits and shunt trip breakers.** When a sprinkler is added to a hoistway or machine room, the conveyance shall comply with the following:

a. The installation shall comply with the applicable version of ASME A17.1, Rule 2.8.3.3.

b. The elevator controls shall be arranged to comply with the phase I fire recall provisions of the applicable version of ASME A17.1, Rule 2.27.3.

c. The applicable version of ASME A17.1 shall be determined by reference to rule 875—72.1(89A). For purposes of subrule 72.13(5), the relevant subrule of 875—72.1(89A) shall apply based on the date the sprinkler is installed instead of the date the conveyance was installed.

**72.13(6) Alterations of handicapped restricted use elevators.** A component of a handicapped restricted use elevator being altered shall comply with the portions of ASME A17.1, section 5.3, applicable to the component. The edition of ASME A17.1 adopted by reference in rule 875—72.1(89A) shall be applied.

**72.13(7) Hoistway lighting.** If the controller for an elevator is being replaced, permanent lighting shall be installed in the hoistway of the elevator. Three-way switches to control the hoistway lighting shall be installed at the pit access door and the top landing access door. The lighting shall be sufficient to provide 10 foot-candles of light to the center of the elevator path measured when the car top lights are off. Engineering calculations that prove 10 foot-candles of light are provided to the center of the elevator path may be substituted for light meter measurements under circumstances such as a glass back car where use of a light meter is not practical.

[ARC 7840B, IAB 6/17/09, effective 7/22/09; ARC 1766C, IAB 12/10/14, effective 1/14/15; ARC 2396C, IAB 2/17/16, effective 3/23/16; ARC 3742C, IAB 4/11/18, effective 5/16/18; ARC 3856C, IAB 6/20/18, effective 8/1/18; ARC 4212C, IAB 1/2/19, effective 3/1/19]

**875—72.14(89A) Design data and formulas.** Rescinded IAB 11/26/03, effective 1/1/04.

**875—72.15(89A) Power-operated special purpose elevators.** The provisions contained in ASME A17.1, section 5.7, are adopted by reference.

**875—72.16(89A) Inclined and vertical wheelchair lifts.** The provisions contained in ASME Safety Standard for Platform Lifts and Stairway Chairlifts A18.1, sections 1, 2, 3, 8, 9, and 10, are adopted by reference for all inclined and vertical wheelchair lifts.

**875—72.17(89A) Hand-powered elevators.** Hand-powered elevators shall not be installed after January 1, 1983.

**875—72.18(89A) Accommodating the physically disabled.** Renumbered as 875—72.3(89A), IAB 11/26/03, effective 1/1/04.

**875—72.19(89A) Limited-use/limited-application elevators.** The provisions contained in ASME A17.1, section 5.2, are adopted by reference.

**875—72.20(89A) Rack and pinion, screw-column elevators.** The provisions contained in ASME A17.1, sections 4.1 and 4.2, are adopted by reference.

**875—72.21(89A) Inclined elevators.** The provisions contained in ASME A17.1, section 5.1, are adopted by reference.

**875—72.22(89A) Material lift elevators.** The provisions contained in ASME A17.1, Sections 7.4 through 7.7 and 7.9 through 7.11, are adopted by reference for material lift elevators installed on or after August 10, 2016.

[ARC 2603C, IAB 7/6/16, effective 8/10/16]

**875—72.23(89A) Elevators used for construction.** The provisions contained in ASME A17.1, section 5.10, are adopted by reference only as they pertain to elevators utilizing permanent equipment in a permanent location.

**875—72.24(89A) Construction personnel hoists.** The provisions of American National Standards Institute (ANSI) A10.4-2007 are adopted by reference for construction personnel hoists as defined by ANSI A10.4-2007. Notwithstanding the ANSI definition, these conveyances may be used only temporarily during construction.

**875—72.25(89A) Alarm bell.** An automatic passenger elevator shall be provided with an alarm bell that is activated by a switch marked “ALARM” located in or adjacent to the car operating panel. The alarm bell shall be audible inside the car and outside the hoistway.

[ARC 0950C, IAB 8/21/13, effective 9/25/13]

**875—72.26(89A) Child entrapment safeguards.** This rule applies to a passenger elevator unless it has a car door consisting of a solid panel.

**72.26(1)** For purposes of this rule, “distance with deflection between the doors or gates” means the distance between the closed car door or gate and the closed hoistway door or gate measured at the greatest perpendicular distance with deflection.

**72.26(2)** For purposes of this rule, measurements of door or gate deflection shall be made in the manner described by ASME A17.1, section 2.14.4.6.

**72.26(3)** Door or gate deflection shall not exceed .75 inch.

**72.26(4)** If the distance with deflection between the doors or gates exceeds 5 inches, a means shall be provided to disable the elevator if a person is in the space between the closed doors or gates.

[ARC 1972C, IAB 4/29/15, effective 6/3/15; ARC 2455C, IAB 3/16/16, effective 4/20/16]

**875—72.27(89A) Handicapped restricted use elevators.** All handicapped restricted use elevators must meet ANSI A17.1 (1981), Part V. Additionally, the elevators shall comply with the following limitations:

1. The elevator shall be used only by a maximum of one disabled person and one attendant at a time. Where a disabled person cannot operate the elevator in a manner which will ensure access to all operating controls and safety features, an attendant shall accompany the disabled person.

2. The elevator shall be key-operated and shall not be capable of being called by buttons or switches but may be called by a key operator.

3. Keys to operate the elevator shall be in the control of the disabled person, the attendant or persons in positions of responsibility at the location.

4. A list shall be maintained at the location indicating the persons holding keys for the operation of the elevator.

5. Each landing and the elevator car shall be posted to indicate that the elevator is only for the use of disabled persons.

6. The travel distance of the elevator shall not exceed 50 feet.

[ARC 1971C, IAB 4/29/15, effective 6/3/15]

**875—72.28(89) Elevators in broadcast towers.** This rule applies to special purpose elevators located in broadcast towers.

**72.28(1) Anchorages.** Anchorages compliant with 29 CFR 1926.502(d)(15) shall be attached inside the car and on the car top.

**72.28(2) *Emergency stop switch.*** An emergency stop switch compliant with ASME A17.1, Sections 2.26.2.8 and 5.7.19, shall be installed on the car top.  
 [ARC 2607C, IAB 7/6/16, effective 8/10/16]

These rules are intended to implement Iowa Code chapter 89A.

- [Filed emergency 12/15/75, Notice 10/6/75—published 12/29/75, effective 12/15/75]
- [Filed 7/28/82, Notice 5/26/82—published 8/18/82, effective 9/30/82]
- [Filed emergency 9/5/86—published 9/24/86, effective 9/24/86]
- [Filed emergency 4/17/87—published 5/6/87, effective 4/17/87]
- [Filed emergency 12/4/92 after Notice 9/30/92—published 12/23/92, effective 12/23/92]
- [Filed 2/15/01, Notice 10/18/00—published 3/7/01, effective 4/11/01]
- [Filed 11/7/03, Notice 10/1/03—published 11/26/03, effective 1/1/04]
- [Filed 2/10/06, Notice 1/4/06—published 3/1/06, effective 4/5/06]
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- [Filed emergency 5/28/08—published 6/18/08, effective 5/28/08]
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- [Filed ARC 7840B (Notice ARC 7696B, IAB 4/8/09), IAB 6/17/09, effective 7/22/09]
- [Filed ARC 8759B (Notice ARC 8622B, IAB 3/24/10), IAB 5/19/10, effective 6/23/10]
- [Filed ARC 0168C (Notice ARC 0011C, IAB 2/22/12), IAB 6/13/12, effective 7/18/12]
- [Filed ARC 0950C (Notice ARC 0753C, IAB 5/29/13), IAB 8/21/13, effective 9/25/13]
- [Filed ARC 1232C (Notice ARC 1108C, IAB 10/16/13), IAB 12/11/13, effective 1/31/14]
- [Filed ARC 1766C (Notice ARC 1560C, IAB 7/23/14), IAB 12/10/14, effective 1/14/15]
- [Editorial change: IAC Supplement 2/18/15]<sup>1</sup>
- [Filed ARC 1891C (Notice ARC 1771C, IAB 12/10/14), IAB 3/4/15, effective 4/8/15]
- [Filed ARC 1971C (Notice ARC 1849C, IAB 2/4/15), IAB 4/29/15, effective 6/3/15]
- [Filed ARC 1972C (Notice ARC 1853C, IAB 2/4/15), IAB 4/29/15, effective 6/3/15]
- [Filed ARC 2396C (Notice ARC 2264C, IAB 11/25/15), IAB 2/17/16, effective 3/23/16]
- [Filed ARC 2455C (Notice ARC 2356C, IAB 1/6/16), IAB 3/16/16, effective 4/20/16]
- [Filed ARC 2603C (Notice ARC 2355C, IAB 1/6/16), IAB 7/6/16, effective 8/10/16]
- [Filed ARC 2607C (Notice ARC 2422C, IAB 3/2/16), IAB 7/6/16, effective 8/10/16]
- [Filed ARC 3742C (Notice ARC 3503C, IAB 12/20/17), IAB 4/11/18, effective 5/16/18]
- [Filed ARC 3856C (Notice ARC 3727C, IAB 4/11/18), IAB 6/20/18, effective 8/1/18]
- [Filed ARC 4212C (Notice ARC 4088C, IAB 10/24/18), IAB 1/2/19, effective 3/1/19]
- [Filed Emergency After Notice ARC 5089C (Notice ARC 5040C, IAB 5/20/20), IAB 7/15/20, effective 6/25/20]

<sup>1</sup> Adopted language of rule 875—72.22(89A) [ARC 6854B, 6/18/08] editorially restored IAC Supplement 2/18/15.

CHAPTER 73  
CONVEYANCES INSTALLED PRIOR TO JANUARY 1, 1975

[Prior to 9/24/86, Labor, Bureau of [530]]

[Prior to 10/21/98, see 347—Ch 73]

**875—73.1(89A) Scope, definitions, and schedule.**

**73.1(1)** This chapter establishes minimum safety standards for all conveyances installed prior to January 1, 1975, except material lift elevators. Conveyances installed on or after January 1, 1975, shall conform with the requirements set forth in 875—Chapter 72. Material lift elevators installed prior to January 1, 1975, are not subject to regulation pursuant to Iowa Code section 89A.2.

**73.1(2)** The definitions contained in American National Standard Safety Code for Elevators, Dumbwaiters, Escalators, and Moving Walks, A17.1 (1971), shall be applicable as used in this chapter to the extent that they do not conflict with the definitions contained in Iowa Code chapter 89A or 875—Chapter 71.

**73.1(3)** Except as noted in this rule, the American Society of Mechanical Engineers Safety Code for Existing Elevators and Escalators, A17.3 (2011), is adopted by reference with an enforcement date of May 1, 2021.

*a.* If a code provision that is more restrictive than A17.3 (2011) applied to a conveyance when the conveyance was installed, the more restrictive provision shall remain in effect.

*b.* A17.3 (2011) Part X applies to elevators covered by rule 875—73.21(89A) without regard to the scope provisions set forth in A17.3 (2011) Part X.

*c.* Provisions of A17.3 (2011) that require installation of a new controller to implement Phase 1 and Phase 2 fire service or car top operation are not adopted by reference and shall not be enforced in Iowa.

*d.* A17.3 (2011), Rule 2.3.2, is intended to prevent the accumulation of sewer gas in an elevator pit and shall not be interpreted to require the addition of a drain pipe in an existing pit. An air gap in an existing drain pipe shall be considered adequate compliance.

*e.* The following shall substitute for the final sentence of A17.3 (2011) Rule 2.1.5(b): “Previously installed 60-inch chains are deemed to be in compliance.”

*f.* An elevator that was legally installed with guide rails made of materials other than steel shall not be required to replace the guide rails due to the adoption of A17.3 (2011).

*g.* Electrical protective devices required by A17.3, requirement 3.10.4, shall cause the electric power to be removed from the elevator driving-machine motor and brake.

*h.* Control panels that are designed with a door or cover and lock shall be locked when service is not being performed if equipment unrelated to the elevator is in the machine room. Group 1 security as set forth in A17.1, Section 8.1, shall be utilized.

*i.* A car top emergency exit pursuant to A17.3(2011), requirement 3.4.4.1(a), shall not be required for a hydraulic elevator if the elevator has manual lowering and it is not equipped with a plunger gripper or safety as described in ASME A17.1(2013), requirement 8.6.5.8.

**73.1(4)** The American Society of Mechanical Engineers Safety Code for Elevators and Escalators, A17.1-2013/CSA B44-13 (2013), Rule 2.14.7.1.4, concerning car top lighting and car top electrical outlets, is adopted by reference with an effective date of May 1, 2021. However, if a car top already has a single outlet, installation of a duplex outlet will not be required.

**73.1(5)** Rules 875—73.2(89A) to 875—73.6(89A), 875—73.9(89A) to 875—73.17(89A), 875—73.19(89A), 875—73.22(89A), and 875—73.24(89A) and subrules 73.1(2), 73.7(1) to 73.7(9), 73.7(11), 73.18(1), and 73.18(3) to 73.18(7) shall be superseded by corresponding provisions of A17.3 (2011) on May 1, 2021.

[ARC 7840B, IAB 6/17/09, effective 7/22/09; ARC 1891C, IAB 3/4/15, effective 4/8/15; ARC 3856C, IAB 6/20/18, effective 8/1/18; ARC 5089C, IAB 7/15/20, effective 6/25/20]

**875—73.2(89A) Hoistways.**

**73.2(1)** Each passenger elevator hoistway landing shall be protected with a door or gate. The door or gate shall be of solid construction and shall guard the entire entrance.

**73.2(2)** All automatic passenger elevators with power doors shall have nonvision panels on hoistway doors.

**73.2(3)** Each hoistway landing in any elevator hoistway shall be continuously provided with a properly working door or gate.

**73.2(4)** Where freight elevator hoistway doors or gates are of open or lattice construction, they shall be at least 6 feet high and shall come within 2 inches of the floor when closed. Gates shall be constructed to reject a ball 2 inches in diameter. Doors and gates must be able to withstand 250 pounds of pressure applied in the center of the door or gate without breaking or being forced out of their guides.

**73.2(5)** Manually operated biparting entrances of elevators which can be operated from the landings shall be provided with pull straps on the inside and outside of the upper panel where the lower edge of the upper panel is more than 6 feet 6 inches above the landing when the panel is in the fully opened position.

**73.2(6)** All freight elevators having wooden hoistway gates in an area where power loading equipment, such as fork trucks, electric mules, etc. are used shall have an acceptable means to restrain the power equipment from running through such wooden gates.

**73.2(7)** Each hoistway door or gate shall be provided with interlocks designed to prevent the car from moving unless the doors or gates are closed. Where doors or gates do not lock when closed they shall lock when the elevator is not more than 12 inches away from the floor. Passenger elevator hoistway doors shall be closed and locked before the car leaves the floor.

**73.2(8)** All hoistway-door interlocks shall function as part of a hoistway-unit system.

**73.2(9)** Automatic fire doors shall not lock any landing opening in the hoistway enclosure from the hoistway side nor lock any exit leading from any hoistway landing to the outside of the building.

**73.2(10)** Emergency keys for hoistway doors and service keys shall be kept readily accessible to authorized persons and elevator safety inspectors.

**73.2(11)** Access means shall be provided at one upper landing to permit access to the top of the car, and at the lowest landing if this landing is the normal point of access to the pit.

**73.2(12)** Each hoistway door or gate which is counterweighted shall have its weights enclosed in a box-type guide or run in metal guides. The bottom of the guides or boxes shall be so constructed as to retain the counterweight if the counterweight suspension means breaks.

**73.2(13)** Hoistways containing freight elevators shall be fully enclosed. Enclosures shall be unperforated to a height of 6 feet above each floor or landing and above the treads of adjacent stairways. Unperforated enclosures shall be so supported and braced as to deflect not over 1 inch when subjected to a force of 100 pounds applied horizontally to any point. Open work enclosure may be used above the 6-foot level and shall reject a ball 2 inches in diameter.

**73.2(14)** Hoistways containing passenger elevators shall be fully enclosed and the enclosure shall be of solid construction to its full height.

**73.2(15)** All elevators that have automatic leveling, inching or teasing devices and that are configured with landing sills that project into the hoistway shall be equipped with a bevel on the underside of the landing sill or the underside of projections found on the bottom section of vertically opening biparting doors. Bevels shall be constructed of smooth concrete or not less than 16-gauge metal securely fastened to the hoistway entrance. Bevels shall extend the full depth of the leveling zone plus 3 inches.

**73.2(16)** Every hoistway window opening seven stories or less on an outside wall above a thoroughfare and every such window three stories or less above a roof of the building or of an adjacent building shall be guarded to prevent entrance by fire or emergency rescue persons. Each such window shall be marked "hoistway" in a readily visible manner.

[ARC 7840B, IAB 6/17/09, effective 7/22/09]

**875—73.3(89A) Car enclosure: Passenger.**

**73.3(1)** Each passenger car shall be fully enclosed except on the sides used for entrance and exit. The enclosure shall be of solid construction. Grillwork at the top of the sides shall not be more than 8 inches high. If the car is provided with a solid door and there is no grillwork in the enclosure, adequate means of ventilation shall be provided.

**73.3(2)** Each passenger car enclosure shall have a top constructed of solid material. The top shall be capable of sustaining a load of 300 pounds on any area of 2 feet on a side and 100 pounds applied at any point. Simultaneous application of these loads is not required.

**73.3(3)** Passenger car enclosure tops shall have an emergency exit with cover. Opening size shall be as set forth in ANSI A17.1, 1971, Rule 204.1E. Hydraulic elevators provided with a manual lowering valve are not required to provide an emergency exit.

**73.3(4)** Each passenger car shall have a door or gate at each entrance. Doors or gates shall be of the horizontally sliding type. Doors shall be of solid construction. Gates shall be of the collapsible type. Gates and doors shall conform to ANSI A17.1, 1971, Rule 204.4.

**73.3(5)** Each passenger car door or gate shall have an electric contact to prevent the car from running with doors or gates open. EXCEPTIONS:

- a. By a car-leveling or truck-zoning device.
- b. By a combination hoistway access switch and operating device.
- c. When a hoistway access switch is operated.

**73.3(6)** All automatic passenger elevators with power doors shall have reopening devices on the doors, designed to reopen doors in the event the doors should become obstructed.

**73.3(7)** Car door or gate closing force.

a. Where a car door or gate of an automatic or continuous-pressure operation passenger elevator is closed by power, or is of the automatically released self-closing type, and faces a manually operated or self-closing hoistway door, the closing of the car door or gate shall not be initiated unless the hoistway door is in the closed position. The closing mechanism shall be so designed that the force necessary to prevent closing of a horizontally sliding car door or gate from rest shall be not more than 30 pounds.

b. Paragraph 73.3(7) "a" does not apply when both of the following conditions are met:

- (1) A car door or gate is closed by power through continuous pressure of a door-closing switch or the car operating device, and
- (2) The release of the closing switch or operating device will cause the car door or gate to stop or to stop and reopen.

**73.3(8)** Each passenger car shall have lighting inside the enclosure of not less than 5 foot-candles. Bulbs and tubes shall be guarded to prevent breakage.

**73.3(9)** Each passenger elevator shall have a capacity plate prominently displayed in its enclosure. The capacity plate shall list its capacity in pounds.

**73.3(10)** All passenger elevator car floors shall be maintained so that persons are not exposed to the hazards of tripping or falling.

**73.3(11)** All automatic passenger elevators shall be provided with an alarm bell capable of being activated from inside the car and audible outside the hoistway. If the elevator is not equipped with a bell, a two-way conversation device to the elevator and a ready accessible point outside the hoistway may be acceptable.

**73.3(12)** All automatic passenger elevators shall have their door open zones adjusted so that the door shall not open unless the car has stopped within 6 inches of floor level.

[ARC 7840B, IAB 6/17/09, effective 7/22/09]

### **875—73.4(89A) Car enclosure: Freight.**

**73.4(1)** Each freight elevator car shall have a solid enclosure at least 66 inches in height. The space between the solid section and the car top shall be enclosed with solid material, perforated material, or latticework. Where used, perforated material or latticework shall reject a ball 1½ inches in diameter. The portion of open-type enclosure which passes the counterweights shall be of solid construction the entire width of the counterweights plus 6 inches on either side. The enclosure top shall be provided with an emergency exit, except for hydraulic elevators with manual lowering valves.

**73.4(2)** Each freight car enclosure shall have doors or gates at each entrance and shall be not less than 6 feet high. Each door or gate shall be constructed in accordance with ANSI A17.1, 1971, Rule 204.4.

**73.4(3)** Each car door or gate on a freight elevator shall have electric contacts to prevent the car from running with doors or gates open. EXCEPTIONS:

- a. By a car-leveling or truck-zoning device.
- b. By a combination hoistway access switch and operating device.
- c. When a hoistway access switch is operated.

**73.4(4)** Each freight elevator car enclosure shall be provided with a top. The top may be of solid or open-work construction and shall be of metal. The openwork shall reject a ball 2 inches in diameter. Car tops shall be constructed to sustain a load of 200 pounds applied at any point on the car top. The top shall not have hinged or folding panels other than the emergency exit cover.

**73.4(5)** Each freight car enclosure shall have lighting not less than 2½ foot-candles. Bulbs or tubes shall be guarded to prevent breakage.

**73.4(6)** Each freight car enclosure shall have capacity plate, loading class plates, and a “No Passenger” sign conspicuously posted. Letters shall be not less than ½-inch high.

**73.4(7)** Freight elevators shall not be loaded to exceed the rated load as stated on their capacity plates.

**73.4(8)** Each freight elevator car floor shall be maintained so that personnel will not readily slip or trip. The floor shall be maintained so that it will hold its rated load without breaking through at any place in the car.

**73.4(9)** Freight elevators shall not be permitted to carry passengers other than the operator and persons to load and unload material.

[ARC 7840B, IAB 6/17/09, effective 7/22/09]

#### **875—73.5(89A) Brakes.**

**73.5(1)** Each electric elevator shall be provided with an electric brake.

**73.5(2)** Each brake shall be of the friction type applied by a spring or springs or gravity and released electrically. The brake shall be capable of holding the car at rest with its rated load.

#### **875—73.6(89A) Machines.**

**73.6(1)** Friction gearing or clutch mechanisms shall not be used for connecting the drum or sheaves to the main driving mechanism.

**73.6(2)** Set screw fastenings shall not be used on power elevators in lieu of keys or pins on connections subject to torque or tension.

**73.6(3)** Portable power-chain or cable hoist machines shall not be used to raise or lower an elevator car.

**73.6(4)** No belt or chain driven power machine shall be used for any elevator unless the machine is provided with a broken belt or broken chain safety switch of the electrical nonautomatic reset type. EXCEPTION: Hydraulic machines.

#### **875—73.7(89A) Electrical protective devices.**

**73.7(1)** All electric elevators shall have a labeled emergency stop switch. The switch shall be located on or adjacent to the operating panel.

**73.7(2)** All electric elevators shall have upper and lower final limit switches. Open-type switches shall not be accepted. Drum-type machines shall have final limit switches mounted on the machine and hoistway final limit switches.

**73.7(3)** All operating devices of car switch operations shall automatically return to the stop position and latch there when released.

**73.7(4)** Tiller-rope operations shall not be used unless all direction switches on controllers are mechanically operated. Contacts on direction switches shall be broken when the rope is at the centered position.

**73.7(5)** Except for firefighter service switches, leveling switches, and truck zone switches, no elevator shall be provided with a switch or device which makes more than one door or gate switch inoperative at any one time.

**73.7(6)** No person at any time shall make any required safety device or electrical protective device inoperative, except where necessary during tests, inspections or maintenance. Such devices shall be restored to their normal operating conditions as soon as all tests, inspections and maintenance have been completed. The conveyance shall not be left unattended while any of these devices are inoperative. To ensure that no jumpers are left behind, a counting system shall be utilized.

**73.7(7)** Each winding drum machine shall be provided with an electrical switch which shall disconnect power to the hoisting motor and brake when ropes are slackened.

**73.7(8)** No person shall enter an elevator pit for any reason without disconnecting power to the equipment using the pit stop switch, lockout, tagout procedures, or other appropriate means of de-energization in accordance with 875—Chapters 2 to 26.

**73.7(9)** Elevators having a polyphase AC power supply shall be provided with means to prevent the starting of the elevator drive motor or door motor if a reversal of phase rotation, or phase failure of the incoming polyphase AC power, will cause the elevator car or elevator door(s) to operate in the wrong direction.

**73.7(10)** All electrical equipment pertaining to the elevator shall conform to ANSI C1-1975 (NFPA 70-1975).

**73.7(11)** All electrical wiring in the machine room and hoistway shall be enclosed in metal conduit, flexible conduit or metal raceways.

[ARC 7840B, IAB 6/17/09, effective 7/22/09; ARC 1971C, IAB 4/29/15, effective 6/3/15]

#### **875—73.8(89A) Maintenance, repairs and alterations.**

**73.8(1) General.** Except as set forth in this rule, all maintenance, repairs and alterations shall comply with the edition of ASME A17.1, Part 8, currently adopted for new conveyances at rule 875—72.1(89A) or ASME A17.7-2007/CSA B44-07, as applicable. Rule 875—71.10(89A) describes alterations which require that the entire conveyance be brought into compliance with the most current code.

**73.8(2) Exemption for button numbering.** All maintenance, repairs and alterations to devices covered by ANSI A117.1 shall comply with ANSI A117.1 (2017), except for requirement 407.4.7.1.2.

**73.8(3) Sump pump exemption.** The provisions of ASME A17.1 that require a pit sump or drain shall not apply to an elevator alteration when all of the following criteria are met:

- a. No other code or rule requires that the pit be excavated or lowered.
- b. The alteration plans do not include the excavation or lowering of the pit floor for any other reason.
- c. There is evidence that groundwater has not entered the pit previously.
- d. The location and geology of the building indicate a likelihood that groundwater would enter the pit if the foundation or pit floor were breached to install the pit sump or drain.
- e. A description of alternative means to maintain the pit in a dry condition is provided to the labor commissioner with the alteration permit application.
- f. The labor commissioner approves the alternative means to maintain the pit in a dry condition.
- g. The alternative means to maintain the pit in a dry condition are installed or implemented as described in the alteration permit application.

**73.8(4) Pit excavation exemption.** The full length of the platform guard set forth in ASME A17.1, Rule 2.15.9.2(a), shall not be required if all of the following criteria are met:

- a. No other code or rule requires that the pit be excavated or lowered.
- b. The alteration plans do not include the excavation or lowering of the pit floor for any other reason.
- c. A full-length platform guard would strike the pit floor when the elevator is on its fully compressed buffer.
- d. The clearance between the bottom of the platform guard and the pit floor is 2.5 centimeters (1 inch) when the elevator is on its fully compressed buffer.

**73.8(5) Sprinkler retrofits and shunt trip breakers.** When a sprinkler is added to a hoistway or machine room, the conveyance shall comply with the following:

- a. The installation shall comply with the applicable version of ASME A17.1, Rule 2.8.3.3.

b. The elevator controls shall be arranged to comply with the phase I fire recall provisions of the applicable version of ASME A17.1, Rule 2.27.3.

c. The applicable version of ASME A17.1 shall be determined by reference to rule 875—72.1(89A). For purposes of subrule 73.8(5), the relevant subrule of 875—72.1(89A) shall apply based on the date the sprinkler is installed instead of the date the conveyance was installed.

**73.8(6) Safety bulkheads.** Documentation from the manufacturer establishing that a safety bulkhead was installed shall establish compliance with ASME A17.1, Rule 8.6.5.8.

**73.8(7) Alterations of handicapped restricted use elevators.** A component of a handicapped restricted use elevator being altered shall comply with the portions of ASME A17.1, section 5.3, applicable to the component. The edition of ASME A17.1 adopted by reference in rule 875—72.1(89A) shall be applied.

**73.8(8) Hoistway lighting.** If the controller for an elevator is being replaced, permanent lighting shall be installed in the hoistway of the elevator. Three-way switches to control the hoistway lighting shall be installed at the pit access door and the top landing access door. The lighting shall be sufficient to provide 10 foot-candles of light to the center of the elevator path measured when the car top lights are off. Engineering calculations that prove 10 foot-candles of light are provided to the center of the elevator path may be substituted for light meter measurements under circumstances such as a glass back car where use of a light meter is not practical.

[ARC 7840B, IAB 6/17/09, effective 7/22/09; ARC 1766C, IAB 12/10/14, effective 1/14/15; ARC 2396C, IAB 2/17/16, effective 3/23/16; ARC 3742C, IAB 4/11/18, effective 5/16/18; ARC 3856C, IAB 6/20/18, effective 8/1/18; ARC 4212C, IAB 1/2/19, effective 3/1/19]

#### **875—73.9(89A) Machine rooms.**

**73.9(1)** All means of access to elevator machine rooms shall be of a permanent nature and shall be constructed and maintained in a clear and unobstructed manner.

**73.9(2)** The elevator machine and control equipment shall be located in a separate room or separated from other equipment by a substantial grill not less than 6 feet high. The grill shall be of a design that will reject a ball 2 inches in diameter. All rooms or enclosures shall have a self-closing and self-locking door.

**73.9(3)** All elevator machine rooms shall be provided with a floor. The floor shall cover the entire area of the machine room and hoistway.

**73.9(4)** Machine room floors shall be kept clean and free of grease and oil. Articles or materials not necessary for the maintenance or operation of the elevator shall not be stored therein. Storage of any equipment or materials in elevator machine rooms other than equipment directly related to elevator operation is prohibited.

**73.9(5)** Lighting in the machine room shall be not less than 10 foot-candles at floor level.

**73.9(6)** Where there is more than one machine in a room, each machine shall have a different number conspicuously marked on it. The controller, disconnecting means and relay panels for each machine shall be conspicuously numbered to correspond to the machine they control.

[ARC 7840B, IAB 6/17/09, effective 7/22/09]

#### **875—73.10(89A) Pits.**

**73.10(1)** All pits shall be kept clean and free of equipment or material not relating to the operation of the elevator. EXCEPTION: sump pumps.

**73.10(2)** Buffers under cars and counterweights shall be permanently fastened to the floor or their supporting beams.

**73.10(3)** All elevators shall have counterweight guards. Guards shall be of unperforated metal of at least the strength of or braced to the equivalent strength of number 14-gauge sheet steel. Guards shall extend from a point not more than 12 inches above the pit floor to a point not less than 7 feet above the pit floor. Where guards are not feasible, warning chains shall be installed on the bottom of the counterweights and shall extend no less than 5 feet below the counterweight. Chains shall be of a number 10 U.S. gauge wire or of equal size. EXCEPTION: When compensating chains or ropes are used, a counterweight guard is not required.

**73.10(4)** Buffers shall be installed where elevator pits are not provided with buffers and where the pit depth will permit. Buffers shall comply with ANSI A17.1, 1971, Section 201.

**73.10(5)** Where the depth of any pit is in excess of 4 feet it shall have a ladder permanently installed. The ladder shall extend not less than 30 inches above the sill of the access door, or hand grips shall be provided to the same height. Ladder shall be of noncombustible material.

[ARC 7840B, IAB 6/17/09, effective 7/22/09]

**875—73.11(89A) Counterweights.**

**73.11(1)** Broken or cracked sections of counterweights shall be replaced.

**73.11(2)** Counterweight hanger rods, tie rods or both shall firmly support and secure the counterweight sections in place.

**73.11(3)** Wire ropes extending through counterweights from one stack to another shall be guarded by metal sleeves attached to the wire ropes. Stacks shall not be spaced less than 8 inches apart.

**875—73.12(89A) Car platforms and car slings.**

**73.12(1)** All platforms shall be soundly constructed without cracks or breaks in stringers or frames. All floors shall be free of holes.

**73.12(2)** All car slings shall be soundly constructed and free of cracks or breaks.

**73.12(3)** Where cable sheaves are used on the crosshead, they shall be firmly attached and free of cracks or breaks.

**73.12(4)** All elevators shall have data plates attached to the crosshead.

**73.12(5)** All elevators with automatic leveling, inching or teasing devices shall have a platform guard or an apron. All other elevators shall have warning chains hung within 2 inches of the edge of the platform on the entrance sides. Chains shall be of number 10 U.S. gauge wire or of equal size. Chains shall extend not less than 5 feet below the platform and shall not be spaced more than 4 inches apart.

**73.12(6)** All car slings shall have guide shoes at the top and bottom of the sling. Shoes that are worn to a degree which affect the safe operation of the car shall be repaired or replaced.

**875—73.13(89A) Means of suspension.**

**73.13(1)** Suspension ropes on drum-type machines shall have not less than one turn of the rope on the drum when the car is resting on the fully compressed buffers.

**73.13(2)** Winding drum machines shall not be used unless they are provided with not less than two hoisting ropes. Each counterweight stack shall be provided with not less than two ropes.

**73.13(3)** Tiller cables on cable-operated elevators shall be kept free of breaks.

**73.13(4)** On tiller-cable operations, the cable shall pass through a guiding or stopping device mounted on the car. The cable shall be provided with adjustable stop balls and be provided with means to lock and hold the car at a floor. Stop balls at top and bottom shall be adjusted to automatically stop the car. The tiller cable shall be completely enclosed in the hoistway.

**73.13(5)** All hoisting or counterweight ropes located outside of the hoistway that are exposed shall be covered with a box-type guard. The guard shall be not less than 6 feet high from floor level.

**73.13(6)** Roller chains shall not be used as the suspension means for any conveyance except where specifically allowed by an applicable provision of ASME A17.1.

**73.13(7)** Hoisting ropes for power elevators shall not be less than 3/8 inch in diameter.

**73.13(8)** Hoisting rope fastening means shall be of the socket and babbiting type. Clamps shall not be used.

[ARC 7840B, IAB 6/17/09, effective 7/22/09]

**875—73.14(89A) Car safeties and speed governors.**

**73.14(1)** Each elevator suspended by ropes shall be provided with mechanically applied car safeties which shall be capable of stopping and sustaining its rated load.

**73.14(2)** Broken rope or slack rope safeties may be allowed if the car speed is not in excess of 50 FPM.

**73.14(3)** Elevators which are provided solely with broken rope or slack rope safeties shall not be used for passenger service. EXCEPTION: Handicapped restricted use elevators.

**73.14(4)** All safeties shall be adjusted so that clearances from the rail shall be in accordance with ANSI A17.1, 1971, Rule 1001.2.

**73.14(5)** All slack cable safeties shall be provided with an electrical switch which disconnects power to the elevator machine and brake when setting of the safeties occurs.

**73.14(6)** All safeties operated by a speed governor shall be provided with a speed switch operated by the governor when used with type B or C car safeties on elevators having a rated speed exceeding 150 FPM. A switch shall be provided on the speed governor when used with a counterweight safety for any car speed. The switches required by this subrule shall disconnect power to the elevator driving-machine motor and brake.

**73.14(7)** Speed governors shall have their means of speed adjustment sealed.

**73.14(8)** For hoistways not extending to the lowest floor and where space below the hoistway is used for a passageway or is occupied by persons, or if unoccupied but not secured against unauthorized access, the counterweights of the elevator shall be provided with safeties. Safeties shall be tripped by a speed governor if the car speed is in excess of 150 FPM. Speed governors shall be set to trip above the car governor tripping speed but not more than 10 percent greater.

**73.14(9)** Access to a governor that is located inside a hoistway shall be provided in accordance with ASME A17.1-2007, Rule 2.7.6.3.4.

[ARC 7840B, IAB 6/17/09, effective 7/22/09; ARC 8760B, IAB 5/19/10, effective 6/23/10; ARC 3856C, IAB 6/20/18, effective 8/1/18]

#### **875—73.15(89A) Guide rails.**

**73.15(1)** All guide rails and brackets whether of wood or steel shall be firmly and securely anchored or bolted in place. Where T rail is used, all fish-plate bolts shall be tight. This shall comply with ANSI A17.1, 1981, Section 200.

**73.15(2)** Where guide rails which are worn to such a point that proper clearance of safety jaws cannot be maintained, the worn sections shall be replaced to achieve clearances as specified in ANSI A17.1, 1971, Rule 1001.2.

[ARC 7840B, IAB 6/17/09, effective 7/22/09]

#### **875—73.16(89A) Existing hydraulic elevators.**

**73.16(1)** Cylinders of hydraulic-elevator machines shall be provided with a means for releasing air or other gas.

**73.16(2)** Each pump or group of pumps shall be equipped with a relief valve conforming to the following requirements:

*a. Type and location.* The relief valve shall be located between the pump and the check valve and shall be of such a type and so installed in the bypass connection that the valve cannot be shut off from the hydraulic system.

*b. Setting.* The relief valve shall be preset to open at a pressure not greater than that necessary to maintain 125 percent of working pressure.

*c. Size.* The size of the relief valve and bypass shall be sufficient to pass the maximum rated capacity of the pump without raising the pressure more than 20 percent above that at which the valve opens. Two or more relief valves may be used to obtain the required capacity.

*d. Sealing.* Relief valves having exposed pressure adjustments, if used, shall have their means of adjustment sealed after being set to the correct pressure.

EXCEPTION: No relief valve is required for centrifugal pumps driven by induction motors, provided the shut-off, or maximum pressure which the pump can develop, is not greater than 135 percent of the working pressure at the pump.

**73.16(3)** Storage and discharge tanks shall be covered and suitably vented to the atmosphere.

**73.16(4)** Hydraulic elevators shall be governed by the rules contained in Chapter 73 that apply to electric elevators except the following rules which are exempt: 875—73.5(89A), 73.6(3), 73.7(2), 73.7(4), 73.7(7), 73.9(9), 73.10(3), 875—73.11(89A), 875—73.13(89A), and 875—73.14(89A).

**73.16(5)** Rescinded IAB 3/7/01, effective 4/11/01.

**875—73.17(89A) Existing sidewalk elevators.**

**73.17(1)** Hoistways shall be permanently enclosed. The enclosures shall conform to ANSI A17.1, 1971, Rule 401.1.

**73.17(2)** All interior landings shall have a door or gate which shall be provided with an interlock.

**73.17(3)** Doors opening in sidewalks or other areas exterior to the building shall be of the hinged type. Doors or covers shall be designed to hold a static load of 300 pounds per square foot. Doors shall always be closed unless elevator is at the landing.

**73.17(4)** Stops shall be provided to prevent the cover in the opening of the sidewalk from opening more than 90 degrees from its closed position.

**73.17(5)** Covers in sidewalk shall be designed to close when the car descends from the top landing.

**73.17(6)** Recesses or guides which will securely hold the cover in place on the car stanchions shall be provided on the underside of the cover.

**73.17(7)** All electrical wiring shall be enclosed in metal conduit, flexible conduit or metal raceways. If hoistway opens in the sidewalk, the wiring shall be weatherproof.

**73.17(8)** Operating devices and control equipment shall comply with ANSI A17.1, 1971, Rule 402.4.

**73.17(9)** All electric sidewalk elevators shall have upper and lower final limit switches. Open-type switches shall not be allowed.

**73.17(10)** Cars shall have enclosures which shall be not less than 6 feet in height provided the stanchions and bow iron are of sufficient height. The enclosure shall be provided with electric contacts to prevent the car from running with doors or gates open.

**73.17(11)** Cars shall have safeties. Where the speed of the elevator does not exceed 50 FPM, car safeties which operate as a result of breaking or slackening of the hoisting ropes may be used. Such safeties may be of the inertia type or approved type without governors. Governors shall not be required when car speed does not exceed 50 FPM.

**73.17(12)** Car enclosures and car gates shall not be required for hand-powered sidewalk elevators.

**73.17(13)** Rescinded IAB 3/7/01, effective 4/11/01.

[ARC 7840B, IAB 6/17/09, effective 7/22/09]

**875—73.18(89A) Existing hand elevators.**

**73.18(1)** Hand-powered elevators shall have hoistway doors. Doors shall be of the self-closing and self-locking type.

**73.18(2)** A sign reading “Danger—Elevator Hoistway—Keep Closed” shall be mounted on each hoistway door. The letters on the signs shall be legible, shall be at least 2 inches high, and shall contrast with the background color.

**73.18(3)** All hand-powered elevators shall be provided with safeties or slack cable devices. Safeties do not have to be operated by a speed governor unless the speed is in excess of 50 FPM.

**73.18(4)** Hand-powered elevators shall have a car enclosure which shall be constructed of metal or sound seasoned wood. The enclosure shall cover all sides which are not used for entrance or exit. The enclosure shall be secured to the car platform or frame in such a manner that it cannot work loose or become displaced in ordinary service.

**73.18(5)** Each hand-powered elevator shall be provided with a brake which shall be capable of stopping and sustaining the car whether loaded or unloaded.

**73.18(6)** Hand-powered elevators shall not be converted or changed to electric powered unless the complete conveyance is brought into conformity with 875—Chapter 72.

**73.18(7)** Rescinded IAB 3/7/01, effective 4/11/01.

[ARC 7840B, IAB 6/17/09, effective 7/22/09]

**875—73.19(89A) Power-operated special purpose elevators.**

**73.19(1)** Elevators complying with the following requirements may be installed in any structure where the elevator is not accessible to the general public, is used exclusively for designated operating

and maintenance employees only, and where transportation of one or two persons is required to attend machinery or equipment frequently.

**73.19(2)** The inside platform area of the car shall not exceed 9 square feet. The rated speed shall not exceed 100 FPM. The rated load shall not exceed 650 pounds.

**73.19(3)** Hoistways shall be enclosed to their full width, to a height of not less than 7 feet with solid or perforated noncombustible material braced to deflect not more than 1 inch when subjected to a force of 100 pounds applied horizontally at any point. Open work enclosures shall be at least number 13 steel wire gauge or expanded metal at least number 13 U.S. gauge and shall reject a ball 2 inches in diameter. Where counterweights pass, landing and stairway side shall be of solid construction.

**73.19(4)** Wiring shall comply with the requirements of the National Electrical Code, ANSI C1-1975 (NFPA 70-1975).

**73.19(5)** Counterweights shall comply with rule 875—73.11(89A).

**73.19(6)** Hoistway doors shall comply with subrules 73.2(1), 73.2(7) and 73.2(11).

**73.19(7)** Cars shall be solidly constructed in accordance with subrules 73.12(1) and 73.12(2).

**73.19(8)** Car enclosure.

*a.* Except at the entrance, the car shall be enclosed on all sides and the top. The enclosure at the sides shall be solid or openwork. All openwork shall reject a ball 1 inch in diameter. The enclosure shall be constructed of sufficient strength that it will not deflect more than 1 inch at any one point.

*b.* There shall be an electric light to illuminate the car or hoistway with the switch placed on or near the operating panel.

*c.* There shall be no glass used in the elevator car except for the car light.

**73.19(9)** A car door shall be provided at each car entrance. Door or gate shall guard the complete entrance. The door or gate shall be at least 7 feet high, of metal construction with solid or open construction to reject a ball 1 inch in diameter. A contact switch shall be provided to prevent the operation of the elevator with doors or gates open. The door or gate shall be provided with interlocks.

**73.19(10)** Guide rails shall comply with rule 875—73.15(89A).

**73.19(11)** The means and methods of suspension shall comply with subrules 73.13(1), 73.13(5), 73.13(6), 73.13(7), and 73.13(8).

**73.19(12)** Electrical switches shall comply with subrules 73.7(2) and 73.7(9).

**73.19(13)** Brakes shall comply with rule 875—73.5(89A).

**73.19(14)** Emergency signal or communication shall comply with subrule 73.3(11).

[ARC 7840B, IAB 6/17/09, effective 7/22/09]

**875—73.20(89A) Inclined and vertical wheelchair lifts.** All vertical and inclined wheelchair lifts shall conform to ANSI A17.1 (1981), part XX, sections 2000 and 2001.

**875—73.21(89A) Handicapped restricted use elevators.** All handicapped restricted use elevators must meet ANSI A17.1 (1981), Part V. Additionally, the elevators shall comply with the following limitations:

1. The elevator shall be used only by a maximum of one disabled person and one attendant at a time. Where a disabled individual cannot operate the elevator in a manner which will ensure access to all operating controls and safety features, an attendant shall accompany the disabled individual.

2. The elevator shall be key-operated and shall not be capable of being called by buttons or switches but may be called by a key operator.

3. Keys to operate the elevator shall be in the control of the disabled person, the attendant or persons in positions of responsibility at the location.

4. A list shall be maintained at the location indicating the persons holding keys for the operation of the elevator.

5. Each landing and the elevator car shall be posted to indicate that the elevator is only for the use of disabled persons.

6. The travel distance of the elevator shall not exceed 50 feet.

[ARC 7840B, IAB 6/17/09, effective 7/22/09; ARC 1971C, IAB 4/29/15, effective 6/3/15]

**875—73.22(89A) Escalators.**

**73.22(1)** Each escalator shall be provided with an electrically released mechanically applied brake capable of stopping the up and down traveling escalator with any load up to and including the rated load. The brake shall be located either on the driving machine or on the main drive shaft.

**73.22(2)** Starting switches shall be of the key-operated type. Starting switches shall be located on or near the escalator.

**73.22(3)** Emergency stop buttons or other type manually operated switches having red buttons or handles shall be accessibly located at or near the bottom and top landings. The buttons or levers shall be protected to prevent accidental operation.

**73.22(4)** A broken step-chain device shall be provided on each escalator that will cause interruption of power to the driving machine if a step chain breaks or if excessive sag occurs in either step chain.

**73.22(5)** Each escalator shall have comb plates at top and bottom landings of the escalator. Comb-plate teeth shall be meshed with and set into slots in the tread surface of the steps so that the points of the teeth are always below the upper surface of the treads.

**73.22(6)** Each escalator balustrade or moulding on the balustrade shall have a smooth surface. Screwheads shall set flush with the surface or be of the oval head type without any burrs or rough places on their surface.

**73.22(7)** The clearance on either side of the steps between the step tread and the adjacent skirt panel shall be not more than 3/16 inch.

**73.22(8)** Step treads shall be illuminated throughout their run. The light intensity shall be not less than 2 foot-candles.

**73.22(9)** An enclosed fused disconnect switch or circuit breaker arranged to disconnect the power supply to the escalator shall be in each machine room or wherever the controller is located.

**73.22(10)** A stop switch shall be provided in each machinery space where means of access to the space is provided. The switch when opened shall cause electric power to be removed from the escalator driving-machine motor and brake. The switch shall be of the manually opened and closed type and shall be marked "STOP".

**73.22(11)** Hand or finger guards shall be provided at the point where the handrail enters the balustrade.

**73.22(12)** Where the clearance of the upper outside edge of the balustrade and a ceiling or scaffold is less than 12 inches or where the intersection of the outside balustrade and a ceiling or soffit is less than 24 inches from the centerline of the handrail, a solid guard shall be provided in the intersection of the angle of the outside balustrade and the ceiling or soffit. The vertical front edge of the guard shall project a minimum of 14 inches horizontally from the apex of the angle. The escalator side of the vertical face of the guard shall be flush with the face of the wellway. The exposed edge of the guard shall be rounded.

This rule is intended to implement Iowa Code chapter 89A.

**875—73.23(89A) Moving walks.** Rescinded IAB 6/17/09, effective 7/22/09.

**875—73.24(89A) Dumbwaiters.** All dumbwaiters whether electric or hand powered shall conform to ANSI A17.1, 1971, section 700. Exceptions: Required rules for hoistway construction as set forth in ANSI A17.1, 1971, shall not apply to existing installations.

**875—73.25(89A) Sprinkler retrofits and shunt trip breakers.** Rescinded IAB 6/17/09, effective 7/22/09.

**875—73.26(89A) Safety bulkheads.** Rescinded IAB 6/17/09, effective 7/22/09.

**875—73.27(89A) Child entrapment safeguards.** This rule applies to a passenger elevator unless it has a car door consisting of a solid panel.

**73.27(1)** For purposes of this rule, "distance with deflection between the doors or gates" means the distance between the closed car door or gate and the closed hoistway door or gate measured at the greatest perpendicular distance with deflection.

**73.27(2)** For purposes of this rule, measurements of door or gate deflection shall be made in the manner described by ASME A17.1, section 2.14.4.6.

**73.27(3)** Door or gate deflection shall not exceed .75 inch.

**73.27(4)** If the distance with deflection between the doors or gates exceeds 5 inches, a means shall be provided to disable the elevator if a person is in the space between the closed doors or gates.  
[ARC 1972C, IAB 4/29/15, effective 6/3/15; ARC 2455C, IAB 3/16/16, effective 4/20/16]

**875—73.28(89) Elevators in broadcast towers.** This rule applies to special purpose elevators located in broadcast towers.

**73.28(1) Anchorages.** Anchorages compliant with 29 CFR 1926.502(d)(15) shall be attached inside the car and on the car top.

**73.28(2) Emergency stop switch.** An emergency stop switch compliant with ASME A17.1, Sections 2.26.2.8 and 5.7.19, shall be installed on the car top.  
[ARC 2607C, IAB 7/6/16, effective 8/10/16]

These rules are intended to implement Iowa Code chapter 89A.

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